



**10 YEARS OF THE
PENINSULA PRINCIPLES**

CLIMATE DISPLACEMENT LITIGATION: NAVIGATING THE HUMAN RIGHTS LANDSCAPE – A GLOBAL REVIEW

November 2023



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A GLOBAL REVIEW**

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Image: Guna Yala, Panama

Photo credit: Kadir van Lohuizen / NOOR

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Executive Summary

Ten years following the adoption of the Peninsula Principles on Climate Displacement Within States ('Peninsula Principles') in August 2013, the relevance of this normative framework for addressing climate displacement has never been greater. As the effects of climate change worsen - now touching all corners of the planet - the escalating severity of extreme heat and weather events, drought, rising sea levels and other effects are causing widespread climate displacement. By adhering to the 'Peninsula Principles,' states can help safeguard the internationally recognised human rights of those affected by climate displacement. Additionally, communities and individuals who are at risk can use these principles as an organising tool to ensure their rights are protected. When human rights are under threat or simply ignored, people are increasingly turning to the courts to seek remedies for damage caused by climate change, including climate displacement.

This report examines the global judicial landscape as it relates to climate displaced persons with a focus on how human rights arguments have been advanced and/or addressed in judicial decisions. It is designed to provide a clear understanding of the current state of climate displacement jurisprudence and the human rights arguments that have been used by individuals and communities displaced by climate change.

To date, millions of people have already been displaced due to climate change and there are no realistic scenarios that predict that these numbers will not increase in coming years. However, less than 1% of all judicial cases dealing with climate change issues have focused on any aspect of climate displacement. Only 19 of almost 2,400 judicial cases have addressed climate displacement themes.¹ This is a stark contrast to the 2,370 cases listed by the Climate Case Chart that relate to broader climate change concerns.² This disparity highlights the need for greater judicial attention and resources to be dedicated to specifically addressing climate displacement. The gap becomes even more pronounced considering that litigation related to climate change is among the fastest-growing type of legal action worldwide.³ We hope to inspire action to bridge this gap through the findings and analysis contained within the present report.

Climate displacement can and does subject people to the violation of basic human rights. Displaced individuals and communities often grapple with securing fundamental rights such as housing, food, water, livelihoods and other social and economic rights. In the judicial context, climate displacement has been addressed across various jurisdictions and primarily involves states as the defendants. This report examines the human rights arguments made in the 19 cases just noted.

1 Migration Data Portal, [https://www.migrationdataportal.org/themes/environmental_migration_and_statistics#:~:text=As%20of%2031%20December%202022,previous%20years%20\(ibid.\).](https://www.migrationdataportal.org/themes/environmental_migration_and_statistics#:~:text=As%20of%2031%20December%202022,previous%20years%20(ibid.).)

2 Climate Case Chart, <https://climatecasechart.com/about/>.

3 Based on the following two reports, on climate change litigation and world-wide litigation statistics, one can infer that climate change litigation is the fastest growing litigation in the world: <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2022/> and <https://www.unep.org/news-and-stories/press-release/surge-court-cases-over-climate-change-shows-increasing-role>

Displacement Solutions (DS) has been actively involved in the study and application of climate case law since 2020, beginning with a review of leading climate change judicial decisions.⁴ The purpose of such study is to understand as deeply as possible the complex intersection of climate change and human rights, in order to understand how this interplay can be used as a way of protecting the rights of climate displaced persons.

This report forms a core element of a one-year project involving a series of events commemorating the tenth anniversary of the Peninsula Principles, a text that remains as valid today as when it was approved in 2013. With this report and all our efforts at Displacement Solutions, we again urge governments everywhere to promptly establish the national institutions needed to adequately address the multitude of climate displacement challenges that will face every country across the world. These processes need to begin in earnest today.

While this report is about climate displacement litigation, it aims to provide a general overview that will be accessible to community organisations and activists who are not legally trained but who are interested in holding governments to account. It therefore seeks to avoid extensive technical legal analyses and legal terms in an effort to encourage a broader range of people to consider litigating this issue.

This report was drafted by Viraaj Akuthota and finalised with editorial inputs from Shaun Butta, Kirsten Young and myself. Graphic design and other artistic work were carried out by Arteria Design.



Scott Leckie
Executive Director

4 Displacement Solutions, https://issuu.com/displacementsolutions/docs/dis6357_courtrooms_and_climate_displacement_v4_1.

Introduction

1. Climate displacement refers to the involuntary movement of people from their places of habitual residence due to climate change-related events such as rising sea levels, extreme weather conditions, and other environmental changes. Even if technically “voluntary”, this displacement can take place due to both acute and chronic climate change events and effects. It can also lead to significant human rights challenges as displaced individuals and communities face increasing difficulties in securing their basic rights to housing, food, water and livelihoods, among others. In an effort to secure these rights, although still comparatively rare, these populations are increasingly resorting to litigation.
2. The Peninsula Principles on Climate Displacement Within States are central to understanding the legal nuances and human rights implications of climate displacement and provide a general blueprint on how to protect the rights of everyone affected by climate change. The Peninsula Principles provide a comprehensive framework outlining the rights of those displaced within their own countries due to climate change and articulate the state of human rights law. Recognising the multifaceted causes and outcomes of climate displacement, the Peninsula Principles advocate for integrated strategies that emphasise the rights, dignity, and requirements of the displaced. They accentuate the importance of embedding human rights standards into national climate change policies and practices and present a clear mandate to states to uphold the rights of climate-displaced individuals. They provide a template against which the efficacy of state actions can be measured.
3. In the judicial context, climate displacement has been addressed in various jurisdictions by both domestic and international courts. These cases have been filed primarily against states rather than corporations/companies or individuals. Invoking human rights law, especially in cases of displacement, involves holding states accountable for the protection of these rights, whereas corporations/companies may not be subject to the same legal obligations. Accordingly, this report only focuses on litigation against states.
4. This report aims to provide a comprehensive review of existing case law concerning climate displacement within a human rights context as of late 2023. The primary objective is to expand understanding of the current legal landscape in this area. By compiling and analysing relevant cases, the report serves as a research aid that illuminates the legal principles, arguments, and decisions that have been used to address climate displacement. It will show that climate displacement cases are still a very small component of broader climate change case law thus far.
5. This is the first in a series of three reports focusing on climate displacement advocacy and litigation, each with a distinct purpose and focus. The present report maps the existing legal terrain, with the two subsequent reports delving deeper into the mechanisms and potential strategies for legal action on climate displacement. In particular, the second report will explore available international and regional judicial and remedial mechanisms for launching cases in favor of protecting the rights of those negatively affected by the effects of climate displacement. It will provide an in-depth examination of international laws, treaties, and institutions that could be utilised to protect the

rights of those displaced by climate change, focusing in particular on those procedures that have not yet been used to adjudicate climate change matters. The third report in the series will outline the components of an ideal test case seeking to judicially reaffirm the duties of states to ensure the full protection of housing, land and property rights in climate displacement contexts. Building upon the insights from the first two reports, it will outline the elements of a hypothetical strategic test case which will incorporate both the challenges and prospects of litigating climate displacement issues. Through this exercise, we aim to shed light on the legal issues and complexities involved and provide guidance on potential approaches to such cases.

6. By sequentially building on each report, we aim to provide a comprehensive and practical guide for practitioners and affected communities navigating the legal challenges of climate displacement. We believe that understanding past and present case law, identifying potential mechanisms, and envisioning a strategic test case will significantly enhance efforts to secure justice for everyone displaced by climate change.

The Current State of Climate Displacement Litigation

7. If current trends persist, it is projected that in coming decades, anywhere between 216 million to one billion people could be displaced due to climate change.⁵ If longer time-frames are considered, it is highly likely that these numbers will grow substantially. Tens of millions have already been displaced and the numbers are increasing every year.
8. Some estimates suggest that climate change litigation has more than doubled since 2015, putting the total number as of mid-2022 at over two-thousand cases.⁶ Other estimates indicate that climate change litigation has more than doubled in the three years prior to 2021.⁷ Regardless of the specific numbers, it is clear that climate change litigation arguably ranks among the most rapidly growing types of legal action globally.⁸ However, this growth has not been matched by a proportional rise in cases addressing the concerns of those *displaced* due to climate change. Despite calls from civil society for a specific climate displacement litigation database, no such consolidated source listing all climate displacement cases exists as of yet.

5 Projections on the scale of climate displacement continue to vary widely, but recent estimates by the World Bank that 216 million will be displaced are currently the lowest figure widely used by those working within the climate change community. See, for instance: Clement, Viviane; Rigaud, Kanta Kumari; de Sherbinin, Alex; Jones, Bryan; Adamo, Susana; Schewe, Jacob; Sadiq, Nian; Shabahat, Elham. 2021. *Groundswell Part 2: Acting on Internal Climate Migration*, World Bank, Washington, DC. All other estimates point to far higher estimates, with some climbing into the billions. See, for instance: Gaia Vince, *Nomad Century: How Climate Migration Will Reshape Our World*, 2023, Flatiron Books. The true number lies somewhere in between and no matter what that number may actually be, represents the largest and most ubiquitous challenge facing humanity as a whole.

6 Grantham Institute, <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2022/>.

7 UNEP, <https://www.unep.org/news-and-stories/press-release/surge-court-cases-over-climate-change-shows-increasing-role>.

8 Id.

9. Many generic climate change litigation databases exist, however the majority of them do not track cases globally, do not constantly update their cases, and are not backed by a reliable institute.⁹ Two databases are considered to be the most authoritative in the broader area of climate change litigation: the Sabin Center for Climate Change Law's database – Climate Case Chart;¹⁰ and the Grantham Research Institute's database – Climate Change Laws of the World.¹¹

Methodology

10. Given the challenges associated with identifying pertinent case law related to climate displacement, this report adopts a methodology involving a manual keyword search of the Climate Case Chart. This manual review entailed searching the database using keywords listed in the first column of the table. The second column of the table displays the number of cases identified from each keyword search.

Keyword	Climate Change Cases
Migration	21
Housing Rights	10
Land Rights	47
Property Rights	54
Residence	10
Displacement	11
Humanitarian Visa	1
Relocation	7

11. Based upon the review, we have identified 19 cases that indirectly address climate displacement, either in law or in fact, and are detailed in the tables below. The cases have been categorised as follows: "Positively Decided Cases", (cases ruled in favor of the claimants or plaintiffs); "Cases Filed but Not Decided", (cases that are awaiting a final ruling); and "Cases Denied or Dismissed", (cases either dismissed summarily or heard and ruled against the plaintiff after evaluating their merits). The following chart lists the 19 cases by name as well as identifying the court or human rights body responsible for considering the case.

9 For example, the Sabin Center for Climate Change Law's database states: "The database has helped highlight and inform a global field of research and practice in climate change law. While we have sought to identify as many cases as possible that may fall within the scope outlined above, the database is not exhaustive. Key limitations include language barriers, levels of media coverage, and public availability of court documents. As a result, coverage in some jurisdictions is more comprehensive than in others. This may contribute to the wide discrepancy in the numbers of climate cases identified in different jurisdictions, although the legal culture in different jurisdictions should also be considered a key factor." Climate Case Chart, <https://climatecasechart.com/about/>.

