

**The Canadian Association of Refugee Lawyers’  
2023 Report on Climate Migrants**

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## **The Canadian Association of Refugee Lawyers**

Founded in 2011, the Canadian Association of Refugee Lawyers (CARL) serves as an informed national voice on refugee law and the human rights of refugees and forced migrants and promotes just and consistent practices in the treatment of refugees in Canada. CARL carries out its work promoting the human rights of refugees in the courts, before parliamentary committees, in the media, among its membership via bi-annual conferences, and elsewhere in the public sphere. CARL's membership includes over 400 lawyers, academics and law students from across Canada. Relying on the broad experience of this membership, CARL has a mandate to research, litigate and advocate on refugee rights, forced migrants and related issues. CARL recognizes that climate change is a major contributor to forced migration.

The CARL Executive includes the following members:

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CARL gratefully acknowledges the immense contributions of its previous Past Presidents:

- Lorne Waldman (founding member)
- Mitch Goldberg (founding member)
- Maureen Silcoff
- Lobat Sadrehashemi

# The Canadian Association of Refugee Lawyers' 2023 Report on Climate Migrants<sup>1</sup>

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<sup>1</sup> CARL uses the term 'climate migrant' as the term 'refugee' has a specific and narrow meaning under international law; CARL is advocating for a broader category of protection. Many organizations use the term 'climate refugee' in this broader sense. In popular discourse, the terms are often used interchangeably.

## I. Introduction – The Need to Act

According to the World Bank, “by 2050, as many as 216 million people could be internal climate migrants.”<sup>2</sup> Climate-induced displacement is now a widely acknowledged consequence of climate change. Canada has a crucial opportunity to urgently and proactively create law and policy to meet international human rights obligations and protect migrants fleeing climate change. The proactive solutions outlined in this report further Canada’s economic, geopolitical, and human rights priorities.

According to its most recent settlement plan, Canada has committed to welcoming 1.5 million immigrants by 2025.<sup>3</sup> Pathways to integrate climate migrants are essential. The World Bank estimates displacement across six key regions - East Asia and the Pacific, North Africa, and Eastern Europe and Central Asia, Sub-Saharan Africa, South Asia and Latin America.<sup>4</sup> Other organizations have estimated the size of impacted individuals at over 1 billion.<sup>5</sup> Climate change will disproportionately affect “the world’s most vulnerable communities,”<sup>6</sup> particularly many Indigenous Peoples.<sup>7</sup>

By the end of the century, the homelands of 280 million people could be entirely submerged, without any chance of return.<sup>8</sup> It is important to recognize the diverse humanity of those impacted by climate change and the voluntary and involuntary migration these individuals may face.

Currently, most of those displaced are projected to relocate within their own countries.<sup>9</sup> However, a number of migrants will have no choice but to leave their countries, particularly those residing on

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<sup>2</sup> Viviane Clement, Kanta Kumari Rigaud, Alex de Sherbinin, Bryan Jones, Susanan Adamo, Jacob Schewe, Nian Sadiq, and Elham Shabahat, “Groundswell: Acting on Internal Climate Migration: Part II” (The World Bank, 2021): <https://openknowledge.worldbank.org/handle/10986/36248> at xxii.

<sup>3</sup> Government of Canada (1 November 2022) “Notice – Supplementary Information for the 2023-2025 Immigration Levels Plan,” available at <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2023-2025.html>

<sup>4</sup> “Groundswell: Acting on Internal Climate Migration: Part II”, *supra* note 2.

<sup>5</sup> Institute for Economics & Peace (9 September 2020) “Over one billion people at threat of being displaced by 2050 due to environmental change, conflict and civil unrest” available at <https://www.economicsandpeace.org/wp-content/uploads/2020/09/Ecological-Threat-Register-Press-Release-27.08-FINAL.pdf>

<sup>6</sup> Internal Displacement Monitoring Centre, Global Report on Internal Displacement 2019, cited in Othering & Belonging Institute at UC Berkeley, “Climate Refugees: The Climate Crisis and Rights Denied” (Dec 2019): <https://belonging.berkeley.edu/climaterefugees> [Othering & Belonging] at 8. See also, NRDC (9 May 2022) “Climate Migration and Equity,” available at <https://www.nrdc.org/stories/climate-migration-equity>

<sup>7</sup> Indigenous Climate Hub (15 February 2021) “Climate-Forced Indigenous Migration: Humanizing The Impact Of Climate Change,” available at <https://indigenousclimatehub.ca/2021/02/climate-forced-indigenous-migration/>

<sup>8</sup> IOM, “Human Mobility at COP26,” (2021) <https://environmentalmigration.iom.int/human-mobility-cop26>

<sup>9</sup> Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford: Oxford University Press: 2012) 2; Penny Becklumb, Background Paper No. 2010-04-E: *Climate Change and Migration: Canada's Role* (1 February 2013): [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201004E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201004E) at 16; Intergovernmental Panel on Climate Change, *Climate Change: The IPCC Scientific Assessment: Final Report of Working Group I* (New York, NY: Cambridge University Press, 1990), cited in Jane McAdam & Ben Saul, “An insecure climate for human security? Climate-induced displacement and international law” in Alice Edwards & Carla Ferstman, eds., *Human*

Small Island Developing States (“SIDS”),<sup>10</sup> which face the existential threat of disappearing and rendering thousands stateless. It is for these affected peoples, in particular, that proactive law and policy-making is needed, in conjunction with Canada’s other obligations to assist internally-displaced persons (for instance, through supporting adaptation efforts in affected regions). The March 2023 sixth Intergovernmental Panel on Climate Change (“IPCC”) Synthesis Report emphasizes the inevitability of climate migration. As the report suggests, it is essential to allow for a proactive migration plan, one part of adapting to our new reality. “[T]he costs of not preparing for this are just too high.”<sup>11</sup>

Since the 2021 version of CARL’s Report on Climate Migration,<sup>12</sup> there have been several notable developments in law and policy in comparative jurisdictions and regional governments. There has also been an increased global emphasis on the responsibilities of wealthier countries to respond to climate change with meaningful action.<sup>13</sup>

CARL’s 2023 Report proposes the following approaches for Canada to consider in the context of offering protection for climate migrants:

- Carve out an exception to s. 97’s ‘personalized risk’ requirement for climate migrants under a new subsection – s. 97(c)
- Create a proactive and broad policy response, which includes:
  - updating the humanitarian and compassionate guidelines to mandate examining officers to turn their minds to the hardships caused by environmental disasters and degradation (in conjunction with training materials for officers);
  - creating a public policy class under s.25(2) of the *Immigration and Refugee Protection Act* (IRPA) to provide protection to climate migrants (i.e., humanitarian visas);
  - issuing temporary resident permits to climate migrants;

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*Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge: Cambridge University Press, 2014); Matthew Lister, "Climate change refugees" (2014) 17 *Critical Review of International Social and Political Philosophy* 618 at 622; Indeed, the World Bank notes that the overlapping climate and health crises, i.e., the COVID-19 pandemic, reveal how climate impacts hinder humanitarian responses and increase the vulnerability of internal migrants forced out of cities due to pandemic lockdowns. See Clement et al 2021 supra note 4 at xxix.

