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LEGAL CHALLENGES FOR CLIMATE-INDUCED DISPLACED PERSONS:
Border Externalization As A Barrier To The Effectiveness of Proposed Solutions

Dissertation to obtain a Master's Degree in Law,
in the speciality of International and European Law

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*For my parents,
Maria and Daniel Brazão.*

*For always loving and supporting me and
Without whom none of my success would be possible.*

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Susana Ribeiro Brazão

“No one leaves home unless home is the mouth of the shark”
Warsan Shire.

Abstract.

Climate change has had a growing impact on both the environment and human life, leading to a situation where more and more individuals are being forced to relocate to areas with lower vulnerabilities and exposure to climate change. However, by intertwining the climate crisis with the migration crisis confronting the European Union, it becomes evident that protecting these individuals will be greatly reduced, if not entirely non-existent. Climate-induced displaced persons in African countries, experiencing the worst effects of climate change, will be prevented from the opportunity for international protection. Existing protection systems do not provide this protection and current protection solutions in the context of climate displacement do not address the problem of the growing externalization practices on migration management, leaving displaced individuals vulnerable to human rights violations with little hope for the future. Therefore, this research aims to examine the impacts of outsourcing policies on migrants' lives, specifically focusing on how agreements between African and European nations could challenge academic approaches and policy initiatives that propose protective measures for climate-affected individuals, potentially leading to them being trapped in inhumane conditions due to climate change and migration security policies. To comprehend the connection between the impacts of climate change and displacement, the thesis will explore how migration pathways are influenced by climate change and the global perspective on migration in Europe. It will then discuss the lack of adequate global protection in the current framework, exploring ways to safeguard individuals displaced by climate change within current policies and potential strategies to address the gaps. Ultimately, it will examine migration control externalization policies, particularly focusing on African and European countries' relationship and its impact on migrants' human rights, especially those susceptible to climate change in Africa. Addressing this recent phenomenon and foreseeing the future for those impacted by climate change and displacement is crucial in order to effectively guarantee protection for these individuals in the future, as we are just starting to navigate these new challenges.

Keywords: Climate Change, Climate-Induced Displacement, EU Migration and Asylum Law, International Refugee Law, International Human Rights Law.

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Resumo.

As alterações climáticas tiveram um impacto crescente tanto no ambiente como na vida humana, levando a uma situação em que cada vez mais indivíduos estão a ser forçados a mudar-se para áreas de menor vulnerabilidade e exposição às alterações climáticas. No entanto, ao juntar a crise climática com a crise de migração que confronta a União Europeia, torna-se evidente que a proteção destes indivíduos será bastante reduzida, se não totalmente inexistente. As pessoas deslocadas devido às alterações climáticas nos países africanos, tendo vivenciado os piores efeitos das alterações climáticas, serão afastadas da oportunidade de proteção internacional. Os sistemas de proteção existentes não fornecem tal proteção e as soluções de proteção pensadas para o contexto do deslocamento climático não abordam o problema das crescentes práticas de externalização na gestão da migração, deixando os indivíduos deslocados vulneráveis às violações dos direitos humanos com pouca esperança para o futuro. Por conseguinte, este trabalho visa examinar os impactos das políticas de externalização na vida dos migrantes, concentrando-se especificamente na forma como os acordos entre as nações africanas e europeias poderiam desafiar as abordagens académicas e as iniciativas políticas que propõem medidas protetoras para os indivíduos afetados pelo clima, levando potencialmente a serem detidos em condições desumanas devido às alterações climáticas e às políticas de segurança e migração. Para compreender a ligação entre os impactos das alterações climáticas e da deslocação, a tese irá explorar a forma como os corredores de migração são influenciados pelas alterações climáticas e pela perspetiva global sobre a migração na Europa. Em seguida, discutirá a falta de proteção global adequada no quadro atual, explorando formas de salvaguardar os indivíduos deslocados pelas alterações climáticas nas políticas atuais e potenciais estratégias para resolver as lacunas. Em última análise, examinará as políticas de externalização do controlo da migração, especialmente focando-se na relação dos países africanos e europeus e no seu impacto nos direitos humanos dos migrantes, especialmente aqueles que são suscetíveis às alterações climáticas em África. Abordar este fenómeno recente e prever o futuro para os indivíduos impactados pelas alterações climáticas e pelo respetivo deslocamento é crucial para garantir eficazmente a proteção destes indivíduos no futuro, uma vez que estamos apenas a começar a navegar estes novos desafios.

Palavras-chave: Alterações Climáticas, Deslocamento, Direito da Migração e do Asilo da UE, Direito Internacional dos Refugiados, Direito Internacional dos Direitos Humanos.

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Abbreviations

CBDR	Common But Differentiated Responsibilities
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUTF	European Union Emergency Trust Fund
FMA	Free Movement Agreements
GHGs	Greenhouse Gases
IDP	Internally Displaced People
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
OHCHR	Office of the United Nations High Commissioner for Human Rights
PSIDS	Pacific Small Island Developing States
SAR	Search and Rescue
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee

Introduction.

Significant efforts have been made to shift towards climate neutrality, addressing the impacts of climate change on the environment and society for a more sustainable economic and social development. However, they remain insufficient. We are not only seeing record-breaking temperature increases, but we are also witnessing severe climate-related disasters that are having a major impact on communities.

In more vulnerable regions of the world, climate change could make living conditions uninhabitable. Therefore, without real and effective action on climate change to deal with climate-related challenges, a large number of people will be forced to move to different regions in order to protect themselves from the negative effects of climate change and to improve their quality of life.

As a new phenomenon, there is no unanimous agreement on the assertion that climate change directly propels migration or displacement. Therefore, there's a lack of consensus among scientific, academic, and political communities regarding the labeling of climate change-induced uprooted people leading to a range of terms used in public debates surrounding climate displacement. The terminology used carries substantial political and legal implications, and the disagreement reflects challenges rooted in legal, political, and security-related concerns.

This new reality was first identified during the 1970s, when Lester Brown of the World Watch Institute introduced the term “environmental refugee”¹, a concept that Essam El-Hinnawi further elaborated in 1985 as “people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life”.²

Certain academics agree in categorizing these individuals as “refugees” because the effects of climate change irreversibly destroy their environment, leaving them with no option but to seek refuge in a host country.³ For instance, Frank Biermann and Ingrid Boas defined

¹ Pan, Eliza. “Reimagining the climate migration paradigm: Bridging Conceptual Barriers to Climate Migration Responses.” *Environmental Law*, vol. 50, no. 4, 2020, pp. 1173-1225. Available at <<https://www.jstor.org/stable/27010196>>.

² El-Hinnawi, Essam. “Environmental refugees.”. United Nations Environmental Programme (UNEP), 1985. Available at <<https://digitallibrary.un.org/record/121267?ln=en&v=pdf>>; Kuusipalo, Rina. “Exiled by emissions—climate change related displacement and migration in international law: gaps in global governance and the role of the UN climate convention.” *Vermont Journal of Environmental Law*, vol. 18, no. 4, 2017, pp. 614-647. Available at <<https://www.jstor.org/stable/26388179>>.

³ Tabassum, Nowrin. “The politics of climate change knowledge: labelling climate change-induced uprooted people.” *Routledge*, p. 2. Available at <<https://doi.org/10.4324/9781003038283>>.

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climate refugees as “people who have to leave their habitats, immediately or in near future, because of sudden or gradual alteration in their natural environment related to [the impacts of climate change]”, either internally or across international borders.⁴

However, some contend that the “refugee” label lacks legal applicability and analytical credibility, other contend that climate change and its impacts lack the potential to trigger cross-border movement. Instead, they argue that it only leads to internal displacement. Thus, McAdam found that climate change-related weather events do not incite cross-border movement in climate-affected countries, namely Bangladesh, Kiribati and Tuvalu, but solely internally displaced people (IDPs). Therefore, proponents of this perspective may find the term “climate refugees” as inappropriate term to describe migrants, and rather advocate labeling these people as climate change-induced internal “migrants” or “displaced people”.⁵

In this thesis, I will use the term “climate change-induced displacement” to refer to human movement resulting from the impacts of anthropogenic climate change. The option for the term “displacement over “migration” conveys the restrictive conditions associated with climate change impacts and underscores the protection needed. Essentially, it is more conducive to understanding both compelled movements and voluntary decisions to flee. The word “displacement” is a comprehensive concept that provides greater flexibility, encompassing both forced and voluntary, internal and international, as well as authorized and unauthorized movements.⁶

Although recognizing the current pattern of internal displacement in the context of climate change, attention will be directed towards the increasing predictions of cross-border displacement, as the failure to address the climate issue will push more individuals to flee their homes and seek shelter in countries across borders, such as those in Europe. Moreover, I will examine involuntary movement, where displacement results from individuals being forced or obliged to flee or leave their homes or places of habitual residence, without necessarily using force, compulsion or coercion, thus potentially allowing for some level of agency in certain situations.⁷

I specifically choose for the term “climate” instead of “environment”. Climate includes temperature, precipitation levels, frequency of extreme weather conditions, among other

⁴ Tabassum, Nowrin, op. cit., pp. 19-20.

⁵ Jayawardhan, Shweta. “Vulnerability and climate change induced human displacement.” *Consilience*, vol. 17, 2017, pp. 103-142. Available at <<https://www.jstor.org/stable/26188784>>.

⁶ Pan, Eliza, op. cit., pp. 1193-1196.

⁷ Sironi, Alice; Emmanuel, Milen; Bauloz, Céline (Eds.). “Glossary on migration.” *International Migration Law*, vol. 34, 2019, pp. 55 and 77. Available at <<https://publications.iom.int/books/international-migration-law-ndeg34-glossary-migration>>.

weather-related characteristics⁸, and environment encompasses a broader scope including climate, topography, biodiversity, and any other surrounding natural and physical features.⁹ Therefore, this study centers on people relocating due to global climate change impacting the environment, instead of broader changes in the environment, highlighting the importance of State responsibility with high GHG emissions that cause climate change.

With the emergence of a new phenomenon, these are challenges in ensuring adequate protection for displaced individuals. The current refugee protection system and the global framework for international protection do not have an effective regime to address cross-border movement associated with climate change. As a result, the literature has tried to find different solutions to provide effective protection for the most vulnerable people in this scenario. This includes the ability to broaden the 1951 Refugee Convention, the establishment of a fresh individual system for climate-induced displacement, and a human rights-based solution based on litigation.

Although acknowledging the increasing development of effective solutions for affected individuals in the context of climate displacement, mainly in academic scholarship, the primary argument of this thesis is to demonstrate the impracticality of these solutions due to the rising emphasis on securitization measures on the policy level that create barriers to prevent migration based on security concerns and sovereignty issues. The EU's migration policy has been focusing on externalization measures that shift EU's responsibilities for humanitarian protection and migration management to third countries via partnerships.

Global North countries are increasingly using externalization as a strategy for controlling migration, implementing measures outside their own borders to stop or discourage irregular migrants from reaching their desired destination without evaluating their claims for protection. Therefore, they support a migration policy that undermines international cooperation, going against the international refugee's protection system through the violation of the non-refoulement principle, and that poses significant risks to the life and safety of migrants and asylum seekers.

Displacement induced by climate change is expected to rise in African countries, requiring the development of solutions for those affected since the current system is unable to handle the influx. Nevertheless, it is within these nations that the European Union and its

⁸ Davies, Roger [et al.] "Climate | definition, weather, & meteorology". July 24, 2024. Available at <<https://www.britannica.com/science/climate-meteorology>>.

⁹ The Editors of Encyclopaedia Britannica, "Environment | Conservation, Ecology & Sustainability". July 1, 2024. Available at <<https://www.britannica.com/science/environment>>.

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Member States devise strategies to externalize migration management, since they are situated in developing migration routes, specifically in North and West Africa near the Mediterranean Sea and the Atlantic Ocean.

Therefore, I will examine the recent externalization agreements between the European Union and several African countries such as Egypt, Libya, Tunisia, Morocco and Mauritania. These countries were chosen because of their proximity to Europe, therefore enhancing migration routes and encouraging externalization partnerships, the recent political instability in many of these countries, and the predicted impacts of climate change on the whole area.

By concentrating on these countries, I aim to comprehend how these externalization policies of migration control will influence the experiences and paths of migrants and asylum seekers overall. Specifically, I seek to grasp the consequences of these partnerships on individuals affected by climate-induced displacement, particularly in terms of the protective solutions proposed by academic scholarship and policy initiatives. This will be accomplished by showing how migrants and asylum seekers are negatively affected by human rights violations, worsened in countries facing the growing impacts of climate change.

While the suggested alternative options may appear feasible and offer a certain degree of protection in theory, they will ultimately be ineffective due to the growing trend of outsourcing migration control, which will obstruct the international protection of individuals in regions strongly affected by climate change. If we do not adequately assist and integrate migrants and uphold a refugee system that consistently violates the human rights of those who are displaced, by preventing their arrival for national security reasons, the future looks bleak for climate-induced displaced individuals, erasing any hope for positive outcomes from alternative policies.

Chapter I – Climate Displacement: An Evolving Migration Crisis.

1. The Climate Crisis in the Realm of the International System.

The current world is experiencing ongoing tension, conflicts, and crises that contribute to a climate conducive to various forms of violence. Examples like the Covid-19 pandemic, the Russia's invasion of Ukraine and Israel-Hamas war highlight this reality. Among the array of pressing global issues today, the onset of the Anthropocene era¹⁰ emerges as one of the most urgent challenges. They challenge the priorities set for the new world order after World War II and signal a new urgency within the international community to protect common and essential values for all, particularly human rights and the environment.

Although not a new concern, climate change has gained significant momentum in contemporary discourse, with the global media landscape witnessing a notable surge in references to “climate change”, accompanied by the emergence of mass social movements aimed at raising awareness and influencing climate governance.¹¹ However, despite being a widely accepted subject in scientific literature, it remains a deeply contentious topic within the realm of international politics. While some perceive it as an urgent and irreversible threat to both human life and the planets, supported by scientific evidence¹², others maintain a skeptical stance, often countering scientific data with economic or political reasoning.

Every region of the world has faced catastrophic weather events that exacerbate climate change. The weather experiences continuous fluctuations that vary widely around the world and are constantly dynamic and evolving. However, climate encompasses longer-term changes, such as the increase in average temperatures observed over decades.¹³ As changes in the climate system occur with greater frequency and intensity, contradicting the scientific literature has become increasingly challenging.

According to the findings of the Intergovernmental Panel on Climate Change (IPCC) reports between 2011 and 2020, human-induced warming approached approximately 1.1°C above pre-industrial levels.¹⁴ This warming is primarily linked to human activities, particularly

¹⁰ Salawitch, Ross J. [et al.]. “Paris climate agreement: beacon of hope.” *Springer International Publishing*, 2017.

¹¹ Calvin, Katherine [et al.]. “IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)].” *IPCC, Geneva, Switzerland*. Ed. lit. Paola Arias [et al.] ; chair Hoesung Lee. [S.l.] : Intergovernmental Panel on Climate Change (IPCC), 2023, pp. 52. Available at <https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf>.

¹² Grossman, Margaret. “Climate Change and the Law.” *The American Journal of Comparative Law*, vol. 58, no. 1, 2010, pp. 225. Available at <<https://doi.org/10.5131/ajcl.2009.0024>>.

¹³ Armstrong, Anne K., Krasny, Marianne E., Schuldt, Jonathon P. “1. CLIMATE CHANGE SCIENCE The Facts”. In “Communicating climate change.” *Cornell University Press*, 2019. pp. 7-8.

¹⁴ Calvin, Katherine, op. cit., p. 75.

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the burning of fossil fuels leading to the emissions of greenhouse gases. Unsustainable practices in energy and land management, as well as consumption and production behaviors, contribute to this phenomenon across various regions, countries, and individuals.

While greenhouse gases play an essential role in sustaining life on Earth by regulating temperatures, the imbalance that occurs with their rising levels manifests its impacts across various geographical and temporal scales, as revealed by the compilation and analysis of historical narratives, thus highlighting our responsibility for these outcomes. These encompass high temperatures, as evidenced by extreme heatwaves in Europe, intensified tropical storms, increased agricultural and ecological droughts, the warming and rising of oceans, a reduction in biodiversity, and amplified health risks.¹⁵

These swift climate changes lead to significant shifts in the human system, posing risks to both societies and ecosystems. Water and food insecurity, increased mortality rates, livelihood damage, greater poverty and inequality, have global repercussions but disproportionately impact certain groups, particularly vulnerable populations in developing regions. While human activities significantly contribute to climate change, non-climatic factors like land use and degradation, socio-economic and political constraints including insufficient institutional and financial resources, governance challenges, and historical injustices also play a major role in creating vulnerabilities and exposure to climate risks among communities and regions.¹⁶

Given this, it's important to note that the countries with the highest concentration of greenhouse gases (GHGs) don't always bear the brunt of the impact. Despite acknowledging the global impacts of climate change, it's clear that those most affected are often the least responsible for the problem, lacking political power and resources to manage the fallout from the actions of other nations. For instance, least-developed nations and small island developing states have considerably lower per capita emissions compared to the global average but, due to their constraints, are also more susceptible to climate-related hazards.¹⁷

¹⁵ Estimates suggest that over 20 million people experienced significant food insecurity in East Africa in 2023. World Meteorological Organization. "State of the global climate 2022". *WMO*, No. 1316, 2023, pp. 34. Available at <<https://library.wmo.int/idurl/4/66214>>.

¹⁶ Masson-Delmotte, Valérie [et al.] – "IPCC, 2018: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty." *Intergovernmental Panel on Climate Change (IPCC)*, 2022, pp. 69. Available at <<https://doi.org/10.1017/9781009157940>>.

¹⁷ Calvin, Katherine, op. cit., p. 51.

Africa, despite its low contribution to greenhouse gas emissions and global warming, is the most vulnerable continent to climate change impacts above 1.5°C.¹⁸ Human-induced temperature increases are observed across Africa, with many regions warming more rapidly than the global average. It is expected that most African countries experience unprecedented high temperatures earlier than wealthier, higher latitude countries in this century.¹⁹ Therefore, climate change is increasingly endangering ecosystems and people in Africa, leading to negative effects such as reduced food production, economic downturn, increased poverty, diseases, human life loss, water and energy insecurity, depletion of natural and cultural legacies, and extreme events threatening human settlements and infrastructure.²⁰

If the current rate of warming persists, it is projected that global surface temperatures could rise by 1.5°C by approximately 2040.²¹ With these temperatures' levels, there will be increased risks affecting different aspects of life, including health, livelihoods, food security, water supply, human security, and economic growth. According to the IPCC,

“3 to 14% of the tens of thousands of species assessed will likely face a very high risk of extinction (...) [and] many low-elevation and small glaciers around the world would lose most of their mass or disappear within decades to centuries” within a 1.5°C world.²²

Therefore, to mitigate the damaging effects of this phenomenon, it is legally and morally imperative for every government to take action to address climate change and protect the human rights necessary for a livable environment through an ambitious global climate policy, including the right to life, clean and safe water, adequate sanitation, healthy and sustainably produced food and safe living, working, learning and leisure environments.²³ This involves transitioning away from fossil fuels and limiting global warming to 1.5°C, as well as urgently reducing vulnerabilities and holding accountable those who contribute to increased exposure to extreme climate events.

1.1. Global Responses to Climate Change: Sufficient Action?

¹⁸ Masson-Delmotee, Valérie, op. cit., pp. 182-253.

¹⁹ IPCC, “Africa”. In “Climate change 2022 – impacts, adaptation and vulnerability.” *Cambridge University Press*, 2023. pp. 1320-1322. Available at <<https://www.cambridge.org/core/books/climate-change-2022-impacts-adaptation-and-vulnerability/africa/9E657A48555494EF46C0DD4550D9C006>>.

²⁰ IPCC, Africa, op. cit., pp. 1332-1396.

²¹ Masson-Delmotee, Valérie, op. cit., p. 81.

²² Calvin, Katherine, op. cit., p. 71.

²³ Office of the High Commissioner for Human Rights. “Climate change: link between humans and the environment must be preserved.” *OHCHR*, Nov. 16, 2023. Available at <<https://www.ohchr.org/en/stories/2023/11/link-between-humans-and-environment-must-be-preserved>>.

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Climate agreements and policies are developed initiatives to combat climate change across various governance levels. This includes elevating national commitments to climate action and increasing public awareness regarding individual everyday behaviors that can impact climate change. This is crucial because the lower the increase in global surface temperature, the less frequent and severe the risks to human societies and natural ecosystems will be.