10 Climate Case Chart, <http://climatecasechart.com/>.

11 Climate Laws, <https://climate-laws.org/>.

Positively Decided Cases

Case Name	Court/Human Rights Body
Daniel Billy and others v. Australia (Billy v Australia)	United Nations Human Rights Committee
Josefina Huffington Archbold v. Office of the President and others (Josefina Case)	Colombia Constitutional Court
I.L. v. Italian Ministry of the Interior and Attorney General at the Court of Appeal of Ancona (IL Case)	Italy Supreme Court of Cassation
In re: AD (Tuvalu Case)	New Zealand Immigration and Protection Tribunal

Cases Filed but Not Decided

Case Name	Court/Human Rights Body
Iten ELC Petition No. 007 of 2022 – Legal Advice Centre T/A Kituo cha Sheria & Anor v. Attorney General and 7 Others	Kenya The Environment and Land Court of Iten
Rights of Indigenous People in Addressing Climate-Forced Displacement (Alaskan Climate Change Petition)	United Nations Special Procedures: Special Rapporteurs
Petition to the Inter-American Commission on Human Rights Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti	Inter-American Commission on Human Rights
Juliana v. United States (Juliana Case)	United States District Court of Oregon
Request for an Advisory Opinion on the Scope of the State Obligations for Responding to the Climate Emergency	Inter-American Court of Human Rights
Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada (Athabaskan Petition)	Inter-American Commission on Human Rights
Tsama William and Others v. Uganda's Attorney General and Others (Uganda Petition)	Uganda High Court of Uganda at Mbale
Anton Foley and Others v. Sweden (Swedish Youth Petition)	Sweden Nacka District Court
Pabai Pabai and Guy Paul Kabai v. Commonwealth of Australia	Australia Federal Court of Australia

Cases Denied or Dismissed

Case Name	Court/Human Rights Body
0907346 [2009] RRTA 1168 (Kiribati Case)	Australia Refugee Review Tribunal
Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment (Ioane Teitiota Case)	New Zealand Supreme Court of New Zealand
UN Human Rights Committee Views Adopted on Teitiota Communication (UN Human Rights Committee (Teitiota))	United Nations Human Rights Committee
Aji P. v. State of Washington	United States Supreme Court of Washington
Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States	Inter-American Commission on Human Rights
Pandey v. India	India National Green Tribunal

12. The following section provides a summary of the cases listed above, including the main legal issues addressed, applicable jurisdiction, key facts, and a brief summary of the outcome. Given the report's focus on the human rights impact of climate displacement, this report only discusses in detail those cases that present specific human rights allegations against the respective state in the 'Human Rights Impact' section which appears after the tables below. The cases not discussed in detail primarily pertain to the "duty of care" cases where there is no underlying human rights obligation argument. However, a summary of these cases will still be included in the subsequent tables.

Positively Decided Cases

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
Daniel Billy and others v Australia (<i>Billy v Australia</i>) ¹²	United Nations Human Rights Committee	Violation of Human Rights under the ICCPR
<p>Key Facts and Summary</p> <p>A group of eight Torres Strait Islanders, Australian nationals, and six of their children submitted a petition against the Australian government to the United Nations Human Rights Committee. They are indigenous inhabitants of four small low-lying islands in the Torres Strait region. The applicants alleged that changes in weather patterns have direct and harmful effects on their livelihood, their culture and traditional way of life. The Torres Strait Islanders indicated that severe flooding caused by tidal surges in recent years has destroyed family graves and left human remains scattered across their islands. They argued that maintaining ancestral graveyards and visiting and communicating with deceased relatives are at the heart of their cultures. In addition, the most important ceremonies, such as coming-of-age and initiation ceremonies, are only culturally meaningful if performed in the community's native lands. The Torres Strait Islanders also argued that changes in climate with heavy rainfall and storms have degraded the land and uprooted trees and have consequently reduced the amount of food available from traditional fishing and farming. The plaintiffs claimed their rights have been violated as Australia failed to implement adequate climate change mitigation and adaptation measures such as upgrading seawalls on the islands and reducing greenhouse gas emissions. Most relevantly, the plaintiffs specifically argued that climate change already compromises the plaintiffs' traditional way of life <i>and threatens to displace them from their islands</i>.¹³</p> <p>Based on the above, the plaintiffs alleged that Australia's insufficient action on climate change has violated the following rights under the International Covenant on Civil and Political Rights (ICCPR): Article 27 (the right to culture), Article 17 (the right to be free from arbitrary interference with privacy, family and home) and Article 6 (the right to life).</p> <p>On 23 September 2022, the U.N. Human Rights Committee found that Australia's failure to adequately protect indigenous Torres Strait Islanders against adverse impacts of climate change violated their rights to enjoy their culture and be free from arbitrary interferences with their private life, family and home. However, there was no breach found for the right to life.</p>		

¹² *Billy v Australia*, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20220923_CCPRC135D36242019_decision.docx, <http://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/>.

¹³ *Id.*, [3.5].

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
Josefina Huffington Archbold v. Office of the President and others (<i>Josefina Case</i>) ¹⁴	Colombia Constitutional Court	Violation of Human Rights under the Colombian Constitution
<p>Key Facts and Summary</p> <p>On 14 November 2020, Hurricane Iota destroyed 98% of the buildings on the islands of Providencia and Santa Catalina in Colombia. On 18 November 2020, the President of the Republic declared the existence of a disaster situation in the archipelago of San Andrés, Providencia and Santa Catalina. This decree ordered the National Unit for Disaster Risk Management ('UNGRD'), to prepare a Specific Action Plan to (i) address the post-disaster humanitarian situation and (ii) plan and execute the rehabilitation and reconstruction of the affected areas.</p> <p>The plaintiff's principal allegation was that the entities in charge of managing the disaster situation caused by Hurricane Iota had violated her fundamental rights and those of the Raizal people. Most relevantly to climate displacement, the applicants alleged that the tents delivered by the UNRGD and the Ministry of Housing were of poor quality and the number of tents did not match the number of families affected.</p> <p>The rights in question were the right to decent housing, drinking water, basic sanitation, a healthy environment, health, access to public information, prior consultation, and cultural identity.</p> <p>The Court found a violation of all the rights in question and that the violation was the result of a lack of compliance by the Colombian government with its domestic and international obligations. The Court issued specific orders to ensure the government's response would be adequate and highlighted that the comprehensive action plan to restore the islands had to consider Colombia's obligations towards climate change mitigation and adaptation. In the Court's reasoning, climate change is the greatest threat to the enjoyment of human rights, which extends the government's responsibilities to mitigation and adaptation measures with a special emphasis on communities in vulnerable situations due to socioeconomic and geographic factors.</p> <p>Please note, this decision does not have an official English translation. All quotes and references to it are based on an automated Google Translation of the case and should be treated with caution.</p>		

14 *Josefina Case*, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20220926_T-333-of-2022_decision.pdf; <http://climatecasechart.com/non-us-case/josefina-huffington-archbold-v-office-of-the-president-and-others/>.

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
I.L. v. Italian Ministry of the Interior and Attorney General at the Court of Appeal of Ancona (<i>IL Case</i>) ¹⁵	Italy Supreme Court of Cassation	Humanitarian Protection Visa Application
<p>Key Facts and Summary</p> <p>The case concerns a Nigerian citizen's humanitarian visa application. The applicant was from the Niger Delta area, an area characterised by serious environmental instability due to indiscriminate exploitation by oil companies and ethnic-political conflicts since the 1990s.</p> <p>On February 24, 2021, the Italian Supreme Court of Cassation (Corte Suprema di Cassazione) established an ordinance that the assessment of a trial judge regarding the granting of humanitarian protection must consider social, environmental or climate degradation, and situations in which natural resources are subjected to unsustainable exploitation in the country of origin. The Court clarified that humanitarian protection visas must be granted when, according to the assessment, the situation in the country of origin does not allow for a minimum essential guarantee for the right to life of the individual.</p> <p>Based on this ordinance and approach to assessing a humanitarian visa application, the Court found that due to the environmental damage in the Niger Delta, the deportation of the applicant would infringe upon their right to life.</p>		
In re: AD (<i>Tuvalu Case</i>) ¹⁶	New Zealand Immigration and Protection Tribunal	Humanitarian Protection Visa Application
<p>Key Facts and Summary</p> <p>This case considers a Tuvalu citizen's application for a humanitarian protection visa in New Zealand. The Applicant's principal contention was that he would be subjected to the harmful effects of climate change if deported back to Tuvalu. While the Tribunal acknowledged the potential for climate change impacts to infringe upon human rights, it explicitly refrained from ruling on the matter of whether such circumstances justify the issuance of humanitarian protection visas. Consequently, the case does not directly or indirectly engage with the human rights arguments within the context of the humanitarian application despite the applicant suffering from climate displacement. Instead, the verdict hinged on the potential harm that would ensue for the family in New Zealand if they were separated due to the applicant's return to Tuvalu.</p>		

15 IL Case, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210224_Ordinance-N-50222021-of-the-Italian-Corte-Suprema-di-Cassazione-Sez.-II-Civile_decision.pdf; <https://climatecasechart.com/non-us-case/il-v-italian-ministry-of-the-interior-and-attorney-general-at-the-court-of-appeal-of-ancona/>.

16 *Tuvalu Case*, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2014/20140604_2014-Cases-501370-371_decision-1.pdf; <http://climatecasechart.com/non-us-case/in-re-ad-tuvalu/>.



SEA LEVEL RISE

Location: Solomon Islands



Photo credit: Beni Knight



Cases Filed but Not Decided

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
Iten ELC Petition No. 007 of 2022 – Legal Advice Centre T/A Kituo cha Sheria & Anor v. Attorney General and 7 Others ¹⁷	The Environment and Land Court of Iten (Kenya)	Violation of Human Rights under the Kenyan Constitution and Climate Change Act No. 11 (2016)
<p>Key Facts and Summary</p> <p>“Members of Ilchamus and Tugen communities living on the shores of Lake Baringo in Kenya together with Kituo cha Sheria (a Kenyan Human Rights Non-Governmental Organisation) have filed a climate change petition being Iten ELC Petition No. 007 of 2022 - Legal Advice Centre T/A Kituo cha Sheria & Anor v Attorney General and 7 Others before the Environment and Land Court (ELC) in Iten.</p> <p>The Petitioners allege violation of several rights under the Constitution of the Republic of Kenya 2010. Consequently, they seek to enforce climate change duties of public officials under the Climate Change Act No. 11 of 2016 Laws of Kenya and other related constitutional rights under the Constitution of the Republic of Kenya 2010. The Petitioners assert that they are victims of climate change related flooding which has caused massive displacement and loss of life and property. The Petitioners contend that the flooding has been caused by hydro-meteorological variables due to climate change. The ELC in Iten allowed an application by the Petitioners requesting the Chief Justice and the President of the Supreme Court of Kenya to empanel a three judge ELC bench to hear their case on the failure, neglect and or refusal by several government officials to discharge their obligations under the Climate Change Act No. 11 of 2016.</p> <p>The petitioners seek 12 substantive orders, among them, a declaration that relevant government officials failed, refused and or neglected to take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse impacts; a declaration that relevant government officials failed, refused and or neglected to avert, minimise and address effects of climate change suffered by petitioners; an order to compel relevant government officials to rehabilitate, relocate, and restore damaged infrastructure; an order for compensation for climate change damage; and an order for resettlement of flood victims.”¹⁸</p> <p>This case summary was reproduced from the Climate Case Chart as the legal documents themselves are not publicly unavailable.</p>		

¹⁷ Iten ELC Petition No. 007 of 2022, <http://climatecasechart.com/non-us-case/iten-elc-petition-no-007-of-2022-legal-advice-centre-t-a-kituo-cha-sheria-anor-v-attorney-general-and-7-others/>

¹⁸ Id.