<sup>10</sup> The SIDS are a distinct group of 39 States and 18 Associate Members of United Nations regional commissions that face unique social, economic and environmental vulnerabilities. See for instance:

<https://www.un.org/ohrlls/content/about-small-island-developing-states>

<sup>11</sup> Lina Tran (7 March 2022) “Climate migration is part of our future. Is it a problem or a solution?” available at <https://grist.org/extreme-weather/climate-migration-is-part-of-our-future-is-it-a-problem-or-a-solution/>; See also IPCC (March 2023) “Synthesis Report of the IPCC Sixth Assessment Report (AR6),” available at [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf).

<sup>12</sup> Canadian Association of Refugee Lawyers (“CARL”) (8 November 2021) “The Canadian Association of Refugee Lawyers’ 2021 Report on Climate Migrants,” available at <https://carl-acaadr.ca/wp-content/uploads/2021/11/CARL-Climate-Migration-Report-FINAL.pdf> [“2021 Report”]

<sup>13</sup> OHCHR (19 July 2022) “A/77/189: Report of the Special Rapporteur on the human rights of migrants,” available at <https://www.ohchr.org/en/documents/thematic-reports/a77189-report-special-rapporteur-human-rights-migrants>

- issuing ministerial instructions to removal officers to consider the risks caused by environmental disasters and degradation in the context of a s.48(2) analysis;
- allowing resettlement to Canada, (i.e., through private sponsorship); and/or
- implementing pilot programs as needed to test any of the above prior to requisite legislative reform.

## 1. Canada's Legal Responsibility

Canada has legal obligations to protect individuals from risks to their lives in their home countries, flowing from both the *Convention Relating to the Status of Refugees*<sup>14</sup> (“the Refugee Convention”), the International Covenant on Civil and Political Rights<sup>15</sup> (“ICCPR”), as well as International Covenant on Economic, Social and Cultural Rights<sup>16</sup> (“ICESCR”). The Refugee Convention is limited by its strict definition of “refugee”: someone outside their country of nationality, or habitual residence, that cannot return owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.<sup>17</sup>

### a) *International Legislation and Jurisprudence*

As it stands, the Convention may only offer protection to persons affected by climate change in states where:

- (a) there is a denial of protection from the adverse effects amounting to persecution on a Convention ground,
- (b) national authorities leverage the adverse effects of climate change to target and persecute particular groups or individuals, or
- (c) serious human rights violations or conflict triggered by the effect of climate change cause people to flee based on a well-founded fear of persecution on a Convention ground.<sup>18</sup>

Many persons displaced due to climate change will not fit under those specific circumstances. In those instances, states have obligations under international human rights law to provide protection.

The ICCPR and the ICESCR both impose obligations on Canada to respect, protect, and fulfill human rights for all without discrimination. This necessarily includes human rights of those displaced due to climate change.

Articles 6 and 7 of the ICCPR, in particular, guarantee the right to life and freedom from cruel, inhuman, or degrading treatment or punishment. Canada also has the corresponding obligation not to return a migrant who may face violations of these rights and freedoms, or other serious human rights violations – this is known as the principle of *non-refoulement*. The United Nations Human

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<sup>14</sup> *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, available at: <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>

<sup>15</sup> *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>

<sup>16</sup> *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html>

<sup>17</sup> *Supra*, note 15..

<sup>18</sup> W. Kälin and N. Schrepfer, “Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches”, (2012), pp. 32–34. Available at [www.unhcr.org/4f33f1729.pdf](http://www.unhcr.org/4f33f1729.pdf); UNHCR, “Legal considerations on refugee protection for people fleeing conflict and famine affected countries” (2017). Available at [www.refworld.org/docid/5906e0824.html](http://www.refworld.org/docid/5906e0824.html); UNHCR, “Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters” (2020). Available at <https://www.refworld.org/docid/5f75f2734.html>

Rights Committee confirmed in *Teitiota v New Zealand* that states bear obligations pursuant to Articles 6 or 7 of the ICCPR to refrain from sending individuals back to countries where “the effects of climate change [...] may expose individuals to a violation of their rights.”<sup>19</sup>

Under the ICCPR, unlike the Refugee Convention, the principle of *non-refoulement* is absolute. States will thus be unable to return individuals affected by climate change to areas where there is a high likelihood that climate change-related risks threaten their human rights. Accordingly, states ought to consider measures to legally admit individuals affected by climate change.

The case of *Teitiota v New Zealand* centered on Mr. Ioane Teitiota, a citizen of Kiribati, a small island state in the equatorial Pacific. In as little as ten to fifteen years, “sea level rise is likely to render the Republic of Kiribati uninhabitable.”<sup>20</sup> Mr. Teitiota argued before the Human Rights Committee that, in returning him to Kiribati after his application for refugee status was rejected, New Zealand had violated his right to life under Article 6 of the Covenant.<sup>21</sup> Although the Committee ultimately found that the risk facing Mr. Teitiota was not sufficiently ‘personal’ to prevent his removal to Kiribati, this decision requires all signatory states, including Canada, to consider their obligation in international law and ensure against non-refoulement in the context of climate migrants.<sup>22</sup>

#### b) *International and Regional Responses*

It bears noting that certain regional agreements and binding laws already exist that have broadened the definition of a ‘refugee’ – or one who warrants refugee protection – wide enough to include climate-displaced persons. These include:

- The Organization of African Unity (“OAU”) – ratified by 46 African countries:
  - A person who has to seek refuge in a different country due to “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.”<sup>23</sup> [Emphasis Added]
- Cartagena Declaration – 15 countries incorporated this broader definition into national law:
  - Refugees are those who “have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts,

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<sup>19</sup> *Ioane Teitiota v New Zealand*, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 23 September 2020 at para 9.12

<sup>20</sup> *Ibid*

<sup>21</sup> *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

<sup>22</sup> Typically, States face non-refoulement obligations where risk to the individual is personalized, not general. However, this requirement is exempted where general conditions are so extreme that they pose a serious risk to life. Note that Committee member Duncan Laki Muhumuza wrote in his dissenting opinion: “New Zealand’s action is more like forcing a drowning person back into a sinking vessel, with the ‘justification’ that after all there are other voyagers on board,” considering, in combination, Mr. Teitiota’s lack of clean water sources, rising sea levels, increased flooding, and the inability to practice subsistence farming. See *Ioane Teitiota v New Zealand*, Annex 2, para 6.

<sup>23</sup> *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, adopted by the Assembly of Heads of State and Government at its Sixth Ordinary Session, Addis-Ababa (10 September 1969), available at <https://www.unhcr.org/media/28182>



massive violation of human rights or other circumstances which have seriously disturbed public order.<sup>24</sup> [Emphasis Added]

- Kampala Convention – ratified by over 30 African countries:
  - Internally displaced persons are entitled to protection due, in part, to “natural or human-made disasters, including climate change.”<sup>25</sup>
- Protocol on the Free Movement of Persons in the Intergovernmental Authority on Development (“IGAD”) region – endorsed and adopted by 8 East African countries:
  - Recognizing “the adverse effects of climate change and environmental degradation as important drivers of displacement and migration,” citizens of IGAD states who are “moving in anticipation of, during or in the aftermath of disaster” deserve protection.<sup>26</sup>

In his July 2022 Report, the Special Rapporteur on the human rights of migrants emphasized with urgency “the insufficient pathways for regular migration, especially for climate-driven migration, putting migrants at risk.”<sup>27</sup> He subsequently reiterated states’ obligations under international human rights law to provide access to regular status for all those whose return would breach such human rights obligations.

