

CLIMATE CHANGE AND MIGRATION FLOWS IN THE INTERNATIONAL CONTEXT AND IN THE BRAZILIAN LEGAL SYSTEM.

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Abstract

(EN)

Global warming could force up to 216 million people to leave their home countries by 2050, due to the absence of water resources and scarcity of agricultural production, as noted by the World Bank's Groundswell report, published on 9 September 2021. Migration resulting from environmental degradation and climate change is also conditioned by intervention policies and funding.

In the current debate on environmental migration, scientific knowledge, including the uncertainty factor, global political will, regulatory strategies for possible 'adaptation' solutions, and the economic resources at stake, represent a good degree of information also provided by the media.

The overall objective of the paper is therefore to frame the issue of migration influenced by the negative effects of climate change from a normative perspective with specific focus on Brazilian legislation.

The aim is to bring out the importance of specific Conventions, multilateral agreements, the possible positive effects on the identities or resilience of people living in these particular geographical areas: to plan a possible shared and participated migration, guaranteeing a degree of integration to these particular communities in the destination territories, verifying if the migration, in other islands or states, is sustainable.

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Climate change in the Mediterranean area is increasing due to the combined effects of subsoil exploitation, sea rise, pollution, degradation and biodiversity.

(ITA)

Il riscaldamento globale potrebbe costringere fino a 216 milioni di persone a lasciare il proprio Paese d'origine entro il 2050, a causa dell'assenza di risorse idriche e della scarsità di produzione agricola, come rilevato dal rapporto Groundswell della Banca Mondiale, pubblicato il 9 settembre 2021. Le migrazioni derivanti dal degrado ambientale e dai cambiamenti climatici sono condizionate anche dalle politiche di intervento e dai finanziamenti.

Nell'attuale dibattito sulle migrazioni ambientali, le conoscenze scientifiche, compreso il fattore incertezza, la volontà politica globale, le strategie normative per le possibili soluzioni di "adattamento", e le risorse economiche in gioco, rappresentano un buon grado di informazione fornito anche dai media.

L'obiettivo generale del lavoro è quindi quello di inquadrare il tema delle migrazioni influenzate dagli effetti negativi del mutamento climatico da una prospettiva normativa con specifico approfondimento alla normativa brasiliana.

Il fine è far emergere l'importanza di specifiche Convenzioni, accordi multilaterali, le possibili ricadute positive sulle identità o sulla resilienza delle persone che vivono in queste particolari aree geografiche: progettare una possibile migrazione condivisa e partecipata, garantendo un grado di integrazione a queste particolari comunità nei territori di destinazione, verificando se la migrazione, in altre isole o Stati, è sostenibile.

I mutamenti climatici nell'area mediterranea aumentano a causa degli effetti combinati dello sfruttamento del sottosuolo, dell'innalzamento del mare, dell'inquinamento, del degrado e delle biodiversità.

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Keywords

Climat Change – Environmental –Migrant— International legal protection – Brazilian Law

Cambiamento climatico – Ambientale – Migrante – Tutela giuridica internazionale – Diritto brasiliano

1. Introduction

Today, the analysis of environmental problems is inseparable from the analysis of human, family, work, urban contexts and of the relationship of each person with himself, which generates a certain way of relating to others and to the environment.

The contribution aims to explain, therefore, how Global Justice, Global, International and National Policies ¹can be very useful both to resolve the behavioral factors at the origin of "environmental" migrations and to provide elements for the construction of sustainable strategies in line with fundamental human rights. Migrations resulting from

environmental degradation and climate change are also conditioned by intervention policies and funding ².

Well, including specific cases of residents at risk of migration from some 'Small Island Developing States ' (hereinafter SIDS), and in particular island territories at high risk of submersion, intends to focus attention on international issues, such as those relating to 'environmental' migrants, which still need to be resolved in relation to global challenges in the field of migration.

¹ World HealthOrganization (2024), ' *Climate Change*', Draft resolution proposed by Barbados, Brazil, Chile, Ecuador, Fiji, Georgia, Kenya, Moldova, Monaco, Netherlands (Kingdom of the), Panama, Peru, Philippines, Slovenia, United Arab Emirates and United Kingdom of Great Britain and Northern Ireland, https://apps.who.int/gb/ebwha/pdf_files/WHA77/A77_ACONF7-en.pdf

²Pr Shukla , J. Skea , E. Calvo Buendia , V. Masson-Delmotte , H.-O. Pörtner , Dc Roberts, P. Zhai , R. Slade , S. Connors, R. Van Diemen , M. Ferrat , E. Haughey , S. Luz , S. Neogi , M. Pathak , J. Petzold , J. Portugal Pereira , P. Vyas , E. Huntley , K. Kissick , M. Belkacemi , J. Malley , (eds .)], IPCC, ' *Climate Change and Land*' : an IPCC special report on climate, desertification, land degradation, sustainable land management, food security and greenhouse gas fluxes in terrestrial ecosystems, <https://www.ipcc.ch/site/assets/uploads/sites/4/2021/07/210714-IPCCJ7230-SRCCCL-Complete-BOOK-HRES .pdf>, pp.18-32; 201-203.

Global warming could force up to 216 million people to leave their home countries by 2050, due to the lack of water resources and the scarcity of agricultural production, as noted by the World Bank's Groundswell report, published on September 9, 2021. Migrations resulting from environmental degradation and climate change are also conditioned by intervention policies and financing.

In the current debate on environmental migrations, scientific knowledge, including the uncertainty factor, global political will, regulatory strategies for possible "adaptation" solutions, and the economic resources at stake, represent a good level of information also provided by the media, in order to obtain a correct interpretation of the phenomena.

The aim is to highlight the importance of specific Conventions, multilateral agreements, the possible positive effects on the identities or resilience of people living in these particular geographical areas: to plan a possible shared and participatory migration,

guaranteeing a degree of integration to these particular communities in the destination territories, verifying whether the migration, to other islands or States, is sustainable.

On this point several scholars, including those of German Advisory Council on Climate change highlight that: "*most developing countries lack the capacity and resources to implement effective adaptation measures. Industrialized countries, as the main drivers of climate change, have a particular responsibility to provide assistance to developing countries to enable them to address the impacts of climate change* ³."

In this regard, the Committee on Economic, Social and Cultural Rights (CESCR) ⁴ instead maintains that "States have a common and individual responsibility, in accordance with the Charter of the United Nations, to cooperate in providing relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons." The provision of a global fund for the monitoring

³ German Advisory Council , p. 200, <https://www.wbgu.de/en/>

⁴ Art. 2 (1) of the International Covenant on Economic , Social and Cultural Rights (ICESCR), which entered into force on 3 January 1976.

and protection of human rights together with a coordination unit should be considered.

Climate change in the Mediterranean area is increasing due to the combined effects of subsoil exploitation, sea level rise, pollution, degradation and biodiversity. Sustainable development policies in Latin American countries must reduce these risks and adopt new adaptation strategies. However, they do not have the information needed to do so, especially in the most vulnerable regions.

Currently, we are faced with a huge amount of scientific evidence, which indicates that changes in climate patterns cannot be seen exclusively from a technical-scientific point of view, but require the necessary legislative and public policy intervention. Progress in

both aspects should continue through programmatic positions in order to achieve the much-desired sustainable development defined in the Brundtland Report of 1987.

Currently, environmental migrants do not have specific legally established norms at international level, mainly because much of the debate on this issue concerns their inclusion in existing norms⁵.

In this context, framing the issue of migrations influenced by the negative effects of climate change in a normative perspective and providing specific protection to the "climate migrant" is more necessary than ever. In the Brazilian context, legislation reflects a humanistic position, but restrictive interpretations by organizations such as the United Nations High Commissioner for Refugees (UNHCR) and the National Committee for Refugees (CONARE) indicate the persistence of traditional narratives in the protection of environmental refugees. In light of this scenario, it is concluded that it is necessary to overcome legal obstacles, develop more favorable interpretations for environmental refugees based on the *pro persona* principle and support the visibility of this category. In fact, already in 2010 Brazil granted a humanitarian visa to Haitian displaced persons in application of Article 225 of the Brazilian Federal Constitution which states that "*every individual has the right to an*

⁵ Escribano P., Pons Ganddini D. (2024), 'Climate change, food insecurity and human mobility: *Interlinkages* , evidence and action', in: McAuliffe M., eds., *World Migration Report 2024* . Geneva: Ouchy, International Organization for Migration (IOM).

ecologically balanced environment, for common use by peoples and essential for a healthy quality of life; it is the duty of public authorities and the community to defend and preserve it for the benefit of present and future generations" 6.

In this context, Brazil has introduced legislation that guarantees complementary protection, with Law 13.445/2017, as a regulatory instrument that provides for the possibility of granting humanitarian visas, also for environmental migrants, while as we will see in the conclusions, Australia proposes an agreement with Tuvalu in anticipation of disasters linked to climate change 7.