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
Rights of Indigenous People in Addressing Climate-Forced Displacement (<i>Alaskan Climate Change Petition</i>) ¹⁹	United Nations Special Procedures: Special Rapporteurs	Violations of Human Rights
<p>Key Facts and Summary</p> <p>On 16 January 2020, the Alaska Institute for Justice submitted a complaint on behalf of five Tribes from Louisiana and Alaska to several UN Special Rapporteurs against the United States government. Their complaint was centered on the government's alleged inaction in addressing the climate change-related harm. Specifically, the Tribes alleged that the U.S. government has known for decades about the harm to coastal communities due to factors such as "rising sea levels, catastrophic storms, and unchecked extraction of oil and gas." However, despite this knowledge, the government purportedly failed to take protective measures.²⁰</p> <p>This inaction allegedly led to severe consequences for the Tribes, encompassing "the loss of sacred ancestral homelands, destruction to sacred burial sites, and the endangerment of cultural traditions, heritage, health, life, and livelihoods." The culmination of these adverse impacts has resulted in the Tribes being "forcibly dislocated from their ancestral lands."²¹</p> <p>Despite the geographical disparities between them, both the Tribes in Louisiana and Alaska claimed that they are confronting analogous human rights violations. This is attributed to the U.S. government's alleged failure to protect, promote, and fulfill each Tribe's right to self-determination and protect Tribal members from the adverse effects of climate change. Specifically, they alleged that climate-forced displacement jeopardises their enjoyment of a multitude of human rights, encompassing "the rights to life, health, housing, water, sanitation, a healthy environment, and food," among others.²²</p>		

19 *Alaskan Climate Change Petition*, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200116_USA-162020_complaint.pdf; <http://climatecasechart.com/non-us-case/rights-of-indigenous-people-in-addressing-climate-forced-displacement/>.

20 *Id.*, page 9.

21 *Id.*

22 *Id.*, page 3.

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
Petition to the Inter-American Commission on Human Rights Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti ²³	Inter-American Commission on Human Rights	Violation of Human Rights
<p>Key Facts and Summary</p> <p>On 4 February 2021, Haitian children submitted a petition to the Inter-American Commission on Human Rights to redress human rights violations stemming from waste disposal in their residential district. The petition advances a factual background of toxic trash disposal from Port-Au-Prince in the residential district of Cité Soleil, which they allege causes short- and long-term health harms most acutely affecting children.</p> <p>This case primarily addresses human rights violations resulting from the detrimental effects of environmental pollution on children. While the petition does mention displacement, it is only brought up in the context of a section discussing climate change. Importantly, neither climate change nor the consequences of displacement serve as the basis for the substantive human rights claims made in the petition. Instead, these elements are included merely to provide context, suggesting that the harms suffered by children could be exacerbated by climate change.</p>		
Juliana v. United States (<i>Juliana Case</i>) ²⁴	United States District Court of Oregon	Violation of Constitutional Rights
<p>Key Facts and Summary</p> <p>Filed by a group of young plaintiffs in 2015, the plaintiffs assert that the federal government, by promoting the use of fossil fuels despite knowing their contribution to climate change, violated their constitutional rights to life, liberty, and property. They also argue that the government's actions contravene its sovereign duty to protect public trust resources. This case is not based on international law, but instead hinges on factual allegations and the assertion that these facts breach rights under the U.S. Constitution.</p>		

23 Petition to the Inter-American Commission on Human Rights Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti, <http://climatecasechart.com/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-to-redress-violations-of-the-rights-of-children-in-cite-soleil-haiti/>.

24 *Juliana Case*, <http://climatecasechart.com/case/juliana-v-united-states/>; https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230608_docket-615-cv-01517_complaint.pdf

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
Request for an Advisory Opinion on the Scope of the State Obligations for Responding to the Climate Emergency ²⁵	Inter-American Court of Human Rights	Advisory Opinion Request under the American Convention on Human Rights
<p>Key Facts and Summary</p> <p>On 9 January 2023, Chile and Colombia submitted a request for an advisory opinion to be presented before the Inter-American Court of Human Rights. The request was with the “purpose of clarifying the scope of State obligations, in their individual and collective dimension, to respond to the climate emergency within the framework of international human rights law, taking into account the differentiated effects that such emergency has on the people of different regions and population groups, nature and human survival on our planet.” The request specifically asks the Court to clarify the issue of climate migration and displacement, and include:</p> <ul style="list-style-type: none"> • “What is the scope that States should give to their conventional obligations in the face of the climate emergency, in terms of: ... the determination of impacts on people, such as human mobility – migration and forced displacement – effects on health, and life, loss of non-economic assets”; and • “Considering that one of the impacts of the climate emergency is to aggravate the factors that lead to human mobility – migration and forced displacement of people: what obligations and principles should guide the individual and coordinated actions to be taken by States in the region to address non-voluntary human mobility exacerbated by the climate emergency.” 		

25 Request for an Advisory Opinion on the Scope of the State Obligations for Responding to the Climate Emergency, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20230109_18528_petition-2.pdf; <http://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/>.

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada (<i>Athabaskan Petition</i>) ²⁶	Inter-American Commission on Human Rights	Violation of Human Rights under the American Convention on Human Rights
Key Facts and Summary <p>On 23 April 2013, Earthjustice, on behalf of the Arctic Athabaskan Council, filed a petition that alleged Canada's fragmentary and lax regulation of black carbon emissions threatened the Athabaskan people's human rights. Specifically, that "black carbon pollution from Canada is harming the Arctic environment and ecosystems upon which indigenous Arctic Athabaskan peoples depend for their lives, livelihoods, and culture."²⁷ The human rights in question include the right to culture, the right to property, the right to means of subsistence, and the right to health.</p> <p>In relation to climate displacement, there were several references to displacement subsumed under the various human rights arguments. Under the right to health, they allege that for "those who must relocate", relocation from weather-related hazards can cause "social and mental stress, even trauma";²⁸ and under the right to property, noting that floods have washed away entire villages.²⁹</p>		
Tsama William and Others v. Uganda's Attorney General and Others (<i>Uganda Petition</i>) ³⁰	Uganda High Court of Uganda at Mbale	Violation of Human Rights
Key Facts and Summary <p>On the 14 October 2020, the applicants, victims of recurrent landslides in Uganda, filed a claim against the Ugandan government alleging that the respondents failed to put in place an effective machinery against landslides, and that the respondents' acts and/or omissions led to the violation of applicants' fundamental rights. Most relevantly, there is explicit mention of climate displacement caused by the landslides. The human rights violations include the rights to life, property, physical and mental health, and clean and healthy environment were infringed when the landslides occurred.</p>		

26 *Athabaskan Petition*, <http://climatecasechart.com/non-us-case/petition-inter-american-commission-human-rights-seeking-relief-violations-rights-arctic-athabaskan-peoples-resulting-rapid-arctic-warming-melting-caused-emissions/>; https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2013/20130423_5082_petition.pdf

27 *Id.*, page 1.

28 *Id.*, page 73.

29 *Id.*, page 67.

30 *Uganda Petition*, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210503_Miscellaneous-Cause-No.-024-of-2020_application-1.pdf; <http://climatecasechart.com/non-us-case/tsama-william-and-others-v-ugandas-attorney-general-and-others/>.

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
Anton Foley and others v Sweden (<i>Swedish Youth Petition</i>) ³¹	Sweden Nacka District Court	Violation of Human Rights
Key Facts and Summary <p>On 25 November 2022, a group of over 600 young people born between 1996 and 2015 filed a class action claim against the Swedish state, alleging that Sweden's action on mitigating climate change is inadequate and therefore a violation of their rights under the European Convention on Human Rights (ECHR). These rights include rights to life, private and family life, and non-discrimination under Articles 2, 8, and 14 of the ECHR, respectively, as well as the right to property under Article 1, Protocol 1 of the ECHR. Most relevantly, they make specific reference to climate displacement as a harm and damage to the physical home as a consequence of climate change.</p>		
Pabai Pabai and Guy Paul Kabai v. Commonwealth of Australia ³²	Australia Federal Court of Australia	Duty of Care
Key Facts and Summary <p>On 26 October 2021, Wadhuam Paul and Wadhuam Pabai, First Nations' leaders from the Torres Strait Islands, filed a case alleging Australia's failure to cut emissions and asserting that the government's inaction will force their communities to migrate to new areas. They state that "Torres Strait Islanders, whose homelands are the islands, reefs, and waters of the Torres Strait, are especially vulnerable to the impacts of climate change" and that the applicants "face an existential threat from climate change." They also mention that a special relationship exists between the Torres Strait Islanders and the Australian government which creates a "duty of care that is owed by the Commonwealth, to act and protect against the harm that climate change has caused and will likely cause to Torres Strait Islanders' health and safety, their lands and seas, and their way of life."³³</p>		

31 *Swedish Youth Petition*, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20221125_18245_application.pdf; <http://climatecasechart.com/non-us-case/anton-foley-and-others-v-sweden-aurora-case/>.

32 *Pabai Pabai and Guy Paul Kabai v. Commonwealth of Australia*, <http://climatecasechart.com/non-us-case/pabai-pabai-and-guy-paul-kabai-v-commonwealth-of-australia/> and the Concise Statement, <https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/online-files/pabai-v-australia>.