### c) *International Policy Commitments*

This ‘hard law’ obligation, when paired with Canada’s commitments under ‘soft law’ agreements, such as the Global Compacts, further establishes Canada’s international obligations to climate migrants.

Objective 5 of the Global Compact for Safe, Orderly, and Regular Migration (“the Compact”) calls on state parties to “enhance availability and flexibility of pathways for regular migration.”<sup>28</sup> With paragraph 21 requiring that states commit to adapting options and pathways for regular migration in a manner that “responds to the needs of migrants in a situation of vulnerability.”<sup>29</sup> Saliently, subsections (g) and (h) present two concrete actions for states to achieve this objective for climate migrants:

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<sup>24</sup> Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (22 November 1984), 36, available at <https://www.unhcr.org/en-us/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>

<sup>25</sup> African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted by the Special Summit of the Union Kampala, Uganda (23 October 2009), 13, available at [https://au.int/sites/default/files/treaties/36846-treaty-kampala\\_convention.pdf](https://au.int/sites/default/files/treaties/36846-treaty-kampala_convention.pdf); Note, however, that only Niger has adopted a law on the protection of IDPs and four additional countries have drafted laws for the implementation of the convention.

<sup>26</sup> IGAD (Intergovernmental Authority on Development) (February 26, 2020) “*Protocol on Free Movement of Persons in the IGAD Region*,” Khartoum, Sudan, 2, 11, <https://bit.ly/3rLtOnd>

<sup>27</sup> OHCHR *supra* note 14 at 8, para 30

<sup>28</sup> UN General Assembly, The Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), 11 January 2019, available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/451/99/PDF/N1845199.pdf?OpenElement>

<sup>29</sup> *Ibid*, para 21.

(g) Develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin, due to sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation in or return to their country of origin is not possible.

(h) Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin due to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible.<sup>30</sup> [Emphasis Added]

To achieve Objective 5 of the Compact, Canada must develop compassionate pathways and policies for climate migrants fleeing both sudden-onset natural disasters and slow-onset degradation. In this vein, the UN Special Rapporteur has called for the implementation of a permanent pathway for those who are unable to adapt or return to their countries due to climate change:

[T]he implementation of objective 5 of the Global Compact for Safe, Orderly and Regular Migration on the availability and flexibility of pathways for regulation migration, in particular on permanent protection for migrants unable to adapt or return to their countries owing to loss and damage associated with climate change.<sup>31</sup>

The Special Rapporteur further calls on states to “enhance the flexibility and accessibility of pathways of admission and stay by ensuring that the criteria used are clear, transparent and rights-based and that they respond to the specific needs of migrants, the situations of vulnerability they face and their sociodemographic and economic reality.”<sup>32</sup>

#### *d) Canadian Action and Calls for Change*

The need for action already appears to be recognized in Canada, evident in part by the creation of the Minister of Environment and Climate Change in August of 2021.<sup>33</sup> Through an Access to Information and Privacy request, CARL has learned that Immigration, Refugees and Citizenship Canada (“IRCC”) launched a Working Group on Climate Change, Migration, and Displacement in the summer of 2020 and discussed terminology, migration pathways, and initial protection considerations within IRCC’s mandate.

On June 8, 2023, the Honourable Member of Parliament Yves-Francois Blanchet emphasized the urgency of action and spoke boldly about the current and the growing risks from climate change, related to the increasing wildfires in Quebec:

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<sup>30</sup> *Ibid*, at paras 21(g) and 21(h).

<sup>31</sup> OHCHR, *supra note 14*, at 21, para 88

<sup>32</sup> *Ibid*, at 15, para 64

<sup>33</sup> Government of Canada, Minister of Environment and Climate Change, The Honourable Steven Guilbeault, available online at: <https://www.pm.gc.ca/en/cabinet/honourable-steven-guilbeault>.

[Environmental impacts] will also affect people around the world. These people will have to try to protect themselves and prepare for the situation. One possible way for them to adapt would be to move somewhere else because the waters will rise, deserts will grow and lands that were once fertile will no longer be. **We, the countries that can do so, will be responsible for receiving climate migrants. That will put additional humanitarian pressure on migration issues.**<sup>34</sup> [Emphasis Added]

With this growing domestic and international pressure, the Government has an urgent opportunity to be a leader in proactive responses to climate-induced displacement.

## II. Proposed Definition: Climate Migrant

### 1. CARL's Proposed Definition

There is currently no agreed upon definition of a “climate migrant.”<sup>35</sup> CARL encourages a flexible approach to defining a ‘climate migrant’ between legal and policy pathways. However, with respect to CARL’s proposal of creating a new protected person class, which requires a legislative change to section 97 of the IRPA, CARL encourages legislation to adopt the following definition of a ‘climate migrant’.

A climate migrant is a person:

- 1) who is outside of their country of nationality or former habitual residence;
- 2) whose country of nationality or former habitual residence has been or will during their lifetime be affected by a short- or long-term environmental disaster or by environmental degradation; and
- 3) who, if returned, faces on account of that disaster or degradation a risk to their life, liberty, or security of their person.

Short-term disasters include, e.g., typhoons, hurricanes, wildfires, and tsunamis, among others, while long-term environmental changes include, e.g., desertification, deforestation, rising temperatures, and rising sea levels, among others. A person may face a risk to their life, liberty, or security of the person on account of an environmental disaster or environmental degradation both because of its direct physical effects and because of secondary socio-political effects such as: population pressures, profound poverty, and political strife.<sup>36</sup>

In policy applications, however, CARL proposes the broadening of this definition, where applicable, to account for eligible applicants facing imminent risks to their lives due to climate

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<sup>34</sup> House of Commons (8 June 2023) “Edited Hansard No 209,” 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, Volume 151, No. 209, available at <https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-209/hansard> at 1015

<sup>35</sup> Bipartisan Policy, Report on Climate Migration: The State Of Play On National, International, And Local Response Frameworks, March 2022: [https://bipartisanpolicy.org/wp-content/uploads/2022/03/BPC\\_Issue-Brief\\_ClimateMigration\\_R06448.pdf](https://bipartisanpolicy.org/wp-content/uploads/2022/03/BPC_Issue-Brief_ClimateMigration_R06448.pdf)

<sup>36</sup> This definition incorporates elements of the language from several of the definitions discussed above, principally the Executive Summary Othering & Belonging, supra note 6.

change who *remain in their country of origin* but have legitimate claims for protection in Canada. This may include applicants seeking temporary residence permits or humanitarian visas to flee imminent climate risks to their lives within their country of nationality or habitual residence.

### **III. Developments in Other Jurisdictions**

This section provides an overview of several developments in other international jurisdictions, which can in turn be used to inform Canada’s own approach.