However, achieving this limit is a challenging task, demanding institutional capacity to develop, implement, and assess the essential changes within the complex and interconnected global social-ecological systems. It also requires enabling effective climate action while integrating justice, ethics, and equity through mitigation, adaptation, and sustainable development.

Over the years, governments have been endorsing mitigation policies and legislation, centering their efforts on reducing GHG emissions or enhancing the absorption of gases that have already been emitted. For example, by 2020, 56 countries primarily focused on reducing GHG emissions.²⁴ Nevertheless, this requires certain resources like new technologies, renewable energy sources, improved sustainable agricultural practices, as well as shifts in both collective and individual behavior.

The global conference focused on the environment in Stockholm in 1972, marked the beginning of discussions between developed and developing nations regarding the connection between economic growth, environmental degradation due to pollution, and the global well-being of individuals.²⁵ Subsequently, several international instruments were adopted to address climate change and its repercussions.

In 1992, the global community collaborated to establish a framework aimed at addressing climate change, specifically to reduce the increase in global temperatures and adapt to the resulting climate changes. This effort resulted in the creation of the United Nations Framework Convention on Climate Change (UNFCCC), where participating states acknowledge the serious implications of climate change for the Earth and its inhabitants, emphasizing that “the largest share of historical and current global emissions of greenhouse gases has originated in developed countries”.²⁶

²⁴ Calvin, Katherine, *op. cit.*, p. 52

²⁵ United Nations. “Report of the united nations conference on the human environment.” Stockholm, UN (A/CONF.48/14/Rev. 1), 1972. Available at <<https://digitallibrary.un.org/record/523249?ln=en&v=pdf>>.

²⁶ United Nations. “United Nations Framework Convention on Climate Change.” Convention n.º 102-38, 1771 U.N.T.S. of May 9, 1992.

The Kyoto Protocol was adopted within the UNFCCC²⁷, outlining obligatory emission reduction targets for developed nations, specifically those listed in Annex I, while developing countries were exempt and certain nations were additionally tasked with providing financial support for the development of emission-reducing technology in developing countries.²⁸ This underscores the previously discussed distinctions in responsibility and capacity concerning climate change.

The adoption of the Paris Climate Agreement in 2015 marked a significant milestone in addressing climate change²⁹, as it brought together all nations under binding commitments to combat climate change and adapt to its effects. As outlined in Article 2 of the Paris Agreement, its primary objective is to curtail greenhouse gas (GHG) emissions, ensuring that the rise in the global average temperature remains “well below 2°C above pre-industrial levels” and endeavors to limit the temperature increase to 1.5°C above pre-industrial levels.³⁰

Additionally, the agreement emphasizes the need for essential adaptation measures to address the impacts of climatic hazards and enhance resilience for the future, all while considering the “principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances”.³¹

The European Union (EU), along with China and the US, is one of the major contributors to greenhouse gas emissions globally, bearing a responsibility not only to its citizens but also a moral obligation to those significantly impacted by climate-related disasters and lack the resources to cope.³² Advocating that nations with substantial responsibility for climate change effects should be accountable for their actions (or lack thereof), the EU is urged to establish a suitable policy and legal framework to compel its Member States to address the consequences of climatic hazards on both people and the environment.

Within the EU legal system, tackling climate change stands out as a primary focus for European institutions.³³ The initial IPCC report in 1990 prompted the European Community to

²⁷ United Nations. “Kyoto Protocol to the United Nations Framework Convention on Climate Change.” Protocol n.º 2303 U.N.T.S. 162. Of December 10, 1997.

²⁸ Salawitch, Ross J. [et al.], op. cit., p. 116-117.

²⁹ United Nations. “Paris Agreement to the United Nations Framework Convention on Climate Change.” Treaty nº 16-1104 T.I.A.S. of December 12, 2015.

³⁰ Article 2(1)(a), Paris Agreement.

³¹ Article 2(2), Paris Agreement.

³² Bostanci, Seda H., Yildirim, Seda. “Sustainable Communities vs. Climate Refugees: two opposite results of climate change.” In Popescu, Cristina, “Handbook of Research on Novel Practices and Current Successes in Achieving the Sustainable Development Goals.” *IGI Global*, 2021, pp. 298-320.

³³ “EU measures against climate change | Topics | European Parliament.” August 7, 2018. Available at <https://www.europarl.europa.eu/pdfs/news/expert/2018/8/story/20180703STO07129/20180703STO07129_en.pdf>.

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delve into discussions about the alarming impacts of climate change during the UNFCCC negotiations. Yet, it was only in 1997, during the Kyoto Climate Change summit, that countries set forth specific targets. The EU, for instance, committed to decrease a combination of six GHGs by 8% from 1990 levels within the commitment period spanning from 2008 to 2012.³⁴

More recently, in 2019, the EU embarked on the European Green Deal, consolidating instruments to address the challenges posed by the impacts of climate change through sustainability and efficiency measures aimed at enhancing health and well-being. The primary goal is to position the EU as the first climate-neutral continent by 2050, imposing legally binding obligations on Member States to achieve zero net emissions by 2050.³⁵ Therefore, in January 2020, the European Commission introduced the Sustainable Europe Investment Plan³⁶, to mobilize a minimum of €1 trillion in investments to facilitate a sustainable transition while helping the regions and communities most impacted by this green transition.³⁷

There is a notable surge in the enforcement of policies and regulations addressing climate change and its impact on both society and the environment. The mentioned instruments play a crucial role in steering toward a more sustainable economic and social development. In fact, greenhouse gas emissions, which are initially forecasted to rise by 16% in 2030 at the time of the Paris Climate Agreement's adoption, are currently projected to increase by 3%.³⁸ However, despite the increase in globally tracked mitigation policies, they remain insufficient.

We are not making progress towards the goal of reducing greenhouse gas emissions, as climate indicators do not offer a hopeful outlook for the future. In 2023, we witnessed record-breaking and unprecedented climate change. According to the Copernicus Climate Change Service (C3S), October 2023 not only marked the warmest October until 1940, but the current

³⁴ UNFCCC, "Kyoto Protocol - Targets for the first commitment period." Available at <<https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/kyoto-protocol-targets-for-the-first-commitment-period>>.

³⁵ European Commission. "Fit for 55: Delivering on the proposals." Available at <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/delivering-european-green-deal/fit-55-delivering-proposals_en>.

³⁶ European Commission. "A strong social Europe for just transitions." Communications from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2020) 21 final. Available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0021&from=EN>>.

³⁷ D' Alfonso, Alessandro. "European Green Deal Investment Plan: Main elements and possible impact of the coronavirus pandemic | Think Tank | European Parliament." *EPRS, European Parliament*, 2020.

³⁸ United Nations Environment Programme. "Emissions Gap Report 2023: Broken Record – Temperatures hit new highs, yet world fails to cut emissions (again)." *UNEP*, 2023, p. 18. Available at <<https://doi.org/10.59117/20.500.11822/43922>>.

year was also 0.1°C warmer than the previous warmest year on record (2016) and 1.43°C warmer than the pre-industrial reference period (1850-1900).³⁹

Current climate initiatives fall short in adequately mitigating climatic hazards and their daily impacts. This inadequacy arises from differences among countries in their moral and political perception of the climate crisis, resulting in varying degrees of urgency in implementing national policies. But it also reflects the difficulties in executing effective mitigation and adaptation measures, such as the risks associated with technology development and transfer, market competition, institutional capacities, financial constraints, and weak political commitment, particularly evident in developing nations.

The effectiveness and sustainability of these solutions hinge on their ability to confront social inequities and disparate vulnerabilities across different global regions; otherwise, maladaptation will exacerbate the disproportionate impacts of climate change. Therefore, climate governance must include comprehensive adaptation planning and implementation to mitigate the impacts of climate change on societies and the environment, aiming to reduce vulnerability and exposure.

These could include investing in food defenses, modifying crops to prevent yields reductions, and community efforts to promote alternative agricultural practices.⁴⁰ However, they need to consider crucial factors like the adequacy of existing institutional and financial resources and governments' willingness to implement policies aimed at addressing the impacts of climatic hazards. And given that climate change is an interconnected global crisis, States should prioritize collective and global interests over their individual ones, fostering multilateral cooperation and collective action within the international system.

In the realms of climate change mitigation and adaptation, expediting progress is imperative, and the effective implementation of measures is crucial to attaining overarching climate objectives, particularly the aim of climate neutrality. Without concrete climate action to address the challenges posed by climate hazards, climate change could trigger a significant population displacement, as individuals seek alternative avenues to shield their lives from the impacts of climate change.

1.2. Climate Change and Displacement.

³⁹ Copernicus. "2023 on track to become the warmest year after record October | Copernicus." 20 Nov. 2023. Available at <<https://climate.copernicus.eu/2023-track-become-warmest-year-after-record-october>>.

⁴⁰ Masson- Delmotee, Valérie, op. cit., p. 396.

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As the Earth struggles to sustain, climate-related impacts may render life unsustainable in more vulnerable regions. People may be driven to migrate as a survival mechanism, either within their own countries or across borders, seeking countries that provide better conditions and opportunities to build resilient livelihoods and well-being. As outlined in the Stern Review and emphasized by Oxford Professor Norman Myers, the estimated number of climate-induced displaced people by the year 2050 vary between 200 million and 1 billion.⁴¹

For instance, with Bangladesh facing increasing uninhabitability due to climatic hazards, it is projected that over 13 million people may be forced to leave the country by 2050.⁴² Additionally, the World Bank's 2021 Groundswell report projects that climate-related effects could lead up to 85.7 million internal climate-induced displaced persons in sub-Saharan Africa in that same period.⁴³

However, while some argue that climate change has the potential to render land uninhabitable, compelling people to leave their homes⁴⁴, other do not agree on the assertion that climate change directly propels migration or displacement. Jane McAdam states that "it is conceptually problematic and empirically flawed in most cases to suggest that climate change alone causes migration"⁴⁵, contending that people move because of the economic consequences brought about by climate change, exacerbating poverty in regions most affected. According to this viewpoint, when people migrate for environmental reasons, factors other than the economic ones are at play, including social or political aspects such as conflicts, weak governance, or unemployment.

Regardless of the perspective on whether climate change directly propels displacement, the reality remains that climate-induced extreme weather events, sea-level rise, and other impacts are progressively influencing human mobility. People witness it all over the world. Rosalie Ticala, a mother of six in the Philippines, shares her experienced of a typhoon that struck Mindanao. After being relocated to an evacuation center, her family returned to their

⁴¹ Kuusipalo, Rina, op. cit., p. 618-619.

⁴² Vince, Gaia. "The century of climate migration: why we need to plan for the great upheaval." *The Guardian*, August 18, 2022. Available at <https://www.theguardian.com/news/2022/aug/18/century-climate-crisis-migration-why-we-need-plan-great-upheaval?CMP=share_btn_link>.

⁴³ Clement, Viviane; Rigaud, Kanta Kumari; de Sherbinin, Alex; Jones, Bryan; Adamo, Susana; Schewe, Jacob; Sadiq, Nian; Shabahat, Elham. "Groundswell Part 2: Acting on Internal Climate Migration." *The World Bank*, 2021, p. 80. Available at <<http://hdl.handle.net/10986/36248>>.

⁴⁴ Guzman, Andrew T. "Overheated: The Human Cost of Climate Change." *Oxford University Press*, 2014, pp. 11-18, 63-71.

⁴⁵ McAdam, J. "Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer." *International Journal of Refugee Law*, vol. 23, no. 1, 2011, p. 12. Available at <<http://dx.doi.org/10.2139/ssrn.1714714>>.

home, but found it uninhabitable, forcing them to go back to the center where they were not allowed to return.⁴⁶

In Kiribati, Linda Uan explains that most of the population do not desire to live in another country, however evidence indicates that they might soon have no other option. According to her, “migration may become the key part of the way [they] are forced to ‘adapt’”.⁴⁷ Communities in the Sahel experience long period drought and rainfall leading to crop failure, loss of livestock and water scarcity.⁴⁸ Therefore, Hindu Oumarou shares a similar sentiment. He believes that migration has inevitably become a method of adaptation and “a means of survival for [them] and [their] animals”, despite the risks.⁴⁹

Nevertheless, these firsthand accounts reveal variations based on geographical locations and the distinct capacity to address similar or diverse environmental challenges, affecting their vulnerability to climate change impacts. These impacts add further strain to communities that are already grappling with challenges such as restricted economic opportunities, social or political marginalization, inadequate governance, and depleted natural resources.⁵⁰

Data compiled by the IDMC reveals that sudden-onset incidents such as extreme storms, floods and wildfires stand out as the primary climate-related driver of internal displacement globally, predominately affecting East, Southeast, and South Asia, Sub-Saharan Africa, and the Caribbean region.⁵¹ In West Africa, rainstorms and floods are the most common rapid-onset climatic events that drive people away from their unusual places of residence, for instance the floods in 2012 caused serious damage and resulted in forced displacement in Nigeria, Niger, Senegal, and Ghana.⁵²

Conversely, gradual occurrences like droughts, extreme heat, precipitation anomalies, and disruptions to food and water security unfold gradually, however they affect people’s mobility. For instance, in the Sahel region, people move due to drought-induced hunger

⁴⁶ Randall, Alex; Salsbury, Jo; White, Zach. “Moving Stories report: The voices of people who move in the context of environmental change.” *Climate Outreach and Information Network*, 2014, p. 6. Available at <<https://climatemigration.org.uk/wp-content/uploads/2014/01/MovingStories.pdf>>.

⁴⁷ Randall, Alex; Salsbury, Jo; White, Zach, op. cit., p. 22.

⁴⁸ Teye, Joseph ; Nikoi, Ebenezer G. A. “Climate-Induced Migration in West Africa.” In TEYE, Joseph, ed. lit. “Migration in West Africa.” *Springer*, 2022. pp. 79-153.

⁴⁹ Teye, Joseph; Nikoi, Ebenezer G. A., op. cit., p. 27.

⁵⁰ Mcinerney, Emily; Saxon, Jennifer; Ashley, Laurie. “Migration as a Climate Adaptation Strategy: Challenges & Opportunities for USAID Programs.” *USAID’s Center of Resilience, Yale University and American University*, 2022, pp. 4. Available at <https://www.fsnnetwork.org/sites/default/files/2023-03/FTF1537_USAID_Climate%20Migration%20Strategy_012723.pdf>.

⁵¹ Internal Displacement Monitoring Center (IDMC). “2023 Global Report on Internal Displacement”, 2023. Available at <<https://www.internal-displacement.org/global-report/grid2023>>-

⁵² Teye, Joseph; Nikoi, Ebenezer G. A., op. cit., pp. 79-153.

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because of crop failure and loss of livestock.⁵³ Consequently, they prompt longer-term shifts in migration patterns, although these effects may not be readily apparent in recent decades, given the greater availability of in situ adaptation options that may be less disruptive.

Migration is part of a broader array of potential adaptation alternatives and often becomes a viable option when other forms of adaptation prove insufficient or are exhausted. However, the predominant climate-related displacement observed currently occurs within countries rather than across borders. For example, droughts in Africa had led to displacement, but this is primarily internal. According to the International Organization for Migration, countries in East Africa, particularly Ethiopia, Kenya, and Somalia, are facing severe drought and occasional flooding, compelling 3 million people to move internally.⁵⁴

This is partly because international migration is an outcome of a dynamic process, where individuals decide to relocate within their own country before considering crossing the border. Moreover, climate-change impacts disproportionately affect vulnerable and low-income countries, making internal migration flows more prevalent than international migration, which typically involves higher associated costs.

Nonetheless, climate change presents the greatest risk to human migration currently, rather than just a rise in temperature. Based on the study done, international displacement linked to climate change concerns is projected to rise, affecting millions of people.⁵⁵ Particularly in Sub-Saharan, Middle Eastern, and North African countries experiencing high drought and changes in rainfall patterns, among other climatic events, these regions are susceptible to intense heat, water crises, and food security challenges, leading people to move.⁵⁶

Despite a lack of specific studies, experts, or policies addressing this issue, indications suggest that these numbers will exponentially increase if no action is taken to mitigate the situation. Given that we are far from achieving the goal of limiting temperature increase to below 2°C above pre-industrial levels as outlined in the Paris Agreement, it is crucial to scrutinize this problem and emphasize the role of displacement as a strategy to address unequal vulnerabilities among countries in the face of climate change. This will highly contribute to the

⁵³ Idem.

⁵⁴ International Organization on Migration. "IOM Hackathon Bridges Data Gaps on Climate Change and Migration." *IOM News*, October 30, 2023. Available at <<https://www.iom.int/news/iom-hackathon-bridges-data-gaps-climate-change-and-migration>>.

⁵⁵ Martin, Susan F. "Climate Change and International Migration." *The German Marshall Fund of the United States*, 2010, p. 2. Available at <https://www.preventionweb.net/files/14679_MartinV3.pdf>.

⁵⁶ Adjei, Ishmael; Oyebamiji, Oluwaseun. "Climate Change Impact on Migration and Food Security: An Existential Threat in Africa." *Journal of Earth Sciences Knowledge and Applications*, vol. 6, no. 1, 2024. Available at <<http://www.ijeska.com/index.php/ijeska/article/view/380>>.

development of sustainable and resilient communities capable of addressing the challenges posed by anthropogenic climate impacts.

2. Securitization of Borders: Migration as a Threat.

The International Organization for Migration has introduced the concept of "migration as adaptation", presenting migration with a positive perspective in response to adverse climate change impacts. Instead of viewing migration as a problem, it can be regarded as a proactive and effective form of adaptation. Households may choose to migrate to diversify and sustain well-being during crises.⁵⁷ However, due to the prevailing negative perception of migration in international and national policies, marked by an increase in stringent immigration regulations, this perspective on climate-induced movement is neither suitable nor precise.

Presenting migration as an adaptation mechanism should entail the understanding that the affected individuals can achieve an equal or enhanced quality of life following their migration.⁵⁸ By doing so, we are implicitly transferring the responsibility for adaptation to the victims, even though this responsibility rightfully belongs to the States, especially considering that most governments currently do not endorse migration for reasons related to national border security.

The surge of climate-related impacts emphasizes the necessity for mitigation and adaptation measures to minimize their effects and prevent loss and damages. Nevertheless, when these strategies prove unsuccessful, the responsibility for the affected households falls upon the States, not the individuals. Additionally, if the only recourse in the face of such failure is forced displacement⁵⁹, the accountability lies with the States whose adaptation and mitigation policies proved ineffective. Therefore, a more fitting term would be "survival migration", applicable not only in the context of climate change.

Current policies regarding human movement across borders are characterized by a securitization discourse, incorporating political barriers to hinder and discourage migration on grounds of security concerns and sovereignty. Securitization is part of the social constructivist "Copenhagen School" of international relations that suggests that an issue is not inherently a

⁵⁷ Sakdapolrak, Patrick; Borderon, Marion; Sterly, Harald. "The Limits of Migration as Adaptation. A Conceptual Approach towards the Role of Immobility, Disconnectedness and Simultaneous Exposure in Translocal Livelihoods Systems." *Climate and Development*, vol. 16, no. 2, 2023, pp. 87-96. Available at <<https://doi.org/10.1080/17565529.2023.2180318>>.

⁵⁸ Vinke, Kira [et al.]. "Migration as Adaptation?" *Migration Studies*, vol. 8, no. 4, 2020, p. 631. Available at <<https://doi.org/10.1093/migration/mnaa029>>.

⁵⁹ Sakdapolrak, Patrick; Borderon, Marion; Sterly, Harald, op. cit., p. 1.

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security concern but becomes one when it is labeled as such.⁶⁰ Threats are not threats by nature but are portrayed as such through speech act, that attempts to transform them from regular political issues into security concerns, legitimating extreme measures to address them.⁶¹

The arrival of migrants and refugees are viewed as a potential threat, with certain perceptions portraying them as existing or potential criminals who could undermine the established lifestyles, economy, or culture of the receiving State. These representations of migration and asylum translate the feeling of insecurity into a societal issue.⁶² They foster a sense of suspicion and discrimination, creating a distance between the receiving community and migrants.