33 Id, [1]-[3].

Cases Denied or Dismissed

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
0907346 [2009] RRTA 1168 (<i>Kiribati Case</i>) ³⁴	Australia Refugee Review Tribunal	Humanitarian Protection Visa Application
<p>Key Facts and Summary</p> <p>The <i>Kiribati Case</i> concerns an application from a Kiribati citizen for an Australian humanitarian protection visa. The application was primarily made on the grounds that the applicant could not travel back to Kiribati due to negative climate change impacts including sea level rise. Specifically, they noted that some of the Kiribati islands are disappearing due to climate change and sea-level rise, and the future of the country is threatened due to climate change. The applicant claimed that their main livelihood is destroyed on the islands, as well as the freshwater supply.</p> <p>This case does not directly make human rights allegations, however, it frames climate change as a form of persecution. This framing allows for a reading of the human rights impact if the applicant was returned to their country of origin.</p>		
Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment (<i>Ioane Teitiota Case</i>) ³⁵	New Zealand Supreme Court of New Zealand	Asylum Application
<p>Key Facts and Summary</p> <p>The case of Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment is a landmark legal case that attracted global attention for its focus on climate change as a reason for seeking asylum. Ioane Teitiota, a man from the Pacific Island nation of Kiribati, applied for refugee status in New Zealand, arguing that rising sea levels and environmental degradation in his home country made it unsafe for him and his family. Teitiota contended that if he was forced to return to Kiribati, he would be subjected to “passive persecution” due to the environmental conditions exacerbated by climate change, including land loss and contamination of freshwater.</p> <p>However, New Zealand’s courts, including the Supreme Court, rejected Teitiota’s claim, stating that he did not meet the criteria for refugee status under the 1951 Refugee Convention. The courts held that the Convention’s definition of a refugee does not extend to people fleeing environmental conditions, even if those conditions are severe. The case highlighted the limitations of existing international refugee law in addressing the emerging issue of climate refugees and sparked discussions on the need for legal frameworks to protect individuals displaced due to climate change.</p>		

34 *Kiribati Case*, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2009/20091210_0907346-2009-RRTA-1168_decision.pdf; <http://climatecasechart.com/non-us-case/0907346-2009-rrta-1168/>.

35 Ioane Teitiota Case, <http://climatecasechart.com/non-us-case/ioane-teitiota-v-the-chief-executive-of-the-ministry-of-business-innovation-and-employment/>

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
UN Human Rights Committee Views Adopted on Teitiota Communication (<i>UN Human Rights Committee (Teitiota)</i>) ³⁶	United Nations Human Rights Committee	Refugee Application Review and Violations under the ICCPR

Key Facts and Summary

In 2013, Ioene Teitiota, a Kiribati citizen, sought asylum in New Zealand, asserting that the effects of climate change and sea level rise forced him to migrate. Once his case had wound its way through the New Zealand courts, he then filed a communication with the UN Human Rights Committee claiming that New Zealand had violated his right to life by denying him asylum despite his assertions that climate change made Kiribati uninhabitable.

The Committee concluded that the communication was admissible, but that New Zealand's decision was not clearly arbitrary, a manifest error, or a denial of justice. The Committee did find, however, that "given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realised." Accepting Teitiota's claim that sea level rise is likely to render Kiribati uninhabitable, the Committee explained that given the 10-15 year timeframe, there was sufficient time for intervening acts by the government of Kiribati to protect its citizens.³⁷

Aji P. v. State of Washington ³⁸	United States Supreme Court of Washington	Violation of Human Rights
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Key Facts and Summary

This case concerns an action by young people claiming that the State of Washington, state agencies and officials violated plaintiffs' rights by creating and maintaining fossil fuel-based transportation and energy systems and that these actions led to climate displacement, "relocation from their home because of climate-induced sea level rise."³⁹ This case was summarily dismissed by way of a separation of powers argument with no substantive discussion of any of the allegations.

36 *UN HRC Teitiota*, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200107_CCPRC127D27282016_opinion.pdf; <http://climatecasechart.com/non-us-case/un-human-rights-committee-views-adopted-on-teitiota-communication/>.

37 *Id.*

38 *Aji P. v. State of Washington*, <http://climatecasechart.com/case/aji-p-v-state-washington/>; and http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2021/20210310_docket-99564-8_petition.pdf.

39 *Aji P. v. State of Washington*, initiating application, page 1: http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2019/20190122_docket-80007-8-l-briefs-also-filed-under-No.-96316-9-in-Washington-Supreme-Court_brief-1.pdf.

CASE NAME	COURT/HUMAN RIGHTS BODY	ISSUE
Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States ⁴⁰	Inter-American Commission on Human Rights	Violation of Human Rights under the American Declaration on Human Rights
Key Facts and Summary <p>On 8 December 2005 Inuit women filed a petition to the Inter-American Commission on Human Rights seeking relief against the United States for its acts and omissions that caused climate change. The applicant sought a series of measures that would mitigate the effect of greenhouse gas emissions on the Arctic. Some of the consequences included the displacement caused by flooding.</p> <p>On 16 November 2006, the Commission summarily dismissed this claim stating that the petition did not contain information that satisfied the relevant rules and that they were not able to determine if the alleged facts would lead to a violation of the rights protected by the American Declaration.⁴¹</p>		
Pandey v. India ⁴²	National Green Tribunal (India)	Public Trust Doctrine, et al.
Key Facts and Summary <p>In March 2017, Ridhima Pandey, a nine-year-old, filed a case at the National Green Tribunal of India. The plaintiff's petition argues that the Public Trust Doctrine, India's commitments under the Paris Agreement, and India's existing environmental laws and climate-related policies oblige greater action to mitigate climate change. Most relevantly, the plaintiff argued that climate change affects children disproportionately and that children were more vulnerable to impacts such as displacement.</p> <p>On 15 January 2019, the National Green Tribunal summarily dismissed the petition and there was no consideration of any of the arguments made within, which included issues revolving around displacement. The case was dismissed on the grounds that climate change is accounted for in the process of impact assessments under the Environment Protection Act of 1986, and therefore, "There is no reason to presume that Paris Agreement and other international protocols are not reflected in the policies of the Government of India or are not taken into consideration in granting environment clearances."⁴³</p>		

40 Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2005/20051208_na_petition.pdf.

41 Id, http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2006/20061116_na_decision.pdf.

42 *Pandey v. India*, <http://climatecasechart.com/non-us-case/pandey-v-india/>, http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2019/20190115_Original-Application-No.-___-of-2017_order-1.pdf.

43 Id, [2].

The Human Rights Impacts of Climate Displacement

13. The cascading effects of climate displacement cut across various facets of human existence. These are not merely limited to the physical displacement of people from their homes but also infringe upon a wide cross section of different internationally recognised human rights. The repercussions impact rights to life, property, work, an adequate standard of living, health, home, and culture. This section outlines the complex web of human rights issues that can be undermined by climate displacement. It offers a comprehensive analysis of the human rights arguments made within the 19 cases that specifically address one or more aspects of climate displacement.
14. The right to life is the most fundamental of human rights. Climate displacement threatens not only the physical lives of individuals but also their quality of life. Housing, land and property rights are heavily impacted in countless ways due to climate displacement, while the right to work is undermined as traditional livelihoods are often disrupted. Similarly, maintaining an adequate standard of living—a right that encapsulates several sub-rights such as access to food, housing, water, and clothing—becomes challenging. The impacts on health, both physical and mental, are profound, and the right to a safe and secure home becomes increasingly elusive. The right to culture—a collective right that enables communities to preserve and nurture their cultural heritage—is also severely compromised as communities fracture and disperse.
15. The selection of the rights discussed in this report—namely life, property, work, an adequate standard of living, health, housing, and culture—reflects their prevalence in the litigation cases identified in this report. These rights emerged as the most commonly invoked and contested in the cases analysed, illustrating the key areas where climate displacement imposes the most significant challenges.

Right to Life

16. In the context of international human rights law, the right to life is a foundational principle enshrined in many key treaties. Article 3 of the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, unequivocally states, “Everyone has the right to life, liberty and security of person.” Similarly, Article 6 of the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, affirms that “Every human being has the inherent right to life.” Within the regional framework, the European Convention on Human Rights (ECHR) mandates its member states to secure the right to life for everyone under their jurisdiction through Article 2.⁴⁴ This right has been addressed in a variety of cases dealing with climate displacement, offering insight into the application of these vital treaties in contemporary circumstances.

44. *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, 138 – 170.

Ioane Teitiota Case - Case Decided

17. In the *Ioane Teitiota Case*, the Applicant asked the Supreme Court of New Zealand to consider “whether the right to life under the ICCPR includes a right of a people not to be deprived of its means of subsistence.”⁴⁵ The Supreme Court simply asserted that they do not “consider that the provisions of the ICCPR relied on have any application on these facts.”⁴⁶ From an analytical perspective, it is difficult to identify which aspect of the Court’s analysis of the Refugee Convention’s application to the Applicant’s case the Court is referring to. The Court leaves open the question of whether the right to subsistence can apply in climate displacement cases generally:

“Our decision in this case should not be taken as ruling out that possibility in an appropriate case.”⁴⁷

UN Human Rights Committee (Teitiota) - Case Decided

18. The United Nations Human Rights Committee (UN HRC) heard Ioane Teitiota’s case after domestic remedies in New Zealand were exhausted. In short, all the initial arguments were heard again, and the Committee upheld the same decisions made by the various courts in New Zealand. The following section briefly reproduces the Committee’s principal findings:
- (a) Ioane Teitiota argued that the scarcity of habitable land on the island of Tarawa due to climate change had led to violent land disputes resulting in fatalities. He suggested that this situation posed a risk to his life. The Committee rejected this argument, primarily stating that a situation of general violence could satisfy the risk to life only in the most extreme cases, either where there is a real risk of harm simply due to violence upon return, or when the individual is in a particularly vulnerable situation. The Committee found that this situation did not exist as this risk was general and not personalised to Ioane Teitiota;⁴⁸
 - (b) Ioane Teitiota asserted that due to climate change causing sea-level rise and subsequent saltwater contamination, the fresh water supplies on Tarawa had been severely depleted. He claimed this lack of access to potable water would seriously harm him. The Committee, however, rejected this claim, on the basis that, according to a report and testimony by climate change researcher John Corcoran, 60% of South Tarawa’s residents obtained fresh water from rationed supplies provided by the public utilities board. Furthermore, the domestic authorities found no evidence to suggest that Ioane Teitiota would lack access to potable water in Kiribati. The Committee acknowledged the hardship that water rationing could cause, but noted that Ioane Teitiota did not provide sufficient information to indicate that the supply of fresh water was inaccessible, insufficient or unsafe, thus creating a reasonably foreseeable threat to his health that would impair his right to a life with dignity or cause unnatural or premature death;⁴⁹

⁴⁵ *Ioane Teitiota Case*, [11].

⁴⁶ *Id* [12].

⁴⁷ *Id* [13].

⁴⁸ *United Nations Human Rights Committee Teitiota*, [9.7].

⁴⁹ *Id* [9.8].