Countries around the world have been slow to incorporate a response to climate-induced displacement within their immigration or refugee protection regimes. The Bipartisan Policy Center reported in March 2022 that, “substantive recommendations and solutions to this growing occurrence are few and far between, at the local, national, and international level” and, “there are few international, national, and local efforts with binding legislative power that address climate migration.”<sup>37</sup> International initiatives are generally non-binding and do not require states to take specific action. Measures have been attempted or proposed, however, in a variety of jurisdictions, outlined below.

Encouragingly, the 27<sup>th</sup> Conference of Parties (“COP”), the periodic international gathering of state and non-state parties, organized by the United Nations Climate Change body (“UN FCCC”), focused on ‘loss and damage’ for the first time in the COP history – which includes funding to address mass displacement, among other devastating and unequal impacts stemming from climate change. Indeed, as a response to COP 27’s focus on providing funding for loss and damage, countries have increased their support for the Migration Multi-Partner Trust Fund. This Fund began in 2019 after the signing of the Global Compact for Migration and includes 19 countries and two non-state entities. The United States, for instance, specifically justifies this increase in funding to support climate affected migrants.<sup>38</sup>

Experts project that COP 28, scheduled for November 30, 2023, to December 12, 2023, will have climate migration specifically added to the conference agenda. Providing an opportunity for international cooperation and collaboration in defining climate-displaced persons and solidifying best practices for all states.<sup>39</sup> While this is encouraging, individual state and regional action is urgently needed in combination with the outcome of COP 28.

#### **a) United States**

The United States does not currently grant status for individuals fleeing from the effects of climate change. However, as discussed in CARL’s 2021 Report, the Biden Administration issued an Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for

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<sup>37</sup> Bipartisan Policy, Report on Climate Migration: The State Of Play On National, International, And Local Response Frameworks, March 2022: [https://bipartisanpolicy.org/wp-content/uploads/2022/03/BPC\\_Issue-Brief\\_ClimateMigration\\_R06448.pdf](https://bipartisanpolicy.org/wp-content/uploads/2022/03/BPC_Issue-Brief_ClimateMigration_R06448.pdf)

<sup>38</sup> The White House, “President Biden Announces New Initiatives at COP 27 to Strengthen U.S. Leadership in Tackling Climate Change” [Fact Sheet] (11 November 2022), online: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/08/fact-sheet-biden-harris-administration-launches-new-climate-portal-to-help-communities-navigate-climate-change-impacts/>.

<sup>39</sup> Gaia Vince (11 January 2023) “Mass Climate Migration is Coming,” available at <https://www.wired.com/story/migration-climate-environment-refugees/>

the Impact of Climate Change on Migration, dated February 4, 2021. The White House released the Report on the Impact of Climate Change on Migration in October 2021.<sup>40</sup> This Report emphasizes that:

When migration presents as the preferable form of adaptation, or in situations when people are forced to flee the impacts of climate change, the United States has a compelling national interest in strengthening global protection for these displaced individuals and groups. Those protections are rooted in humanitarian objectives and inextricably linked to U.S. interests in safe, orderly, and humane migration management, regional stability, and sustainable economic growth and development.<sup>41</sup>

There has been some legislative advancement towards tackling the issue of climate migration in the United States,<sup>42</sup> with the proposed legislation, entitled “*A Bill To establish a Global Climate Change Resilience Strategy, to Authorize the Admission of Climate-Displaced persons, and For Other Purposes*”, attempting to make provisions for “climate-displaced person(s)” by amending the *Immigration and Nationality Act* (INA, which is the American equivalent of the IRPA).

In particular, the Bill introduces the concept of a person displaced due to climate change by inserting the following definition into section 101(a) of the INA:

The term ‘climate-displaced person’ means any person who, for reasons of sudden or progressive change in the environment that adversely affects his or her life or living conditions:

- (a) is obliged to leave his or her habitual home, either within his or her country of nationality or in another country;
- (b) is in need of a durable resettlement solution; and
- (c) whose government cannot or will not provide such durable resettlement solution.<sup>43</sup>

The Bill would allow applications ‘for climate-displaced person statuses’ at designated application centres.<sup>44</sup> The Bill recognizes that the Office of the United Nations High Commissioner for Human Rights has suggested that a person who cannot be reasonably expected to return to his or her country of origin should be considered a victim of forced displacement and should be granted at least a temporary stay in the country where they have found refuge.<sup>45</sup> Accordingly, the Bill attempts to have the United States *inter alia* “assist in providing durable solutions for climate-displaced persons” and to “aid other countries in their climate change mitigation efforts”.<sup>46</sup>

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<sup>40</sup> White House, Report on the Impact of Climate Change on Migration, October 2021:

<https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf>

<sup>41</sup> *Ibid*, at 5

<sup>42</sup> Lundstrom, Jayla, *Centre for American Progress*, Climate Change Is Altering Migration Patterns Regionally and Globally (December 3, 2019): <https://www.americanprogress.org/issues/immigration/news/2019/12/03/478014/climate-change-altering-migration-patterns-regionally-globally/>.

<sup>43</sup> *A Bill to establish a Global Climate Change Resilience Strategy, to authorize the admission of climate-displaced persons, and for other purposes*, 117<sup>th</sup> United States Congress, 1<sup>st</sup> Session, (April 22, 2021), section 3: [Available at: https://www.congress.gov/bill/117th-congress/house-bill/2826/actions](https://www.congress.gov/bill/117th-congress/house-bill/2826/actions) and <https://www.congress.gov/bill/117th-congress/senate-bill/1335/actions>.

<sup>44</sup> *Ibid*.

<sup>45</sup> *Ibid*, section 2.

<sup>46</sup> *Ibid*

Finally, the Bill aims to have the United States collect and report data on individuals displaced by climate change and environmental disasters, report the findings to Congress and the Secretary of State, and coordinate with the US Agency for International Development to create a “Global Climate Resilience Strategy” over the medium term.<sup>47</sup>

The previous legislative session passed without a vote on the Bill, but its sponsors reintroduced it in the House and Senate on April 22, 2021.<sup>48</sup> On April 23, 2021, the Bill was referred to the Subcommittee on Environment and Climate Change. On October 19, 2021, the Bill was referred to the Subcommittee on Immigration and Citizenship. There has been no further public action taken on this Bill.

As of May 2023, the Interagency Policy Process on Climate Change and Migration put forward in the White House Report, intended to coordinate US efforts in addressing climate migration, has yet to be established.<sup>49</sup> However, in a May 2023 joint letter, 47 members of Congress urged President Biden to create an interagency working group on climate change and migration, to protect populations displaced by weather-related disasters.<sup>50</sup>

## b) Oceania and the Pacific

### i. New Zealand

New Zealand has introduced a Pacific Access Category Resident Visa program. This program has a quota for a total of 650 migrants from Fiji, Kiribati, Tonga, and Tuvalu who may apply for permanent residency in New Zealand per annum. Similarly, the Samoan Quota Resident Visa allows for a quota of 1,100 Samoan migrants each year.<sup>51</sup> These visas have the direct intention of providing status for residents of the neighbouring Small Island Developing States (SIDS) who may need to leave their homes due to climate change.<sup>52</sup>

### ii. Australia

Similar to their neighbour New Zealand, Australia’s Pacific Labour Mobility Scheme, launched in July 2018, seeks to welcome new workers to Australia, particularly from Pacific Island states. This program serves to enhance capacity across the Pacific region and eliminate labour shortages in Australia by accepting workers from nine countries including Fiji, Kiribati, and Nauru.<sup>53</sup> Although not directly targeting climate-displaced people, Australia submitted to the Office of the High

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<sup>47</sup> *Ibid*, sections 4 and 5.