The process of securitizing migration in Western countries in recent decades has successfully shifted the legitimate methods of managing migrants. Governments build political trust, loyalty, and identity by creating false narratives and instilling fear and intolerance, emphasizing the importance of the community's survival.⁶³ Therefore, when governments perceive migration as an existential threat, it increases the risk of fostering feelings of fear and distrust, which can lead to the support of anti-migration political parties to tackle this threat.

Recent EU elections are proof of this argument, which have shown that the rise in support for far-right, anti-migrant parties is reshaping the political landscape.⁶⁴ For instance, Italian Prime Minister Meloni's right-wing party, "Brothers of Italy" (Fratelli d'Italia), has a strong stance against migrants entering Italian ports. Moreover, the National Rally (Rassemblement National) secured over two times the votes of Macron's Renaissance party, leading to their victory in the initial round of national elections in France. Therefore, their victories signal a growing support for strict anti-migration positions within the EU which is likely to impact future migration policies.

As migration has been increasingly addressed as a security concern by most European countries, States feel legitimized to prioritize national border surveillance over life-saving missions through securitization policies within border control. However, we acknowledge a

⁶⁰ Rosen, Johannes von. "The Securitization of Migration as a Threat to Liberal, Democratic Societies." *Sicherheit Und Frieden (S+F) / Security and Peace*, vol. 37, no. 1, 2019, pp. 35-40. Available at <<https://www.jstor.org/stable/26679776>>.

⁶¹ Waever, Ole. "Securitization and Desecuritization." In Lipschutz, Ronnie D., ed. lit.. "On Security." *Columbia University Press*, 1995, pp. 46-87. Available at <<https://www.libraryofsocialscience.com/assets/pdf/Waever-Securitization.pdf>>.

⁶² Huysmans, Jef. "The Politics of Insecurity Fear, Migration and Asylum in the EU." *Routledge*, 2006, pp. 45-62.

⁶³ Idem.

⁶⁴ "2024 European election results | European Union | European Parliament." Available at <<https://results.elections.europa.eu/en/index.html>>.

bitter paradox within contemporary migration policies. Namely, the profound disparity between the rhetoric of human rights within the EU and its Member States and the reality of their border control practices.

The Italy-Libya Memorandum of Understanding from 2017 is a notable example, outlining cooperation with the Libyan Coast Guard to address irregular migration, combat human trafficking and bolster border security in the Central Mediterranean, with human rights protection taking a secondary role.⁶⁵ Furthermore, the recent Italian decree on “search and rescue” (SAR) operations, approved in February 2023⁶⁶, commonly referred to as the “anti-rescue” decree⁶⁷, impede and criminalize the life-saving effort of non-governmental organizations, disregarding the lives and human rights of migrants in the name of national security.

In response to human rights-based criticisms of these practices, many countries in recent years have attempted to adopt new strategies for migration control. Specifically, they have externalized their responsibilities for humanitarian protection and migration management to other countries through partnerships. Externalization is a growing migration control strategy among Global North countries, involving measures beyond their borders to prevent or deter migrants without permission to enter their intended destination without individually assessing their protection claims.⁶⁸

Examples include the UK-Rwanda Asylum Partnership, ratified on April 25, 2024, where it has been established that any asylum entering the UK illegally after 1 January 2022, from a safe country, could be relocated to Rwanda to process their asylum claims rather than having them processed in the UK.⁶⁹ Additionally, Spain and Morocco have collaborated for a long time on border control, offering Morocco political and economic benefits for assisting the EU with border protection. In January 2023, they signed agreements to manage migration and boost investment in Morocco, with the main objective to prevent illegal entry into Spain.⁷⁰

⁶⁵ Ceretti, Victoria. “Italy-Libya Memorandum of Understanding: An affront to the fundamental human rights of migrants, refugees, and asylum seekers.” *Euro-Med Human Rights Monitor*, March 13, 2023. Available at <<https://euromedmonitor.org/a/5561>>.

⁶⁶ Decreto-Legge 2 gennaio 2023, n. 1 (Raccolta 2023), GU Serie Generale, Anno 164^o, N. 1 del 02-01-2023.

⁶⁷ Tranchina, Giulia. “Italy’s Anti-Rescue Decree Risks Increasing Deaths at Sea – Italy.” *Human Rights Watch*, 2023. Available at <<https://reliefweb.int/report/italy/italys-anti-rescue-decree-risks-increasing-deaths-sea-enit>>.

⁶⁸ Frelick, Bill; Kysel, Ian M.; Podkul, Jennifer. “The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants.” *Journal on Migration and Human Security*, vol. 4, no. 4, 2016, pp. 190-220. Available at <<https://doi.org/10.1177/233150241600400402>>.

⁶⁹ “Inadmissibility: safe third country cases”, 2023, p. 12. Available at <<https://assets.publishing.service.gov.uk/media/662b67df6963baceeb225266/Inadmissibility.pdf>>.

⁷⁰ “Spain and Morocco strengthen cooperation on migration”, *La Moncloa*, February 2, 2023. Available at <https://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2023/20230202_spain-morocco-migration.aspx>.

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Furthermore, the EU and Tunisia agreed on 16 July 2023 to a Memorandum of Understanding, in which the EU commits to providing direct financial support and speeding up EU funding to enhance collaboration in areas such as macroeconomic stability, economy and trade, green energy transition and people-to-people contacts. In return, Tunisia is expected to cooperate on migration management, specifically in preventing migrant departures and facilitating their return to their home countries.⁷¹

Through these partnerships, the EU and its Member States delegate the responsibility for migrants and asylum seekers in search of protection to countries at its external borders to other third countries. However, this only demonstrates how the interests of the States as an economic and political actor often take precedence over its role as the primary protector of individuals human rights. Often framed under the pretext of “burden-sharing” for border control, these strategies offer a “burden-shifting” approach, presenting obstacles to the development of migrants’ human rights protection.

They promote a framework that undermines international cooperation, contradicting the international refugee protection system, by violating the principle of non-refoulement and by posing significant risks to the safety of migrants and asylum seekers. As said by the UN High Commissioner for Refugees, Filippo Grandi, and the UN High Commissioner for Human Rights, Volker Turk, the shift on the responsibility for refugee protection not only undermines international human rights protections but sets a worrying global precedent.⁷²

Securitization strategies promote the use of migrants as negotiation tools, with less-developed countries gaining financial support and other benefits from wealthier states in return for restrictions on migration. Nevertheless, they essentially push migrants to embark in dangerous journeys involving human smugglers and traffickers, resulting in death, detention, or being violently sent back to a third transit country or country of origin where they are left to live in inhumane conditions with no access to protection.⁷³

⁷¹ European Commission. “Memorandum of Understanding on a strategic and global partnership between the European Union and Tunisia”, July 16, 2023. Available at https://ec.europa.eu/commission/presscorner/detail/en/IP_23_3887.

⁷² “UK-Rwanda asylum law: UN leaders warn of harmful consequences.” *United Nations High Commissioner for Refugees*, April 23, 2024. Available at <https://www.unhcr.org/news/press-releases/uk-rwanda-asylum-law-un-leaders-warn-harmful-consequences>.

⁷³ OHCHR, “In Search of Dignity: Report on the Human Rights of Migrants at Europe’s borders.” *United Nations / OHCHR*, 2017. Available at https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/InSearchofDignity-OHCHR_Report_HR_Migrants_at_Europes_Borders.pdf; Strik, Tineke. “Report on Human Rights Protection and the EU External Migration Policy.” *European Parliament*, 2020/2116(INI), 2021.

The prevalence of these practices hinders individual's rights to migrate and seek asylum in a safe place, resulting in the infringement of their rights to life, to health and adequate housing, to be free from inhuman and degrading treatment, and to self-determination.⁷⁴ Securitization measures jeopardize the core value of human dignity as outlined in international law and the EU Charter of Fundamental Rights

We acknowledge that European States face significant challenges in managing the growing influx of migrants and asylum seekers. These challenges encompass the initial reception of migrants and asylum seekers upon their arrival, as well as the disproportionate number of asylum seekers relative to the capacities of some states to adequately accommodate them.

However, despite the difficulties, such factors cannot exempt European States of their obligations under international human rights law and related provisions. The effective control of EU external borders is a collective responsibility of all Member States that holds significant importance within a human rights-based approach to displacement⁷⁵, prioritizing solidarity towards migrants and protection of their human rights.

Such control needs to be adapted to contemporary challenges, including global inequalities and climate change, which influence the context in which the European Integrated Border Management operates and are expected to have substantial impact on the management of migration and return.⁷⁶ The concept of freedom extends to climate-induced displaced people, and they have the inherent right to have their human rights upheld and safeguarded during their journey. Therefore, climate-induced displaced individuals must have access to international protection when they move to find safer and better living conditions.

2.1. Externalization Agreements: Increase in Securitization-based Partnerships.

Externalization refers to the act of transferring responsibilities from a State within its borders to occur outside its territory.⁷⁷ In the context of migration control, externalization often involves relocating migration management, asylum processing, and humanitarian protection

⁷⁴ Article 6, ICCPR, Article 11, ICESCR, Article 7, ICCPR, and Article 1, ICCPR, respectively.

⁷⁵ According to the European Commission, the European Border and Coast Guard is required to guarantee the human rights of everyone involved throughout all their activities. European Commission. "Establishing the multiannual strategic policy for European integrated border management." *Communication from the Commission to the European Parliament and the Council*, COM(2023) 146 final, p. 8.

⁷⁶ FRONTEX, "Strategic Risk Analysis 2022." *Frontex*, 2022. Available at <<https://prd.frontex.europa.eu/document/strategic-risk-analysis-2022/>>.

⁷⁷ "Refugee Law Initiative Declaration on Externalisation and Asylum." *International Journal of Refugee Law*, vol. 34, no. 1, 2022, pp. 114-119. Available at <<https://doi.org/10.1093/ijrl/eeac022>>.

responsibilities from destination states to transit states or countries of origin.⁷⁸ This political strategy is focused on building loyal relationships where third countries are encouraged to prevent migrants and asylum seekers from crossing their borders or to capture and return them.

This process may include a range of practices and policies that impose penalties on carriers transporting irregular migrants, promote migrant apprehensions, such as maritime interceptions operations or “turn-backs”, enforce the return of migrants to unsafe countries, and set-up offshore migrant processing and detention facilities.⁷⁹ Furthermore, States engage in partnerships to address irregular migration and enhance capacity the asylum system in third countries by providing them operational, financial, or political support.⁸⁰

The externalization of migration management is a widespread practice; however, it is not a new concept. After the end of the cold war, countries have introduced restrictive policies to deter the arrival and settlement of foreign national within their borders. As for managing borders through externalization, measures date back to the early stages of the development of national migration policies in the beginning of the twentieth century.⁸¹

Nevertheless, in the past decades, amid the increasing securitization of migration, there has been an increase on the use of bilateral or multilateral externalization strategies in certain countries and regions, such as the European Union, the United States and Australia, to shift border control and migration management to neighboring countries and more distant regions in Africa, Asia, the Middle East, and Central America.⁸² They aim for cooperation to limit illegal human mobility by implementing stricter border control to prevent migrants and asylum seekers from entering their territories and facilitating their return to third countries, in detriment of the protection and security of migrants.

The growing arrival of migrants into Europe has brought migration challenges to the forefront of both EU foreign and domestic politics. Therefore, in the past years, the EU’s migration policy has worked with an increasing isolation and a selective opening border for

⁷⁸ Pijnenburg, Annick. “Externalisation of Migration Control: Impunity or Accountability for Human Rights Violations?” *Netherlands International Law Review*, vol. 71, 2024, pp. 59-88. Available at <<https://doi.org/10.1007/s40802-024-00250-y>>.

⁷⁹ Nicolosi, Salvatore Fabio. “Externalisation of Migration Controls: A Taxonomy of Practices and Their Implications in International and European Law.” *Netherlands International Law Review*, vol71, 2024, pp. 1-20. Available at <<https://link.springer.com/article/10.1007/s40802-024-00253-9>>.

⁸⁰ Frelick, Bill ; Kysel, Ian M. ; Podkul, Jennifer, op. cit., pp. 190-220.

⁸¹ Zaiotti, Ruben. “Mapping remote control: The externalization of migration management in the 21st century.” In Zaiotti, Ruben, ed. lit. “Externalizing Migration Management: Europe, North America and the spread of 'remote control' practices.” *Routledge*, 2016, pp. 3-4.

⁸² Stock, Inka; Üstübcici, Ayşen Schultz, Susanne U. “Externalization at work: responses to migration policies from the Global South.” *CMS*, vol. 7, no. 48, 2019.

certain groups, particularly for job markets, through fresh political measures and strategies.⁸³ Since the 2015-16 migration crisis, when Syria's collapse resulted in record levels of migration into Europe, the European Union has actively sought to externalize its migration challenges.

For instance, the EU-Turkey migration deal of 2016, aiming to prevent asylum seekers from leaving Turkey for Greece and obliging Turkey to take asylum seekers back⁸⁴, would become the blueprint for the success of other deals, as it increased the confidence in the potential of European cohesion and resources to develop workable partnerships to combat irregular migration, within the external dimension of EU migration law.

Recent agreements concluded or sought by the EU and by European countries include the Memorandum of Understanding with Tunisia, the Joint Declaration with Egypt, the partnerships between the UK and Rwanda and between Italy and Albania, aimed at preventing people who wish to seek asylum in Europe or returning people that arrive on European borders illegally.

These measures serve as a response mechanism to unstable economic situations, political instabilities, and climate change issues, which lead to large-scale displacement to Europe and other wealthier nations. Therefore, as developing countries face ongoing political and economic instability alongside climate-related disasters, migration to Europe will keep increasing. Meaning that the EU will increasingly use such strategies to ensure cooperation with partner countries to stop migration.⁸⁵

Desperate individuals, both men and women with children, move along changing and dangerous migration pathways from the Middle East and Africa to reach Europe. Many people from less developed African nations undertake perilous journeys to Europe seeking better living conditions and opportunities, and due to stricter European migration regulations, many are forced to enter and live in the country illegally.

Nevertheless, despite years of restrictive border policies, Europe continues to face increased vulnerability to migration pressures. In 2023, there was yet another rise in irregular migration. The number of illegal border-crossing detected at the EU's external borders exceeded 442 000, reaching the highest level since 2016.⁸⁶ From this figure, 281 924

⁸³ Brocza, Stefan ; Paulhart, Katharina. "EU mobility partnerships: a smart instrument for the externalization of migration control." *European Journal of Futures Research volume*, vol. 3, no. 15, 2015. Available at <<https://doi.org/10.1007/s40309-015-0073-x>>.

⁸⁴ European Commission, "EU-Turkey joint action plan", October 15, 2015. Available at <https://ec.europa.eu/commission/presscorner/detail/de/MEMO_15_5860>.

⁸⁵ Suah, Nyanquoi. "Europe Externalization Policy in Africa." *Munk School of Global Affair and Public Policy*, University of Toronto, 2023.

⁸⁶ FRONTEX, "Migratory Routes." Available at <<https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/migratory-routes/>>.

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individuals left Northern Africa for Europe, which is 58% higher than in the previous year's figure.⁸⁷

Migration to Europe through the Mediterranean Sea, specifically the Central Mediterranean route, has seen a substantial rise in arrivals of migrants from the sub-Saharan Africa and North Africa via countries like Tunisia and Libya, particularly since 2020. In 2023, the Central Mediterranean witnessed an increase of more than 50 000 irregular migrants compared to 2022, reaching almost 158 000 irregular border crossing, which is 50% higher than the previous year. Migratory movements from the Eastern Mediterranean, including those from Syria, also join the northward movements towards Greece, Cyprus, and Bulgaria.⁸⁸

The Western Mediterranean route involves irregular migrants in Spain, arriving via sea and land, to the territories of Ceuta and Melilla in Northern Africa. These migrants are primarily from Algeria and Morocco, as well as from sub-Saharan Africa, and the rise in their numbers has resulted increased cooperation between Spain and Morocco. Nevertheless, an increasing path in the past years has been Western Africa, linking West Africa with the Spanish Canary Islands in the Atlantic Ocean. Irregular migrants reach these islands after traveling through Morocco, Western Sahara, Mauritania, Senegal and the Gambia.⁸⁹

Europe's migration strategic policy is shaped by the growing political significance of migration in the EU and the uncertain political and security situation in Africa. Due to geographical and geopolitical factors, African countries are essential gatekeepers in the EU's migration policy. Therefore, the EU's approach to Africa is primarily influenced by its own interests, rather than a set of principles that uphold fundamental values such as human rights, democracy, and the rule of law.⁹⁰

Nevertheless, African countries also prioritize their own interests and engage in agreements for power and resources on both regional and global levels. One tool they can use is their placement on mixed migration routes. Therefore, migrants have been used for political reasons in the EU-Africa relationship to achieve domestic objectives or boost regional and global influence.

⁸⁷ UNHCR, "West and Central Mediterranean situation." Available at <<https://reporting.unhcr.org/operational/situations/west-and-central-mediterranean-situation/>>.

⁸⁸ FRONTEX, "Migratory Routes."

⁸⁹ European Council, "Migration flows on the Western routes." Available at <<https://www.consilium.europa.eu/en/policies/eu-migration-policy/western-routes/>>.

⁹⁰ Farrel, Mary, "A Triumph of Realism over Idealism? Cooperation Between the European Union and Africa." *Journal of European Integration*, vol. 27, no. 3, 2005, pp. 263-283. Available at <<https://doi.org/10.1080/07036330500190107>>.

Outsourcing agreements include actions that breach the human rights of migrants and asylum seekers, such as the non-refoulement principle and the prohibition of inhumane and degrading treatment, resulting in perilous conditions for them to relocate, notably making the migration routes between Africa and Europe hazardous. Therefore, considering the overall living conditions in African countries and the negative impact of outsourcing migration control policies, movement from African countries to European countries will be more limited and risky.

Additionally, given the growing influence of climate change on these most at-risk nations, individuals who plan to relocate because life there is no longer sustainable will encounter more challenges and find themselves stuck in perilous and cruel circumstances. The continuous flow of migration from Northern Africa to Europe involves individuals compelled to leave their homes because of extreme climate events that jeopardize their survival or greatly impact their living conditions, like droughts, floods, and land degradation.⁹¹ Northern Africa, considered a “climate change hotspot”⁹², faces the consequences of climate change, experiencing both gradual and sudden events that have led to large-scale displacements in the past⁹³ and predictions of millions being displaced in the future due to climate change.⁹⁴

Climate change induced disasters such as droughts, hurricanes, and floods have severely impacted the livelihoods of people in Eastern and Southern Africa, leading to the displacement of millions. The World Migration Report noted that in the IGAD subregion, approximately 27 million people faced extreme food insecurity, with 866,000 refugees and asylum seekers residing in drought-affected regions of Kenya, Ethiopia, and Somalia.⁹⁵ The rise and severity of these effects led to the adoption of the Kampala Ministerial Declaration on Migration, Environment, and Climate Change, which created a joint framework to tackle climate-driven movement and promote sustainable development of the participating states.⁹⁶

However, despite the growing concerns regarding climate-induced displaced individuals, especially those moving from African countries most vulnerable to the impacts of climate change to European countries, the current refugee protection system lacks an adequate protection for these individuals. Thus, the literature about climate-induced displacement has

⁹¹ United Nations Environment Programme, “Livelihood Insecurity: Climate Change, Migration and Conflict in the Sahel”, May 2011, pp. 54-64.

⁹² Diffenbaugh, N.S., Giorgi, F. “Climate change hotspots in the CMIP5 global climate model ensemble.” *Climatic Change*, vol. 114, 2012, pp. 813–822. Available at <<https://link.springer.com/article/10.1007/s10584-012-0570-x>>.

⁹³ McAuliffe, M., Oucho, L.A., op. cit., p. 62.

⁹⁴ Groundswell Part 2: Acting on Internal Climate Migration, pp. 23-41.

⁹⁵ McAuliffe, M., Oucho, L.A., op. cit., p. 63.

⁹⁶ Kampala Ministerial Declaration on Migration, Environment and Climate Change.

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made efforts to embrace different solutions to provide effective protection for the most vulnerable people in this situation. In the upcoming chapter, I will explore how the refugee protection system implies alternative protection systems on the context of climate-induced displacement.

Nonetheless, my focus will be on highlighting and elaborating on the fact that, while these suggested alternative options may seem viable and provide some level of protection in theory, they will ultimately prove ineffective because of the increasing trend towards externalizing migration management, which will hinder the international protection of individuals in regions heavily affected by climate change. If we fail to properly support and resettle migrants and uphold a refugee system that systematically compromises the human rights of the displaced to protect sovereignty and national security, the outlook for climate-induced displaced individuals is not positive.