- (c) loane Teitiotia alleged that his right to life had been violated due to the destruction of his crops from salt deposits on the ground, effectively depriving him of his means of subsistence. The Committee highlighted the domestic authorities' finding that while it was difficult to grow crops, it was not impossible. The Committee acknowledged that in certain areas, the lack of alternatives to subsistence livelihoods could heighten an individual's vulnerability to the adverse effects of climate change. However, they noted loane Teitiotia's lack of information regarding alternative employment sources and the availability of financial assistance to meet basic humanitarian needs in Kiribati. They also pointed out the New Zealand Tribunal's observation that most nutritious crops were still available in Kiribati. Based on the available information, the Committee did not find a real and reasonably foreseeable risk at the time of loane Teitiotia's removal that he would be exposed to a situation of indigence, deprivation of food, and extreme precarity that could threaten his right to life, including his right to a life with dignity. Consequently, the Committee held that loane Teitiotia failed to establish that the domestic authorities' assessment was clearly arbitrary or erroneous or amounted to a denial of justice;⁵⁰ and
- (d) loane Teitiotia asserted that he faced a risk to his right to life due to overpopulation and frequent and increasingly intense flooding and breaches of sea walls and argued that the State party's courts failed to give sufficient weight to the expert testimony of the climate change researcher. He suggested that Kiribati would become uninhabitable within 10 to 15 years. The Committee, however, did not find the time frame unreasonable for intervening acts by Kiribati, with international community support, to protect and potentially relocate its population. They acknowledged the State party's findings that Kiribati was taking adaptive measures to reduce vulnerabilities and build resilience against climate change-related harms. Consequently, the Committee did not deem the domestic authorities' assessment—that the measures taken by Kiribati would suffice to protect loane Teitiotia's right to life under Article 6 of the Covenant—to be clearly arbitrary or erroneous, or to amount to a denial of justice.⁵¹

19. However, despite this reasoning the Committee did leave the door open for future environmental displacement cases that could affect the right to life:

"The Committee also observes that it, in addition to regional human rights tribunals, has established that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life."⁵²

⁵⁰ Id [9.9].

⁵¹ Id, [9.10] – [9.12].

⁵² Id [9.5].



Image: Malaita, Solomon Islands
Photo credit: Beni Knight

IL Case – Case Decided

20. In the *IL Case* the Italian Supreme Court of Cassation evaluated an appeal regarding a humanitarian visa application by an applicant from the Niger Delta in Nigeria, an area characterised by serious environmental instability due to indiscriminate exploitation by oil companies and ethnic-political conflicts since the 1990s. The Court found that numerous oil spills have occurred due to sabotage and theft, resulting in the contamination of large areas. The Court also noted the significant levels of poverty among the local population who do not benefit from the area's main natural resource, as well as the insecurity due to sabotage, damage, kidnappings of public figures, and attacks against police forces. Moreover, the Court considered international sources indicating that the Nigerian government has contested the interests of major oil companies in the Delta area.⁵³
21. The decision is novel for humanitarian applications as the Court found that an assessment for granting humanitarian protection should go beyond a consideration of armed conflict scenarios and also take into account situations of social, environmental or climate degradation, as well as situations in which natural resources are subject to unsustainable exploitation in the country of origin:

“It follows from the foregoing that if, as in the present case, the trial judge finds, in a specific area, a situation suitable for integrating an environmental disaster, or in any case a context of serious compromise of natural resources which is accompanied by the exclusion of entire segments of the population from their enjoyment, the assessment of the widespread dangerous condition existing in the applicant’s country of origin, for the purpose of recognising humanitarian protection, must be conducted with specific reference to the particular risk for the right to life and dignified existence deriving environmental degradation, climate change or unsustainable development of the area. The danger to the individual life that is detected for the purposes of the recognition of protection, in fact, does not necessarily have to derive from an armed conflict, but can depend on socioenvironmental conditions that can in any case be referred to human action, provided that the context it is created in a specific area is, in practice, such as to seriously jeopardise the very survival of the individual and his relatives.”⁵⁴

22. Due to the severity of the environmental damage in Nigeria, the Court found that if the Applicant were returned to Nigeria, it would breach the applicant’s fundamental right to life.⁵⁵

⁵³ *IL Case*, page 1-4.

⁵⁴ *Id*, page 3.

⁵⁵ *Id*, page 4-5.

***Alaskan Climate Change Petition* – Case Filed but Not Decided**

23. In the *Alaskan Climate Change Petition*, the claimants allege that the US government, through both acts and omissions, violated the “collective and individual human rights of indigenous tribes facing climate displacement.”⁵⁶ Specifically, they assert that certain tribal governments decided “decades ago that the relocation of their entire community is the best long-term adaptation strategy” and despite making this “difficult decision”, the US Government failed to “implement the relocation plans so that neither community has yet relocated.” Further, they state that due to the failure to relocate, “the lives of Tribal citizens are threatened every time a storm occurs and the communities are inundated.”⁵⁷
24. The claimants rely on the following sources, accepted scientific fact, and principles of international law in making their allegation:
 - (a) UN Human Rights Committee’s (UN HRC) views on the right to life: States have an obligation to protect against “reasonably foreseeable threats and life-threatening situations that can result in loss of life.” This obligation also covers threats that do not result in loss of life but expose victims to a real risk of the deprivation of life;⁵⁸
 - (b) UN HRC views on climate change: The Committee recognises climate change as one of the most serious threats to the ability of present and future generations to enjoy the right to life;⁵⁹
 - (c) UN HRC views on the preservation of the environment: The Committee mentions the implementation of the obligation to respect and ensure the right to life depends on the measures taken by states to preserve the environment and protect it against harm, pollution, and climate change caused by public and private actors;⁶⁰
 - (d) UN HRC views on state parties’ duties: State parties should address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These conditions can include degradation of the environment and deprivation of land, territories, and resources of Indigenous peoples;⁶¹ and
 - (e) The Guiding Principles on Internal Displacement: These principles highlight the importance of the duty to protect the right to life to prevent and avoid conditions that lead to displacement. They affirm a special duty to protect Indigenous peoples who have close ties to land;⁶²

⁵⁶ *Alaskan Climate Change Petition*, page 38.

⁵⁷ *Id.*

⁵⁸ *Id.*, page 39.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

- (f) The Universal Declaration on the Rights of Indigenous Peoples: The declaration specifies an elevated responsibility towards Indigenous peoples in line with their special rights, which include the right to their lands, territories, and resources;⁶³ and
- (g) The Peninsula Principles on Climate Displacement Within States: These principles outline the human rights principles that must be adhered to when individuals and communities are forcibly displaced internally because of climate change.⁶⁴

Uganda Petition – Case Filed but Not Decided

25. In the *Uganda Petition*, the claimants construe the right to life as placing an obligation upon the Ugandan government to “put in place an effective machinery for dealing with landslides.”⁶⁵ They cite many domestic and international sources to support this construction, including the ICCPR, and:
 - (a) Para 26 of the UN Human Rights Committee General Comment No. 36, which “provides that the 1st respondent shall develop contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters, which may adversely affect enjoyment of the right to life”;⁶⁶ and
 - (b) Paragraph 41 of General Comment No. 3 on The African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), which provides that “The State has a positive duty to protect individuals and groups from real and immediate risks to their lives caused either by actions or inactions of third parties ... Such actions include, inter alia, preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.”⁶⁷
26. As the Ugandan government did not put in place the relevant machinery to deal with landslides, they failed to fulfill their positive obligations under the right to life.

Swedish Youth Petition – Case Filed but Not Decided

27. The claimants in the *Swedish Youth Petition* alleged that Sweden breached their right to life pursuant to Article 2 of the ECHR due to the negative consequences of climate change, which include “serious environmental hazards and environmental threats ... which risk affecting people’s lives, well-being, dignity and property.”⁶⁸

⁶³ Id.

⁶⁴ Id, page 12.

⁶⁵ *Uganda Petition*, Issue No 2 [22(c)].

⁶⁶ Id, Issue No 2 [22(l)].

⁶⁷ Id.

⁶⁸ Supra note 31 [237].

28. Further, they acknowledge that the rights in the ECHR have not been tested in relation to climate change but recognise there is “extensive practice regarding the impact of the environment on the right to life ... in case of predictable natural disasters, industrial activity and other environmentally hazardous business.”⁶⁹ With respect to the right to life, they construe the obligation upon the state as not only “actualised in situations where the State’s actions or failure to act have led to death, but also in situations where someone has been exposed to the risk of death, whereby the State has a positive obligation to protect life within the state jurisdiction.”⁷⁰

***Billy v Australia* - Case Decided**

29. In *Billy v Australia*, the Applicants made several complaints against the Australian government regarding harm to their right to life due to the threat of displacement caused by climate change. The arguments included: Australia had an obligation to take adaptive and mitigative measures; Australia did not meet its obligations under the Paris Agreement; Australia did not respect the applicant’s right to a healthy environment; and lastly Australia was not taking all steps possible to reduce emissions. One argument noted: “In violation of article 6 (1) of the Covenant, the State party has failed to prevent a foreseeable loss of life from the impacts of climate change, and protect the authors’ right to life with dignity. The State party has not taken adaptation and mitigation measures. It has not provided resources to adopt measures identified as necessary by the Torres Strait Island Regional Council and the TSRA, and has not met its obligations under the Paris Agreement. The State party has failed to respect the authors’ right to a healthy environment, which is part of the right to life. The State party must devote maximum available resources and all appropriate means to reduce emissions in order to comply with its obligations under Article 6 of the Covenant.”⁷¹
30. The UN Human Rights Committee initiated their evaluation of the argument by highlighting the following legal principles:
- (a) that the “right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures to protect the right to life”;⁷²
 - (b) reiterating their General Comment No. 36 (2018) on the right to life, which states that the right to life means includes the right to be “free from acts or omissions that would cause their unnatural or premature death”;⁷³

⁶⁹ Id [238]-[239].

⁷⁰ Id [240].

⁷¹ *Billy v Australia*, [3.4].

⁷² Id, [8.3].

⁷³ Id.

- (c) that “the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in the loss of life”;⁷⁴
 - (d) that State parties may be in violation of the right to life even if the relevant threats do not actually result in the threat to life;⁷⁵ and
 - (e) threats that could violate the right to life include “climate change impacts, and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”⁷⁶
31. Applying the relevant legal principles to the Applicant group, the Committee found no violation of the right to life primarily due to:
- (a) the Applicants failing to demonstrate an adverse impact to “their own health or a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten their right to life”;⁷⁷
 - (b) that Australia has undertaken mitigative and adaptive measures, primarily a seawall project, that may, within the time frame of 10 to 15 years prove to be effective in combatting the consequences of sea level rise. Overall, the Committee concluded that these adaptation measures cannot be proven to be insufficient.⁷⁸
32. The Committee found there to be no violation of the right to life despite acknowledging the current existence of “flood-related damage, seawall breaches, coral bleaching, increasing temperatures, erosion, reduction of the number of coconut trees and marine life used for food and cultural purposes, and a lack of rain and its effect on crop cultivation.”⁷⁹

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id, [8.6].

⁷⁸ Id, [8.7].

⁷⁹ Id, [8.5].