<sup>48</sup> *Ibid*

<sup>49</sup> Julie Watson, “After Raising Hope, Biden Still Lacks Climate Migration Plan” *AP News* (19 October 2022) online: <https://apnews.com/article/bidenscience-national-security-droughts-climate-andenvironmental168993c37a8be94767799cdfb63ea64>.

<sup>50</sup> Norton Press Release (1 May 2023) “Norton Urges President Biden to Create Interagency Working Group on Climate Change and Migration,” available at <https://norton.house.gov/media/press-releases/norton-urges-president-biden-create-interagency-working-group-climate-change>.

<sup>51</sup> OHCHR, *supra note 14*, at 19, para 80

<sup>52</sup> *Ibid*

<sup>53</sup> *Ibid*

Commissioner of Human Rights (“OHCHR”) – UN’s human rights body – that this program may provide alternative pathways for individuals displaced due to climate change.<sup>54</sup>

Australia has also introduced the Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise, which provides core principles for states to follow in legal and policy action on climate change and climate-induced displacement.<sup>55</sup>

One such principle – 3.1 – holds that countries must use their capabilities and resources under their international human rights obligations to ensure appropriate and effective measures are taken in the context of climate migration caused by sea-level rise. These measures include:

1. Reduce disaster risks and help countries adapt to the adverse effects of climate change.
2. Protect lives and ensure the safety of those living in low-lying areas at high risk of sea-level rise.
3. Prevent displacement from happening.
4. Protect and assist individuals if they must be displaced.<sup>56</sup>

The Declaration urges both sending and receiving states to review existing domestic laws around climate migration, and to consider developing new laws and agreements to accommodate increasing numbers of persons migrating due to rising sea levels.<sup>57</sup>

### iii. Pacific Regional Framework on Climate Mobility

Developed as a product of two years of consultations and research, this draft framework intends to lay out national policies surrounding both regional and internal displacement due to climate change.<sup>58</sup>

Over 100 state and non-state actors from the Pacific region met in the summer of 2022 to draft the framework and plan its implementation in national policies.<sup>59</sup> The parties to this draft recognize the urgency to act, as Pacific Island countries are amongst the most severely impacted by climate

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<sup>54</sup> *Ibid.*

<sup>55</sup> Platform on Disaster Displacement (24 August 2018) “Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise,” available at <https://disasterdisplacement.org/portfolio-item/sydney-declaration/>

<sup>56</sup> *Ibid*

<sup>57</sup> *Ibid*

<sup>58</sup> ICAAD (International Center for Advocates Against Discrimination), (June 2022) “ICAAD Joins CSO Partners at the First-Ever Regional Climate Mobility Dialogue,” available at <https://icaad.ngo/2022/07/15/icaad-joins-cso-partners-at-the-first-ever-regional-climate-mobility-dialogue/>

<sup>59</sup> ILO (International Labour Organization), (24 June 2022) “High-level Dialogue on the New Regional Framework on Climate Mobility concludes,” [https://www.ilo.org/suva/public-information/WCMS\\_850454/lang--en/index.htm](https://www.ilo.org/suva/public-information/WCMS_850454/lang--en/index.htm)

change and sea level rise. Eight islands have already been submerged and two are rapidly disappearing.<sup>60</sup>

c) Small Island Developing States (“SIDS”)

i. Fiji

Fiji states it will welcome climate migrants on a permanent basis.<sup>61</sup> In 2016, the Attorney General and acting Prime Minister of Fiji said that the nation would welcome climate migrants displaced by rising sea levels in the Pacific Islands. At the time, Fiji invested large sums into developing a legal framework to help relocate future climate migrants from other Pacific Island countries.<sup>62</sup>

Fiji’s Planned Relocation Guidelines intend to include all people at risk of, or affected by disasters and environmental change, but not until all other adaptation options in the National Adaptation Plan are exhausted and full, free, and informed consent and cooperation is provided by the communities at risk. Furthermore, the 2019–2024 strategy on drought-related disasters of the Intergovernmental Authority on Development includes efforts to build resilience and promote migration as an adaptation mechanism.<sup>63</sup>

Fiji followed the guidance of the Coordination Centre for the Prevention of Natural Disasters in Central America, which trained member countries on disaster displacement. Likewise, following regional guidance, Fiji and other member states ensure that they incorporate migrants and migration into their disaster risk reduction or preparedness frameworks (see [A/76/642](#)).<sup>64</sup> Fiji’s Planned Relocation Guidelines, for instance, include all people at risk of, or affected by disasters and environmental change, but not until all other adaptation options in the National Adaptation Plan are exhausted and full, free, and informed consent and cooperation is provided by the communities at risk.<sup>65</sup>

d) Latin America

i. Argentina

In 2022, Argentina announced the creation of a special humanitarian visa to facilitate regular admission of persons from Central America, Mexico, and the Caribbean, fleeing socio-natural

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<sup>60</sup> John Podesta, (25 July 2019) “The climate crisis, migration, and refugees,” Brookings Institution, available at <https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/>

<sup>61</sup> Suong Vong, *Protecting Climate refugees is Crucial for the Future*, Humanity in Action, May 2017 available online at [https://www.humanityinaction.org/knowledge\\_detail/protecting-climate-refugees-is-crucial-for-the-future/](https://www.humanityinaction.org/knowledge_detail/protecting-climate-refugees-is-crucial-for-the-future/)

<sup>62</sup> National Legislative Bodies / National Authorities, *Fiji: Planned Relocation Guidelines - A framework to undertake climate change related relocation (2018)*, December 2018.

<sup>63</sup> *Ibid.*

<sup>64</sup> OHCHR, *supra note 14*, at 19, para 81

<sup>65</sup> National Legislative Bodies / National Authorities, *Fiji: Planned Relocation Guidelines - A framework to undertake climate change related relocation (2018)*, December 2018, p. 95



disasters.<sup>66</sup> These visas grant admission for three years and work alongside civil society organizations to provide housing and integration support for the first year.