North and West Africa face significant vulnerability and exposure to climate change, threatened by the dangers of extreme heat and food and water shortages, all of which are increasingly endangering human life and health, ecosystems and biodiversity and human settlements and infrastructures.⁹⁷ These climatic conditions, along with with other political and socioeconomic factors, could add pressure that might impacts migration trends and the occurrence of conflicts.⁹⁸ Therefore, later on I will examine the effects of climate change in countries such as Egypt, Morocco, Libya and Tunisia, to understand how migration outsourcing will affect individuals displaced by climate change impacts.

The increasing number of migrants from African countries heading to Europe demonstrates the impact of climate change on the most at-risk individuals who move due to severe climate disasters affecting the lives of people in those African countries, resulting in the relocation of millions. Therefore, the implementation of externalization agreements, particularly between the EU and member states and North African countries, to deter migrants from reaching Europe will worsen the harmful effects caused by climate change and, in particular, will render suggested solutions for protecting these individuals ineffective.

⁹⁷ Climate & Development Knowledge Network. "THE IPCC'S SIXTH ASSESSMENT REPORT: Impacts, adaptation options and investment areas for a climate-resilient North Africa." Available at <https://cdkn.org/sites/default/files/2022-09/IPCC%20Regional%20Factsheet_North%20Africa_Web.pdf>.

⁹⁸ Sultan, , Benjamin. "What are the future climate scenarios in North and West Africa?" *MIGRATION IN WEST AND NORTH AFRICA AND ACROSS THE MEDITERRANEAN: TRENDS, RISKS, DEVELOPMENT AND GOVERNANCE*. Available at <<https://publications.iom.int/system/files/pdf/ch25-what-are-the-future-climate-scenarios.pdf>>.

Chapter II – Protection in the Context of Climate-Induced Displacement.

1. Current Legal Protection Frameworks: Legal Limitations.

1.1. 1951 Refugee Convention and UNFCCC.

As observed, defining climate-induced displaced people is a challenging and non-unanimous task. An even more intricate challenge lies in providing the necessary protection for displaced individuals. While cross-border movement due to climate change is expected to grow, most of them are unlikely to receive protection under current international and European laws.

The 1951 UN Convention Relating to the Status of Refugees was established as the paramount international legal instrument within the refugee protection regime. While innovative when introduced, it is frequently deemed too restrictive and antiquated, especially in the context of climate-induced displacement. According to Article 1, a refugee is defined as someone who

“owing to a well-founded fear of being prosecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country”.⁹⁹

Advocates for the term “climate refugees” contend that climate-induced displaced people could qualify as refugees under the Refugee Convention, given the premise that the country of origin fails to offer protection from persecution stemming from climate change, in order to illustrate the urgency.¹⁰⁰ If we label climate-induced displaced people as refugees, the assumption implies a special societal responsibility of protection, for which the international community must bear.¹⁰¹

However, according to the Convention, persecution does not involve any form of human rights violation but rather an intentional, severe, and discriminatory deprivation of fundamental rights.¹⁰² Consequently, it would likely be challenging to consider climate change impacts and environmental degradation in a manner consistent with the 1951 Convention.

⁹⁹ United Nations. “Convention Relating to the Status of Refugees.” Convention n.º 189 UNTS 137 de 28 Jul. 1951.

¹⁰⁰ “The Problem — Climate Refugees.” Available at <<https://www.climate-refugees.org/why>>.

¹⁰¹ Ammer, Margit [et al.]. “TIME TO ACT: How the EU can lead on climate change and migration.” Ed. lit. Silvia Brugger. *Heinrich-Böll-Stiftung*, 2014. Available at <https://eu.boell.org/sites/default/files/hbs_time_to_act.pdf>.

¹⁰² Warren, Phillip Dane. “Forced Migration After Paris COP21: Evaluating the “Climate Change Displacement Coordination Facility.” *Columbia Law Review*, vol. 116, no. 8, 2016, p. 2116. Available at <<https://www.jstor.org/stable/44028186>>.

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Firstly, climate change itself cannot be linked to an act of persecution. According to the Convention and its historical context, refugees typically face persecution from their own government.¹⁰³ Therefore, even if it is argued that developed States bear the most responsibility for climate change and subsequently influence human movement, this phenomenon will increasingly occur in developing countries, particularly in regions with lower greenhouse gas emissions.

Secondly, persecution under the Convention must be connected to “race, religion, nationality, or membership of a particular social group or political opinion”. In the case of climate change-induced displacement, there are no discriminatory reasons involved. It affects all people that live in the country affected by climate change and does not pertain to specific or individual characteristics of people. This creates significant legal obstacles for climate-induced displacement, resulting in a scenario where international protection depends on whether factors, other than climate change, meet the criteria of the refugee regime.

Established as the principal humanitarian agency responsible for implementing the Refugee Convention and addressing refugees’ challenges, the United Nations High Commissioner for Refugees (UNHCR) has acknowledged that environmental factors could contribute to the induction of cross-border migration flows and has recognized the rising number of people displaced by climate change-events and the debate regarding their protection.¹⁰⁴ However, it maintains the stance that there is no sufficient reason to grant refugee status under the 1951 Refugee Convention. The use of the term “climate refugee” is deemed to lack a basis in international refugee law and may potentially violate the applicable legal framework.¹⁰⁵

Nonetheless, the Refugee Agency suggests that other violations of human rights could be considered as persecution, depending on the subjective circumstances of each case.¹⁰⁶ Furthermore, in its recommendations for the climate summit in Katowice (COP24), the

¹⁰³ Ibid.

¹⁰⁴ Guterres, António. “Climate change, natural disasters and human displacement: a UNHCR perspective.” *UN High Commissioner for Refugees (UNHCR)*, 2009, p. 9.

¹⁰⁵ Kalin, Walter ; Schrepfer, Nina. “Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches.” *UN High Commissioner for Refugees (UNHCR)*, Geneva, 2012, p. 28.

¹⁰⁶ UN High Commissioner for Refugees (UNHCR), “Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.” Geneva, January 1992, point 51 and 52. Available at <<https://www.unhcr.org/fr-fr/en/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>>.

UNHCR emphasized the necessity for further examination and management regarding the applicability of refugee law in the context of climate change and its impacts.¹⁰⁷

The problem with the Refugee Agency lies in its significant reliance on UN member states for funding and cooperation in acquiring resources, ensuring security, and hosting and resettling refugees. Notably, the UNHCR's entire budget is derived from a select few countries, with the US, Japan and the EU constituting 94% of all state contributions.¹⁰⁸ This dependency on funding and support influences international protection, as the primary institution responsible is constrained by the policies of its funders and host governments, which are heavily rooted in state sovereignty.

Nevertheless, addressing climate change within the realm of displacement has become a growing concern. The UN began substantial initiative with the 2010 Cancun Adaptation Framework and the 2015 Paris Agreement, initially integrating concerns associated with climate-induced displacement into the UN Framework Convention on Climate Change.¹⁰⁹ More recently, in 2021, the UN confirmed the need to systematically address the issue of internal displacement as an integral part of the climate change agenda.¹¹⁰

Acknowledging the progress made, the current international legal system lacks a dedicated framework that addresses cross-border movement associated with climate change. The Convention was established in 1951, in the the aftermath of World War II, where the focus was on safeguarding people persecuted by war and deprived of their fundamental rights. Climate change-induced displacement was not a prominent concern, nor was it discussed alongside other economic, social, and political issues that, given the specific historical context, held greater significance. However, evolving challenges demand an adaptation of the law to effectively incorporate these new realities.

1.2. EU Law and Policy on Migration and Asylum.

¹⁰⁷ UN High Commissioner for Refugees (UNHCR), "Climate change and disaster displacement: Key Messages on international protection." Katowice, Poland, December 3 to 15, 2018, p. 3. Available at <<https://www.unhcr.org/media/key-messages-cop24>>.

¹⁰⁸ Parekh, Serena. "Refugees and the Ethics of Forced Displacement." *Routledge*, 2016, p. 21. Available at <<https://doi.org/10.4324/9781315883854>>.

¹⁰⁹ Berchin, Issa [et al.]. "Climate change and forced migrations: An effort towards recognizing climate refugees." *Geoforum*, vol. 84, 2017, pp. 147. Available at <<http://dx.doi.org/10.1016/j.geoforum.2017.06.022>>.

¹¹⁰ European Commission, "EU's humanitarian action: new challenges, same principles", Communication from the Commission to the European Parliament and the Council, COM/2021/110 final, p. 6.

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In 1999, the European Parliament established the initial connection between climate change and displacement in its report on environment, security, and foreign policy.¹¹¹ Additionally, in 2011, its study titled “Climate refugees: legal and policy responses to environmentally induced migration” not only scrutinized the link between climate change and displacement, but also delved into protection gaps, policy responses, and the existing legislative and policy framework within the EU concerning this matter.¹¹²

The European Commission, in 2007, it supported the “Environmental Change and Forced Migration Scenarios (EACH-FOR)” project, designed to assist EU Member States in determining the most suitable policies based on the specific climate change-related forced movement scenario.¹¹³ The Commission also urged states to address the connections between climate change and displacement, particularly in the context of development and humanitarian assistance.¹¹⁴ In 2015, it acknowledged climate change as one of the root causes of irregular migration and forced displacement in third countries, underscoring the crucial importance of prevention and mitigation within EU policy.¹¹⁵

Despite awareness of the problem and endeavors to mitigate its effects, there is no European or international policy specifically or directly addressing the protection of climate change-induced displaced persons. Some European countries made efforts to include climate change impacts as a reason for displacement. For instance, during the drafting process of the EU Temporary Protection Directive, Finland aimed to encompass “persons who have had to flee as a result of natural disasters” within the definition of displaced persons. However, other

¹¹¹ Where Mrs. Theorin (rapporteur), on behalf of the Committee on Foreign Affairs, Security and Defense Policy, states that “*local and regional ecological problems can have serious implications for international relations, for example (...) large-scale displacement of environmental refugees*”. European Parliament, “Verbatim report of proceedings: Environment, security and foreign affairs”, 1999. Available at <https://www.europarl.europa.eu/doceo/document/CRE-4-1999-01-27-ITM-004_EN.html>.

¹¹² Kraler, Albert ; Cernei, Tatiana ; Noack, Marion. “Climate Refugees”: Legal and policy responses to environmentally induced migration.” *European Parliament*, 2011. Available at <[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/462422/IPOL-LIBE_ET\(2011\)462422_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/462422/IPOL-LIBE_ET(2011)462422_EN.pdf)>.

¹¹³ CORDIS, “Environmental change and forced migration scenarios | EACH-FOR Project | Fact Sheet | FP6 | CORDIS | European Commission”, March 26, 2013. Available at <<https://cordis.europa.eu/project/id/44468>>.

¹¹⁴ European Commission, “Maximizing the Development Impact of Migration and the EU contribution for the UN High-Level Dialogue on Migration and Development and on broadening the development-migration nexus”, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2013/292 final, p. 12.

¹¹⁵ European Commission, “European Agenda on Migration”, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2015/240 final.

Member States, namely Belgium and Spain, opposed this, contending that there was no legal basis to support such a provision.¹¹⁶

The New Pact on Migration and Asylum, introduced in September 2020 and approved by the Council of the EU in May 2024, followed the identification of numerous deficiencies in the EU's border management and asylum and migration policy during the 2015 migration crisis. As outlined, the lack of solidarity and willingness to address migrants and asylum seekers, driven by political, economic, and social factors, have negatively impacted the lives of many migrants who are simply seeking shelter and security, a situation deemed unacceptable.

It sets forth a framework of regulations and policies aimed at fostering a more equitable, efficient, and more sustainable migration and asylum process for the EU. The goal is to ensure decent conditions for individuals arriving in the region and establish a system grounded in principles of solidarity, responsibility, and respect for human rights.¹¹⁷ However, as a more restrictive instrument, it not only fails to adequately address the issue of climate change displacement, but worsens the deficiencies already outlined, possibly exacerbating fundamental rights concerns with a “more effective migrant exclusion, return, and deterrence”.¹¹⁸

It is ironic how the document begins by quoting the current President of the European Commission, Ursula von der Leyen, who emphasizes the need of a humane approach based on global responsibility. In reality, this system is likely to lead to ineffectiveness and exacerbate human rights violations, especially since it lacks an accountability mechanism and continues to provide Member States with their desired outcomes, namely securitization.

Under the EU legal framework, tackling climate change stands as a primary focus for European institutions. However, with its impacts progressively displacing more people, the EU must establish a thoroughly prepared and robust framework to manage potential migration crises in the future. If the EU and its Member States persist in overlooking this issue and neglecting their responsibility toward these individuals, the consequences will be more severe, and they will not be prepared to confront the challenges ahead.

¹¹⁶ Council of the European Union, “Outcome of Proceedings of Working Party on Asylum”. Doc 6128/01 LIMITE ASILE 15, 4, 2011, pp. 4. Available at <<https://data.consilium.europa.eu/doc/document/ST-6128-2001-INIT/en/pdf>>.

¹¹⁷ European Commission, “New Pact on Migration and Asylum”, Communication from the Commission, COM(2020) 609 final.

¹¹⁸ Dijidiki, Vasileia, Bhabha, Jacqueline. “EU Migration Pact Fails to Address Human Rights Concerns in Lesbos, Greece.” *Health and Human Rights Journal*, vol. 22, no. 2, 2020, pp. 291-296. Available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7762917/>>.

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In response to the gaps and restrictions in international refugees' protection regimes related to displacement in the context of climate change impacts, the literature is developing alternative systems to provide effective protection for affected individuals. However, it is important to recognize that they have their own practical limitations and will primarily encounter a significant challenge in the form of increased external collaboration in migration control.

2. Alternative Proposals to Protect Climate-Induced Displaced Persons: Limitations.

2.1. Expand the 1951 Refugee Convention.

As previously noted, the 1951 Refugee Convention definition is highly constrained in the context of displacement caused by climate change. If we interpret the Convention broadly, it might be applicable in very specific scenarios of environmental displacement. For instance, if a government neglects to protect a specific social group from the impacts of environmental change, leading them to seek refuge in another state due to the state of origin's failure or deliberate policy¹¹⁹, or if conflicts arise within a particular social group due to constrained environmental resources.

However, the Refugee Convention has a narrower scope, where persecution is challenging to establish in these circumstances, although some contend that the "lack of protection assistance in the aftermath of disasters can be comparable to persecution if the assistance is unequally or inequitably distributed".¹²⁰ From this perspective, refugee law is seen as a framework that provides protection in situations where States fail their obligations to its people, resulting in discriminatory impacts.

An alternative suggestion has been to broaden the definition of "refugee", namely the grounds upon which persecution is based on, to encompass those displaced by the impacts of climate change¹²¹, a step that has been taken by the African Union. The 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa has expanded the definition to include individuals leaving their country of origin "owing to external aggression, occupation, foreign domination, or events seriously disturbing the public order in either part or the whole of his country of origin or nationality".¹²² Although this definition was not originally intended

¹¹⁹ Jayawardhan, Shweta, *op. cit.*, p. 108.

¹²⁰ *Ibid.*

¹²¹ Warren, Phillip Dane, *op. cit.*, pp. 2124-2125.

¹²² Article 1(2). Organization of African Unity (OAU), "Convention Governing the Specific Aspects of Refugee Problems in Africa."

to cover climate change-induced displacement, a natural disaster could constitute a circumstance that “disturbs the public order”.

For instance, the Maldives government, in 2006, proposed amending the 1951 Refugee Convention to broaden the definition of “refugee”.¹²³ Similarly, Jessie Cooper, an American lawyer, recommended an amendment to Article 1(a) of the Refugee Convention by incorporating degraded environmental conditions that pose a threat to life, health, livelihoods, and the utilization of resources, grounded in article 25(1) of the UDHR.¹²⁴

Nonetheless, despite perceived benefits, there is not unanimous agreement on extending the coverage of the 1951 Refugee Convention to include climate change-induced displacement. As this expansion would require providing protection to a larger group than currently designated, such an expansion would potentially lead to counterproductive effects and overwhelm an already complex system¹²⁵, due to Europe’s lack of political will to address migration challenges amid the rise of far-right and anti-migrant parties.

Additionally, within the context of climate-induced displacement, there is no defined responsibility assigned to a state as an agent of persecution.¹²⁶ Despite this being a valid and literal argument in the context of the Refugee Convention, we can establish a clear connection between the responsibility of States contributing more significantly to climate change for its mitigation and adaptation and the protection of the people affected by it, based on human rights obligations. Nevertheless, incorporating climate-induced displacement into the current refugee system would present challenges due to causation issues.

An additional argument opposing the extension of the 1951 Convention is the inability to achieve a consensus on the extent to which the refugee regime could be broadened, given the present political landscape. Certain developing countries, like the Maldives and Bangladesh, may seek to enhance the “refugee” definition to encompass climate-induced displacement. However, developed countries may prefer to constrict rather than broaden such a definition.

This also reveals a previously mentioned debate. Jane McAdam highlights that, like any treaty, there is a requirement not only to establish it but also to enforce it for it to hold any significance. As she clarifies, the issue lies not in the absence of a treaty but in the deficiency

¹²³ McAdam, J. “Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer”, pp. 2-27.

¹²⁴ Kraler, Albert ; Cernei, Tatiana ; Noack, Marion, op. cit., pp. 39-41.

¹²⁵ Wareen, Phillip Dane, op. cit., pp. 2124-2125.

¹²⁶ Kraler, Albert ; Cernei, Tatiana ; Noack, Marion, op. cit., pp. 39-41.

of political will to implement it, as evident in contemporary politics.¹²⁷ This expansion would offer insufficient protection given the limitation of the current refugee system and the prevailing political reluctance. Therefore, ensuring vital protection for climate-induced displaced people necessitates seeking solutions beyond the framework of the 1951 Refugee Convention.

2.2. Establish a New Regime for Climate-Induced Displacement.

The absence of a specific and unambiguous international legal framework enabling the acknowledgement and protection of climate-induced displaced people has prompted calls for a new international instrument addressing climate change displacement, to prevent conflicts with the existing refugee regime. Many envision a multilateral treaty, independent of the UNFCCC, capable of addressing current legal voids by establishing protected rights for climate-induced displaced individuals, mirroring those provided in the 1951 Refugee Convention.

As an example, American lawyers Bonnie Docherty and Tyler Giannini advocate for a binding multilateral agreement adopting a rights-based approach that offers extensive protections for climate-induced displaced people, including non-refoulement protection.¹²⁸ Their proposed convention is centered on the fundamental principle of shared responsibility, and they suggest the establishment of administrative bodies to implement the instrument. These bodies would include a global fund, a coordinating agency, and a panel of scientific experts.

Policymakers, including the Swedish Member of Parliament Tina Ackertoft, who served as the rapporteur for a report on environmental refugees for the Council of Europe's Committee on Migration, Refugees, and Population¹²⁹, have advocated for a new legal agreement. Ackertoft influenced both the Committee on Migration, Refugees and Population and the Committee on Environment, Agriculture and Regional Affairs of the Parliamentary Assembly of the Council of Europe to adopt a resolution and a recommendation, which aimed to encourage an exhaustive legal study on the constraints and gaps in current legal instruments,

¹²⁷ McAdam, Jane, "Seven Reasons the UN Refugee Convention should not include 'climate refugees'." *The Sydney Morning Herald*, June 6, 2017. Available at <<https://www.smh.com.au/opinion/seven-reasons-the-un-refugee-convention-should-not-include-climate-refugees-20170606-gwl8b4.html>>.

¹²⁸ Docherty, , Bonnie ; Giannini, Tyler. "Confronting a rising tide: a proposal for a convention on climate change refugees." *Harvard Environmental Law Review*, vol. 33, no. 2, 2009, pp. 349-403. Available at <<https://climate.law.columbia.edu/sites/default/files/content/5c3e836f23a774ba2e115c36a8f72fd3e218.pdf>>.