Having made these brief remarks, let us examine what is meant by environmental migrant.

2. General concepts. The environmental migrant

According to a well-known report by the Institute ⁸for Environment and Human Security of the University established by the United Nations - UNU-EHS, migrants fleeing from territories devastated by the negative effects of climate change, would reach about 250 million in 2050. Furthermore, in 2050, according to Legambiente, they would represent 1.5% of the world's population, with a majority of women. Currently, about 1 billion children - almost half of the 2.2 billion children in the world - live in 33 countries at high risk for the impacts of climate change and millions more could migrate in the coming years ⁹.

⁶B. Commoner, ' *The Closing Circle : Nature, Man and Technology* ' (New York: Alfred A. Knopf, 1972) , p . 8.

⁷T.Tietenberg, ' *Environmental Economics and Policy* ' (New York, Pearson Education , 2004), P.Iafrate , ' *Captured within the borders: the case of internally displaced persons and their impact on human rights*' , in the volume Ospiti Indesiderati, The right to asylum 70 years after the UN Convention on Refugees, edited by B.Coccia and A.Ricci, research project promoted by the Institute of Political Studies "S. Pio V" and carried out by the IDOS Study and Research Centre, pp.90-94.

⁸Report No. 29, March 2022, ' *Climate and Disaster Risk Analysis Tool for Adaptive Social Protection*' , United Nations University - Institute for Environment and Human Security, UNU-EHS, 2022.

⁹ *Guiding principles for children on the move in the context of climate change* , 2022, p.10, unicef.org.

In 1993, the United Nations High Commissioner for Refugees (UNHCR) identified environmental degradation as one of the four main causes of migration, along with economic tensions, political instability and ethnic conflicts. In many cases, especially for

those who leave their places of residence, even within state borders, it is often complex and difficult to effectively assess the impact of the environmental phenomenon, because it is closely intertwined with political, demographic and, in particular, economic factors. However, it has been seen that poverty, which pushes many people to migrate, is very often due to environmental degradation, but it is not always easy to reach territories with better conditions ¹⁰.

The scholar N.Myers ¹¹, in this regard, states that: "*this is the situation that characterizes, in general, those refugees who migrate towards areas where the economic conditions are little or not at all better than those who leave Saharan Africa or the Indian subcontinent*". In general, it could be argued that the effects of climate change certainly appear more incisive on all those communities that live in situations of political instability and conflict, generating increasing vulnerability.

We intend to generalise the discussion, starting from the factors (social, economic, demographic, political, environmental) that influence migrations, which are certainly linked in their complexity. In fact, climate change often acts as a trigger for these elements, generating a significant transformation, which in turn affects many aspects of society, both directly and indirectly.

The combination of environmental stress, demographic trends, and the adaptive capacity of places is influencing population movements, especially within state borders or geographic regions.

¹⁰A.Sannella , (2024) ' *Human Mobile Population : Embracing the One Health Approach to Address Inequality* ', in Health and Society Volume 23, Issue 3, 2024, pp.181-192; F. Murray , KY Hess, T. Rihtman *Environmentally sustainable person-centred care: Occupational therapy students ' attitudes , perceptions and self-perceived preparedness for practice* . Aust Occup Ther J. 2025 Feb;72(1).

¹¹N.Myers , ' *Environmental Exodus' (People Fleeing Difficult Lands)*, Environment Publishing, 1998 , p.24.

Recent studies do not deny the difficulty of distinguishing between environmentally and economically motivated migrants, nor do they minimize the importance of socio-economic and political aspects alongside environmental ones.

Some scholars believe that the multiple social, political and economic components do not allow us to affirm that people are made more vulnerable by the environmental factor alone. It would therefore be the unequal access to resources, poverty, with all the economic, social and political problems connected to it, that make "the environment" an unsustainable and irreversible factor from which we must escape, and not viceversa ¹².

The scholar Pollice suggests imagining "the possible causal configurations underlying environmental migrations as points of an ideal *continuum* whose extremes are represented: on the one hand, by phenomena of degradation of an exclusively natural nature (...) on the other, (by those) determined by human action alone" ¹³.

An interesting distinction, reported by the scholar Hugo, in a study for the International Organization for Migration (IOM), identifies four causes of environmental changes that determine migration: immediate environmental disasters, land degradation, climate change and finally the implementation of "mega-projects. Moreover ¹⁴, as the author himself states, "if one were to consider a continuum at the extremes of which there are the free choice of movement and forced delocalization, these would rarely be observable in reality; in fact, in most cases, movement is the result of a mixture of elements, some arbitrary, others forced".

In fact, depending on the geographical area in which migration occurs, it is often proposed to distinguish between free internal or international migration and forced internal and international migration. This classification, as Hugo recalled, does not easily meet with the approval of the majority of the research world; in general, the

¹²W. Kälin , (2010) ' *Conceptualising Climate-Induced Displacement* ' in J. McAdam , *Climate change and displacement* , Oxford, Hart publishing Ltd, p. 96 .

¹³F. Pollice, *Peoples on the Run. Geography of Forced Migrations* , Cuen , 2007, Naples , p.25.

¹⁴G.Hugo (2008), ' *Migration, Development and Environment* ', No. 35 Geneva, IOM Migration Research Series

most shared critical positions are those that recognize a certain degree of overlap between constraint and voluntariness in migration.

3. Proposals for the application of the Geneva Convention to “environmental migrants”?

This paragraph recalls some reflections in relation to the much-discussed legal question about the possibility of extending the legal definition of refugee to the notion of environmental refugee, considering among the causes of persecution also the natural or anthropogenic effects of environmental change.

Migratory flows determined by environmental factors have always been present on a global level: floods, disasters, droughts, for climatic reasons have induced individuals or entire populations to move towards other geographical areas ¹⁵.

The difficulty of living in poverty and unhealthy environments due to the degradation of the environment (land, water, air, natural resources), resulting from natural events, including climate change, or human behavior, can be one of the causes of migration within and outside a country.

Research conducted by UNOPS, the United Nations Environment Programme (hereinafter UNEP) ¹⁶and the University of Oxford has shown that climate migrants will represent one of the largest categories of migrants in the foreseeable future. Legal issues relating to the refugee issue revolve around the definition of refugee and related rights contained in the 1951 Geneva Convention relating to the Status of Refugees and the subsequent 1967 New York Protocol, which in art . 1A(1), *nationality*,

¹⁵ A Perilli, A Adduci, W Ricciardi, AG de Belvis , C.Cadeddu , (2024) ' *Towards planetary health systems: a manifesto for a revised quadruple aim for healthcare improvement* ' . *Global Sustainability* .

¹⁶ *Infrastructure for climate action* was published by UNOPS, UNEP and the University of Oxford; 2021, <https://www.unep.org/news-and-stories/press-release/new-report-reveals-how-infrastructure-defines-our-climate> https://www.unep.org/news-and-stories/press-release/new-report-reveals-how-infrastructure-defines-our-climate_, pp.40-45.; McAuliffe M., Oucho LA, eds. (2024). *World Migration Report 2024* . Geneva: International Organization for Migration (IOM).

membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or any person who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it .

In this paragraph, the aim is to better understand, on the basis of art. 1A(2), which possible obstacles, analysed by much of the literature on the subject, tend to undermine the attempt to include environmental refugees in the definition of refugee as defined in the 1951 Convention. The essential elements recalled by the 1951 Convention seem to be:

1. the citizen is outside the territory of the State of which he is a citizen (or domiciled, if stateless) and, for fear of persecution, cannot or does not want to place himself under the protection of that State;
2. a well-founded fear of being persecuted;
3. reasons for persecution (race, religion, nationality, membership of a particular social group).

The critical contents are summarized with reference to the above-mentioned elements, so as to allow the possibility of generating a more careful reflection on the extension of the Convention to environmental refugees.

The possible legal protection systems for environmental migrants could be different, because environmental migrations have different origins and time horizons. A relevant result is based on the evidence that some individuals, following migration, are still in their own State and others have had to cross an international border. Supporters of a unified vision in one category, namely refugees, should exclude those who do not cross national borders. Furthermore, movements outside one's own State are not contemplated due to the closure of borders established by some States or the presence of virtual borders that inhibit entry. Therefore, another criticality arises related to the geographical factor; the environmental refugee does not always migrate from a specific State, but from a generic territory that does not correspond to a single State; he or she could flee from interstate or intrastate areas even larger than the territory of a single State. Another problematic scenario is for those fleeing, for

example, from ecologically fragile territories at high risk of flooding or even more so from small island states destined to disappear due to rising sea levels ¹⁷.