The Director of the National Immigration Directorate in Argentina emphasizes the unique focus on providing “active and preventive protection measures to people displaced and *at risk* of displacement, as opposed to the most common *ex post facto* humanitarian measures usually granted to people already in the country when disaster strikes.”<sup>67</sup>

## ii. Colombia

In May 2023, the Colombian Congress voted in favour of the first of four stages of a new “climate migrant bill.”<sup>68</sup> This Bill proposes to define climate-displaced people and to provide protection for these individuals. This protection would include “priority access to housing, health services and education.”<sup>69</sup>

Importantly, this proposed Bill includes both people affected by short-term environmental impacts such as natural disasters, and long-term environmental impacts, such as environmental degradation to farmlands.<sup>70</sup>

Congressman Duvalier Sánchez, one of the lawmakers sponsoring the bill – has reported high likelihood that this Bill will pass, considering widespread political support and alignment with the government’s commitment to tackle climate change and its impacts.<sup>71</sup>

## iii. Uruguay

Flooding is a central environmental concern in Uruguay. In the past several years, 67,000 people in Uruguay are estimated to have been displaced due to flooding or flood-related causes.<sup>72</sup> In 2014, Uruguay established the National Resettlement Plan to resettle families affected by flood-prone or polluted areas.<sup>73</sup> The country aimed to resettle 2,516 families in 2015 that lived in flood-prone zones and could not afford to move on their own.<sup>74</sup> Job training and housing were provided to families to help them integrate into the community.

## iv. Peru

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<sup>66</sup> Boletín Oficial de la República Argentina (16 May 2022) “Dirección Nacional de Migraciones,” available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/262784/20220519>

<sup>67</sup> Platform on Disaster Displacement (2022) “Policy Brief: Leading Initiatives by Argentina to Address Displacement in the Context of Disasters and Climate Change,” available at <https://disasterdisplacement.org/portfolio-item/policy-brief-leading-initiatives-by-argentina-to-address-displacement-in-the-context-of-disasters-and-climate-change/>

<sup>68</sup> Anastasia Moloney (17 May 2023) “Colombia’s climate migration draft law hailed as ‘life saver,’” available at <https://www.context.news/climate-risks/colombias-climate-migration-draft-law-hailed-as-life-saver>

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> United Nations Climate Change Secretariat, National Resettlement Plan - Uruguay, available online: <https://unfccc.int/climate-action/momentum-for-change/urban-poor/national-resettlement-plan>

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

In 2018, Peru published its first Climate Change Framework Law.<sup>75</sup> Among other things, the law “requires government planning aimed at preventing and addressing forced migration and temporary displacement due to climatic changes and other environmental impacts.”<sup>76</sup> The law required the National Authority on Climate Change and the Ministry of Women and Vulnerable Populations to establish an action plan to prevent and address forced migration caused by the effects of climate change.<sup>77</sup>

e) Africa’s Binding Continental Agreement

The Kampala Convention was adopted in October 2009. The signatories include 30 African states, who have ratified the Convention. The objectives of this binding agreement are to eliminate the root causes of displacement, provide durable solutions, protect internally displaced persons in Africa, and establish the obligations and responsibilities of state parties.<sup>78</sup> States are compelled to incorporate their obligations “into domestic law by enacting or amending relevant legislation on the protection of, and assurance to, internally displaced persons in conformity with their obligations under international law.”<sup>79</sup> Further, Article 4 articulates that the prohibited categories of arbitrary displacement include “forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected.”<sup>80</sup>

Importantly, in 2020, The Free Movement of Persons Protocol was endorsed by Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda.<sup>81</sup> The agreement allows people fleeing natural disasters to seek refuge in neighbouring states. The Protocol allows citizens to “cross borders in anticipation of, during or in the aftermath of disaster, and enables disaster-affected people to remain in another country as long as return to their country of origin ‘is not possible or reasonable’.”<sup>82</sup>

As a separate, specific example of free mobility regimes responding to climate displacement, the Inter-Governmental Authority on Development (IGAD) in East Africa’s “Protocol on Free Movement of Persons in the IGAD Region” holds:

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<sup>75</sup>Bipartisan Policy, Report on Climate Migration: The State Of Play On National, International, And Local Response Frameworks, March 2022: [https://bipartisanpolicy.org/wp-content/uploads/2022/03/BPC\\_Issue-Brief\\_ClimateMigration\\_R06448.pdf](https://bipartisanpolicy.org/wp-content/uploads/2022/03/BPC_Issue-Brief_ClimateMigration_R06448.pdf)

<sup>76</sup> *Ibid.*

<sup>77</sup> Decreto Supremo que aprueba el Reglamento de la Ley N° 30754, Ley Marco sobre Cambio Climático, available online: <https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-aprueba-el-reglamento-de-la-ley-n-30754-decreto-supremo-n-013-2019-minam-1842032-2/>

<sup>78</sup> African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention"), 23 October 2009, Preamble, available at: <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa> <https://www.unhcr.org/en-au/about-us/background/4ae9bede9/african-union-convention-protection-assistance-internally-displaced-persons.html>

<sup>79</sup> *Ibid.*, Article 3(2)(a)

<sup>80</sup> *Ibid.*, Article 4(4)

<sup>81</sup> Thomson Reuters Foundation News, “OPINION: New pact paves way for innovative solutions to disaster and climate change displacement in Africa”, 28 February 2020 available online: <https://news.trust.org/item/20200228175003-4k8dq>

<sup>82</sup> *Ibid.*

1. Member States shall allow citizens of another Member State who are moving in anticipation of, during or in the aftermath of disaster to enter into their territory provided that upon arrival they shall be registered in accordance with national law.
2. Member States shall take measures to facilitate the extension of stay or the exercise of other rights by citizens of other Member States who are affected by disaster in accordance with the provisions of this Protocol when return to their state of origin is not possible or reasonable.<sup>83</sup>

f) Bangladesh

In response to a growing concern over climate-induced displacement, the government of Bangladesh developed the National Strategy on the Management of Disaster and Climate-Induced Internal Displacement (NSMDCIID) in 2015. The Strategy acknowledges the rights of climate migrants at different stages of displacement. It acknowledges that those who experience displacement are at risk of various human rights challenges.<sup>84</sup>

The goal of the strategy is “to make vulnerable communities in Bangladesh resilient to climate change and disasters through sustainable management of disaster and climate induced internal displacement.”<sup>85</sup> At the pre-displacement phase, the strategy outlines activities for prevention and preparedness. At this stage, the state should understand the risk, invest in programs, strengthen disaster risk governance, create options for employment and livelihood, and identify highly vulnerable zones and engage in effective land use planning.<sup>86</sup>

At the displacement phase, the main objective is to manage displacement and provide humanitarian assistance to the affected people. At this stage, the state will determine the needs of the displaced population and arrange a response that “addresses four primary life-saving areas of humanitarian aid: water supply, sanitation and hygiene promotion; food security and nutrition; shelter, settlement and non-food items; and health action.”<sup>87</sup>

At the post-displacement phase, the state will rehabilitate affected people. According to the Strategy, the state should welcome participation of the affected people in the decision-making process. The state will assess the stability of the region, provide adequate information to affected persons to enable an informed decision, restore land, houses, and property and basic services.<sup>88</sup>

g) Europe

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<sup>83</sup> Inter-governmental Authority on Development, *Protocol on Free Movement of Peoples in the IGAD Region* (26 December 2020), Article 16, available at: <https://environmentalmigration.iom.int/sites/g/files/tmzbd11411/files/event/file/Final%20IGAD%20PROTOCOL%20ENDORSED%20BY%20IGAD%20Ambassadors%20and%20Ministers%20of%20Interior%20and%20Labour%20Khartoum%2026%20Feb%202020.pdf>.