Housing, Land and Property Rights

33. Housing, land, and property (HLP) rights are fundamental human rights that are recognised in international human rights and humanitarian law.⁸⁰ These rights encompass the legal norms and frameworks that govern issues related to the conditions in which people live including housing, land tenure security, and property ownership and all other related themes. HLP rights are of critical importance in conflict and post-conflict settings, as they are often violated or disrupted during times of instability and displacement, as well as in the context of climate change. The recognition and protection of HLP rights have been established through various international legal instruments. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, includes the right to housing and the right to property. Additionally, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides a comprehensive and significant international legal source for the right to adequate housing. Article 11(1) of the ICESCR recognises the right of everyone to an adequate standard of living, including adequate housing, and emphasises the importance of international cooperation in realising this right.⁸¹
34. The right to an adequate standard of living, encompassing the right to adequate housing and the right to food, is a central tenet of international human rights law. Article 25 of the UDHR declares, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care...”
35. The right to property, another fundamental principle, is codified in various international standards and treaties. Article 17 of the UDHR asserts, “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.” Similarly, Protocol 1, Article 1 of the ECHR states, “Every natural or legal person is entitled to the peaceful enjoyment of his possessions.” In the Americas, the American Convention on Human Rights (ACHR), in its Article 21, safeguards the right to property.

***Athabaskan Petition* – Case Filed but Not Decided**

36. The claimants in the *Athabaskan Petition* allege that Canada has breached their right to property, a right they state is enshrined in the “Universal Declaration of Human Rights, the European Convention on Human Rights, and the African Charter on Human and People’s Rights.”⁸² Further to the citation of international law, the petition contains several references to Inter-American Court and Commission case law where they assert that it provides legal precedent “that indigenous peoples have a fundamental human right to use and enjoy the lands they

80 See, Scott Leckie (2023). *Housing, Land and Property Rights: Residential Justice, Conflict Zones and Climate Change*, Routledge.

81 See, Scott Leckie & Chris Huggins (2011). *Conflict and Housing, Land and Property Rights: A Handbook on Issues, Frameworks and Solutions*, Cambridge University Press.

82 *Athabaskan Petition*, page 64.

have traditionally occupied, independent of domestic title.”⁸³ In addition, they also assert that property does not just include tangible property but that property should be “expansively defined” to include intangible property such as traditional knowledge.⁸⁴

37. Based on the cited law, they assert that by “failing to adequately regulate black carbon emissions, Canada is violating Arctic Athabaskan peoples’ right to property.”⁸⁵ They mention many examples of harm that substantiate their allegation, most notably in relation to climate displacement, which include:

- (a) “floods have washed away entire villages”;⁸⁶
- (b) “increases in rain and freezing rain—resulting in faster snowmelt, flash flooding, and ice storms—damage Arctic Athabaskan towns, including homes, riverbank camps, and the roads and rivers people use for travel on the hunt”;⁸⁷
- (c) “Some effects of accelerated Arctic warming, like floods and fires, can wipe out large swaths of land and natural resources”;⁸⁸ and
- (d) “Arctic warming has compromised the structural integrity of commercial and residential buildings, including by destroying foundations, causing roofs to collapse, and increasing outbreaks of fire.”⁸⁹

Uganda Petition – Case Filed but Not Decided

38. In the *Ugandan Petition*, the claimants assert that the Ugandan government is responsible for the infringement of the right to property. Specifically, they allege that the Ugandan government is responsible for the harm caused to the property as they failed to discharge their positive obligations under the right to life to put in place effective machinery that would have protected their property from landslides, as noted above.⁹⁰ To provide support for this allegation they cite numerous international law instruments, in addition to Article 17 of the UDHR, which include:

- (a) Article 19(c) of the Sendai Framework for Disaster Risk Reduction 2015–2030 (69/283) adopted by United Nations General Assembly on 3 June 2015, that provides “Managing the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development”;⁹¹ and

⁸³ Id, page 64-65.

⁸⁴ Id, page 64-66.

⁸⁵ Id, page 67.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id 27, page 68.

⁹⁰ *Uganda Petition*, Issue No 3 at [24].

⁹¹ Id, Issue No 2 at [22(a)].

- (b) Article 14 of the African Charter of Human and People's Rights 1981, which protects the applicants' right to property.⁹²

***Swedish Youth Petition* – Case Filed but Not Decided**

39. The claimants in the *Swedish Youth Petition* argue the violation of human rights in a collective fashion – they outline Sweden's obligations with respect to protecting the climate broadly, and how such protection feeds into each Article. For example, in relation to Article 1 of the First Additional Protocol to the ECHR (Right to Property), they allege that due to the negative consequences of climate change, which include "serious environmental hazards and environmental threats ... which risk affecting people's ... property."⁹³ They construe property not only as immovable and personal property but also legitimate expectations that have support in law such as rights of use and grants.⁹⁴ Based upon this definition of property, they argue that Sweden must protect the home and other property from the effects of climate change.⁹⁵

***Josefina Case* – Case Decided**

40. In the *Josefina Case*, the Applicant's underlying factual argument centered around the fact that "fourteen months after Hurricane Iota, 800 families still had to live in tents."⁹⁶ Their principal complaint focused on the quality of housing provided to the applicants after the hurricane. Specifically, they alleged that the proposed building design was inadequate for a multitude of reasons, the most pertinent being that the construction was made from poor materials that could not withstand the local climatic conditions, and the construction was incompatible with the model agreed upon by the Raizal community.⁹⁷ These combined assertions constituted the Applicant's complaint that the Colombian government had breached the obligation to provide adequate or decent housing.
41. In deciding against the Colombian government, the Colombian Constitutional Court reiterated Article 11 of the ICESCR (adequate standard of living) in addition to the corresponding domestic legislation that mirrors the content of Article 11. The Court also cited General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, which defined decent housing to mean "the right to live in safety, peace and dignity somewhere." Therefore, interpreting that decent housing under the Colombian constitution which embodies Article 11 of the ICESCR, "is not limited to offering people "a roof over their heads", but rather guaranteeing adequate housing that allows a life in decent conditions."⁹⁸ The application of this law, according to the Colombian Constitutional Court, "must" require adequate housing to have "adequate security

⁹² Id, Issue No 2 at [22(e)].

⁹³ *Swedish Youth Petition*, [237] and [244].

⁹⁴ Id, [237] and [249].

⁹⁵ Id, [250].

⁹⁶ *Josefina*, section 1 - 'Background' [4.5].

⁹⁷ Id, section 1 - 'Background' [4.5].

⁹⁸ Id, section 2 - 'Considerations' [3.11].

and basic infrastructure, among many other elements, all of them accompanied by the qualifier “adequate.”⁹⁹ The “other elements” include: location, habitability, availability, cultural adaptation, supportable expenses, legal security in tenure, and affordability.¹⁰⁰

42. The Colombian Constitutional Court ruled that the right to adequate housing was infringed because the housing did not meet the standards of habitability, availability and cultural adaptation. Further, the Court labeled the reconstruction and repair of the houses as “arbitrary and gimmicky.”¹⁰¹ The following reproduces the salient points of the Court’s determination of this violation:
 - (a) regarding habitability, the houses delivered did not correspond to the agreed model, were incomplete, and were of poor quality;¹⁰²
 - (b) again regarding habitability, the houses built did not have the capacity to protect the inhabitants in the event of a hurricane and the overflow of sewage from inadequate septic tanks affected individual health and the overall environment;¹⁰³
 - (c) regarding availability, there was insufficient construction of water systems that led to a lack of sufficient drinking water or water for hygienic purposes;¹⁰⁴ and
 - (d) regarding cultural adaptation, the construction did not respect the cultural needs of the inhabitants primarily due to their inability to lead a self-sufficient lifestyle, which was hampered due to the lack of natural resources such as water.¹⁰⁵

Kiribati Case – Case Decided

43. In the *Kiribati Case*, the appellant argued that “climate change should be seen as a form of persecution which involves serious harm.”¹⁰⁶ Despite the initial case being for a protection visa, commonly referred to as a refugee application, the case relates to human rights generally. Referring to the harm caused by losing a home or land, the appellant did not directly link the persecution argument to this harm. Nonetheless, it appears that the Australian Refugee Review Tribunal inferred this connection, associating the appellant’s fear of persecution with the possibility of Kiribati being entirely submerged by rising sea levels. As such, the Tribunal ruled on this premise: “He fears ultimately that the country could be completely submerged by sea water and no longer habitable.”¹⁰⁷

99 *Id.*, section 2 - ‘Considerations’ [3.11].

100 *Id.*, section 2 - ‘Considerations’ [3.12].

101 *Id.*, section 2 - ‘Considerations’ [7.1.1].

102 *Id.*, section 2 - ‘Considerations’ [7.1.7].

103 *Id.*, section 2 - ‘Considerations’ [7.1.14].

104 *Id.*, section 2 - ‘Considerations’ [7.1.15].

105 *Id.*, section 2 - ‘Considerations’ [7.1.21].

106 *Kiribati Case*, [22].

107 *Id.*, [47].

44. The Tribunal rejected the appellant's case as it considered it necessary that "persecution within the meaning of the Convention must involve a discriminatory element ... and the requirement that for the Refugee Convention to apply to persecution, the persecution must involve systematic and discriminatory conduct."¹⁰⁸ After the Tribunal reviewed relevant case law, it asserted that the systematic and discriminatory conduct requires an "element of an attitude or motivation."¹⁰⁹ In this instance, the Tribunal did not find the necessary conduct feared that could be "properly considered persecution for reasons of a Convention characteristic as required."¹¹⁰
45. The Tribunal based its finding that no systematic and discriminatory conduct existed for the following reasons:
- (a) Australia's, or other "high emitting countries" continued production of carbon emissions cannot constitute the element of motivation as they do not "have any element of motivation to have any impact on residents of low-lying countries such as Kiribati, either for their race, religion, nationality, membership of any particular social group or political opinion." They went further to state that a high carbon emitting countries' indifference to the consequences of climate change also cannot constitute the requisite motivation;¹¹¹
 - (b) That the requisite motivation requires an "agent of persecution";¹¹² and
 - (c) Overseas laws which may allow for elements of "natural disaster or environment problems" providing a basis to seek protection do not apply in Australia.¹¹³

Alaskan Climate Change Petition – Case Filed but Not Decided

46. The *Alaskan Climate Change Petition* contains two mutually distinct allegations that the United States Government breached Article 11 of the ICESCR (right to an adequate standard of living). The first is that the US Government failed to provide the right to adequate housing, and the second is that they failed to protect the right to subsistence and food.¹¹⁴
47. In relation to the right to adequate housing, the petition states that this right is "defined as habitable, culturally appropriate and able to protect from environmental threats."¹¹⁵ They further cite the Pinheiro Principles on Housing and Property Restitution for Refugees, which also protects this right.¹¹⁶ The claimants rely on the following factual circumstances as evidence of the breach of the right to adequate housing:

¹⁰⁸ Id, [48].

¹⁰⁹ Id, [51].

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id, [52].

¹¹³ Id, [53].

¹¹⁴ *Alaskan Climate Change Petition*.

¹¹⁵ Id, page 47.

¹¹⁶ See: <https://www.unhcr.org/au/media/principles-housing-and-property-restitution-refugees-and-displaced-persons-pinheiro>.