On the basis of these different scenarios, it seems necessary to recall some reflections set out in the previous paragraph, on how the concept of State has changed today and on the new nature that borders assume in contemporary migrations. In fact, the anomaly of the territories colonized in the past (to which scholars Ratzel and Jellinek refer ¹⁸), leads to reflect on similar situations that still exist today, old colonies that we could identify with particular territories, ACP (Africa, Caribbean and Pacific) and/or SIDS (Small Island Developing States), where the link between State and territory is not free from contradictions. In this regard, it seems appropriate to ask whether there can be a universalistic conception of the environmental refugee that includes such cases, considering the hypothesis that some of these territories risk being submerged by the oceans, without ensuring the possibility of a return. Well, considering the rather individualistic approach of the Geneva Convention, persecution is individual, it should have an almost collective scope, if extended to a religious or ethnic group of environmental migrants. If it is true that environmental stress, for human or environmental reasons, often turns into a form of oppression and leads people to flee from persecution, many jurists do not believe that such individuals can be considered refugees on the basis of such persecution. Environmental persecution seems to be inexplicable and not contemplated by the Convention, even when the negative effects of climate change are mainly caused by human action. There is a difficulty in modeling climate change in terms of persecution, further exacerbated by the discriminatory element. It appears necessary to demonstrate that the persecutor wants to commit persecutory acts for a presumed or real characteristic of the specific person, on the

¹⁷C.Rudolph , (2003) ' *Security and the Political Economy of International Migration*' , American Political Science Review 97: 4, pp. 603–620 .

J.Hesselbjerg Christensen et al., (2007) 'Regional climate projections', in Climate Change 2007: The Physical Science Basis Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, eds . S. Solomon et al. (New York: Cambridge University Press, 2007), p. 850.

¹⁸F.Ratzel, *Politics Geography* (1897), ' *Aufl ., durchgesehen und ergänzt von E. Oberhummer , Oldenbourg , München*', Berlin , 1923, p. 2. Among the recent studies dedicated to Ratzel, see F. Farinelli, *Friedrich Ratzel and the Nature of (Political) Geography* » . Political Geography, 19, 2000, p. 943-955 .

basis of the five *conventional reasons* (race, religion, nationality, political opinion, membership of a specific social group). In reality, the effects of climate change emerge in a rather indiscriminate way, the real difficulty lies in identifying the persecutor, in the same State of origin, or as many authors argue, in the international community, for example in industrialized countries heavily responsible for terrestrial gas emissions¹⁹. In this regard, one could for example recall the study by Simms²⁰, when he states that "*poor States are all ecological creditors of rich States that have led in the past and continue to reproduce today, predominantly influencing climate change, the conditions of poverty that determine migration*"²¹.

Despite this widely shared legal evidence, doctrine has identified personal paths; in particular, as McAdam²² tries to identify limited exceptions in which environmental degradation and the impacts of climate change can constitute forms of persecution under the Convention.

In particular, it identifies the following cases:

- victims of natural disasters who flee because their government has knowingly refused or obstructed assistance in order to punish or marginalize them under one of the five provisions of the Convention;
- structures that target particular groups whose survival depends on agriculture in cases where climate change is already compromising their existence;
- the State which causes drought by destroying or poisoning water, or contributes to environmental destruction by polluting the land or the sea;

¹⁹S.Benjamin , Orlove et al. (2000), ' *Prediction of Andean precipitation and crop yield from the influence of El Niño on the visibility of the Pleiades*' , Nature, p. 68-71.

²⁰A. Simms , (2005), ' *Ecological Debts*' , Pluto Press 2005, <http://www.nespor.it/wp-content/uploads/2012/10/i-rifugiati-ambientali-ei-rifugiati-climatici.pdf>

²¹Ecological Debt: *The Health of the Planet and the Wealth of Nations* - https://it.qaz.wiki/wiki/Ecological_debt

²²J.Mcadam , (2010) ' *Climate change and displacement*' , Oxford, Hart Publishing Ltd.

- the state that refuses to accept help from other states when it needs it, such as in the aftermath of a disaster;
- the State that does not establish adequate measures to prevent a disaster.

According to MacAdam , existing legal principles could be developed, extended and adapted to respond to new circumstances, such as the proposed extension of the 1951 Convention to environmental refugees ²³. The extension could be done through creative interpretation or by analogy. However, acknowledging the shortcomings of existing norms and developing new ones could also be an alternative strategy. The issues surrounding this latter option are generally complex and require shared political will, with the risk of leading to shortcomings in terms of implementation.

Despite these difficulties, universal rights, general international principles of dignity, humanity and international cooperation provide an interesting framework to support a variety of new policy scenarios, both at the normative and political levels.

In this regard, we briefly analyse some of the significant proposals put forward in the field of international protection:

One of the proposals is to broaden the scope of the 1951 Convention and include the term refugee, recalling the concept set out in the 1948 Declaration of Human Rights and other international conventions ²⁴.

In this regard, the United Nations Human Rights Council Resolution, adopted in 2008, was promoted by most of the small island developing States, aiming to explicitly recognize climate change as a "human rights issue". This was followed by a call to UNHCR ²⁵to analyze and investigate the effects of climate change in relation to the full enjoyment of human, economic, cultural and social rights.

²³J..Mcadam , (2012) ' *Climate Change , Forced Migration and International Law*' , Oxford University Press, Oxford, pp. 250-252.

²⁴P.Fargue , (2008), ' *Emerging demographic patterns across the Mediterranean and their implications for migration through 2030*' , Migration Policy Institute , Washington,

²⁵<https://www.unhcr.org/research/working/3ae6a0d00/environmental-refugees-myth-reality-richard-black.html>

Along the same lines, Gemenne ²⁶of the University of Paris Vincennes , conducts an interesting reflection, arguing that " *environmental refugees are victims of violence: that typical of the Anthropocene , that is, of climate change and environmental disasters caused by the West, its consumption and its investments, which make all the States and peoples who are at the origin of these flows responsible for the fate of those who have been forced to flee and, consequently, have the right to international protection* . Whatever the reasons that push both war refugees and environmental migrants to flee their countries, both are exposed to mistreatment, violence, exploitation, robbery and mortal risks during their journey to Europe, as no humanitarian corridor is foreseen to facilitate their arrival".²⁷

This statement, even considering that forced migration is not generally a normative and absolutely demonstrable definition, recalls the value of the Universal Declaration of Human Rights of 1948, in particular Article 3 which states that " *everyone has the right to life, liberty and security* ". This connotation seems to affirm that environmental refugees ²⁸are deprived of democratic rights and defined as victims of violence, almost persecuted in their dignity.

We could say that, in Gemenne 's ²⁹statement, the acts of persecution could be mainly identified with acts of physical and psychological damage ³⁰. More complex, however, is to demonstrate who is responsible for the fate of these people, that is, to identify the subjects of persecution, as well as to establish the completely voluntary nature of the actions of those truly responsible.

²⁶F.Gemenne, (2011), ' *Why the numbers don't add up: a review of estimates and forecasts of people displaced by environmental change*', *Global Environmental Change* , suppl . 21, page 41.

²⁷https://www.repubblica.it/solidarieta/profughi/2017/11/09/news/nuova_zelanda_un_visto_umanitario_per_le_vittime_del_cambiamento_climatico-180664160/

²⁸European Parliament resolution of 16 January 2018 on women, equal opportunities and climate justice (2017/2086(INI))

²⁹F.Gemenne , (2013), ' *Géopolitique two Climat*' Paris: Armand Colin. 2nd edition of Geopolitique two Changement climatic (2015); F. Gemenne et al. " *Climate Change and Migration .*" Annual Review of Environment and Resources , vol. 38, pp. 345-366.

³⁰ P.Iafrate (2018) ' *The legislation on immigrants and refugees in Italy: between formality and operativity*', Agorà Collection, n.1, pp.31-35, ISSN 0390 – 1181, Edizioni Idos .

In this regard, one can recall the 1969 OAU (Organisation of African Unity) Convention in Africa, within which the definition of refugee is extended to include "*any person who, because of events seriously disturbing public order in part or in all of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality*".

In relation to the OAU Convention, sudden environmental disasters are considered sufficient to cause public disorder, but States are unlikely to accept that the concept of public disorder ends with violence, recognizing migrants as victims of violence ³¹.

Another doctrine bases its reasoning on the difficulty of establishing a direct relationship between environmental degradation and exodus abroad, recognizing the impossibility of identifying the perpetrator of the persecution and of being able to reconstruct the etiology of the exodus. In this regard, Zetter ³²of Oxford University states that "*Disasters do not move people. It is their social and political vulnerability and their susceptibility to shocks that predispose them to displacement*". This statement, while drawing attention to disasters, does not distinguish migrants affected by sudden environmental disasters from those living with a slow degradation of their habitat, but instead introduces the more general concept of vulnerability that could induce displacement.