<sup>84</sup> Dr. Tasneem Siddiqui, Mohammad Towheedul Islam, Zohra Akhter (13 September 2015) “National Strategy on the Management of Disaster and Climate Induced Internal Displacement (NSMDCIID),” available at [https://www.preventionweb.net/files/46732\\_nsmdciidfinalversion21sept2015withc.pdf](https://www.preventionweb.net/files/46732_nsmdciidfinalversion21sept2015withc.pdf)

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

i. Italy

In a 2020 decision, Italy's Supreme Court of Cassation (its highest court), found that natural disasters can amount to compelling drivers of migration, as they are able to worsen people's vulnerability and violate their core human rights.<sup>89</sup> This case was an appeal of a rejected international protection claim. In this case, the claimant's home was destroyed by flooding that affected large parts of Bangladesh in 2012 and 2017. The Court concluded that destruction of the applicant's home could affect his vulnerability if it related strongly enough to possible violations of his primary human rights.<sup>90</sup>

ii. Germany

The German Advisory Council on Global Change has put forward a plan to develop a 'climate passport' that would offer individuals at risk of climate change the option to gain access to civil rights in safe countries.<sup>91</sup> This climate passport would permit voluntary and humane migration pathways for the population of states that face existential threats and may become uninhabitable due to climate change. According to the 2018 proposal, the passport would generally apply to the entire population and would not require a direct application by individual citizens. As such, individuals would not have to prove they have been directly affected by the disaster.<sup>92</sup>

iii. Switzerland

Article 83 of the Federal Act on Foreign Nationals and Integration allows for provisional admission where execution of a removal order is neither possible nor lawful. The Swiss Federal Council has clarified that Article 83 of the Federal Act on Foreign Nationals and Integration applies to displacement owing to natural disasters and the adverse effects of climate change. It has explained that Switzerland can provisionally admit people whose return cannot be reasonably affected owing to environmental events.<sup>93</sup>

iv. Sweden and Finland

From 2011 to 2016, both Sweden and Finland granted temporary and permanent immigration status to individuals inside of their respective countries and who are unable to return to their countries of origins due to environmental disaster.<sup>94</sup> In Sweden, environmental migrants were included in a special category of 'person otherwise in need of protection' who is unable to return to their native country because of an environmental disaster. However, it is unclear whether this category encompassed climate change impacts.<sup>95</sup> It also remains to be seen whether these countries will reinstate their progressive policies, which were repealed or walked back as the 'refugee crisis' emerged in Europe.

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<sup>89</sup> OHCHR, *supra note 14*, at 18, para 73

<sup>90</sup> *Ibid.*

<sup>91</sup> OHCHR, *supra note 14*, at 19, para 77

<sup>92</sup> *Ibid.*

<sup>93</sup> OHCHR, *supra note 14*, at 18, para 75

<sup>94</sup> Murray, Sheila, Environmental Migrants and Canada's Refugee Policy (2010) 27:1 *Refugee* 89 available online at <https://refuge.journals.yorku.ca/index.php/refuge/article/view/34351/31258>, p. 98

<sup>95</sup> Ilse Pinto-Dobernig, ed, "Migration and Climate Change" (2008) 31 *International Organization for Migration* available online at <https://publications.iom.int/books/mrs-ndeg31-migration-and-climate-change>, p. 39.

The Finnish Aliens Act did not change their definition of a refugee or the subsidiary protections against torture and other inhuman or degrading treatment. Instead, it added a new category of ‘humanitarian protection’ on account of ‘environmental catastrophe’.

An alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if there are no grounds under section 87 or 88 for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation.<sup>96</sup> [Emphasis Added]

Finland also extended protection for groups of environmentally displaced persons under section 109 of the Act. This protection remained temporary but is available to “aliens who need international protection and who cannot return safely to their home country or country of permanent residence, because there has been a massive displacement of people in the country or its neighbouring areas as a result of an armed conflict, some other violent situation or an environmental disaster.”<sup>97</sup> [Emphasis Added]

Sweden included a separate category of protection called ‘other protection needs’, which included “individuals who cannot return to [their] home countries due to an environmental disaster.”<sup>98</sup> This was limited to sudden-onset disasters alone, initially intended to protect victims of catastrophes like Chernobyl. Individuals affected by slow-onset environmental disasters were not included. Likewise, Sweden limited protection to individuals who could not find internal flight alternatives.

## **I. Recommended Pathways for Protecting Climate Migrants**

In line with the examples above, Canada has a range of options available to protect climate migrants in our country, and should seek to implement such options quickly. CARL’s legal and policy recommendations are as follows:

### **1. Section 97 Exception to the Requirement for ‘Personalized Risk’**

To entitle a person for protection, the IRPA requires that an applicant be subjected ‘personally’ to the danger of torture or to a risk to their life or of cruel, unusual treatment or punishment.

Subsection 97(1)(b)(ii) of the IRPA holds that the risk to life or risk of cruel, unusual treatment must not be “faced generally by other individuals in or from that country.”<sup>99</sup> Many climate migrants would not have access to protection under section 97 due to the generalized risk stemming from wide-reaching climate impacts.

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<sup>96</sup> The Finnish Aliens Act 301:2004

<sup>97</sup> *Ibid*, at s. 109

<sup>98</sup> Swedish Aliens Act 2005:716.

<sup>99</sup> *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), section 97(1)(b)(ii).

CARL proposes considering the adoption of a new subsection – subsection 97(1)(c) – which carves out a legislated exception to the requirement of ‘personalized risk’ for climate migrants specifically. Section 97 could read as follows:

**97 (1)** A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

[...]

(c) to a current or imminent risk to their life, liberty, or security of the person by a short- or long-term environmental disaster or by environmental degradation if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, and

(ii) the risk would be faced everywhere in that country

This proposed amendment recognizes the preference for in-country solutions to climate-induced displacement, where feasible. These solutions – which warrant separate attention and support by the Government of Canada – may include adaptation methods and planned internal relocation (akin to those in Bangladesh and Fiji above). However, when internal solutions are not available, protected person status ought to be extended to climate migrants forced from their homes.

## 2. Policy Options

CARL strongly reiterates that Canada’s *ad hoc* approach to humanitarian disasters is inadequate to proactively and effectively addressing the needs of climate migrants. A thoughtful and forward-looking response is needed. The following six policy options can be implemented in combination with one another and in conjunction with the above strategies.

### a) *Option 1: Humanitarian and Compassionate Guidelines*

Canada allows the granting of permanent residency on humanitarian and compassionate grounds under section 25 of the IRPA.<sup>100</sup> This section provides the Minister with discretion to admit individuals to Canada who may not have been contemplated elsewhere in legislation. Specifically, the Minister is permitted, in most cases, to “examine the circumstances concerning the foreign national” and “grant the foreign national permanent resident status” based on any “humanitarian and compassionate considerations relating to the foreign national.”<sup>101</sup> Canada ought to explicitly recognize climate-induced migration as a relevant consideration in humanitarian and compassionate decision-making by enacting or amending guidelines pertaining to section 25 of IRPA.