- (a) that the climate crisis represents a significant threat to the human right to adequate housing as its consequences could cause the permanent loss of land and housing;¹¹⁷
 - (b) land loss encompasses a profound cultural and national loss, given the fundamental connection between their identities and lands;¹¹⁸
 - (c) environmental factors such as sea level rise, extreme weather events, and flooding are causing erosion of the living space available to these coastal communities;¹¹⁹
 - (d) environmental changes are adversely impacting the habitability of homes and limiting access to essential services, including electricity, water supply, and sanitation;¹²⁰
 - (e) communities experience severe overcrowding due to a reduction in habitable space, coupled with an absence of basic amenities in homes;¹²¹ and
 - (f) the cost burden for essential utilities, such as heating fuel and electricity, is substantial, compelling families to make a choice between food and maintaining these utilities.¹²²
48. In relation to the right to subsistence and food, the overall complaint is that the climate crisis is making subsistence hunting and gathering, which are the primary sources of food for the community members “more dangerous and less reliable.”¹²³ The claimants cite numerous facts that demonstrate this harm, including:
- (a) traditional ice cellars, crucial for food storage in these communities, becoming non-operational due to flooding and freezing;¹²⁴
 - (b) communities are grappling with a severe shortage of traditional food sources such as the bearded seal, due to adverse ice conditions;¹²⁵
 - (c) the alarming rise in ocean and river temperatures is resulting in large-scale mortality among fish and marine mammals, thereby threatening future fish stocks and the overall health of marine ecosystems that communities depend on;¹²⁶ and

¹¹⁷ Id, page 47.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Id.

¹²² Id.

¹²³ Id, page 44.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

- (d) tribal citizens are being forced to transition from subsistence livelihoods to purchasing food from grocery stores, burdening families whose primary income source is tied to the natural resources impacted by climate change.¹²⁷

Right to Work

49. The right to work is enshrined in numerous international instruments. Article 23 of the UDHR states, “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” The ICESCR, in its Article 6, further elaborates this right, saying, “The States Parties...recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.” The following case sought to use these treaties in the context of the right to work, particularly in situations of climate displacement.¹²⁸

***Kiribati Case* – Case Decided**

50. In the *Kiribati Case*, the Applicant argued that “climate change should be seen as a form of persecution which involves serious harm.”¹²⁹ A key element of the Applicant’s claim was that he was unable to earn a livelihood due to climate change.

***Billy v Australia* – Case Decided**

51. The *Billy v Australia* case adds another dimension to this issue. While the case is centered on the right to life, the applicants’ complaints indirectly relate to the right to work. They argue that the threat of displacement caused by climate change, and the consequent inability to sustain their livelihoods, infringes upon their right to life. However, the decision of the UN Human Rights Committee indicates that without a demonstrated immediate threat to life or health, such arguments may not meet the threshold for a violation of the right to life under the ICCPR. Together, these cases indicate that while the impacts of climate change pose significant challenges to the right to work, particularly in cases of climate displacement, these challenges are not yet adequately addressed within the existing framework of international human rights law. The pending petitions, if successful, could set a new precedent in acknowledging these challenges and expanding the interpretation of the right to work to include protection against the adverse effects of climate change.

¹²⁷ Id.

¹²⁸ See: Scott Leckie and Anne Gallagher (2006). *Economic, Social and Cultural Rights: A Legal Resource Guide*, University of Pennsylvania Press. See also: Ben Saul, David Kinley, Jacqueline Mowbray (2014). *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, Oxford University Press, (chapter 8)

¹²⁹ *Kiribati Case*, [22].



Image: Kiribati
Photo credit: Jocelyn Carlin

Right to Health

52. The right to health is deeply embedded in several crucial international instruments. Article 25 of the UDHR stipulates: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family...” Further, Article 12 of the ICESCR recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Additionally, regional human rights systems, such as the European Social Charter (Article 11) and the African Charter on Human and Peoples’ Rights (Article 16), safeguard this right. In the following discussion, different cases will be examined to illuminate the interpretation and application of these standards and treaties in the context of the right to health in climate displacement scenarios.

***Kiribati Case* – Case Decided**

53. In the *Kiribati Case*, the Applicant also argued that the impact of rising sea levels caused his health to deteriorate due to the “contamination of drinking water ... and a non-balanced diet” caused by saltwater inundation on crops.¹³⁰ The Tribunal for the same reasons as laid out in paragraphs 44-45 above, rejected the Applicant’s argument, however, unlike the previous dismissals, the Tribunal did not specifically mention “health” in their “findings and reasons.” This does not mean they were not attuned to the consequences of climate change to the Applicant’s health, but rather that they did not consider the impact to health to be a form of persecution.

***Josefina Case* – Case Filed but Not Decided**

54. In the *Josefina Case*, the Applicant pointed to the following factors that they alleged constituted a breach of their right to health:

- (a) the field hospital had multiple deficiencies including an “inoperable laboratory tent”;¹³¹
- (b) a hospital tent without permanent drinking water sources;¹³² and
- (c) limited medical emergency transport.¹³³

55. The Colombian Constitutional Court cited and reiterated Article 12 of the ICESCR (the right to health) in addition to the domestic law that mirrored Article 12, stating that everyone has the right to the highest attainable standard of physical and mental health. The Court also cited General Observation No 14 of the ICESCR, stating that health “is a fundamental human right and is indispensable for the exercise of other human rights” and that its “denial or incomplete provision of health services is a violation of the fundamental rights.”¹³⁴

¹³⁰ *Kiribati Case*, [20]-[21].

¹³¹ *Josefina*, section 1 - ‘Background’ at [4.5].

¹³² *Id.*, section 1 - ‘Background’ at [4.5].

¹³³ *Id.*

¹³⁴ *Id.*, section 1 - ‘Considerations’ at [3.14].

56. The Court found that the state's actions could be considered to be a more egregious breach of the right to health.¹³⁵ These statements included the fact that the relevant hospital did not even provide the minimum services that the pre-existing hospital offered. Therefore, applying the law on the right to health they found a clear breach.¹³⁶

Alaskan Climate Change Petition - Case Filed but Not Decided

57. In the *Alaskan Climate Change Petition*, the claimants construed the right to health as an obligation upon the US government which included "both preventing exposure to health hazards, and improving the capacity of individuals to cope with health hazards."¹³⁷ Based upon this obligation, the claimants alleged the breach of this right based on the following facts:

- (a) "Sea level rise salinates freshwater and disrupts sanitation and water supply";¹³⁸
- (b) "Flooding may also lead to groundwater contamination";¹³⁹
- (c) "Brain-eating amoeba affects the water supply in Louisiana";¹⁴⁰ and
- (d) "Tribal citizens continue to live in unsafe homes because there is little to no support for them to fix their homes following flooding or damage to their homes."¹⁴¹

Athabaskan Petition - Case Filed but Not Decided

58. In the *Athabaskan Petition*, the claimants allege that Canada has breached the Athabaskan people's right to health due to the failure to regulate black carbon emissions, a right they state is protected, among other sources, through the ICESCR.¹⁴² The petition also contains several references to Inter-American Court and Commission case law which they assert provides legal precedent linking "environmental degradation and the right to health."¹⁴³ The claimants also provide examples from international human rights bodies, such as the European Committee of Social Rights and the UN Committee on Economic and Social Rights, to support the same precedent.¹⁴⁴

¹³⁵ Id, section 1 - 'Considerations' at [7.1.24].

¹³⁶ Id, section 1 - 'Considerations' at [7.1.27].

¹³⁷ *Alaskan Climate Change Petition*, page 47.

¹³⁸ Id, page 47.

¹³⁹ Id.

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² *Athabaskan Petition*, page 69.

¹⁴³ Id, page 70.

¹⁴⁴ Id, page 70-71.

59. Based on the cited law, they allege that “Canada’s insufficient regulation of black carbon emissions contributes to rapid Arctic regional climate change and is harming Arctic Athabaskan peoples’ health and well-being.”¹⁴⁵ They mention many examples of harm that substantiate their allegation, most notably in relation to climate displacement, which include:
- (a) “Increased risks of injury related to weather events, such as storms, rockslides, avalanches, intense rainfalls, floods, and extreme temperature also threaten the health and well-being of Athabaskan peoples”;¹⁴⁶
 - (b) “weather-related natural hazards present a more serious risk of injury to populations and communities that live and travel in exposed areas, as Arctic Athabaskan peoples do”;¹⁴⁷ and
 - (c) “Infrastructure damage caused by low water levels, as well as flooding from ice jamming and unusual breakup patterns of ice in rivers, also threatens Arctic Athabaskan peoples’ lives and health.”¹⁴⁸

Right to Privacy, Family and Home

60. The right to privacy, family, and home is an indispensable element of international human rights law. Article 12 of the Universal Declaration of Human Rights stipulates, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation...” This right is further consolidated in Article 17 of the ICCPR, which affirms that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence...” On the regional scale, Article 8 of the European Convention on Human Rights provides a “right to respect for private and family life, home and correspondence.” The upcoming sections will investigate various cases that shed light on the interpretation and application of these vital treaties with respect to the right to privacy, family, and home, particularly in situations of climate displacement.¹⁴⁹

¹⁴⁵ Id, page 71.

¹⁴⁶ Id, page 73.

¹⁴⁷ Id.

¹⁴⁸ Id.

¹⁴⁹ For a leading commentary on the right to privacy, family, and home, see: Article 17: Privacy, Home, Correspondence; Honour and Reputation in “A Commentary on the International Covenant on Civil and Political Rights – The UN Human Rights Committee’s Monitoring of ICCPR Rights.” Taylor, P. (2020). In A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights.



Image: Guna Yala, Panama
Photo credit: Kadir van Lohuizen / NOOR

***Billy v Australia* – Case Decided**

61. In *Billy v Australia*, the Applicant argued that “climate change already affects their private, family and home life, as they face the prospect of having to abandon their homes.”¹⁵⁰ The UN Human Rights Committee began its evaluation of this argument by reaffirming the following legal principles:
- (a) that Article 17 of the ICCPR not only prohibits arbitrary interference, but also obligates the State party to adopt positive measures to ensure the effective exercise of the rights under this article;¹⁵¹
 - (b) that when environmental damage threatens disruption to privacy, family, and the home, States parties must prevent serious interference with the privacy, family, and home of individuals under their jurisdiction;¹⁵²
 - (c) that Article 17 should be understood as protecting the traditional indigenous way of life of the plaintiffs, who enjoy a special relationship with their territory;¹⁵³ and
 - (d) that degradation of the environment due to climate change impacts can constitute violations of privacy, family life, and home.¹⁵⁴
62. When applying the relevant legal principles to the claimants, the Committee found a violation of the rights under Article 17 due to:
- (a) the State party failing to implement adequate adaptation measures to protect the authors’ home, private life, and family;¹⁵⁵
 - (b) the State party not specifically addressing the author’s allegations about the need for additional adaptation measures, such as upgraded seawalls;¹⁵⁶ and
 - (c) the State party not contesting or providing alternative explanations for the author’s claims about the negative impacts of climate change on their lives and livelihoods.¹⁵⁷

¹⁵⁰ *Billy v Australia*, [8.9].

¹⁵¹ *Id.*, [8.9] – [8.10].