¹²⁹ Acketoft, Tina. "Environmentally induced migration and displacement: a 21st century challenge." *Council of Europe*, 2008. (Council of Europe Doc. 11785). Available at <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12098&lang=en>>.

with the goal of developing a new framework that recognizes climate-induced displaced people and protect their human rights.¹³⁰

Dana Zartner, a professor and an advocate of environmental justice and human rights, has put forward a convention addressing climate-induced displacement, akin to the Convention Against Torture. This proposed convention includes a comprehensive set of rights and obligations, an implementation mechanism, and an analysis of the root causes of displacement.¹³¹ Nevertheless, some critics argue that Zartner's proposal disproportionately places obligations on developing countries, which are primarily affected by climate change and displacement.¹³²

However, while these proposals contribute to formulating the foundations of a new international instrument, none of them are exhaustive and comprehensive to provide adequate protection for climate-induced displaced people. As such, some argue that the adoption of any convention related to the protection of climate-induced displaced people is likely to face failure. For instance, drawing from her fieldwork in Tuvalu, Kiribati, and Bangladesh, Jane McAdam contends that advocating for a new treaty to address climate-related displacement is misguided.

Firstly, based on her field research, a universal treaty may not be suitable for addressing the specific concerns of certain communities. The perception of international movement as a response to climate change varies in Tuvalu, Kiribati, and Bangladesh due to their unique geographical, demographic, cultural, and political circumstances.¹³³ Consequently, regional responses may be better equipped to address these distinct needs.

Secondly, as abovementioned, the complex causation challenges in climate displacement would be too overwhelming for a comprehensive multilateral instrument to handle. From a policy and legal standpoint, decision-makers would be required to assess various elements to establish a connection between climate change and the decision to move, which is almost impossible. It would involve evaluating the nature of the alleged harm,

¹³⁰ Kraler, Albert ; Cernei, Tatiana ; Noack, Marion, op. cit., pp. 43-44.

¹³¹ Falstrom, Dana. "Stemming the Flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment." *Colorado Journal of International Environmental Law and Policy*, vol. 13, 2001. Available at https://www.researchgate.net/publication/237325906_Stemming_the_Flow_of_Environmental_Displacement_Creating_a_Convention_to_Protect_Persons_and_Preserve_the_Environment.

¹³² Kraler, Albert ; Cernei, Tatiana ; Noack, Marion, op. cit., pp. 43-44.

¹³³ McAdam, J., "Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer", pp. 2-27.

determining if climate change was the cause of that harm, and assessing whether there is a violation of human rights for which protection is needed.¹³⁴

Thirdly, political constraints will hinder the implementation of a climate-induced displacement treaty, similar with the challenges faced by the 1951 Refugee Convention.¹³⁵ The current political scenario, especially within European countries, indicates a lack of political will to engage in negotiations for a new legal instrument that would require additional obligations to protect more groups of people. Without ratification, implementation, and enforcement by the states, the mere existence of a treaty will not solve the humanitarian issue.

While acknowledging that a convention recognizing the duty to assist could foster international cooperation in sharing the responsibility for climate-induced displaced people, the mentioned concerns imply that emphasizing a multilateral treaty to extend states' international protection obligations may not be the most suitable mechanism at present for achieving positive outcomes for populations significantly impacted by the effects of climate change.

2.3. Human Rights-Based Approach: Climate Litigation.

The connection between human rights and environmental preservation is evident, as climate change can pose challenges recognized human rights like the right to life, the right to private and family life, and the right to an adequate standard of living by degrading a safe, clean and healthy environment. Indeed, some argue that recognizing the right to a safe environment within international human rights frameworks would impose on states the duty to safeguard, preserve, and enhance environmental conditions conducive to individual development. This proposition aligns with provisions like Article 24 of the African Charter on Human and People's Rights¹³⁶ and Articles 28 and 35 of the ASEAN Human Rights Declaration.¹³⁷

However, this perspective is not universally accepted. For instance, the European Union lacks explicit provisions in the European Convention on Human Rights (ECHR) addressing the protection of these rights. Therefore, litigation emerges as a crucial tool in addressing and confronting the unfolding climate change crisis. There is a widespread awareness that the impacts of climate change adversely affect the enjoyment of human rights, for which states

¹³⁴Ibid.

¹³⁵ Ibid.

¹³⁶ OAU, "African Charter on Human and Peoples' Rights", Doc. N°. CAB/LEG/67/3 of 27 June, 1981.

¹³⁷ ASEAN Human Rights Declaration and Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration, ASEAN Secretariat, Jakarta, February 2013.

bear legal responsibility as the main duty-bearers under international human rights law.¹³⁸ As such, litigation is used to challenge national authorities and governments, ensuring accountability for their (in)actions on climate-related matters, including displacement.

As a result, there has been a rise in complaints submitted to the UN Human Rights Committee regarding climate change, showcasing the capacity of climate change litigation to strengthen climate policy and ensure human rights protection. For instance, Mr. Ioane Teitiota sought to hold New Zealand accountable before the United Nations Human Rights Committee for violating his right to life and the country's non-refoulement obligation.¹³⁹ This was after New Zealand deported him and his family to Kiribati, exposing them to life-threatening climate change impacts.

In this case, Teitiota expressed concerns about returning to Kiribati, citing the rising sea levels and associated environmental degradation, namely the difficult living conditions, that prompted him and his family to leave the island in the first place.¹⁴⁰ The author points out that the lack of potable water due to saltwater contamination and overcrowding in Tarawa has resulted in health problems for him and his family.¹⁴¹ He specifically mentions that one of his children suffered from a severe case of blood poisoning consequently.¹⁴²

The Committee believes that the impacts of climate change in receiving nations, without national and international actions, could lead to violations of individuals' rights as outlined in articles 6 and 7 of the ICCPR. Specifically, the Committee reminds that under article 2, States parties to the Covenant are obligated "not to extradite, deport, expel, or otherwise remove a person from their territory, when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant".¹⁴³

Moreover, it emphasizes that the right to life should be interpreted in a broader scope to encompass individuals' entitlement to live with dignity and be protected from actions or

¹³⁸ Knur, Franziska. "The United Nations Human Rights-Based Approach to Climate Change – Introducing a Human Dimension to International Climate Law". In Schorlemer, Sabine von ; Maus, Sylvia, ed. lit. "Climate Change as a Threat to Peace: Impacts on Cultural Heritage and Cultural Diversity." *Peter Lang AG*, 2014. p. 41. Available at <<http://www.jstor.org/stable/j.ctv2t4cvp.7>>.

¹³⁹ "Ioane Teitiota v. New Zealand", UNHRC, CCPR/C/127/D/2728/2016, January 7, 2020.

¹⁴⁰ "Ioane Teitiota v ...", para. 25-29.

¹⁴¹ Ibid.

¹⁴² "Ioane Teitiota v ...", para. 5.

¹⁴³ UN Human Rights Committee (UNHRC), "General comment no. 31: The nature of the general legal obligation imposed on States Parties to the Covenant." 26 May 2004, para. 12. Available at <<https://www.refworld.org/legal/general/hrc/2004/en/52451>>.

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omissions that could lead to their untimely or unnatural death.¹⁴⁴ In its general comment No. 36, the Committee highlights that environmental degradation, climate change, and unsustainable development are among the most critical and severe threats to the right to life of present and future generations.¹⁴⁵ These challenges pose a risk of violating this fundamental right, compelling States parties to take measures to prevent such violations and guarantee the enjoyment of the right to life.

This case highlights the need and potential benefits of adopting a human-centered approach to human rights concerns, particularly regarding displacement caused by climate change impacts. For instance, while it had a disappointing outcome, Ioane Teitiota's concerns illustrate challenges linked to food security, the availability of clean water, and basic sanitation, which resulted in human movement due to the creation of unlivable and undignified health conditions. Additionally, it presented a change to interpret how the right to life and the non-refoulement principle apply to climate change-induced displacement.

Within the EU, the European Court of Human Rights (ECtHR) plays a crucial role in protecting human rights, embodying the notion of judicial protection of environmental human rights. A concerning number of cases related to violations of rights linked to environmental issues, notably violations of the right to life (Article 2 of the Convention) and the right to respect for private and family life (Article 8 of the Convention), not only highlights pollution as the underlying cause of such breaches but also allows to better define the content and extent of these human rights.¹⁴⁶

As awareness of anthropogenic climate change grows, holding someone liable for the impacts of rising sea levels and the increase in frequency or severity of natural catastrophes (i.e., hurricanes, floods, and droughts) on human rights may be an option to shift the loss.¹⁴⁷ Human rights and climate change-related litigation cases can bring about legal impacts, such

¹⁴⁴ UN Human Rights Committee (UNHRC), "Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016", *Human Rights Committee*, September 15, 2020. Available at <<https://digitallibrary.un.org/record/3979204?ln=en&v=pdf>>.

¹⁴⁵ UN Human Rights Committee (UNHRC), "General comment no. 36, Article 6: right to life." 2 September 2019, para. 62. Available at <<https://documents.un.org/doc/undoc/gen/g19/261/15/pdf/g1926115.pdf?token=tLUBODBRZTrO9tE7Zr&fe=true>>.

¹⁴⁶ Ladychenko, Viktor ; Mykytiuk, Anton. "Environmental rights protection in the European Court of Human Rights." *Law. Human. Environment*, vol. 14, no. 4, 2023, pp. 24-36. Available at <<https://doi.org/10.31548/law/4.2023.24>>; "Verein Klimasenioren Schweiz and Others v. Switzerland", ECtHR, 53600/20 (STRASBOURG), April 9, 2024, para. 573-574.

¹⁴⁷ Ebert, Ina. "Climate Change and Liability: An Overview of Legal Issue." In Ruppel, Oliver C. ; Roschmann, Christian ; Ruppel-Schlichting, Katharina, ed. lit. "Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility." *Nomos Verlagsgesellschaft mbH*, 2013. p. 859-860. Available at <<http://www.jstor.org/stable/j.ctv941w8s.32>>.

as prompting law enforcement, establishing new legal standards, or compelling legislative and procedural changes by influencing decision-makers' actions. Additionally, it can lead to social and cultural shifts, affecting people's behaviors, empowering communities, and acknowledging the experiences and needs of the most vulnerable individuals.¹⁴⁸

However, we acknowledge that unique challenges and constraints may arise. Complainants are required to demonstrate the causal link between the individual responsibility of a state and the impacts resulting from climate change that cause harm to vulnerable populations.¹⁴⁹ This can be very challenging, particularly given that community resilience to environmental events relies on various factors, which reflects in the decision to move. For instance, human mobility related to climate change often interacts with other determinants that affect such decision and the degree to which it is voluntary or forced.¹⁵⁰

Therefore, affected people struggle to establish a link between climate change impacts and displacement, as well as to prove that a certain climate-related event that prompted them to flee wouldn't have happened or been as destructive without the high concentration of greenhouse gas emissions from a specific state or groups of states.¹⁵¹ As each state has their share of contribution to climate change and are also impacted by it to some extent, it is almost an impossible task to ascertain the rightful party to bring a lawsuit against and the extent of their liability.

Additionally, jurisdictional issues limit the accountability of the international community for the impacts of climate change, as illustrated by the case *Duarte Agostinho and Others v. Portugal and 32 Other States*. The European Court of Human Rights (ECtHR) dismissed a complaint by six Portuguese teens against 33 countries for human rights violations due to insufficient climate action.¹⁵² The ECtHR rejected the notion that states can be held accountable for climate change impacts on individuals beyond their jurisdiction or control solely based on positive obligations regarding climate change.¹⁵³

¹⁴⁸ Alogna, Ivano ; Clifford, Eleanor. "Climate Change Litigation: Comparative and International Perspectives." *British Institute of International and Comparative Law*, 2020, pp. 20. Available at <<https://www.biiicl.org/publications/climate-change-litigation-comparative-and-international-perspectives?cookieset=1&ts=1713274359>>.

¹⁴⁹ Mayer, Benoit. "The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework." *Colorado Journal of International Environmental Law and Policy*, vol. 22, no. 3, 2011, pp. 402-405. Available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1755622>.

¹⁵⁰ Human Rights Council, "The Slow onset effects of climate change and human rights protection for cross-border migrants", A/HRC/37/CRP.4, 2018, p. 7.

¹⁵¹ Mayer, Benoit, op. cit., pp. 402-405.

¹⁵² "Duarte Agostinho and Others v. Portugal and 32 Other States", ECtHR, 39371/20 (STRASBOURG), April 9, 2024, para. 14-30 and 66.

¹⁵³ "Duarte Agostinho and ...", paras. 198 and 200.

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This underscores the challenges of enforcing climate change accountability across multiple countries through international human rights law, due to the complexities of jurisdictional boundaries in addressing global environmental concerns. Nevertheless, we shall emphasize the distinction between jurisdiction and responsibility regarding climate change and alleged violations of human rights.

Chapter III – Impact of Externalization Practices on Climate Displacement: an impasse for effective solution.

Despite the acknowledgement of the challenges within climate displacement and the growing elaboration of effective solutions for affected individuals within the literature, numerous agreements have been established with a big focus on border control, interceptions and pushbacks.¹⁵⁴ For instance, the EU’s migration policy has been influenced by externalization methods. Border managements responsibility is shifted to third countries using deterrent measures like non-admission policies, relocating refugees to third countries, and other practices to stop migrants from entering European borders and evade humanitarian responsibility.

This partnership among countries involves EU support through funding and operational assistance, including with the EU Trust Fund For Africa projects¹⁵⁵ and joint efforts between African states’ authorities and Frontex, specifically focusing on the West African route via the Sahel transit region.¹⁵⁶ Furthermore, African nations have been entering into agreements with European countries regarding the topics of returns and readmissions. For instance, the pacts between Morocco and Spain about land and sea border pullbacks, as well as the EU Memorandum of Understanding with Tunisia revolving around EU funding in exchange for Tunisia’s cooperation with migration control.¹⁵⁷

The EU’s goal is to encourage North African countries to cooperate in hosting migrants and asylum seekers using securitization and externalization of migration management, in return for financial and technical assistance. This would entail that North African countries would be responsible for controlling migration, while European countries avoid this burden. Yet, the proliferation of these practices is set to exacerbate the dangerous situation of the Mediterranean, already known as one of the deadliest migration routes globally.

The rise in strategies to transfer migration control, particularly between European and African countries, shows the growing demand for migration towards Europe and, consequently,

¹⁵⁴ Xanthoupoulou, Ermioni. “Mapping EU Externalisation Devices through a Critical Eye.” *European Journal of Migration and Law*, vol. 26, no. 1, 2024, pp. 108-135. Available at <<https://doi.org/10.1163/15718166-12340170>>.

¹⁵⁵ European Union, “Support to Integrated border and migration management in Libya – First phase”, *Emergency Trust Fund for Africa*. Available at <https://trust-fund-for-africa.europa.eu/our-programmes/support-integrated-border-and-migration-management-libya-first-phase_en#:~:text=The%20programme%20aims%20to%20strengthen,sea%20and%20in%20the%20desert>.

¹⁵⁶ “Africa - Frontex Intelligence Community”, AFIC.

¹⁵⁷ European Commission, “Memorandum of Understanding on a strategic and global partnership between the European Union and Tunisia”, *European Commission*, 2023. Available at <https://ec.europa.eu/commission/presscorner/detail/en/IP_23_3887>.

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the establishment of new migratory pathways. Nevertheless, it also illustrates the emergence of the precarious conditions in which people live in these regions, serving as catalysts that increasingly affect people's lives, such as conflicts, poverty, or climate change, prompting them to make the decision to move.

Particularly in less developed and more vulnerable regions like African countries, the impacts of climate change are increasingly driving people to leave their homes due to inhumane living conditions. However, these areas have also seen a rise in externalization agreements and migration security policies. Therefore, in the upcoming chapter, I aim to further examine the agreements between these world regions and assess the impact of externalization practices on European and African migration policy.

Moreover, I aim to demonstrate that externalization policies have harmful impacts in migrants and asylum seekers, including human rights violations, which will impact the future of climate change-induced displaced individuals and their international protection. Restricting the arrival of migrants, regardless of their reasons for leaving, will hinder the effectiveness of any proposed system for the protection of these individuals, diminishing any chance for hope stemming from alternative policies. Therefore, existing or future solutions to climate displacement is considerably limited by the effects of externalization agreements.

1. EU-Africa Externalization Partnerships.

The EU has stressed the importance of working with African nations to tackle issues such as curbing irregular departures, as well as combating human trafficking and migrant smuggling. This includes enhancing border controls in transit and origin countries, utilizing EU border police and improving cooperation with African border agencies through training and technology. Furthermore, it involves establishing agreements to send illegal migrants back to their home countries or to a designated "safe third country".¹⁵⁸

Thus, following the 2022 Sixth European Union-African Union Summit, the EU has renewed or established partnerships with Libya, Tunisia, Egypt, Morocco and Mauritania. The cooperation formed through these agreements relies on a strategy of benefits and consequences, with North African governments unfolding to EU pressure and the EU using its economic power to provide financial aid and technology in return for control over migration.

¹⁵⁸ European Commission, "EU working together with African partners on migration: Launch of Team Europe initiatives." Brussels, 2022.

The European Union Emergency Trust Fund (EUTF) for Africa¹⁵⁹ was established in November 2015 as a mechanism to address the root causes of instability, forced displacement, and irregular migration and to contribute to better migration management in Africa.¹⁶⁰ The narrative around this trust fund suggests that aid can buy partner countries' cooperation in readmission and strict border management, and therefore curb migration flows to the EU.¹⁶¹ This perspective is reflected on the following partnerships established between the EU and North African countries.

Since its creation, the EUTF for Africa has been the EU's main tool for actions to support migration related issues in Libya. In 2017, the Italian and Libyan governments signed a Memorandum of Understanding, in which Italy provides financial support for economic development and stability, vessels and border security instruments, and funding for Libyan detention centers and voluntary departure of migrants from the country, in exchange for border surveillance, namely by preventing people from departing its Libya to reach Europe.¹⁶²

In this regard, the EU provided logistical and financial support to Libya through a EUTF for Africa project that focused on preventing the flow of migrants from Libya to Italy and the EU by providing training and support to the Libyan coast guard, as well as ships to the Libyan authorities.¹⁶³ Since then, Libya has been exploiting the EU's desire to outsource migration management to third countries in order to promote its own strategic interests. Therefore, instead of helping human beings in danger, Libya uses migrants, refugees and asylum seekers as leverage to gain economic and political advantage from the EU, whose goal is to keep vulnerable people out at all costs, even at the expense of their lives.

In February 2023, the EU and Italy provided a search and rescue boat to the Libyan Coast Guard, with a commitment for four additional vessels for the purpose of intercepting

¹⁵⁹ Now replaced with the Neighbourhood, Development and International Cooperation Instrument and Team Europe Initiatives. European Commission, "Global Europe: Neighbourhood, Development and International Cooperation Instrument." Available at <https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/global-europe-neighbourhood-development-and-international-cooperation-instrument_en>; "Team Europe Initiatives." Available at <[https://international-partnerships.ec.europa.eu/policies/team-europe-initiatives_en#:~:text=Team%20Europe%20Initiatives%20\(%27TEIs%27,results%20with%20a%20transformative%20impact.>](https://international-partnerships.ec.europa.eu/policies/team-europe-initiatives_en#:~:text=Team%20Europe%20Initiatives%20(%27TEIs%27,results%20with%20a%20transformative%20impact.>)>.

¹⁶⁰ European Union, "Emergency Trust Fund for Africa." Available at <https://trust-fund-for-africa.europa.eu/index_en>.

¹⁶¹ Mlambo, Victor H. "Externalization and Securitization as Policy Responses to African Migration to the European Union." *African Human Mobility Review*, vol. 6, no. 3, 2020, pp. 94-109. Available at <<http://dx.doi.org/10.14426/ahmr.v6i3.916>>.

¹⁶² Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic.

¹⁶³ European Union, "Support to Integrated border and migration management in Libya – First phase", *Emergency Trust Fund for Africa*.

irregular migrants.¹⁶⁴ Moreover, Italy has automatically renewed the MoU with Libya in 2020 and 2023, committing to support the North African states' controversial migration management policies at least until 2026.

Due to the violence and human rights violations migrants face in Libya, many have chosen Tunisia as a point of departure for Europe. Other than being a country of origin, Tunisia has become an essential transit country for sub-Saharan African migrants and asylum seekers to reach Europe.¹⁶⁵ In this context, the EU has made efforts to reduce irregular departures from Tunisia by supporting measures to enhance border management and anti-smuggling and anti-trafficking in human beings.