The doctrinal proposals outlined all present a critical issue represented by the fact that the model of those fleeing from war cannot be similar to that of those fleeing from an environmental disaster, generating a fear of persecution based on the violation of every right to security and freedom of choice upon returning to one's country of origin.

In a certain sense, one could refer to the Cartagena Declaration adopted by the Colloquium on International Protection of Refugees in Latin America, Mexico and Panama, held in Cartagena, Colombia from 19 to 22 November 1984, which speaks of a massive violation of human rights. However, the Cartagena Declaration, having

³¹ For a more in-depth examination of the OAU Convention, see in chronological order the United Nations Declaration on Territorial Asylum of 1967, art. 3(1), the Principles Concerning the treatment of refugees of the Afro-Asian Consultative Committee, art. III(1) of the 2001 revised version, the 1969 African Convention, art. II(3) and the Cartagena Declaration of 1984, no. III(5).

³²P. Maguire, (1982). '*Problems of conservation and protection*', in R. Zetter, (ed.) *Conservation of Buildings in Developing Countries*, Oxford: Oxford Polytechnic, pp.463 -475.

to demonstrate evidence of a present threat, does not focus on the risk of potential future harm; therefore it does not seem to be effective in ensuring absolute preventive protection as a basis for an international definition of environmental refugee ³³.

In this regard, we will see how the jurisprudence of the European Court of Human Rights has provided precise indications on how the failure of measures adopted in the face of "foreseeable" risks can be addressed to the complete violation of human rights. Even more so since with the Resolution of 23/07/2008, the United Nations Human Rights Council has entrusted the High Commissioner for Human Rights with the task of continuing a study on the relationship between human rights and climate change. In the Report of the High Commissioner, Chapter III focuses on the human rights obligations that States should guarantee. The Court, in fact, identifies the violation of the right to life when public institutions do not adopt adequate emergency policies and coherent territorial planning ³⁴.

Finally, recalling what was said above, we recall *the Convention on Civil and Political Rights of 1966*, which recognizes the right " *to fully and freely enjoy and utilize natural wealth and resources* " (art.47) and, in parallel, the Inter-American Commission on Human Rights which declares that " *the right to life is necessarily linked to and dependent on the physical environment* ".

4. The climate migrant between non-binding international norms and extensive interpretations

The figure of the climate migrant is regulated by non-conventional international norms, including the Global Compact for Safe, Orderly and Regular Migration (GCM,

³³Internal Displacement Monitoring Center (IDMC), (2018) Norwegian Refugee Council (NRC), ' *Global Report on Internal Displacement* ', 2018, p. 5.

³⁴Case Bankovic and Others v. Belgium and Others, Application Nos. 52207/99, (ECtHR, 19 December 2001), para. 80. Case Ilascu and Others v. Moldova and Russia, Application No. 48787/99, (ECtHR, 8 July 2004). Case Issa and Others v. Turkey, Application No. 31821/96, (ECtHR, 16 November 2004). Case Ilascu and Others v. Moldova and Russia, cit., para. 333. 108 Case Issa and Others v. Turkey, cit., para. 74. 109 Case Al Skeini and Others v. the United Kingdom, Application No. 55721/07, (ECtHR, 7 July 2011), paras. pp.133-137.

approved by the United Nations General Assembly on 19 December 2018)³⁵. The signatory States (Italy did not participate) have committed to address the root causes of environmental migration, protect the rights of people displaced by climate change, develop new ways to respond to the urgent needs of those who have been displaced by changes in their domestic environment or climate change³⁶. More precisely, the Sustainable Development Goals of the 2030 Agenda: (SDGs) seek to address the root causes of climate migration, such as poverty (SDG 1), hunger (SDG 2), access to water (SDG 6), and climate action (SDG 13). The UN promotes policies that reduce the vulnerability of populations to climate change and improve resilience. In particular, Goal 2 states that to strengthen the resilience of communities affected by natural disasters, it is necessary to manage the relationship between climate change and migration flows, especially the role of neighboring countries - to be ready to welcome displaced communities. Goal 5, instead, outlines the need to develop national and regional practices, based on humanitarian reasons, humanitarian visas, access to schooling for children, temporary residence permits for those fleeing their country of origin due to sudden climate events³⁷.

In relation to the relationship between migration and the environmental dimension, some recent instruments are cited³⁸, including the Paris Agreement of 12 December

³⁵ United Nations. (2018). Global Compact for Safe, Orderly and Regular Migration. [https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195] (https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195).

³⁶E. Ferris , (2019), ' *Climate Change, Migration, Law, and Global Governance* ' , 44 NCJ Int'l L. & Com . Reg. 427 <https://scholarship.law.unc.edu/ncilj/vol44/iss3/3> p. 459.

³⁷Resolution adopted by the General Assembly on 19 September 2016, New York Declaration for Refugees and Migrants, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf

³⁸On the non-binding nature of the Global Compact on Migrants and Refugees see, for all, G. Cataldi, A.Del Guercio (2019) , ' *The global compact on migrants and refugees. The soft law of the United Nations between sovereignist pressures and potential developments*' , in Law, immigration and citizenship, n. 2/2019, p.193.

2015 on climate change ³⁹, the Sendai ⁴⁰Framework for Disaster Risk Reduction adopted by the United Nations Office for Disaster Risk Prevention, the Addis Ababa ⁴¹Action Agenda on Financing for Development, which integrates climate change and disaster aspects into the concept of development, and the Nansen Initiative on Disaster Displacement . The Paris Agreement is a binding international agreement between states, one of whose objectives is to limit the increase in global temperature to well below 2°C above pre-industrial levels; in other cases, it is a plan of action aimed at solving concrete problems and setting objectives that develop international law.

The latter goes beyond the distinction made so far by most international environmental treaties between environmental protection and human rights, identifying the impact of climate change on their full exercise ⁴². The preamble states: "*recognizing that climate change is a common concern of humanity, Parties should, when taking action to address climate change, respect, promote and take into account their respective obligations regarding human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and persons in situations of vulnerability and the right to development, as well as gender equality, women's empowerment and intergenerational equity .*"

On the other hand, the universal rights on which the Declaration is based are found in various covenants relating to the treatment of migrants and refugees – including the 1966 International Covenant on Economic, Social and Cultural Rights, the 1966

³⁹Paris Agreement (Paris, 12 December 2015; entry into force 4 November 2016). The entry into force of the Agreement was subject to ratification by at least 55 States representing at least 55% of total carbon dioxide emissions. The Agreement currently has 192 signatory States and 87 States Parties. <https://www.consilium.europa.eu/it/policies/climate-change/paris-agreement/>

⁴⁰The Sendai Framework 2015-2030, <https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030> is a non-binding document containing a set of objectives and priorities related to disaster prevention and reduction. The document was adopted on 8 March 2015 at the Third United Nations Conference on Disaster Risk Reduction.

⁴¹Addis Ababa Action Agenda of the Third International Conference on Financing for Development, <https://sustainabledevelopment.un.org/frameworks/addisababaactionagenda>

⁴²High-level expert meeting on the new future of human rights and the environment: advancing the global agenda Co-organized by UNEP and OHCHR Nairobi, 30 November-1 December 2009, <https://www2.ohchr.org/english/issues/environment/StefanoSensiPresentazione.pdf> /rifiuti/ docs

International Covenant on Civil ⁴³and Political Rights, the ⁴⁴1979 Convention on the Elimination of All Forms of Discrimination against Women ⁴⁵, as well as against children under the ⁴⁶1989 Convention on the Rights of the Child.

4.1 The extensive interpretation of international protection in the light of the Teitiota judgment

At the international level, the idea of including environmental migrants or refugees has been raised through an extensive interpretation of Article 1A within the Geneva Convention relating to the Status of Refugees. Conversely, since in the case of the climate migrant the individual is not subject to persecution for reasons of race, language, religion, political opinion or membership of a particular social group, the qualification of refugee status is excluded from the definition of environmental refugees due to the difficulty of considering environmental degradation as a form of persecution and of linking it to one of the reasons for persecution provided for by the 1951 Geneva Convention ⁴⁷.

However, environmental migrants may be recognised as refugees when their flight for climatic or environmental reasons is linked to a form of ethnic, religious or political persecution or discrimination against certain groups: for example ethnic or political or religious minorities excluded from assistance by public authorities during disasters or natural catastrophes, or forced to flee their country of origin due to the

⁴³International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966; entered into force 3 January 1976).

⁴⁴Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 December 1979; entered into force on 3 September 1981).

⁴⁵ UNICEF (2024). *Women's, children's and adolescents' health country profiles and dashboards* . <https://data.unicef.org/resources/health-country-pro-files-and-dashboards/>

⁴⁶Convention on the Rights of the Child (New York, 20 November 1989; entered into force on 2 September 1990).