¹⁵² *Id.*, [8.9].

¹⁵³ *Id.*, [8.10].

¹⁵⁴ *Id.*, [8.12].

¹⁵⁵ *Id.*, [8.11].

¹⁵⁶ *Id.*, [8.12].

¹⁵⁷ *Id.*

Swedish Youth Petition – Case Filed but Not Decided

63. The claimants in the *Swedish Youth Petition* alleged that Sweden breached their right to protection for private and family life, and home pursuant to Article 8 of the ECHR due to the negative consequences of climate change, which include serious environmental hazards and environmental threats ... which risk affecting people's lives, well-being, dignity and property."¹⁵⁸ In making this allegation, they specifically construe "home" to include the physical notion of a home such as an office or also a holiday home.¹⁵⁹

Right to Culture

64. The right to culture is affirmed in several essential international legal instruments. Article 27 of the UDHR states, "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits." Further, Article 15 of the ICESCR acknowledges the right of everyone to "take part in cultural life." In the subsequent section, various cases will be reviewed to elucidate the interpretation and application of these crucial treaties concerning the right to culture, specifically in circumstances of climate displacement.¹⁶⁰

Billy v Australia – Case Decided

65. In *Billy v Australia*, the UN Human Rights Committee had to decide whether Australia breached Article 27 of the ICCPR by not protecting the "Applicants from reduced viability of their islands and the surrounding seas, owing to climate change impacts."¹⁶¹ In deciding on this issue, the Committee interpreted Article 27 as:
- (a) a right that aims to ensure the "survival and continued development of cultural identity"¹⁶²;
 - (b) read along with the United Nations Declaration on the Rights of Indigenous People, enshrining "the inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used"¹⁶³; and
 - (c) protecting a minority groups "culture, language or religion."¹⁶⁴

¹⁵⁸ *Swedish Youth Petition*, [237] and [244].

¹⁵⁹ *Id.*, [249].

¹⁶⁰ *Supra*, Ben Saul, et al., chapter 17.

¹⁶¹ *Billy v Australia*, [8.14].

¹⁶² *Id.*, [8.13].

¹⁶³ *Id.*

¹⁶⁴ *Id.*

66. Upon applying the law, the Committee found a violation of Article 27 because Australia failed to adopt timely adaptation measures which then impeded the Applicant's ability to maintain their culture and protect it from climate change impacts. The failure was primarily evidenced by:
- (a) the delay in constructing seawalls despite the reasonably foreseeable threat of rising sea levels due to climate change which was raised as early as the 1990s by the Applicant's community;¹⁶⁵
 - (b) the erosion of "traditional lands and natural resources" that were used for "traditional fishing and farming and for cultural ceremonies that can only be performed on the islands";¹⁶⁶ and
 - (c) the inability to "transmit to their children and future generations their culture and traditions and use of land and sea resources"¹⁶⁷.

Alaskan Climate Change Petition – Case Filed but Not Decided

67. The claimants in the *Alaskan Climate Change Petition* alleged that the "United States government has failed to protect the cultural heritage of the Tribes" by:¹⁶⁸
- (a) failing to "grant federal recognition of the Tribes in Louisiana" which "prevented them from protecting their right to their land and resources";¹⁶⁹
 - (b) sea level rises cause land loss which result in "numerous cemeteries, sacred sites and historic mounds" being on the "brink of disappearing";¹⁷⁰
 - (c) tribes not being able to live in their traditional "dirt floor palmetto homes" as "homes are raised 10-15 feet off the ground to avoid potential flood damage";¹⁷¹
 - (d) never nominating the specific tribal sites to the National Register status in order to receive further protection.¹⁷²
68. The culmination of the above factors is alleged to breach "the right to enjoy culture as defined in the International Covenant on Civil and Political Rights."¹⁷³

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Id.

¹⁶⁸ *Alaskan Climate Change Petition*, page 42.

¹⁶⁹ Id, page 42.

¹⁷⁰ Id.

¹⁷¹ Id.

¹⁷² Id.

¹⁷³ Id, page 42.

***Athabaskan Petition* – Case Filed but Not Decided**

69. The claimants in the *Athabaskan Petition* alleged that Canada breached their right to enjoy culture as Canada has an obligation, under international law, to not “degrade the Arctic environment” and has breached this obligation.¹⁷⁴ The claimants cited multiple international law treaties that asserted this right, including the ICCPR. However, they largely relied upon the case law of the Inter-American Court to set the applicable law. Specifically, it was noted that the Inter-American Court “has long recognised that degradation of land or natural resources can violate the human right to the benefits of culture, especially in the context of indigenous or tribal cultures.”¹⁷⁵ They further relied upon decisions of the UN Human Rights Committee to assert the “importance of natural resources to the right to the benefits of culture.”¹⁷⁶ The claimants then applied that law to their factual assertions in order to allege that Canada has failed to take effective action to reduce black carbon emissions as this failure has negatively affected the Athabaskan peoples’ subsistence-based living, traditional knowledge, and cultural sites.¹⁷⁷

¹⁷⁴ Id, page 58.

¹⁷⁵ Id.

¹⁷⁶ Id, page 59.

¹⁷⁷ Id, page 60-61.

Conclusion

70. This report provides an analysis of how national courts and tribunals, as well as international and regional bodies, have thus far addressed cases addressing the human rights impacts of climate displacement. It also provides details of the arguments used by applicants in cases yet to be decided by these bodies. The cases reviewed relate to the rights to life, housing land and property, work, an adequate standard of living, health, privacy, family, home and culture.
71. Concerning the right to life, the cases reviewed demonstrate the evolving legal interpretation of this right in the context of climate displacement. While courts have yet to explicitly recognise the right to life as including a right not to be deprived of one’s means of subsistence, they have shown a willingness to consider socio-environmental conditions, including environmental disasters and serious compromise of natural resources, as legitimate threats to life. This opens the door for future cases to argue that climate displacement, which often involves both environmental disasters and the compromise of natural resources, poses a serious threat to individuals’ right to life. However, as seen in the UN Human Rights Committee *Teitiota* case, courts may require immediate threats to life, suggesting that the slower, creeping nature of climate change may not be adequately addressed by current interpretations of this right.

72. Housing land and property rights are also severely impacted, with climate displacement complicating issues of ownership and possession. The cases reviewed illuminate the challenges and complexities of applying the right to property in the context of climate displacement. The *Athabaskan Petition* and the *Uganda Petition* highlight the direct impacts of climate change on tangible property, such as land and housing, and the violation of property rights due to the failure of governments to regulate emissions or establish effective climate change combat mechanisms.
73. The *Swedish Youth Petition* extends the concept of property rights to encompass lawful expectations, reflecting the broader economic impacts of climate change. The *Kiribati Case* and *Billy v Australia*, while not directly addressing property rights, show the complexities in arguing climate change impacts as a form of persecution or a threat to the right to life. These cases might have implications for arguments concerning property rights, as the loss of property due to climate change could similarly be difficult to characterise as a violation of human rights under current international law. Together, these cases suggest that the impacts of climate change pose significant challenges to the right to property, particularly in cases of climate-induced displacement. The pending petitions, if successful, could set new precedents in acknowledging these challenges and expanding the interpretation of the right to property to include protection against the adverse effects of climate change.
74. Climate displacement often undermines the right to work as traditional livelihoods are disrupted. The *Kiribati Case* reveals the complexities of applying the right to work in the context of climate displacement and underlines the difficulty of characterising climate change impacts, such as the inability to earn a livelihood due to environmental degradation, as a form of persecution under current international law. This suggests a gap in the protection afforded by the existing legal framework, which does not adequately account for the threats posed by climate change to the right to work.
75. The right to an adequate standard of living cases underscore the threat that climate change poses to the rights to adequate housing and food. The *Josefina Case* establishes a precedent that inadequate housing conditions, exacerbated by the impacts of climate change, can constitute a breach of this right. In contrast, the *Kiribati Case* suggests that the threat of losing one's home due to climate change is not enough to constitute persecution under the current understanding of international human rights law. Eventual judicial attention to the pending *Alaskan Climate Change Petition*, could further affirm this recognition and hold governments accountable for the impacts of climate change on the right to an adequate standard of living.
76. The impacts on health, both physical and mental, are profound. These cases highlight the growing recognition of these impacts, especially when related with climate change. The *Josefina Case* establishes a precedent that deficiencies in healthcare services, such as those exacerbated by climate displacement, can constitute a breach of the right to health. The pending *Alaskan Climate Change* and *Athabaskan Petitions*, if successful, could further affirm this recognition and set new precedents for holding governments accountable for the health impacts of climate

change. These cases underscore the need for robust measures to protect the right to health in the face of climate change and displacement. The legal interpretation of the right to health should take into account the wide-ranging health consequences of displacement, which encompass not only immediate physical health risks but also long-term psychological trauma.

77. The right to privacy, family and home cases suggest an evolving recognition of the impacts of climate change on this right. The *Billy v Australia* case establishes a precedent that climate change impacts can violate these rights, particularly for indigenous communities who have a special relationship with their territories. The pending *Swedish Youth Petition*, if successful, could affirm this recognition and expand the interpretation of “home” to include places like offices and holiday homes. These cases underscore the need for robust measures to protect the right to privacy, family, and home in the face of climate change.
78. Lastly, the right to culture is severely compromised as climate displacement can lead to the fracturing and dispersion of communities. The cases reviewed show the evolving legal landscape concerning the right to culture in the context of climate displacement. The *Billy v Australia* case establishes a precedent for recognising climate displacement’s impact on cultural rights, particularly for indigenous communities. The pending *Alaskan Climate Change* and *Athabaskan Petitions*, if successful, could further affirm the importance of natural resources to the right to the benefits of culture and set new precedents for holding governments accountable for actions contributing to climate change that threaten cultural rights. These cases underscore the need for robust measures to protect cultural rights in the face of climate change, particularly for indigenous communities whose cultural identity is closely tied to their natural environment. Recognising this collective right requires a nuanced understanding of the cultural losses that result from displacement, extending beyond physical displacement to include the dislocation from cultural practices, traditions, and community ties.
79. While climate change litigation has expanded exponentially in recent years, and while cases relating to climate displacement are also growing, this report reveals that only a minute proportion of cases decided thus far have addressed the issues arising from climate displacement. This review shows that while some progress has been made in advancing climate change litigation issues and in discerning aspects of the rights that should be enjoyed by climate displaced persons, the potential for new cases remains very considerable.
80. Displacement Solutions is currently preparing two additional reports in connection with our project commemorating the 10th anniversary of the Peninsula Principles that will build on the findings in this report. The first will examine all of the international and regional avenues for judicial redress that have *not yet* been invoked in the context of climate displacement. The second will examine novel arguments in a future climate displacement case that would seek to significantly strengthen judicial recognition of the housing, land and property rights of everyone affected by the reality of climate displacement. These reports will be published in 2024.

This report forms part of the *Peninsula Principles@10 Project*, commemorating ten years since the adoption of this groundbreaking international normative framework outlining the housing, land and property rights of people facing climate displacement.

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