The EU has devoted around €1.4 billion to overall bilateral cooperation with Tunisia between 2014 and 2020, under various funding instruments, including the EU Emergency Trust Fund for Africa. Between 2021 and 2022, the EU allocated €334 million under the Neighbourhood, Development and International Cooperation Instrument (NDICI – Global Europe).¹⁶⁶ After a visit from a European delegation in July 2023 to Tunisia, both governments signed a Memorandum of Understanding on a strategic and global partnership worth €150 million that included the objective to fight against irregular migration.¹⁶⁷

In the context of this MoU, the EU shall provide adequate financial support, especially for supplying equipment, training, and technical assistance to enhance Tunisia's border management, as well as funds for promoting civil society initiatives such as education, economic growth, and transitioning to green energy. In return, Tunisia commits to increased policies on migration and facilitating voluntary returns of migrants to their country of origin.

Nevertheless, this agreement fits perfectly into the current patterns of EU cooperation on migration management with third countries, particularly in complying with human rights violations. The EU-Tunisia MoU is facing significant backlash as it establishes the return of migrants back to Tunisia, highlighting the country's deficient asylum system and mistreatment

¹⁶⁴ Soto-Mayor, Guillaume. "Libya, tunisia, and niger as case studies for counter-productive anti-migration policies sustaining abuses and criminality." *Middle East Institute*, 2024, pp. 7-10. Available at <<https://www.jstor.org/stable/resrep60185.6>>.

¹⁶⁵ Meddeb, Hamza ; Louati, Fakhreddine, "Tunisia's Transformation Into a Transit Hub: Illegal Migration and Policy Dilemmas." *Malcolm H. Kerr Carnegie Middle East Center*, March 2024. Available at <<https://carnegieendowment.org/research/2024/07/tunisias-transformation-into-a-transit-hub-illegal-migration-and-policy-dilemmas?lang=en>>.

¹⁶⁶ "EU MIGRATION SUPPORT IN TUNISIA", June 2023. Available at <https://neighbourhood-enlargement.ec.europa.eu/document/download/5fd60eeb-7748-4f29-bda6-de875be53317_en>.

¹⁶⁷ European Commission, "Memorandum of Understanding on a strategic and global partnership between the European Union and Tunisia."

of migrants, all within a wider context of democratic instability.¹⁶⁸ Furthermore, it enables and encourages the repatriation of migrants to third countries of origin, which are characterized by poor human rights practices and authoritarian regimes, like Libya, Turkey, Morocco, and Egypt.

President Ursula von der Leyen has expressed the intention to pursue similar agreement with other countries despite the serious human rights issues associated with this MoU, as she emphasizes the benefits beyond migration.¹⁶⁹ Therefore, following the desire to enhance strategic partnerships with African countries, the EU established a new agreement with Egypt in March 2024.¹⁷⁰ This agreement includes €200 million out of a €7.4 billion funding package allocated for migration management.¹⁷¹

As the war in Sudan rages and the conflict between Israel and Hamas continues in the Gaza Strip, the EU fears the arrival on its territory of a large influx of migrants fleeing diverse wars through Egypt. Therefore, the objective of this partnerships is to stem immigration from Egypt to Europe. However, this partnership rises concerns due to Egypt's appalling human rights record, including in areas such as border control and migration management, as it will legitimize the policies of President Abdel Fattah al-Sissi' authoritarian government and its failures to protect human rights in Egypt.¹⁷²

Since assuming control in 2013, they have been responsible for killing protesters and abusing numerous of perceived critics and opponents.¹⁷³ Eve Geddie, Amnesty International's Head of the European Institutions Office, states that in the realm of migration, "Egyptian authorities routinely arrest and arbitrarily detain refugees, asylum seekers and migrants in cruel

¹⁶⁸ Zribi, Nesrine. "Externalizing Borders or Externalizing Repression? Tunisia at the Center of a Failed Asylum Architecture." *The Tahrir Institute for Middle East Policy*, August 2023. Available at <<https://timep.org/2023/08/21/externalizing-borders-or-externalizing-repression-tunisia-at-the-center-of-a-failed-asylum-architecture/>>.

¹⁶⁹ European Commission, "2023 State of the Union Address by President von der Leyen", Strasbourg, European Commission, 2023.

¹⁷⁰ European Commission, "Joint Declaration on the Strategic and Comprehensive Partnership between The Arab Republic Of Egypt and the European Union." *European Neighbourhood Policy and Enlargement Negotiations (DG NEAR)*, March 17, 2024.

¹⁷¹ European Commission, "Egypt." Available at <https://neighbourhood-enlargement.ec.europa.eu/european-neighbourhood-policy/countries-region/egypt_en>.

¹⁷² European Commission, "EU-Egypt bilateral agreement: NGOs mobilise for human rights inclusion in negotiation processes", *International Federation for Human Rights*, 2024.

¹⁷³ Francavilla, Claudio. "EU Deal with Egypt Rewards Authoritarianism, Betrays "EU Values": Migration Control Obsession Ignores Abuses, Entrenches Oppression." *Human Rights Watch*, March 15, 2024. Available at <<https://www.hrw.org/news/2024/03/15/eu-deal-egypt-rewards-authoritarianism-betrays-eu-values>>.

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and inhumane conditions, and unlawfully deport them, without due process or the opportunity to claim asylum, to countries where they risk facing serious human rights”.¹⁷⁴

As a result of the rise on outsourcing migration management agreements in North Africa and the subsequent increase in reports of migrants and asylum seekers’ human rights violations in the region, they are now heading towards West Africa, specifically Morocco, Western Sahara and Mauritania, resulting in a recent surge in migration to Spanish enclaves of Ceuta and Melilla and to the Spanish Canary Islands.

Thus, after years of negotiations and of substantial financial support to assist in addressing migration challenges in Morocco through the EU Trust Fund for Africa¹⁷⁵, Morocco and the EU finally agreed on a migration pact in December 2023, as “Morocco stands out as a crucial partner in Africa” according to the Frontex Executive Director Hans Leijten.¹⁷⁶ In that same year, Spain entered into two memorandums on migration cooperation with Morocco¹⁷⁷, with Spanish Prime Minister Sanchez praising Morocco as a partner in helping EU migration policies.¹⁷⁸

Moreover, in response to the rise in migrants arriving via the Canary Islands, the EU revealed on February 8, 2024, a €200 million aid package for Mauritania, the main departure point for boats heading towards the Spanish islands.¹⁷⁹ The EU commits to work on improving cooperation for the return and readmission of Mauritians living irregularly in the EU and to enhance the capabilities of border management authorities with training and equipment. In return, Nouakchott agrees to host migrants headed for the Canaries and prevent boat departures.¹⁸⁰

Furthermore, several European countries, including Spain, Italy and the UK have also formed bilateral agreements with non-European countries in addition to the aforementioned

¹⁷⁴ Amnesty International, “EU/Egypt: Put human rights at the centre of all cooperation.” *Amnesty International*, March 15, 2024. Available at <<https://www.amnesty.org/en/latest/news/2024/03/eu-egypt-put-human-rights-at-the-centre-of-all-cooperation/>>.

¹⁷⁵ Koch, Christian ; Barrougm, Houda. “Europe’s Toughened Stance on Migration.” *Gulf Research Center*, May 2024. Available at <<https://www.grc.net/single-commentary/161#:~:text=With%20a%20total%20of%20€%2C%20and%20labor%20migration%20support>>.

¹⁷⁶ FRONTEX, “Frontex-Morocco outlining the next steps for closer cooperation”, *Frontex*, December 12, 2023.

¹⁷⁷ “Memorandum of Understanding on Migration Management and Governance, and on Orderly and Regular Migration Movements”, *The 12th Moroccan-Spanish High Level Meeting: Joint Declaration*, February 2, 2023.

¹⁷⁸ Le Monde Afrique, “Madrid salue le rôle « essentiel » du Maroc en matière migratoire”, April 20, 2023. Available at <https://www.lemonde.fr/afrique/article/2023/04/20/madrid-salue-le-role-essentiel-du-maroc-en-matiere-migratoire_6170295_3212.html>.

¹⁷⁹ European Commission, “The European Commission launches new migration partnership with Mauritania”, March 7, 2024.

¹⁸⁰ “Joint Declaration Establishing a Migration Partnership between the Islamic Republic of Mauritania and the European Union”, March 8, 2024.

partnerships. Italy has been part of these agreements for a long time, but they have not successfully led to the desired outcome of significantly decreasing the movement to Italy or the number of deaths at sea.¹⁸¹ As a result, additional strategies were implemented, primarily utilizing detention centers to accommodate asylum seekers to evaluate their asylum claims.

This covers the new bilateral partnership with Albania signed in November 2023 that sets up two facilities in Albania to hold people saved at sea by Italian vessels.¹⁸² Instead of emphasizing border control cooperation, this agreement aims to process asylum claims outside of the territory to discourage sea crossings. However, unlike the UK-Rwanda deal, this agreement does not delegate the responsibility for processing asylum claims to Albania. Instead, it ensures that Italian laws and procedures will still be followed for individuals brought to the designated center in Albania.¹⁸³

Despite criticism and lack of unanimous support within European entities¹⁸⁴, the European Union and its member states remain satisfied with the effectiveness of these agreements and intend to continue diplomatic partnerships with Africa. They aim to create new agreements and strategies to deter migrant arrivals from African countries to Europe. Nevertheless, these strict migration agreements have led to increased irregular migration within African countries and contradict Africa's migration and development plans, which are centered on free movement.¹⁸⁵

The African Union's Free Movement of People Protocol, adopted in January 2018, promotes the free and safe movement of people, goods and services as a means to achieve economic and social progress.¹⁸⁶ The purpose of the Free Movement of People is to promote integration of Africa by removing physical barriers that limit movement and hinder its economic growth. An example is how the protocol guarantees Africans the right to enter and remain in member states for up to 90 days without a visa, while also forbidding the mass expulsion of non-nationals.¹⁸⁷

¹⁸¹ International Organization for Migration, "Missing Migrants Project." Available at <<https://missingmigrants.iom.int/>>.

¹⁸² Protocollo tra il Governo della Repubblica Italiana e il Consiglio dei Ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria, Rome, 6 November 2023.

¹⁸³ Article 4.2 of the agreement.

¹⁸⁴ Silva, Isabel Marques da ; Liboreiro, Jorge. "EU migration deals with Egypt and Tunisia have to be 'revised,' says Nicolas Schmit." *Euronews*, May 7, 2024. Available at <<https://www.euronews.com/my-europe/2024/05/07/eu-migration-deals-with-egypt-and-tunisia-have-to-be-revised-says-nicolas-schmit>>.

¹⁸⁵ Suah, Nyanquoi, op. cit.

¹⁸⁶ OAU, "Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Rights of Residence and Rights of Establishment", January 29, 2018.

¹⁸⁷ OAU, "Protocol to the ...", Article 6 and 20.

This reflects the prevailing political view in Africa which emphasizes the importance of human movement for regional economic growth and development.¹⁸⁸ In many African countries, migration brings in substantial income, therefore imposing more restrictions on movement would greatly hinder the country's economy. However, the increase of stringent border control regulations in the EU has obstructed the perception that migration can be beneficial for the development of European countries. The primary focus is on national security in order to restrict the movement of migrants to Europe.¹⁸⁹

Therefore, the growing cooperation among African nations in enforcing the European external migration policy, involving agreements preventing irregular migration to Europe and the return of illegal migrants in exchange for financial support and access to the European job market via visas, presents new obstacles that undermine adherence to the Free Movement of People Protocol as well as facilitates the establishment of transit centers in Africa to perpetuate the violation of migrants' rights linked to these externalization measures.¹⁹⁰

2. Future of Border Securitization in the Context of Climate Displacement.

2.1 Violation of Migrants' Human Rights Through Externalization Practices.

Migrants are increasingly compelled to leave their homes due to a variety of factors, such as poverty, limited healthcare and education, scarce resources like water and food, inadequate housing, and the impacts of environmental degradation and climate change, along with the "traditional" causes of forced displacement namely as persecution and conflict. However, as a result of this decision, they are at higher vulnerability to discrimination, exploitation and marginalization, often deprived of their human rights and fundamental freedoms.¹⁹¹

The principle of non-refoulement and the prohibition of arbitrary or collective expulsion are recognized as customary norms of international law¹⁹² that must be followed by

¹⁸⁸ Schofberger, Irene, "Free movement policies and border controls: regional migration governance systems in West and North Africa and Europe, and their interactions." *MIGRATION IN WEST AND NORTH AFRICA AND ACROSS THE MEDITERRANEAN: TRENDS, RISKS, DEVELOPMENT AND GOVERNANCE*. Available at <<https://publications.iom.int/system/files/pdf/ch30-free-movement-policies-and-border-controls.pdf>>.

¹⁸⁹ D'Humières, Victoire. "European Union/African Cooperation: the externalisation of Europe's migration policies." *Foundation Robert Schuman*, April 30, 2018. Available at <<https://server.www.robert-schuman.eu/storage/en/doc/questions-d-europe/qe-472-en.pdf>>.

¹⁹⁰ Suah, Nyanquoi, op. cit.

¹⁹¹ OHCHR, "About migration and human rights." Available at <<https://www.ohchr.org/en/migration/about-migration-and-human-rights>>.

¹⁹² According to article 33 of the Refugee Convention, article 7 of the ICCPR, articles 4 and 19 of the Charter of Fundamental Rights to the European Union, and articles 3 of the European Convention on Human Rights and 4 of the Protocol n°4.

all States in order to ensure that no person is sent back to a place where they may face torture or other cruel, inhuman or degrading treatment or punishment, or other serious human rights violations.¹⁹³

Therefore, returning migrants and asylum seekers to third countries where they are subject to actions that result in severe physical pain, bodily harm, mental suffering, fear, or feelings of inferiority or humiliation to the victims, such as corporal punishment, sexual violence and prolonged detention in poor conditions, breaches the prohibition of non-refoulement.¹⁹⁴

In addition to violating the principle of non-refoulement, States engaging in externalization practices also violate the right to life, the prohibition of slavery and forced labour, the right to liberty and security, the right to respect for private and family life, the right to equality and non-discrimination and the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

According to the UN Human Rights Committee, the obligation to respect and protect the right to life requires States to avoid deporting, extraditing or otherwise transferring individuals to countries where there is a significant threat to their right to life.¹⁹⁵ As a result, this principle could be breached when migrants are returned to countries where serious environmental degradation or climate change impacts could jeopardize the effective enjoyment of the right to life and adversely harm their overall health, as demonstrated in the Teitiota case and outlined in article 6 of the ICCPR.¹⁹⁶

Libya is characterized by a weak legal system, which criminalizes irregular migration enforces penalties like deportation or detention. Additionally, there is no established legal framework for asylum seekers and refugees due to not being a signatory of the Refugee Convention, meaning they are not obligated to protect refugees in their jurisdiction. Migrants in Libya are refused asylum rights and deprived of their basic human rights, such as the rights to life, freedom, and personal security. Therefore, externalization of migration policies with

¹⁹³ Hicks, Peggy, “Unsustainable return practices heighten the vulnerability of migrants to precarious re-migration, putting them at risk of violence, exploitation, and abuse.” *Expert Meeting on protecting the human rights of migrants in the context of return*, March 6, 2018. Available at <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/Return/InformalSummary.pdf>>.

¹⁹⁴ International Commission of Jurists, “Migration and International Human Rights Law: A Practitioners’ Guide”, 2021, pp. 159-163.

¹⁹⁵ “General Comment No. 36”, CCPR, *op. cit.*, fn 46, para. 30.

¹⁹⁶ “Ioane Teitiota v ...”, para. 9.5.

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Libya has taken advantage of a loophole in international law where no country is clearly held accountable for the protection of migrants.¹⁹⁷

Refugees and migrants intercepted by the Libyan Coast Guard are subject to arrest and detention by the Department for Combating Illegal Migration and suffer from harmful treatment.¹⁹⁸ Migrants in Libya are housed in overcrowded and unhygienic detention centers where they endure inhuman conditions and face various human rights violations such as torture, cruel and degrading treatment, including sexual abuse, forced labor and other forms of slavery-like practices, illegal killings, and human trafficking.¹⁹⁹ According to a Gambian refugee,

“They beat me with a rubber hose, because they want money to release me. They called my family while beating me so they would send money”.²⁰⁰

Therefore, the EU’s externalization strategies violate the non-refoulement principle by allowing migrants to be sent back to Libya where they are exposed to these inhumane forms of exploitation. Moreover, Libya is also in violation of the prohibition of refoulement by deporting a large number of migrants to their countries of origin. The OHCHR reports that migrants who are forced to return to their home country frequently face serious human rights violations and abuses.²⁰¹

However, these externalization measures imply the violations of human rights on another dimension in Libya. Average temperatures have increased above the global average of 1.1°C since 1900 and it is expected that the rise will reach 2.2°C by 2040 and roughly 4°C by the end of the century. Climate change in Libya has led to an increase in the frequency and intensity of disasters and environmental degradation such as floods, sandstorms, land/mudslides and desertification.²⁰² Moreover, due to decreasing precipitation and salinity of groundwater, Libya is considered one of the most water scarce countries in the world, being one of the greatest threats in this country as it reduces water availability for agricultural and domestic consumption.²⁰³

¹⁹⁷ Jackson, Lauren. “The Impact of the European Union’s Externalization of Migration on the Human Rights of Migrants in Libya.” *Journal of Modern Slavery*, vol. 8, no. 1, 2023, pp. 73-76.

¹⁹⁸ Report of the Independent Fact-Finding Mission on Libya, 1 October 2021, A/HRC/48/83, para. 61; Report of the Independent Fact-Finding Mission on Libya, March 23, 2022, A/HRC/49/4, para. 46.

¹⁹⁹ Amnesty International, “Libya: European governments complicit in horrific abuse of refugees and migrants”, December 12, 2017. Available at <<https://www.amnesty.org/en/latest/press-release/2017/12/libya-european-governments-complicit-in-horrific-abuse-of-refugees-and-migrants/>>.

²⁰⁰ Ibid.

²⁰¹ Office of the United Nations High Commissioner for Human Rights, “Nowhere but back: Assisted return, reintegration and the human rights protection of migrants in Libya”, October 22, 2022.

²⁰² United Nations, “UN Climate Change Fact Sheet: Libya”, October 2022. Available at <<https://libya.iom.int/sites/g/files/tmzbd1931/files/documents/UN%20Climate%20Change%20Factsheet%20Libya.pdf>>.

²⁰³ UNDP, “Libya: Environment and Climate Change.”

In September 2023, Storm Daniel caused intense rainfall in Derma, resulting in the city's destruction from the flooding caused by two dams failure, killing more than 11,000 people and leaving over 10,000 others missing.²⁰⁴ In this sense, Julie Arrighi, Interim Director at the Red Cross Red Crescent Climate Center, emphasized “how climate change-fuelled extreme weather events are combining with human factors to create even bigger impacts, as more people, assets and infrastructure are exposed and vulnerable to flood risks”.²⁰⁵

Nevertheless, the aforementioned disaster sheds light on another aspect of climate change in Libya. Socioeconomic marginalization, political and intercommunal conflicts and failing infrastructure further exacerbate climate-related disasters. Frederic Wehrey views vulnerability to climate change as exacerbated by political instability, which further perpetuates the marginalization of socioeconomically disadvantaged communities and ethnolinguistic minorities, particularly regarding the access to water and energy infrastructures.²⁰⁶

On February 21, 2023, Tunisia experienced a significant decline in the protection of migrants' and refugees rights. Refugees and asylum seekers increasingly come to Tunisia from nearby countries like Libya, as well as from sub-Saharan Africa. As a result, President Saied publicly made discriminatory and offensive comments, connecting undocumented Black African migrants with criminal activities and a conspiracy to change Tunisia's population:

“Hords of illegal immigrants from sub-Saharan Africa are still arriving, bringing violence, crime, and unacceptable and illegal practices”.²⁰⁷

This lead to a surge in racist violence against Black African migrants, refugees and asylum seekers by Tunisian citizens and police authorities.²⁰⁸ According to the Human Rights Watch, these comprised beatings, torture, numerous arbitrary arrests and mass deportations, among various others. The security authorities removed 2,000 individuals from at least 16 African countries, including asylum seekers, pregnant women, and children, to isolated regions

²⁰⁴ Mourad, Yousef. “More than 10,000 missing in flooded Libyan city; 11,000 dead.” *Saharan Journal*. September 15, 2023. Available at <<https://sahanjournal.com/news-partners/libya-flooding-more-than-10000-missing-derma/#:~:text=According%20to%20the%20Libyan%20Red,people%20elsewhere%20in%20the%20country>>.