⁴⁷Commission working document on climate change, environmental degradation and migration accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Strategy for Adaptation to Climate Change , Brussels, 16.4.2013 COM (2013) 216 final, p. 57.

construction of large infrastructures (e.g. dams, laying of oil or gas pipelines, extraction of hydrocarbons, minerals, felling of forests, expropriations).

Well, for the purposes of recognizing refugee status, in addition to the occurrence of the disaster, it is also necessary to demonstrate a causal link between the climatic-environmental event that determined the escape and the action or omission of the state authorities, both in contributing to the occurrence of the disaster, and in the event of their failure or inadequate prevention of the event to the detriment of the population concerned.

In this regard, the term "climate refugee" has been considered by UNHCR to be somewhat inappropriate as it is not grounded in international law and does not accurately reflect the complex ways in which climate and displacement interact.

However, since 2017 in relation to persecution based on membership of a social group, UNHCR has argued that the term "membership of a particular social group" in Article 1A of the Geneva Convention should be understood as including the environmental term, for people fleeing countries ⁴⁸affected by conflict and famine ⁴⁹. In 2018, this argument is strengthened by the causal link between conflict, violence, disasters or climate change and people fleeing abroad to destination countries in specific situations that have occurred in the Horn of Africa and the Americas, where conflict or violence have interacted with climate change or disasters.

In this regard, it is appropriate to mention the case of *Teitiota v. New Zealand* ⁵⁰.

In the present case, the UN Committee, in its decision published in January 2020, notes that the State may be held liable for the violation of the right to life when, despite not having carried out any conduct capable of determining a reasonably

⁴⁸UNHCR, Guidelines on International Protection. "Membership of a particular social group" under Article 1(A)2 of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, No. 3, p. 2. (https://www.unhcr.org/it/wp-content/uploads/sites/97/2020/07/ITA-Gruppo_Sociale.pdf).

⁴⁹UNHCR, Legal Considerations on Refugee Protection for People Fleeing Countries Affected by Conflict and Famine, 7 April 2017, <https://www.refworld.org/pdfid/5906e0824.pdf>.

⁵⁰*Ioane Teitiota v. New Zealand* (unrevised advanced version), CCPR/C/127/D/2728/2016, United Nations Human Rights Committee (HRC), 7 January 2020, available at: <https://www.refworld.org/cases,HRC,5e26f7134.html>

foreseeable event, it is unable to demonstrate that it has taken all possible measures to safeguard the lives of those under its jurisdiction (such as ensuring the right to food, water, shelter, etc.), to address general conditions that may create a serious threat to the enjoyment of the right to life, such as environmental degradation, climate change and unsustainable development, or has not taken measures to minimize the effects and risks of an unexpected and violent natural phenomenon ⁵¹.

The same Committee also cites the Sufi and Elmi judgment of the ECHR ⁵²(European Court of Human Rights) and considers that the climatic or environmental factors that led to the flight have a link with forms of inhuman or degrading treatment or conflict.

In 2022, the Committee intervened in a similar case involving a joint complaint from eight Australian citizens and six of their children. All are residents of Boigu, Poruma, Warraber and Masig , four small low-lying islands in Australia's Torres Strait region. The residents claimed their rights had been violated because Australia had failed to adapt to climate change, including by improving sea walls on the islands and reducing greenhouse gas emissions.

⁵¹Consider, in this regard, inter-ethnic conflicts fought with episodic or generalized forms of mutual environmental devastation or the devastating effects of prolonged armed conflicts (e.g. Syria and Darfur).

⁵²See European Court of Human Rights, Fourth Section, judgment of 28 June 2011, Sufi and Elmi v. the United Kingdom (application nos. 8319/07 - 11449/07) where the Court states that if the humanitarian conditions in Somalia were entirely predominantly attributable to poverty or the lack of State resources to cope with a natural phenomenon, then it could be argued (as in N. v. the United Kingdom) that such conditions could be considered to be in breach of Article 3 of the ECHR only in extremely exceptional cases. However, in the Court's assessment, the conditions in Somalia, although aggravated by drought, are mainly due to the direct or indirect actions of the parties to the conflict and to al-Shabaab 's refusal to allow international agencies to operate in the areas under its control. In this case, the Court prefers to follow the approach tried in MSS v. Belgium and Greece, according to which it is necessary to take into account the applicant's ability to meet his basic needs, his vulnerability and the prospect of an improvement in his situation within a reasonable time (§ 283). Having regard to the reports on the situation in the camps for displaced persons in Somalia and in the Dadaab refugee camps in Kenya and the fact that these camps are meanwhile becoming increasingly overcrowded, the Court considers (§ 292) that anyone seeking internal protection in one of these camps would be at risk of treatment contrary to Article 3 of the ECHR because of the appalling humanitarian conditions. The judgment is important both because before then, while not excluding the possibility that, in situations of generalised violence, any return to a country would be contrary to Article 3 of the ECHR.

In this regard, the Committee found that Australia's failure to adequately protect Torres Strait Islanders from the adverse impacts of climate change violated Article 6 of the International Covenant on Civil and Political Rights (1966), namely the rights of Torres Strait Islanders to enjoy culture and family life. Accordingly, the Committee called on Australia to compensate the islanders for the damages suffered, to engage in meaningful consultations with their communities to assess their needs, and to take measures to continue to ensure the safe existence of the communities on their islands⁵³.

Furthermore, internal or international conflicts may also concern the possession of natural resources essential for survival, such as water or arable land, for example conflicts caused by the scarcity of water and food following new hydraulic works or the construction of dams, such as those on the Nile (between Ethiopia, Sudan and Egypt) or those on the Jordan and its tributaries (between Israel, Jordan, Syria and Palestine) or those on the Tigris and Euphrates (between Turkey, Syria and Iraq). Inhuman or degrading treatment could concern those who live in areas polluted by hydrocarbons (e.g. the Niger Delta in Nigeria) or by nuclear waste (e.g. Ukraine or Japan) or in areas where habitable land is eroded by the sea or by floods (e.g. Bangladesh) or is dried up by desertification (e.g. the Sahel lands).

For the sake of completeness, it is stated that with the ruling of 9 April 2024⁵⁴, application no. 53600/20), the European Court of Human Rights (ECHR) in the *Verein case Climate-friendly Switzerland* (The Senior Women for Climate Association Protection Switzerland - Elderly for Climate Switzerland) and Others v. Switzerland condemned Switzerland for violating human rights in the environmental field.

According to the Strasbourg judges, Switzerland has failed to adopt the measures necessary to contain global warming in clear violation of Article 8 of the European Convention for the Protection of Human Rights, namely the right to respect for

⁵³ Australia- Torres Strait Islands , 22 September 2022, Views adopted by the Committee under Article 5 (4) of the Optional Protocol, relating to Communication No. 3624/2019 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f135%2fD%2f3624%2f2019&Lang=en

⁵⁴ Case of Verein Climate-friendly Schweiz And Others V. Switzerland 53600/20, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-233206%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-233206%22])

private and family life, as it has failed to adopt adequate tools to change the effects of climate change,⁵⁵ including those to achieve the 2030 objective set by the Paris Agreement⁵⁶.

The second violation, of a procedural nature pursuant to art. 6 § 1, concerns the fact that the Swiss judicial authorities did not consider it necessary to examine the merits of the climate issue at issue in the appeal, refusing to take into consideration the scientific evidence relating to climate change.

On this point, the Constitutional Court, with ruling no. 105/2024⁵⁷, filed on 13 June 2024, in light of the provisions of art. 9 of the Constitution, also considered illegitimate the failure to provide in art. 104-bis, paragraph 1-bis.1, fifth period, of the *Implementation Rules of the Code of Criminal Procedure, as introduced by Legislative Decree no. 2 of 5 January 2023 (Urgent measures for plants of strategic national interest)*, a maximum term of 36 months for the operation of the so-called 'balancing measures' that the Government, in the event of seizure of plants necessary to ensure the production continuity of plants of strategic national interest, can adopt in order to protect national economic interests and safeguard employment. In assessing the constitutional legitimacy, the Court recalled the ruling of the ECHR Verein Climate-friendly Switzerland (The Senior Women for Climate Association Protection Switzerland - Elderly for the Climate Switzerland) and others v. Switzerland appeal no. 53600/20 paragraph 539, highlighted that the recent constitutional reform of 2022 has given express and autonomous importance, in the new text of art. 9, to the

⁵⁵ United Nations Environment Program (2023). ' *Global Climate Litigation Report: 2023 Status Review*' , Nairobi, <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>

⁵⁶ Paris Agreement, (<https://unfccc.int/process-and-meetings/the-paris-agreement>). The Paris Agreement, signed by 194 countries and the EU, aims to limit global warming to below 2°C and pursue efforts to limit it to 1.5°C to avoid the catastrophic consequences of climate change. All European Union member states are signatories on their own, but their positions and common emission reduction targets are coordinated together at EU level. On 28 November 2019, the European Parliament adopted a resolution calling on the EU to set climate neutrality by 2050 as a long-term goal under the Paris Agreement and to increase emissions reduction targets to 55% by 2030.