The IRCC operational bulletin provides the following guidance on the factors relevant to section 25 decision-making:

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<sup>100</sup> *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), section 25.

<sup>101</sup> *Ibid.*

Applicants may base their requests for H&C consideration on any relevant factors including, but not limited to:

- establishment in Canada for in-Canada applications;
- ties to Canada;
- the best interests of any children directly affected by the humanitarian and compassionate decision;
- factors in their country of origin including adverse country conditions;
- health considerations including inability of a country to provide medical treatment;
- family violence considerations;
- consequences of the separation of relatives;
- inability to leave Canada has led to establishment (in the case of applicants in Canada);
- ability to establish in Canada for overseas applications;
- any unique or exceptional circumstances that might merit relief.<sup>102</sup>

CARL proposes adding the following factor to these guidelines explicitly requiring that examining officers consider climate related migration:

- short-term or long-term environmental disasters or degradation - including typhoons, hurricanes, wildfires, tsunamis, desertification, deforestation, rising temperatures, and rising sea levels, among others - that can be expected to pose a risk to a person's life, liberty, or security of the person during the course of their lifetime, because of its direct physical effects and/or because of secondary socio-political effects such as population pressures, profound poverty, and political strife.

Alongside this guidance, CARL proposes that the IRCC share training materials with officers regarding climate related migration and H&C considerations involved therein.

*b) Option 2: Public Policy Class*

The creation of a public policy class for climate migrants would permit Canada a great deal of flexibility in adapting to the needs of such migrants in light of Canadian policy objectives. This action is in line with other jurisdictions creating 'humanitarian visas' for climate-displaced persons. No legislative or regulatory process is required for the creation of a public policy class under section 25.2(1) of IRPA.<sup>103</sup> Rather, the internal policy process begins with the department or the Minister's office.

*c) Option 3: Temporary Resident Permits*

A third option is to provide temporary resident permits to climate migrants. Section 24(1) of IRPA allows the issuance of a discretionary temporary resident permit both to classes of individuals and to specific individuals where such persons do not otherwise meet the requirement of IRPA.<sup>104</sup> The

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<sup>102</sup> Government of Canada, Immigration, Refugees Citizenship Canada, Operational Instructions and Guidelines, *Humanitarian and compassionate assessment: Hardship and the H&C assessment* (March 2, 2016), available at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/humanitarian-compassionate-consideration/processing/assessment-hardship-assessment.html>

<sup>103</sup> *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), section 25.

<sup>104</sup> *Ibid.*

Minister is permitted to issue TRPs where it is “justified in the circumstances”.<sup>105</sup> The government of Canada itself seemed to contemplate such permits to address climate migrants in its 2010 Background Paper, *Climate Change and Forced Migration: Canada’s Role*.<sup>106</sup> However, a temporary measure, such as a temporary resident permit, could leave an individual’s life in limbo for far too long, falling short of an ideal long-term solution for climate migrants. CARL recommends a consideration of such temporary protection only in conjunction with more meaningful, long-term pathways to status and protection in Canada, as outlined elsewhere in this section. This option would be akin to the humanitarian visas provided in a number of other jurisdictions, as outlined above.

*d) Option 4: Ministerial Instructions on Removals*

The Canadian Border Services Agency, which enforces immigration law and policy, is obligated under s. 48(2) of IRPA to enforce a removal order “as soon as possible”.<sup>107</sup> With renewed attention to the plight of climate migrants, a fifth measure to address climate migration would be to mandate that removals officers consider whether removal would subject an individual to a risk of life, liberty or security of the person as a result of climate related events. CARL recommends the consideration of Ministerial instructions to ensure such a consideration by enforcement officers.

*e) Option 5: Resettlement through Private Sponsorship/Expansion of the Humanitarian Protected Persons Class*

CARL recommends both expanding the definition of the country of asylum class, and introducing a new class under the humanitarian-protected persons class, for climate migrants who have been, and continue to be, seriously and personally affected by climate-induced risks to their life and security of the person.

There is currently one class listed under humanitarian-protected persons abroad class, which is the country of asylum class. Regulation 146 of the *Immigration and Refugee Protection Regulations* (“IRPR”) specifies that protection may be granted to “a person in similar circumstances to those of a Convention refugee [who] is a member of the country of asylum class.”<sup>108</sup> The country of asylum class applies to individuals who “have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.”<sup>109</sup> CARL recommends that this definition be expanded as follows:

147 A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

- (a) They are outside all of their countries of nationality and habitual residence; and

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<sup>105</sup> *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), section 24(1).

<sup>106</sup> Parliament of Canada, Background Paper, *Climate Change and Forced Migration: Canada’s Role* (February 2, 2010): [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201004E#ftn22](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201004E#ftn22)

<sup>107</sup> *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), section 48(2).

<sup>108</sup> *Immigration and Refugee Protection Regulations* (SOR 2002-227), s. 146

<sup>109</sup> *Immigration and Refugee Protection Regulations* (SOR 2002-227), s. 147(b)



- i. They have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries; or
- ii. They have been, and continue to be, seriously and personally affected by climate-induced risks to their life and security of the person in each of those countries.

In addition, CARL is proposing that a new class be introduced that would provide a similar avenue of resettlement for climate migrants from inside their countries:

#### Climate Migration Class

148(1) A foreign national is a member of the Climate Migration Class if they have been, and continue to be, seriously and personally affected by climate-induced risks to their life and security of the person in their country of nationality.

There previously existed a ‘Source Country Class’ to protect victims of persecution who were still in their home country, as such, precedent for this recommendation currently exists.

#### *f) Option 6: Pilot Programs*

All the proposals above that rest within the jurisdiction of the Minister can be tested in practice with the creation of a pilot program. Pilots can be established or modified by ministerial instructions. Pilot programs are typically implemented by ministerial instructions, after a cabinet process. Canada currently has 42 pilot programs.<sup>110</sup> Pilot programs permit a period of time to test a new idea, potentially prior to legislative implementation.

## **II. Conclusion**

Environmental disaster and degradation will inevitably cause many climate migrants to relocate internationally, including to Canada. Canada must develop a thoughtful and proactive response to an inevitable shift in climate induced migration. CARL proposes, in step with emerging trends in several other countries, a multi-pronged approach that includes the following:

- An exception to s. 97’s ‘personalized risk’ requirement for climate migrants.
- A proactive and broad policy response from Parliament and from government, which includes:
  - changing the humanitarian and compassionate guidelines to require examining officers to consider the hardships caused by environmental disasters and degradation in an individual’s home country;
  - creating a public policy class under s. 25(2) of IRPA to provide protection to climate migrants;
  - issuing temporary resident permits to climate migrants;

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<sup>110</sup> Government of Canada, Immigration, Refugees and Citizenship Canada, *Ministerial Instructions related to other immigration programs and goals*: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/ministerial-instructions/other-goals.html>

- issuing ministerial instructions to removals officers to consider the risks caused by environmental disasters and degradation in the context of a section 48(2) IRPA analysis;
- allowing resettlement in Canada, i.e., through private sponsorship; and/or
- implementing pilot programs as needed to test any of the above prior to requisite legislative reform.