²⁰⁵ IFRC, “Libya floods: Climate change made catastrophe ‘far more likely.’” Geneva, September 19, 2023. Available at <<https://www.ifrc.org/press-release/libya-floods-climate-change-made-catastrophe-far-more-likely>>.

²⁰⁶ Wehrey, Frederic. “Climate Vulnerability in Libya: Building Resilience Through Local Empowerment.” *Carnegie Endowment for International Peace*, June 2024. Available at <<https://carnegieendowment.org/research/2024/06/libya-climate-vulnerability-adaptation-periphery?lang=en>>.

²⁰⁷ Human Rights Watch, “Tunisia: Events of 2023”. Available at <<https://www.hrw.org/world-report/2023/country-chapters/tunisia-0>>.

²⁰⁸ Amnesty International, “Tunisia 2023”. Available at <<https://www.amnesty.org/en/location/middle-east-and-north-africa/north-africa/tunisia/report-tunisia/>>.

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on Tunisia's borders with Libya and Algeria, where they had limited access to water, food, or healthcare.²⁰⁹

Similarly to Libya, in Tunisia, climate change has exacerbated existing socioeconomic inequalities that negatively impact vulnerable populations. The country's geographical position leaves it particularly vulnerable to climate change in the Mediterranean region, as rising temperatures are likely to bring reduced and more variable rainfall. The rising sea level will worsen saltwater intrusion, exacerbating, in addition to extreme climate events like floods and droughts, water scarcity, agricultural losses and infrastructure damage.²¹⁰

Therefore, Tunisia's heavy reliance on imported food has made the country structurally incapable of withstanding climate shocks like droughts that reduce agricultural productivity. Moreover, the ongoing challenges related to the limited water and food resources, worsen by increasing temperatures, have also negatively affected communities that are economically dependent on agriculture and fishing for their livelihoods, leaving them vulnerable to sudden increased in both food and energy prices.²¹¹

The UNHCR reported that by September 2023, more than 317,000 refugees had sought shelter in Egypt to escape Sudan's conflict, with 310,000 being Sudanese nationals and over 7,000 being from other countries.²¹² However, since the start of the Sudan conflict in April 2023, the Egyptian government has mandated that all Sudanese individuals must obtain visas before entering Egypt. This has resulted in unreasonable and life-threatening delays for asylum seekers and has led to thousands of displaced people stranded in dire humanitarian conditions.²¹³

Security authorities detain refugees and migrants from Afghanistan, Syria, and sub-Saharan African for illegally entering or staying in Egypt, subjecting them to cruel and inhuman conditions and forcibly sending some back without adequate assessment of their protection

²⁰⁹ Human Rights Watch, "Tunisia: Events of 2023".

²¹⁰ World Bank Group, "Tunisia Country Climate and Development Report." *CCDR Series*. Washington, DC: World Bank. Available at <http://hdl.handle.net/10986/40658>.

²¹¹ Yerkes, Sarah ; Arkeh, Joy. "What Tunisia's Municipalities Can Contribute to Climate Adaptation." *Carnegie Endowment for International Peace*, June 2024. Available at <https://carnegieendowment.org/research/2024/06/tunisia-climate-adaptation-regions-local-communities?lang=en>.

²¹² UNHCR, "Sudan Situation: UNHCR External Update", October 4, 2023. Available at <https://data.unhcr.org/en/documents/details/103833>.

²¹³ Human Rights Watch, "Egypt: Civilians Fleeing Sudan Conflict Turned Away", July 23, 2023. Available at <https://www.hrw.org/news/2023/07/13/egypt-civilians-fleeing-sudan-conflict-turned-away#:~:text=On%20June%2010%2C%20an%20Egyptian,to%20enter%20without%20a%20visa>.

status.²¹⁴ In May 2023, Alfred Djasnan, a refugee from Chad, was detained and sent to Rwanda after protests by sub-Saharan Africans about their living situation.²¹⁵

This illustrates the present government system in Egypt, which includes criminalizing, enforcing stricter sanctions, militarizing borders, and repressing civil society in migration, as part of limiting freedom of speech and expression. These human rights violations at the border, carried out in the name of fighting irregular migration, involved enforced disappearance, torture and detention in substandard facilities. They occurred without legal protection and went against Egypt's international obligations concerning human rights.²¹⁶

Additionally, with its economy based on agriculture and significant economic activity in coastal regions, Egypt remains one of the countries most at-risk in the world when it comes to climate change. Climate change in Egypt will result in increasing temperature and irregular rainfall patterns, with a worrying increase of 0.53°C per decade in the past thirty years.²¹⁷ Without any adaptation, Egypt is expected to be among the countries most impacted by rising sea levels in terms of the population at risk of annual flooding with a 4°C temperature increase and one-meter sea-level rise scenario.²¹⁸

Sea level rise in Egypt is expected to worsen saline water intrusion into coastal fresh groundwater aquifers and increase soil salinity. In addition to the increased severity of sandstorms and flash floods, climate change threatens agricultural sustainability and ecological systems, as well as leads to deteriorating of crop quality and lower productivity, which will have significant socioeconomic consequences and serious implications for agriculture, food security and public health.²¹⁹ Moreover, with a projected significant population increase by 2050, Egypt will face increased pressure for food and clean water while dealing with limited state capacity due to climate-related constraints on natural resources.²²⁰

²¹⁴ Amnesty International, "EU/Egypt: EU must address Egypt's 'abysmal' human rights record", January 23, 2024. Available at <<https://www.amnesty.org/en/latest/news/2024/01/eu-egypt-eu-must-address-egypts-abysmal-human-rights-record/>>.

²¹⁵ Amnesty International, "Egypt 2023". Available at <<https://www.amnesty.org/en/location/middle-east-and-north-africa/north-africa/egypt/report-egypt/>>.

²¹⁶ McKay, Emad. "Migration crisis: Europe throws Egypt's Sisi a new lifeline." *International Bar Association*, May 14, 2024. Available at <<https://www.ibanet.org/Migration-crisis-Europe-throws-Egypt-s-Sisi-a-new-lifeline>>.

²¹⁷ Africa, pp. 1285–1455,1364.

²¹⁹ Raey, Mohamed El. "Impacts and implications of climate change for the coastal zones of Egypt." In Michel, David ; Pandya, Amit, ed. lit. "Coastal zones and climate change." *The Henry L. Stimson Center*, 2010, pp. 31-50.

²²⁰ Hamzawy, Amr ; Al-Mailam, Mohammad ; Arkey, Joy. "Climate change in Egypt: opportunities and obstacles." *Carnegie Endowment for International Peace*, October 2023. Available at <<https://carnegieendowment.org/research/2023/10/climate-change-in-egypt-opportunities-and-obstacles?lang=en>>.

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Reports from the media and NGOs in 2021 detailed instances of Moroccan authorities committing human rights violations against migrants, such as conducting abusive raids on sub-Saharan migrants and arbitrarily detaining them.²²¹ Nevertheless, despite the implementation of a new migration and asylum policy in September 2013, Moroccan security forces continue to frequently assault and mistreat sub-Saharan migrants attempting to reach the Spanish enclaves.²²²

As for its exposure to climate change impacts, the temperature will continue to increase under all temperature scenarios until the end of the 21st century. With a medium level of greenhouse gas concentration, it is estimated that by 2050, the average annual temperature will rise by 1.5°C to 1.8°C compared with the reference period of 1981-2018. In a scenario with high levels of emissions, temperatures could reach between 2°C to 3°C.²²³ Therefore, the rise in annual temperature and reduced precipitation, leading to drought and desertification, are among the most disruptive climate impacts in Morocco, with extreme weather events, such as storms and flash flood, also increasingly becoming more frequent.²²⁴

Morocco faces high levels of water scarcity that have deprived their citizens, especially farming communities, of adequate water supplies.²²⁵ The country's natural water availability is increasingly affected by droughts in addition to the salinity of groundwater and soils in recent decades, placing Morocco in a situation of structural water stress (below 1,000 m³, per capita availability of renewable water resources). Therefore, the increased risk and intensity of water scarcity and drought throughout the country, in addition to increased frequency of intense rainfall events and floodings, is expected to impact sectors such as agriculture, water and food security, human health and infrastructures.²²⁶

In Mauritania, climate change is expected to worsen existing problems such as land and infrastructure degradation water stress and food insecurity by causing more frequent and severe

²²¹ Human Rights Watch, "Morocco and Western Sahara: Events of 2021." Available at <<https://www.hrw.org/world-report/2022/country-chapters/morocco-and-western-sahara>>.

²²² Human Rights Watch, "Morocco: Abuse of Sub-Saharan Migrants", February 10, 2014. Available at <<https://www.hrw.org/news/2014/02/10/morocco-abuse-sub-saharan-migrants>>.

²²³ IEA, "Climate Resilience for Energy Transition in Morocco." *Paris, IEA*, 2023. Available at <<https://www.iea.org/reports/climate-resilience-for-energy-transition-in-morocco>>.

²²⁴ World Bank Group, "Climate Risk Country Profile: Morocco." *WBG, Washington, DC*, 2021. Available at <https://climateknowledgeportal.worldbank.org/sites/default/files/2021-09/15725-WB_Morocco%20Country%20Profile-WEB.pdf>.

²²⁵ Shehabi, Manal. "Just Energy Transitions? Lessons from Oman and Morocco." *Carnegie Endowment for International Peace*, May 30, 2024. Available at <<https://carnegieendowment.org/research/2024/05/morocco-oman-energy-transition-oil-exporting-renewable?lang=en>>.

²²⁶ World Bank Group, "Morocco Country Climate Development Report." *WBG, Washington, DC*, 2022, p. 4. Available at <<https://www.worldbank.org/en/country/morocco/publication/morocco-country-climate-and-development-report>>.

natural disasters. For example, after a severe drought in 2021, 20% of the population experienced severe food insecurity.²²⁷ Projected temperature increase of 2.0 to 4.5°C by 2080, based on the future GHG emissions scenario, will result in crops damage, increased water shortage, economic losses, agricultural damage as well as health concerns, exacerbated by the country's high level of poverty and high reliance on climate-sensitive sectors like agriculture, fisheries, mining and livestock.²²⁸

According to Josefa Leonel Correia Sacko, Commissioner for Agriculture, Rural Development, Blue Economy and Sustainable Environment at the African Union Commission:

“Africa, like other regions, has come to terms with the reality that climate change is already happening. Left untamed, the coming decades and years would easily be characterized by severe climate-induced pressure on the continent's economies, livelihoods and nature. Given Africa's high exposure, fragility, and low adaptive capacity, the effects of climate change are expected to be felt more severely. People's health, peace, prosperity, infrastructure, and other economic activities across many sectors in Africa are exposed to significant risks associated with climate change”.²²⁹

Therefore, the loss of coastal land caused by rising sea levels, water and food insecurity, economic losses, agricultural damage, and health concerns related to the impacts of climate change may impact the migration decisions of the people living in these coastal African regions in seeking better opportunities for their livelihoods. The increasing human population and the rapid degradation of natural resources will likely lead to a rise in the numbers of displaced people, both within countries and internationally, bringing about a new and unprecedented phenomenon.²³⁰

Nevertheless, the impacts of climate change are expected to hasten intraregional displacement, particularly shifts from rural to urban areas, rather than across borders. According to the IOM in its 2019-2023 Strategic Vision,

²²⁷ Ndoye, Anta [et al.]. “Can Mauritania Reduce the Impact of Climate Disasters on its Economy.” *International Monetary Fund*. February 14, 2023. Available at <<https://www.imf.org/en/News/Articles/2023/02/13/cf-how-mauritania-can-reduce-the-impact-of-climate-disasters-on-its-economy>>.

²²⁸ Federal Ministry for Economic Cooperation and Development, “Climate Risk Profile: Mauritania.” Available at <https://www.pik-potsdam.de/en/institute/departments/climate-resilience/projects/project-pages/agrica/giz_climate-risk-profile-mauritania_en_final>.

²²⁹ World Meteorological Organization, “State of the Climate in Africa 2022.” September 4, 2023. Available at <<https://wmo.int/publication-series/state-of-climate-africa-2022>>.

²³⁰ Van Wyk, Sanita ; Ruppel, Oliver. “Climate-change-induced movement of persons in Africa: Human rights responses to aspects of human security.” In Ruppel, Oliver C. ; Roschmann, Christian ; Ruppel -Schlichting, Katharina, ed. lit. “Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility.” *Nomos Verlagsgesellschaft*, 2013, pp. 799-826.

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“Climate change will have a strong influence over future dynamics and become part of the intricate set of factors fueling internal movement (...) and the transfer of populations from rural to urban areas”.²³¹

In a recent publication released by IOM (2022), migration driven climate and weather related hazards was revealed to have reached unprecedented levels with 24.5 million persons internally displaced attributed to climate-related disasters. Additionally, by 2050, West Africa alone could record 32 million while the total number of displaced persons due to climate change from the rest of the continent could reach 86 million if no proactive actions its taken.²³²

Nevertheless, migrating from rural to urban areas could serve as an initial state for transitioning to international migration. This can happen because urban migrants earn more income and acquire more information about other global opportunities, enabling them to choose to move abroad.²³³ However, moving to urban-transit areas will most likely exacerbate vulnerabilities such as economic instability, political turmoil, conflict, climate change effects, among other reasons that threaten their lives, prompting individuals to involuntarily migrate to Europe in search of improved living conditions.

The International Organization for Migration (IOM) survey reveals that economic reasons are the primary drivers of migration within the Eastern Mediterranean and the Central Mediterranean Route, followed by war or conflict. However, migrants arriving in Spain via the Western Mediterranean Route also report economic reasons and slow climate changes in their origin countries. For instance, climate change impacts are reported by about 10% of the total sample and 18% of migrants interviewed.²³⁴ This suggests that climate change is an emerging significant driver of global movements, propmting future surveys in several countries in Africa to include more targeted questions on climate-induced and climate-linked movement.

Since the start of the century, the mass movement of people from Africa to Europe has been recognized as a significant security threats linked to climate change. European security analysts have warned that climate-induced movement could lead to increased tensions in transit

²³¹ International Organization for Migration, “IMO Strategic Vision: 2019-2023: Setting a Course for IOM.” November 15, 2019. Available at <<https://governingbodies.iom.int/system/files/en/council/110/C-110-INF-1%20-%20IOM%20Strategic%20Vision.pdf>>.

²³² International Organization for Migration, “Annual Report 2022.” IOM, Geneva, 2023. Available at <<https://publications.iom.int/books/annual-report-2022>>.

²³³ Williams, Wendy. “African Migration Trends to Watch in 2024.” *African Center for Strategic Studies*. January 9, 2024.

²³⁴ International Organization for Migration, “DTM Europe — Migrants Travelling to Europe by land and by sea. Journeys, Vulnerabilities and Needs of migrants arriving in Greece, Italy, and Spain in 2023.” *Europe*, IOM, 2024. Available at <<https://dtm.iom.int/reports/europe-migrants-travelling-europe-land-and-sea-journeys-vulnerabilities-and-needs-migrants>>.

and destination areas, and that Europe should anticipate a significant rise in migratory pressure.²³⁵

“there will be millions of ‘environmental’ migrants by 2020 with climate change as one of the major drivers of this phenomenon [...]. Europe must expect substantially increased migratory pressure”.²³⁶

The security approach that has been implemented between the EU and European countries and African countries aims to address risks associated to future possible migration scenarios and the security concerns tied to each alternative. Specifically, it has recognized emerging security risks posed by alternative routes of irregular migration, which require securitization measures like externalization agreements on migration management.

Therefore, the implementation of externalization agreements and measures by the EU and European countries with African countries such as Libya, Egypt, Tunisia, Morocco and Mauritania, linked to violations of human rights and core principles at international and European levels, will hinder the opportunity of international protection for climate-induced displaced individuals. Due to the growing impacts of climate change in North African countries, along with rising predictions of climate-driven displacement to Europe, externalization agreements will neglect affected individuals, trapping them in a dire situation.

Externalization agreements between countries from these continents exacerbate human rights violations related to the dangerous and shifting migration pathways from Africa to Europe. These violations include arbitrary detention, inhumane conditions and abuses in detention centers, and deportation procedures that violate the right to asylum, the prohibition against non-refoulement, and deprive migrants from their rights to life and freedom. Moreover, these agreements create immobility within countries that are highly vulnerable to climate-related disasters, exposing them to additional human rights violations related to the impacts of climate change.

However, these externalization agreements are part of a widespread trend towards informal cooperation on migration, which has resulted in a range of mechanisms that vary in form and name from traditional international treaties. At the level of the European Union, informal agreements have been reached between the EU and third countries that are not legally

²³⁵ Goff, Leo ; Zarin, Hilary ; Goodman, Sherri. “Climate-Induced Migration from Northern Africa to Europe: Security Challenges and Opportunities.” *The Brown Journal of World Affairs*, vol. 18, no. 2, 2012, pp. 195-213. Available at <<http://www.jstor.org/stable/24590873>>.

²³⁶ Council of the European Union; European Commission. “Climate change and international security: Paper from the High Representative and the European Commission to the European Council.” *Publications Office*, 2008.

binding under international law.²³⁷ Therefore, these informal agreements do not follow formal protocols and disregard human rights protection.

These soft deals are linked to less stringent forms of Parliamentary supervision, as they do not adhere to formal parliamentary approval or authorization processes, resulting in reduced accountability measures. As such, challenging them in court is difficult, which is why they usually avoid judicial scrutiny and don't face accountability for their human rights concerns. A noble illustration of this is the ruling of the Court of Justice of the European Union (CJEU) regarding the EU-Turkey Statement. As per the CJEU, it does not have the jurisdiction to review the legality of this agreement, under Article 263 of the TFEU, since it is not classified as a

“measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union”.²³⁸

This lack of procedural legal safeguards, such as the possibility of raising legal challenges, leads to migration policies that undermine the values the EU strives to uphold and promote, especially human rights.²³⁹ These informal externalization partnerships reduce the protection of human rights because they lack democratic oversight in their decision-making and implementation and offer no judicial protection, disregarding their human rights compliance.²⁴⁰

Climate-induced displaced individuals must be able to have their human rights respected and protected during their journey, and they should be able to have access to international protection when seeking safer and better living conditions. However, the current international protection system and suggested solutions won't offer adequate or viable protection for these individuals due to the rise of externalization of migration management by the EU and European countries with African regions.

I have emphasized the importance of protecting fundamental human rights essential for a sustainable environment, including the right to life, the right to an adequate standard of living,

²³⁷ Frasca, Eleonora, Roman, Emanuela. “The Informalisation of EU Readmission Policy: Eclipsing Human Rights Protection Under the Shadow of Informality and Conditionality.” *European Papers*, vol. 8, no. 2, 2023, pp. 941.

²³⁸ “EU-Turkey Statement of 18 March 2016”, Court of Justice of the European Union, Case T-257/16, February 28, 2017, paras. 70-74. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016TO0257>.

²³⁹ Cardwell, Paul J., Dickson, Rachel. “‘Formal informality’ in EU external migration governance: the case of mobility partnerships.” *Journal of Ethnic and Migration Studies*, vol. 49, no. 12, 2023, pp. 3123. Available at < <https://doi.org/10.1080/1369183X.2023.2193743>>.

²⁴⁰ Frasca, Eleonora, Roman, Emanuela. “The Informalisation of EU Readmission Policy: Eclipsing Human Rights Protection Under the Shadow of Informality and Conditionality.” *European Papers*, vol. 8, no. 2, 2023, pp. 950.

the right to food and water, and the right to the highest attainable standard of physical and mental health, among others. When these rights are threatened due to ineffective response to climate change, eventually the right to asylum should be ensured to allow people to flee their country to seek a dignified life, in accordance with human rights protection, something not upheld by these externalization agreements.

Understanding that not only will they undermine the right to move and seek asylum, preventing migrants and asylum seekers from improving their living conditions, but also exacerbate human rights violations in African countries, creating immobility and worsening the living conditions for these individuals. Science shows that climate change will increasingly impact people's lives, and these agreements guarantee that those in more vulnerable countries lose their right to life and their right to asylum.