⁵⁷ Constitutional Court . Sent . May 7, 2024 (dep .June 13, 2024), n. 105, Pres . Barbera, ed . Viganò, https://www.cortecostituzionale.it/actionPronunceGiudici.do?lingua=EN&codice_giudice=133

protection of the environment, biodiversity and ecosystems, also in the interest of future generations.

Having made these brief remarks, we proceed to examine how the issue of climate change has been addressed by Brazil and Australia.

5. International legal protection of environmental migrants and Brazilian immigration law

Brazilian environmental legislation on migrants is complex and is part of human rights.

In Brazil, environmental protection is guaranteed by the Federal Constitution of 1988, which in Article 225 establishes that every individual has the right to an ecologically balanced environment, this includes both Brazilian citizens and foreigners residing in the country.

Brazil's National Policy on Climate Change (Law No. 12,187/2009⁵⁸) and the National Plan for Adaptation to Climate Change (PNA) recognize the need to mitigate and adapt to climate impacts. These policies aim to reduce greenhouse gas emissions, promote sustainable development and improve resilience to climate change, indirectly supporting populations affected by environmental changes.

Brazil implements several public policies that aim to protect both the environment and the rights of migrants, through: a) assistance programs for migrants affected by environmental disasters; b) access to safe territories not affected by environmental degradation; c) environmental education and awareness, i.e. the inclusion of migrants in environmental education programs⁵⁹.

⁵⁸ Commission Economy for Latin America and the Caribbean (CEPAL). Climate change and derechos humanos : contributions from and to Latin America and the Caribbean. Santiago: Naciones Unidas , 2019, <https://www.cepal.org/es/publicaciones/44970-cambio-climatico-derechos-humanos-contribuciones-america-latina-caribe>

⁵⁹ Silva, José A. (2017) 'O Direito two Migrants Climáticos no Brasil : Desafios e Perspectivas ! Revista Brasileira de Direito , vol. 13, no. 3, pp. 45-68.

Key challenges in implementing environmental rights for migrants ⁶⁰ include:

- a) the need for greater integration between migration and environmental policies;
- b) the lack of adequate infrastructure to accommodate migrants in environmentally safe areas;
- c) the desire to raise awareness among migrants of their environmental rights and of the mechanisms available to protect them ⁶¹.

Various civil society organizations and government initiatives work to protect migrants' environmental rights, including:

In this regard, UNHCR (United Nations High Commissioner for Refugees) promotes the protection of refugees, including those displaced for environmental reasons.

In particular, the Institute for Migration and Human Rights (IMDH): develops projects aimed at assisting migrants and refugees, including environmental aspects.

Protecting the environmental rights of migrants in Brazil is an issue that requires a multidisciplinary approach, which involves the integration of public policies, awareness-raising and collaboration between different sectors of society, in order to ensure a healthy environment for all, including migrants, and promote social and environmental justice.

5.1 Brief considerations on Brazilian Law No. 13.445/2017

Environmental migrants are those who move due to climate and environmental factors, such as droughts, floods, sea level rise, among others ⁶².

Currently, environmental migrants do not have a specific regulation established legally at the international level, mainly because much of the debate on this topic concerns the question of how they fit into existing regulations, that is, much of the effort is

⁶⁰ Ministry of the Environment . (2008), ' *Plano Nacional about Mudança do Clima*' Federal Government of Brazil.

⁶¹ Banco Mundial. Groundswell : Preparing for Internal Climate Migration. World Bank Group, 2018.

⁶² O. Brown , (2008), ' *Migration and Climate Change* ', IOM Migration Research Series No. 31, International Organization for Migration.

wasted in trying to move from the legislation provided for refugees to the needs of those who migrate motivated by environmental factors, which does not imply great progress, given that the needs of this category of migrants are specific and diverse. In this context, many countries have tried to establish legislation that guarantees complementary protection, among them Brazil, which enacted Law 13,445/2017, a cutting-edge legislative instrument, which among other innovative institutions, provides for the possibility of granting humanitarian visas, including for environmental migrants .

In this regard, many states have created their own legislation, providing complementary protection, including Brazil, which has approved the Immigration Law, in which one of the provisions is to grant temporary visas for humanitarian reasons, including migration due to environmental disasters.

The Brazilian Immigration Law (Law No. 13,445/2017⁶³) is a legislative framework that establishes rules for the entry and stay of foreigners in the country, as well as providing for the rights and duties of migrants. This law replaced the Statute on Foreigners (Law No. 6,815/1980), promoting a more humanitarian and inclusive approach to migration.

Environmental migration refers to the movement of people caused by environmental factors, such as natural disasters, climate change, and environmental degradation. These phenomena can cause the loss of housing, agricultural land, and natural resources, forcing populations to move in search of safety and sustenance⁶⁴.

Although the Migration Act 2017 does not contain a specific section on environmental migration, it does include provisions that can be interpreted as applicable to environmental migrants, especially in the context of humanitarian emergencies.

⁶³ Brazil . "Lei n. 13.445, 24 May 2017, (http://www.planalto.gov.br/ccivil_03/ato2015-2018/2017/lei/l13445.htm), M. Mijangos Aguilera, (2023), ' *Las migraciones climate in Latin America and protection international to the displaced climatic* ' . GeoGraphos , 14(2), 102-108, <https://doi.org/10.14198/GEOGRA2023.14.155>

⁶⁴ A.Silva , José, (2017), ' *O Direito two Migrants Climáticos no Brasil : Desafios e Perspectivas* ' . Revista Brasileira de Direito , vol. 13, no. 3, pp. 45-68.

The legislation is based on the principles of equality, non-discrimination, humanitarian reception and respect for human rights. These principles can be invoked to protect environmental migrants: the institution of humanitarian reception, therefore, was born from a need for international protection and state reception outside the scope of the 1951 Convention, which has often proved insufficient to satisfy the growing demands of current migratory movements.

The latter is proposed, first of all, as one of the principles and guarantees of Brazilian migration policy, in art. 14, § 3 of Law 13.445/2017⁶⁵.

The humanitarian visa referred to in Article 14 may be granted to foreigners in vulnerable situations, such as refugees and stateless persons, including potentially those displaced for environmental reasons.

The law also provides that foreigners should not be deported or repatriated if they are at risk of death or threats to their personal integrity upon return to their country of origin.

The temporary residence established by art.30 also allows the granting of temporary residence for humanitarian reasons, which may be relevant for environmental migrants.

⁶⁵ Art. 3 Brazilian migration policy is governed by the following principles and guidelines (...) VI – humanitarian reception ;

And even more specifically in art. 14, § 3 of Law 13.445/2017, with the following wording: Art. 14. A temporary visa may be granted to immigrants who come to Brazil with the intention of establishing residence there for a certain period of time and who meet at least one of the following hypotheses: I - the purpose of the temporary visa is: c) humanitarian reception; (...), § 3 The temporary visa for humanitarian reception may be granted to a stateless person or citizen of any country that is in a situation of serious or imminent institutional instability, armed conflict, serious calamity, environmental disaster or serious violation of human rights or international humanitarian law, or in other cases, in the form of a regulation. The law grants a one-year visa “to stateless persons or citizens of any country” in “a situation of serious or imminent institutional instability, armed conflict, major calamities, environmental disasters or serious violations of human rights or international humanitarian law, or in other cases.”

The legislation also establishes special protection for migrants in vulnerable situations, including children, adolescents, the elderly and people with special needs, who may be particularly affected by environmental disasters⁶⁶.

The practical implementation of protection for environmental migrants depends on specific regulations and the interpretation of immigration authorities. The recognition of environmental migrants as a distinct category is still evolving in Brazil and globally and requires continued attention to ensure that legislation adapts to the emerging realities of climate change and natural disasters.

The above provision provides for the granting of a humanitarian visa depends on the regulation, which was issued in the same year in which the law was issued, through Decree no. 9199/2017, from the analysis of which important conclusions can be drawn.

In particular, with 318 articles, almost three times the 121 of the Immigration Law, the text of the measure⁶⁷ satisfies most of the novelties contained in the legislation, including the institution that could elevate Brazil to the forefront of the international protection of migrants' human rights, namely visas and residence permits for humanitarian reasons, whose art. 36 of the aforementioned decree establishes that "a joint act of the Ministry of Foreign Affairs, Justice and Public Security and Labor defines the conditions, deadlines and requirements for issuing the visa"⁶⁸.

However, according to scholars Biazatti and Pereira,⁶⁹ the regulatory framework has serious gaps, since it refers to "future ministerial acts", criteria and conditions for access to rights. In particular, it maintains the possibility of arbitrariness and non-

⁶⁶ PHFBarbosa ; S.Loreto , (2018) '*A Nova lei de imigração ea proteção conferred ob apátrida : alinhamento brasileiro ao father international protection two righteous humanos*'. Direito magazine International . Brasilia, see 15, p. 121-136, n.3.

⁶⁷ C. Claro, (2020), '*A Proteção legal two "refugees" "ambientais" nas very concerning protection international by person humana*'. Magazine Interdisciplinary Human Mobility . Brasilia, see 28, p. 221-241, n. 58..

⁶⁸ C. Oliveira , (2017), '*O Brasil ea proteção complementary humanitarian. Mural International* . Sao Paulo. v. 8, p. 121-133, n. 1 Jan / Jun 2017.

⁶⁹ LDD Pereira, LDiniz Durães . (2011) '*Uma Brazilian vision of the refugee concept environmental*'. In: A.Ramos , A.de Carvalho ; G.Rodrigues , G.Almeida (Org .), 60 Anos de ACNUR: Perspectivas de Futuro. São Paulo: CL-A, pp. 221-240.

disciplinary discretion, defining broad terms provided by law, such as "acts contrary to constitutional principles and objectives". Furthermore, it facilitates confusion between criminal justice and migration when it conditions access to the right to migrate to the absence of criminal records and criminal convictions, as well as doubly sanctioning the person awaiting expulsion from Brazil who does not have the possibility of regularizing his/her status.

5.2 The granting of a humanitarian visa as a protection tool

In 2010, Haiti's history was marked by another tragedy, the earthquake that mainly devastated the capital Port-au-Prince had a magnitude of 7 on the Richter scale, causing the collapse of the National Palace, headquarters of the United Nations Peacekeeping Forces in Haiti and a hospital in Pétionville, the environmental catastrophe left one and a half million homeless victims, more than two hundred thousand dead and about three hundred thousand injured.

From that moment on, a large part of the Haitian population began a pilgrimage throughout the American continent, seeking support in the face of their desperate condition, with the goal of reaching Brazil. They passed through countries such as the Dominican Republic, Panama, Ecuador, Peru, until reaching Brazil; or again, from Ecuador to Colombia and, finally, to Brazil. In general, they arrived in the North of Brazil, entering the country through the states of Acre and Amazonas.

Since then, Brazil has begun to welcome people from Haiti and has used the complementary humanitarian protection protocol, guided by the principle of human dignity.

The estimated number of Haitians currently living in Brazil as of July 20, 2023 is approximately 161,000.

According to data from the General Coordination of the National Committee for Refugees (CONARE), from July 2023, 2,186 Haitians entered Brazil after the earthquake and requested refugee status from January 2010 to September 2011.⁷⁰ However, CONARE found itself faced with the absence of the persecutory element

⁷⁰ I. Fantinati, APB Moraes, (2020) 'O aporte legal two refugees set in the light of the right international. Starter magazine Científica' e Extensão da Faculdade de Direito de Franca, v. 5, no. 1,

for the purpose of granting refugee status, consequently the federal police initially denied the registration of the asylum requests.

The delay in defining the status of these immigrants entering the country, subjected to long periods in temporary reception centers, has created a situation of vulnerability.

In 2012, the federal government, through the National Council for Immigration, established the humanitarian visa for Haitians ⁷¹.

The large flow of asylum requests has brought progress, starting from a restrictive legislation (1951 Convention) and arriving at an expanded form of asylum seekers' rights (Cartagena Declaration 1984 ⁷²), building a migration policy based on the effective protection of human dignity.

According to the Brazilian Federal Constitution (art. 1, III, of the CRFB) ⁷³the human being, regardless of his condition, must be recognized as having the dignity of the human person, which represents the basis of all human rights.

<https://www.revista.direitofranca.br/index.php/icfdf/article/view/1061/0>

⁷¹ MAP Zeferino, Marco Aurelio Pieri; J.Aguado , (2012) ' *Os deslocamentos Haitian environments for Brazil* .Reviewed by SJRJ, see 19, no. 35, pp.213-230, https://bdjur.stj.jus.br/jspui/bitstream/2011/74915/deslocamentos_ambientais_haitianos_zeferino.pdf

⁷²Cartagena Declaration on Refugees, 19-22 November 1984, https://www.unhcr.org/en/wp-content/uploads/sites/97/2020/07/1984_Cartagena_Declaration.pdf

⁷³Art. 1 The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundation:

I - sovereignty;

II - citizenship;

III - the dignity of the human person;

IV - the social values of work and free enterprise; (See law no. 13.874 of 2019)

V – Political pluralism.

The key point to ensure protection is, therefore, the recognition of the other as a human person worthy of equal protection, without any political discretion.

Haitian migrants who are in Brazil, simply because they are people (regardless of the legal status that the legislation grants them), deserve the protection of all human rights. Therefore, in principle, it is indifferent, for the protection of the human rights of Haitians, whether they are officially recognized as refugees or not.

The concept of refugee, according to Haddad ⁷⁴, is equally descriptive and normative, because it prescribes a value. The characterization of the refugee inevitably responds to interests, certain criteria and objectives. The political community may prefer a more restrictive connotation in order to reduce the potential burdens arising from the Public Administration, obligations created by the 1951 Convention. Migration in Brazil demonstrates how the current separation between voluntary migrants and refugees or forced migrants is unsatisfactory.

The Brazilian government has gone through several stages in the reception process up to the stage of granting humanitarian legal status. For Forst, being recognized as a person of law means being respected in one's personal autonomy to determine one's own life. Citizenship presupposes political recognition, which constitutes a value of oneself as a full member of the political community ⁷⁵.

The government treats all Haitians who have applied for admission and has granted humanitarian visas to all of them, without distinction. A state of emergency policy requires practical reflection that today increasingly generates conflicts between the different federated states. The question that arises is whether the creation of this new status is necessary and sufficient to guarantee the full protection of Haitian migrants in Brazil.

Sole paragraph. All power emanates from the people, who exercise it through elected representatives or directly, according to the terms of this Constitution, <https://www.jusbrasil.com.br/topico-ato-normativo/10641860/artigo-1-da-constituicao-federal-de-1988>

⁷⁴ E.Haddad , (2008), ' *The refugee : a conceptual analysis* ' . Part I p.25. IN: The Refugee in International Society Between Sovereigns Cambridge. Cambridge University Press,

⁷⁵ R. Forst , (2010) ' *Os contextos da Justiça* ' . Translation : Denilson Luis Werle . São Paulo: Boitempo ,

The granting of a humanitarian visa does not fully protect migrants from Haiti, since the humanitarian visa can be revoked at any time. As a result, Haitian citizens are in a state of high social vulnerability in terms of the recognition of their rights before society.

Well, even if the political decision taken so far does not provide for the recognition of Haitian migrants in Brazilian territory as refugees, according to the terms of the 1951 Geneva Convention, since they do not satisfy this element of persecution, the question remains open.

In other words, Brazil's Immigration Law establishes a solid basis for protecting the rights of migrants, including those displaced for environmental reasons, through its principles of humanitarian reception and promotion of human rights. However, progress in the specific protection of environmental migrants may require further developments in legislation and regulatory practice⁷⁶.

This being the case, let us now examine the legal instruments adopted by Australia towards environmental displaced persons from the Tuvalu Islands.

6. The PALM Program (Pacific Australian Labor Mobility) and the Australia-Tuvalu Partnership Agreement

Australia does not have specific legislation that addresses only environmental migrants or climate refugees. However, various aspects of migration and refugee policy could potentially apply to individuals displaced by environmental factors such as climate change.

The Migration Act 1958 is the primary legislation governing immigration and refugee resettlement. In Australia, it outlines the criteria and procedures for various subclasses of visas, including humanitarian visas that may be applicable to environmental migrants in certain circumstances. Australia's Refugee and Humanitarian Program has an annual humanitarian program for refugees that includes resettlement of refugees

⁷⁶ H.Bermúdez Guevara, (2017), ' *El migrant climático y su reconocimiento en el order legal international*' . *Investigation and Thought Crítico* , 5 (1), pp.69–76. <https://doi.org/10.37387/ipc.v5i1.65>

and other humanitarian migrants. Although traditionally focused on political and conflict-related refugees, there has been discussion about broadening the criteria to include environmental factors. Australia has been actively engaged in policy discussions on climate change both domestically and internationally, this includes adaptation and mitigation strategies that indirectly impact potential environmental migrants ⁷⁷.

Internationally, Australia is a signatory to various international agreements and protocols relating to refugees and human rights (e.g. the Refugee Convention, the International Covenant on Civil and Political Rights, etc.), which may influence its approach to environmental issues.