Moreover, Ama Francis has acknowledged that Free Movement Agreements (FMAs), described as “provisions within regional economic integration schemes that liberalize migration restrictions between participating memberstates”, can offer important protection to climate displaced persons, a concept widely adopted by African countries. In particular, she highlights that these measures can improve individual and structural economic resilience and avoid the political challenges of establishing an international legal framework for climate displacement. Additionally, they offer a framework that respect rights and facilitates mobility in response to climate-driven disasters.²⁴¹

In fact, the Free Movement of People Protocol by the African Union aims to enhance African integration by removing obstacles that limit movement and impede economic growth, aligning with Africa's perspective in the importance of human movement for regional economic progress. Additionally, I have highlighted that the OAU Convention Governing the Specific Aspect of the Refugee Problem in Africa has broadened the definition of “refugee” that opens the opportunity for protection in the context of climate displacement, demonstrating African countries' willingness to provide international protection to other migratory movements beyond those caused by conflict and persecution, if applicable.

However, the growing implementation of strict border control measures with the EU has weakened the “free movement” approach advocated by African countries and challenged the idea that migration can be beneficial for the development of European countries. Indeed, the collaboration of African countries in carrying out the European external migration strategy

²⁴¹ Francis, Ama. “Free-Movement Agreements & Climate-Induced Migration: A Caribbean Case Study.” *Journal of International Affairs*, vol. 73, no. 1, 2019, pp. 123-34. Available at <<https://www.jstor.org/stable/26872782>>.

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poses challenges that hinder compliance with Free Movement Agreements, as African migration controls begins to be influenced by the Europe's approach on migration.²⁴²

While the EU external policy sought to involve ongoing dialogues with African countries to enhance mutual goals, building stronger economic cooperation and promoting sustainable development based on shared values and interests, the reality is there are political differences related to migration control. Migration continues to play a crucial role in the development strategies of African countries, benefiting communities and livelihoods. Therefore, the externalization agreements on migration management highlight the contradiction between the EU's migration objectives and the nature of African societies, which rely heavily on migration, leading to severe consequences for the local population.²⁴³

Therefore, the proposed solutions to establish an international protection system for climate-induced displaced persons in the absence of international framework and guaranteed legal rights are likely to become unsuccessful as a result of externalization agreements in different potential scenarios. To begin with, climate-induced displaced individuals are unable to move from African countries to Europe, which can result in immobility and worsen the already inhumane living conditions in those countries exacerbated by the impacts of climate change.

On the other hand, due to the lack of emphasis on addressing root causes of migration in migration policies, climate-induced displaced persons will seek alternative migration routes despite externalization policies, leading to dangerous journeys and encounters with human rights abuses at EU borders, followed by deportation to countries where they also experience human rights violations. Therefore, considering the increasingly restricted migration policies and the failure to address structural migration challenges, neither expanding the definition of "refugees", establishing an individual protection framework in the context of climate displacement, nor rights-based protection approach through litigation will adequately address the challenges that climate-induced displaced individuals will face.

3. Callout for States on Climate Displacement.

3.1 Obligation to Adequately Protect Climate-Induced Displaced Persons: Principle of "Common but Differentiated Responsibilities".

²⁴² Bisong, Amanda. "The Failure of European Policy on Africa and Migratory Movements." *European Institute of the Mediterranean*. Available at <<https://www.iemed.org/publication/the-failure-of-european-policy-on-africa-and-migratory-movements/>>.

²⁴³ Idem.

Being one of the most economically developed regions in the world, the European Union has played a significant historical role in emitting substantial amounts of greenhouse gases that contribute to climate change. The EU27 is ranked among the six largest contributors to greenhouse gas emissions worldwide, accounting for a share of 6.67 per cent of the global total in 2022, according to the Emissions Database for Global Atmospheric Research report.²⁴⁴

Nonetheless, the EU has taken steps to assist low- and middle-income countries facing greater vulnerability to the impacts of climate change, and which may have less capacity to adapt and transition to net zero emissions. This cooperation encompasses not only financial assistance, for instance with the Strategy for Financing the Transition to a Sustainable Economy²⁴⁵, but also technical support, technology transfer, and institutional capacity building, constituting significant aid worthy of recognition.

However, while the EU extends assistance to the countries most vulnerable and affected by such impacts, its approach to migration may pose challenges when people are forced to flee their homes to survive climate change-induced disasters. The support provided should also encompass the assurance of respect and protection for human rights upon their arrival in European countries, an aspect that, as per the prevailing practices of EU Member States, may not be prioritized when weighed against border securitization.

In order to establish a healthy environment for the enjoyment of fundamental human rights, it is important that climate-induced displaced people are adequately protected. Therefore, challenges such as establishing a causal responsibility to states emitting the highest levels of greenhouse gases for impacts such as forced displacement should not be viewed as unbeatable obstacles to assigning legal responsibility, especially on a collective level.

As outlined, scientific evidence indicates that impacts of climate change disproportionately impact developing countries, with developed nations being the primary contributors to both emissions and resultant impacts. While pinpointing the exact countries accountable for a particular climate change-related event or determining the extent of their contribution remain challenging, a connection can be established between countries emitting high levels of carbon and the climate change impacts disproportionately affecting the most vulnerable regions.

²⁴⁴ Joint Research Centre (European Commission), “GHG emissions of all world countries – 2023.” *Publications Office of the European Union*, 2023. Available at <<https://www.iemed.org/wp-content/uploads/2023/09/Failure-European-Policy-Africa-Migrations-Bisong-IEMedYearbook2023.pdf>>.

²⁴⁵ European Commission, “Strategy for Financing the Transition to a Sustainable Economy”, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2021/390 final.

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Therefore, it is crucial to embrace a broad notion of responsibility that includes common obligations of states for universal interests, such as the environment.²⁴⁶ As such, it is essential that addressing issues like the threat to life and inhuman or degrading treatment, as well as other damages related to climate change, be guided by the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC).²⁴⁷

The Treaty on the European Union underscores the EU's role and responsibility to protect human rights globally, emphasizing that its external relations should universally and consistently adhere to this principle.²⁴⁸ As a region with a high concentration of greenhouse gases (GHGs), the EU bears responsibility for the impacts on regions like Sub-Saharan Africa and the Pacific Small Island Developing States (PSIDS), especially when residents are compelled to leave their countries due to such impacts.

This includes practical and effective humanitarian support for climate-induced displaced people arriving at European borders. Yet, current policies lack a comprehensive approach that can effectively deal with emerging risks by understanding the root causes of forced displacement and actively working towards durable solutions, rather than focus on reactive crisis responses. This entails facilitating safe and legal pathways for individuals to reach the EU²⁴⁹, rather than leaving vulnerable people at the mercy of criminal networks or trapped in climate hotspots, facing human rights violations.

The principle of Common But Differentiated Responsibilities (CBDR) remains particularly important concerning climate change-induced displacement.²⁵⁰ It embodies fundamental principles of equity in international law, affirming that while all states bear responsibility for addressing global environmental degradation, it is not equal. Therefore, it ensures a balance between the obligation of all states to assume responsibility for global climate challenges through the element of “common responsibility”, and the need to acknowledge the significant disparities in economic development levels among states, which are connected to their contributions and capacities for addressing such challenges.²⁵¹

²⁴⁶ “Change in the Earth’s climate and its adverse effects are a common concern of humankind”. United Nations, “United Nations Framework Convention on Climate Change”, Preamble.

²⁴⁷ Article 3(1) of the UN Framework Convention on Climate Change acknowledges the different capabilities and differing responsibilities of individual countries in addressing climate change, stating the “developed countries Parties should take the lead in combating climate change and the adverse effects”. Mayer, Benoit, op. cit., p. 357.

²⁴⁸ Articles 2, 3(5) and 21, TEU.

²⁴⁹ Vankova, Zvezda. “Refugee Labour Mobility to the EU: A Tool Contributing to Fairer Sharing of Responsibilities in the Context of Forced Displacement?” *Refugee Survey Quarterly*, vol. 43, no. 1, 2024, pp. 53-73. Available at <<https://doi.org/10.1093/rsq/hdad023>>.

²⁵⁰ United Nations, “United Nations Framework Convention on Climate Change”, Article 3.

²⁵¹ Abeyasinghe, Achala C. ; Arias, Gilberto. “CBDR as a Principle of Inspiring Actions Rather than Justifying Inaction in the Global Climate Change Regime.” In Ruppel, Oliver C. ; Roschmann, Christian ; Ruppel-

Greenhouse gas (GHG) emissions predominantly stem from centuries of carbon-intensive industrial activity in developed states. Consequently, this principle embodies a compromise between the perspectives of developed and developing countries, whereby developed nations bear a larger burden of responsibility owing to their historical contribution to climate change.²⁵² Therefore, developed countries are obligated to provide support to vulnerable developing countries in both mitigating and adapting to the adverse impacts of climate change.

The discourse on responsibility underscores the inequity in the international allocation of potential climate change impacts when weighted against the distribution of benefits from substantial greenhouse gas emissions.²⁵³ Displacement is one of the many effects of climate change, particularly affecting populations of developing countries, who are highly vulnerable to human rights violations resulting from climate-related events. Therefore, this matter shall be addressed through an equitable framework that prioritizes leadership from developed countries, which entails fostering global climate action while acknowledging the differentiated responsibilities among countries.

However, this principle lacks universal consensus among developed nations²⁵⁴, leading to its neglect in environmental governance debates. Because its content is not strictly defined, CBDR does not inherently create legal obligations for states. Therefore, these countries raise certain questions concerning its applicability, particularly regarding the identification of responsible actors and the precise nature of their responsibilities.²⁵⁵ Consequently, CBDR has not evolved into a universally accepted norm within the international climate regime. According to Thomas Leclerc, it has become “legally meaningless”, merely encouraging states to evaluate their contributions on climate action without scrutiny.²⁵⁶

Even so, the principles of cooperation and solidarity mandates that States work together. According to Article 80 of the Treaty on the Functioning of the European Union

Schlichting, Katharina, ed. lit. “Climate Change: International Law and Global Governance: Volume II: Policy, Diplomacy and Governance in a Changing Environment.” *Nomos Verlagsgesellschaft mbH*, 2013, pp. 235-258.

²⁵² Van Wyk, Sanita ; RUPPEL, Oliver, op. cit., pp. 816-820.

²⁵³ Mayer Benoit. “Governing International Climate Change-Induced Migration.” In Elliott, Lorraine, ed. lit. “Climate Change, Migration and Human Security in Southeast Asia.” *S. Rajaratnam School of International Studies*, 2012, pp. 28-45.

²⁵⁴ Epstein, Charlotte. “Common but differentiated responsibilities.” March 20, 2023. Available at <<https://www.britannica.com/topic/common-but-differentiated-responsibilities>>.

²⁵⁵ Kolmas, Michal. “The Failure of CBDR in Global Environmental Politics.” *Global Environmental Politics*, vol. 23, no. 1, 2023, pp. 11-19. Available at <http://dx.doi.org/10.1162/glep_a_00681>.

²⁵⁶ Leclerc, Thomas. “The Notion of Common but Differentiated Responsibilities and Respective Capabilities: A Commendable but Failed Effort to Enhance Equity in Climate Law.” In Mayer, Benoit ; Zahar, Alexander, ed. lit. “Debating Climate Law.” *Cambridge University Press*, 2021, pp. 76-85. Available at <<https://doi.org/10.1017/9781108879064.007>>.

(TFEU), “the policies of the Union (...) shall be governed by the principle of solidarity and fair sharing of responsibility (...) between the Member States”, including migration policies.²⁵⁷ Guided by these principles, developed countries must realign their efforts with the CBDR principle, otherwise its disregard this principle will undermine the credibility of the climate regime and isolate developing regions. This includes acknowledging responsibility for causing many global environmental issues and providing assistance to developing countries, including leading efforts to protect the rights of individuals displaced by climate change impacts.

3.2 Preventive Work to Avoid the Violation of Climate-Induced Displaced Persons’ Rights.

In accordance with the principle of solidarity, States must strive to protect the rights of people in general, and for the purposes of this thesis, the most vulnerable people affected by the impact of climate change, including in situations of displacement. Therefore, efforts should focus, primarily, on minimizing the negative impacts of climate change on the environment and on society by reducing our greenhouse gas emissions, transitioning to renewable energy sources and improving the sustainability of our supply network.

Eliminating vulnerabilities and exposure to climate-related disasters shall be a focus to either create resilience in communities to adapt to climate change, reducing the risks associated with displacement. Therefore, states, international organizations and civil society shall make cooperative efforts in prevention, namely on adaptation, mitigation, resilience, and capacity-building of communities more vulnerable and affected. The capacity-building could include the teaching new processes on how to use land, innovative techniques to limit the degradation of natural resources, or providing social protection to those dependent on such resources.

Moreover, it is important to address climate change as a root cause of displacement, as a better understanding of the underlying circumstances that make people decide to flee their home country, in order come up with orderly, regular, and safe pathways for displacement, in general and in the context of climate change. Therefore, focus should be on transitioning towards more legal migration, by providing assistance in response to climate-related emergencies, emphasizing education and job opportunities for those displaced, better living conditions and livelihoods and economic inclusion by recognizing the value of labor. Therefore, these long-term and better-managed solutions are capable to provide shelter and protect human rights in the context of climate-induced displacement.

²⁵⁷ European Parliament, “The Implementation of Article 80 TFEU on the principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States in the field of border checks, asylum and immigration.”

Nonetheless, the most important improvement that shall be made in the matter discussed in this thesis is reassessing the partnerships established between the EU and Africa in order to transition from a border control focused cooperation towards a human rights-centered and genuine alliance that can address the challenges of migration from Africa to Europe. The global landscape is evolving with uncertainties, marked by a shift towards prioritizing individuals national interests over collective goals. Yet, this approach falls short in addressing the interconnected challenges we currently face.

Migration management should prioritize human beings over economic or political interests, fostering international cooperation to tackle global economic, social, and security issues, particularly those involving human rights violations. Climate change can subject people to dire conditions that compel them to leave. Therefore, the focus on solidarity and humanitarian treatment underscores the importance of these efforts in developing a comprehensive approach based on human rights focused on the protection of climate change-induced displaced persons.

Therefore, fostering agreements and partnerships shall be based on solidarity and burden-sharing, rather than relying on alliances that outsource migration management and humanitarian responsibilities to other countries to prevent migrant entry, based on burden-shifting. They should aim to develop policies or mechanisms that facilitate the reception and integration of individuals more vulnerable to climate change in a comprehensive manner, guaranteeing fundamental human rights. These include non-refoulement and freedom of movement, as well as access to education and employment opportunities, the right to adequate housing, and, importantly, fostering social cohesion between displaced individuals and the host population.

In addition to protecting human rights being an international obligation, it is crucial to understand that the international legal framework allows for a balanced long-term migration governance that can respect and protect the rights of all individuals, enhance state sovereignty and promote respect for the rule of law. State sovereignty is not necessarily undermined when the rights of both regular and irregular migrants are protected, as the African Union's Free Movement of People Protocol can illustrate. An effective management of migration can turn out a major driver of development and prosperity.

Therefore, credible and cooperative efforts between the EU and African countries should prioritize the protection of migrants and their human rights, understanding the root causes of displacement, and effectively integrating migrants into host societies through a comprehensive approach. This shall lead to an effective system that fosters support and

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assistance through collaboration between states and communities most impacted by climate-induced displacement, through long-term humanitarian aid solutions that ensure a dignified quality of life and rights protection.

Conclusion.

Establishing partnerships between European countries and African countries, particularly vulnerable to the impacts of climate change, with the aim of shifting migration management to non-European nations will hinder the effective international protection of individuals affected by climate-induced displacement. This will result in people living in these unacceptable inhumane living conditions that infringe upon their human rights. Therefore, implementing this external policy for migration control will render protection unfeasible amidst climate-related displacement and will worsen violations of human rights.

Climate-induced displacement is a new concept, therefore numerous concerns are being raised. Currently, we are in a time where despite attempts, the international community's failure to lower greenhouse gas emissions has led to unmanageable situations for the global population, particularly in regions like Africa which are at high risk of climate change impacts with limited resources. The reality is that the growing occurrence and intensity of climate change effects have created unbearable living conditions for individuals in these areas, prompting some to migrate to different countries on the same continent or even outside the continent, seeking better lives in places like Europe.

Nevertheless, being a developing phenomenon, many concerns arise, particularly about the lack of legal protection for these individuals. Indeed, the current international protection system fails to adequately protect individuals impacted by climate change who are forced to relocate. Climate change's consequences do not fit the Refugee Convention definition of "refugee", and the European Union still doesn't address climate change effectively, notably absent from the New Pact on Migration and Asylum.

Therefore, scholars have been focusing more on tackling this problem of climate-related displacement to address the absence of international protection provided. However, the proposed solutions for addressing the deficiencies in global legislation related to climate-induced displacement may present certain practical obstacles. Extending the definition of "refugee" to include those impacted by climate change poses challenges in assigning accountability to a state as a persecuting entity, leading to inadequate protection due to the shortcomings in the current refugee framework and prevailing political resistance.

Concerning the development of a new global instrument for addressing displacement caused by climate change, it has been suggested to avoid the limitations of the existing refugee system. However, because of variations on how climate change could affect each country based on political, cultural, demographic and geographic circumstances, a universal agreement may not be capable of providing complete and effective protection for all the specific needs

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required. Additionally, once more, there is a lack of alignment between the political willingness and the establishment of a new mechanism that legally imposes new responsibilities.

There has been a growing emphasis on addressing climate change through legal action and court rulings, as numerous cases have been brought to hold governments and authorities accountable for the effects of climate change on communities. It can effectively impact law enforcement, set new legal standards and drive legislative and procedural changes by influencing decision-makers. However, challenges with causal connection and jurisdictional issues restrict ensuring international accountability for climate change impacts

Nevertheless, a major challenge that individuals displaced by climate change encounter is the impact that externalization of migration control agreements has on migrants, asylum seekers, and particularly on those impacted by climate change and compelled to move. The outsourcing of migration management by European countries to African countries involves the establishment of detention centers where irregular migrants endure inhumane living conditions and suffer from physical and mental abuse by authorities in the African nations participating in these agreements. Additionally, they result in some migrants being deported back to their home countries, violating the principle of non-refoulement and complying to human rights abuses that they fled from.

The European Union shares responsibility for human rights abuses towards migrants and asylum seekers in African nations like Egypt, Libya, Tunisia, Morocco and Mauritania. The implementation of these externalization agreements illustrates that Europe is based on a fundamental principle: having full and efficient control over its borders to return unwanted and deemed criminal or dangerous migrants. Therefore, they disregard the respect and protection for the lives of these individuals and their human rights.

Specifically, these alliances are made with countries that are highly at risk and impacted by climate change. In North and West African countries, communities heavily dependent on primary activities are facing growing challenges from climate change. This includes the declining agricultural productivity, resulting in food and water shortage, and an increase in natural disasters like droughts and floods. These hardships are forcing many to migrate to Europe in search of better living conditions.

Therefore, delegating migration management responsibilities will overlook and worsen breaches of human rights linked to climate change effects, making it nearly impossible to safeguard individuals displaced by climate change in African nations. Those forced to leave their homes due to climate change will be left to endure the harsh living conditions caused by climate change, and the undignified conditions in third countries.

Attempting to reach European borders will mean going through dangerous journeys facing inhumane conditions, with the risk of human rights violations and deportation to their home countries. On the other hand, this also causes immobility in countries plagued by human rights abuses and climate change, trapping people in degrading circumstances. Thus, the suggested alternate solutions will be unsuccessful because of the increasing use of external agreements for controlling migration, hindering the possibility of providing international protection and humanitarian aid to people in areas heavily impacted by climate change and displacement.

International law has failed to provide necessary protection for people who are forced to flee their homes due to severe climate change. The absence of legal recognition has led to unacceptable instances of clear human rights violations, especially the fundamental and universal right to a dignified life, mirroring the legal void that those impacted by climate change are in, as well as the EU's political reluctance and disregard towards displaced persons.

The human rights implications of these externalization agreements are a signal that there is a pressing requirement to uphold, protect and include migrants and asylum seekers in our society as equal human beings worthy of a dignified and respectful life. However, this will only be achieved by establishing a migration system focused on saving lives and protecting human rights, instead of emphasizing border security measures.

By continuously working to reduce vulnerabilities and exposure to climate change effects, we can adopt a human rights-centered strategy for addressing climate-induced displacement. Nevertheless, it is crucial to focus on addressing climate change as a main driver of displacement and irregular migration. It will be essential to address the underlying reasons for migration to establish legal and safe migration routes, ultimately developing lasting solutions to offer protection amid displacement and climate change within European and African countries.

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