The Pacific Australia Labour Program Mobility (PALM) focuses primarily on facilitating temporary labour mobility from Pacific Island countries (Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu, Timor-Leste -) to Australia.

Environmental migrants are individuals or communities forced to leave their homes due to environmental factors such as sea level rise, natural disasters or environmental degradation. PALM aims to grow the Pacific Australian and Timorese diaspora, develop our strong people-to-people ties and encourage greater cultural, trade, investment and educational exchanges ⁷⁸.

The primary objective is to address labour shortages in Australia, particularly in sectors such as agriculture, horticulture and hospitality. The program provides workers from participating countries with the opportunity to earn money, acquire skills and support their families and home communities, as well as promote cultural exchange and strengthen ties between Australia and the Pacific region. To protect workers, PALM sets out measures to ensure fair treatment of workers, including adequate wages , safe working conditions and support services.

⁷⁷New Zealand Government . (n.d.). [Pacific Access Category] (<https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/pacific-access-category-resident-visa>). Immigration New Zealand.

⁷⁸Bedford, R., & Hugo, G. (2012), ' *Population movement in the Pacific: A perspective on future prospects* ', *New Zealand Population Review* , 38, pp.85-112.

However, the program does not specifically consider environmental migrants as a distinct category⁷⁹.

In this regard, Australia has recently proposed a partnership agreement with Tuvalu to address climate change challenges. This agreement is aimed at providing support to Tuvalu, a small Pacific island state that is particularly vulnerable to sea level rise and other climate impacts.

The main components of the agreement include: a) climate migration, which includes the possibility for Tuvaluans to relocate to Australia in the event of extreme climate disasters that make the archipelago uninhabitable; b) economic support, which includes providing financial aid and assistance for climate adaptation projects, resilient infrastructure and water resources improvements; c) technical collaboration, which includes sharing knowledge and technologies to help Tuvalu mitigate the impacts of climate change and develop long-term adaptation strategies; d) natural resource protection, which includes engaging in the conservation of Tuvalu's marine and terrestrial ecosystems, which are crucial to the survival of local communities.

This agreement is significant because it represents one of the international efforts to directly address the impacts of climate change, recognizing the urgency of concrete measures and the responsibility of larger nations to the most vulnerable countries. Australia's agreement⁸⁰ to welcome migrants from Tuvalu, particularly those affected by the impacts of climate change, represents a significant development in the context of regional security and humanitarian cooperation. Tuvalu⁸¹, like other Pacific island nations, faces existential threats from rising sea levels and other climate-related challenges.

⁷⁹ Australian Government . (n.d.). [Pacific Australian Labor Mobility (PALM) scheme](<https://www.dfat.gov.au/geo/pacific-engagement/pacific-labour-mobility>). Department of Foreign Affairs and Trade .

⁸⁰ Australia-Tuvalu Falepili Union, <https://www.dfat.gov.au/sites/default/files/australia-tuvalu-falepili-union-treaty.pdf>

⁸¹ Constable , A.L. (2017), ' *Climate change and migration in the Pacific: options for Tuvalu and the Marshall Island's* '. Reg Environ Change 17, pp.1029–1038 <https://doi.org/10.1007/s10113-016-1004-5>

The agreement is likely part of a broader security framework in which Australia recognises the strategic importance of maintaining stability and cooperation in the Pacific region. Climate change is recognised as a security concern because it has the potential to exacerbate existing vulnerabilities and contribute to instability. On a humanitarian level, Australia's decision to accept migrants from Tuvalu underlines its commitment to humanitarian principles, providing a pathway for Tuvaluans displaced or at risk from climate impacts.

Well, while the specific details of the policy framework are crucial, such initiatives typically involve structured migration or resettlement programmes, possibly under humanitarian or special visa categories. These programmes aim to ensure that affected people can move safely and with dignity.

7. Conclusions

In general, the modifications to international Treaties and Conventions, obviously, present as their main obstacle the different will of the institutional actors involved; probably without the historical necessity perceived as immediate and in the absence of deeply conscious personalities, the proposal would still be little desirable ⁸².

Migrants in Brazil are protected by the Immigration Law (No. 13,445/2017), which guarantees fundamental rights to migrants, regardless of their immigration status. Among these rights, dignity, freedom, security and protection against xenophobia and discrimination prevail ⁸³.

The law in question plays an important role in the modernization and humanization of Brazilian immigration policy. The law replaced the old Aliens Statute and introduced a more inclusive and human rights-based approach ⁸⁴.

⁸² A. Baldwin , C Methmann , D. Rothe ' *Securitizing "climate Refugee": the futurology of climate-induced migration* ', Critical Studies on Security, 2014 2(2), pp.121–130

⁸³ Law no. 13.445 of 24 May 2017, provides for the rights and duties of migrants.

⁸⁴ Moraes , Raquel De Souza . (2017) " *Mudança Climate and Migration International : Perspectives for the Director Internacional e Brasileiro* ." Revista de Direito International , vol. 14, no. 2, pp. 35-56.

In particular, the latter places emphasis on the protection of migrants' human rights, including the right to due process and equal treatment.

The law allows for the granting of humanitarian visas to people affected by serious humanitarian crises, including environmental disasters. This can be interpreted as an indirect protection for environmental migrants ⁸⁵.

All the more so since there is flexibility in temporary visas for humanitarian reasons, which may include environmental emergency situations ⁸⁶.

On this point, it is worth noting that in 2004 the UN Security Council issued Resolution 1542 of 30/04/2004 ⁸⁷, creating the peacekeeping mission to restore order in Haiti, due to various problems that culminated in the deposition of President Jean-Bertrand Aristides .

It is evident that several migratory problems have been generated by this differential treatment granted to Haitian migrants. The UN has published an international report ⁸⁸that identifies the norms for the protection of people in situations of environmental disaster, indicating among other issues, the duties of the State towards this population, providing for international political assistance, disaster risk reduction policy and violation of human rights.

⁸⁵Treaty of Asunción (1991), The founding treaty that established MERCOSUR. Ouro Protocol Preto (1994) established the institutional structure of MERCOSUR and affirmed the commitment to a customs union. The Montevideo Protocol (2010) broadened the scope of cooperation to include social, labor and cultural issues.

⁸⁶CONARE. Regulatory resolution no. 23, 28 November 2017.

⁸⁷Resolution 1542 of the UN Security Council of 30/04/2004 created MINUSTAH (acronym for French Stabilization Mission for the United Nations in Haiti) with the objective of stabilizing the country, pacifying and disarming guerrilla and rebel groups, promoting free and informed elections, and shaping the institutional and economic development of the country. Brazil was a leading country in the peacekeeping mission.

⁸⁸The International Law Commission of the United Nations approved on 06/08/2014, during its 66th session, a recommendation on the protection of persons in the event of disasters, with number A/CN.4/L.831. < <http://daccess-ddsny.un.org/doc/UNDOC/LTD/G14/030/20/PDF/G1403020.pdf?ElementOpen> >.

The combination of international legal protection of environmental migrants with Brazilian immigration law marks a step towards greater protection and recognition of the rights of migrants affected by environmental changes. However, there is still a long way to go to ensure adequate protection at international and national levels, as the referral to ministerial acts to define entry criteria leaves too much discretion to administrative authorities. The latter, often called “climate refugees,” are people forced to leave their homes due to climate change, natural disasters, and environmental degradation.

In this regard, the Colombian Constitutional Court set an important precedent in its decision T-123 of 2024, recognising the existence of internal displacement caused by environmental factors, including events related to climate change. The decision was based on an action for protection brought by a couple of peasants displaced from their land by recurrent flooding of the Bojabá River⁸⁹.

At the regional cooperation level, the agreement with Tuvalu also reflects Australia's role in promoting regional cooperation and addressing shared challenges, such as climate-induced displacement. The latter could serve as a model for other nations facing similar problems in the Pacific region to collaborate on solutions⁹⁰.

Overall, Australia's willingness to accept migrants from Tuvalu in the context of a security pact underscores the evolving intersection of climate change, security and humanitarian responses in the Pacific region.

⁸⁹ Colombia: *Sentencia T-123 de 2024. Desplazamiento forzado interno por factores ambientales, incluidos hechos asociados al cambio climático*, Sentencia T-123 de 2024, Colombia: Corte Constitucional, 16 Abril 2024, <https://www.corteconstitucional.gov.co/relatoria/2024/T-123-24.htm>

⁹⁰ *Pacific Migration Common Country Analysis Mainstreaming migration into the United Nations 2030 Agenda and Sustainable Development Goals (SDGs), 2021*, <https://australia.iom.int/sites/g/files/tmzbdl1001/files/documents/Pacific%20Migration%20Common%20Country%20Analysis.pdf>

