

SUBMITTED APRIL 14, 2022

## SUBMITTED INPUT

An NGO Input for the Special Rapporteur's Report on The Impact of Climate Change and the Protection of the Human Rights of Migrants, Submitted by the Center for the Human Rights of Children, Loyola University School of Law

SUBMITTED BY

**Center for the Human Rights of Children  
Loyola University Chicago, School of Law**  
25 E. Pearson St. Chicago, IL 60611, USA  
(312) 915-7541 (t) [www.luc.edu/chrc](http://www.luc.edu/chrc)

Katherine Kaufka Walts, JD, Director,  
[kkaufkawalts@luc.edu](mailto:kkaufkawalts@luc.edu)

Sarah J. Diaz, JD, LLM, Associate Director,  
[sdiaz10@luc.edu](mailto:sdiaz10@luc.edu)

Kellie Tomin, Second Year Law Student



**Input for the Special Rapporteur on the Human Rights of Migrants on the Impact of Climate Change and the Protection of the Human Rights of Migrants by the Center for the Human Rights of Children, Loyola University Chicago School of Law, April 14, 2022**

**Acknowledgements**

This input was researched and written by Kellie Tomin, 2L Loyola School of Law and [Prof. Sarah J. Diaz](#), JD. LL.M., Associate Director of the Center for the Human Rights of Children. [Prof. Katherine Kaufka Walts](#), Director, Center for the Human Rights of Children provided invaluable edits, feedback, and analytical contributions to the development of this input.

The Center for the Human Rights of Children (CHRC) thanks our Loyola colleagues who have contributed critical content to this input including, especially, [Prof. James Gathii](#), Wing-Tat Lee Chair in International Law and Professor of Law for comments in support of the input and [Prof. Carmen Gonzalez](#), Morris I. Leibman Professor of Law whose unparalleled climate migration research is driving a firmer understanding of the interconnectivity between the climate crisis, migration, and human rights.

**Table of Contents**

- I. Reconceiving Climate Inequity as Persecution Against Protectable Groups including Children .....2**
- II. The Legal Paradigms and the False Narrative Surrounding Climate Migration.....3**
  - a. The Climate Impact Paradigm .....3
  - b. The Human Rights Paradigm: The right to life in the protection of refugees .....5
  - c. The Refugee Paradigm: State action or inaction leading to discrimination so severe as to be considered persecution .....5
- III. Case Studies: Illustrating the Nexus between Climate Inequity and Refugee Protection.....6**
  - a. Palm Oil Magnates, *Campesinos* and Violence in Honduras .....7
  - b. Guatemala Subsistence Farmers & Pervasive Flood and Drought .....7
  - c. Indigenous Children in Colombia’s La Guajira Region .....8
- IV. Migration Driven by Climate Inequity under the Rubric of the Refugee Convention .....9**
- V. Concluding Recommendations .....10**

## **Input for the Special Rapporteur on the Human Rights of Migrants on the Impact of Climate Change and the Protection of the Human Rights of Migrants by the Center for the Human Rights of Children, Loyola University Chicago School of Law, April 14, 2022**

### **I. Reconceiving Climate Inequity as Persecution against Protectable Groups including Children**

The Center for the Human Rights of Children submits this response to the call for submissions made by the Special Rapporteur on the Human Rights of Migrants to inform the Special Rapporteur's forthcoming thematic report to the General Assembly at its 77<sup>th</sup> session in September 2022. This input will focus specifically on the nexus of climate change and migration with an emphasis on both the protectability of climate migrants and the unique vulnerability of children in all aspects of climate migration.

There is an adage that “nature does not discriminate.” This perception has led to a misunderstanding amongst those charged with defending the human rights of migrants that individuals fleeing climate change are not entitled to the special protections often associated with severe discrimination, namely protection under the Refugee Convention.<sup>1</sup> This input seeks to clarify the manner in which the effects of climate change can be directly tied to protectable characteristics of migrants and that the failure to provide equitable protection from the effects of climate change can and must come under the rubric of protection-based claims for more migrants.

Research overwhelmingly suggests that the most dramatic effects of climate change are wrought on communities already marginalized by the state, specifically ethnic minorities, indigenous communities, women and children.<sup>2</sup> Climate change has largely been described as a social and racial justice problem, noting that “racism is ‘inexorably’ linked to climate change.”<sup>3</sup> While the Refugee Protocol may not explicitly provide protection for individuals fleeing the consequences of climate change, there is room to better understand the social science of climate impact to understand how protected groups are experiencing persecution in the form of climate inequity (dispossession of land, appropriation of resources, deracination) as patterns or practices of severe discrimination, tantamount to persecution, and worthy of protection under the Refugee Convention.

---

<sup>1</sup> *Children Uprooted in a Changing Climate*, UNICEF, <https://www.unicef.org/environment-and-climate-change/migration> (last visited Apr. 1, 2022) (“Many people uprooted by climate change are unlikely to meet legal definitions or other conditions for employment-based, family or humanitarian admissions to destination countries, leaving many children stranded with nowhere to go.”).

<sup>2</sup> Carmen G. Gonzalez, *Climate Change, Race, and Migration*, 1 J. OF L. & POL. ECON. 109, 114 (2020); Rachel Baird, *The Impact of Climate Change on Minorities and Indigenous Peoples*, MINORITY RTS. GRP. INT’L 1 (2008) (available at <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-524-The-Impact-of-Climate-Change-on-Minorities-and-Indigenous-Peoples.pdf>); Talia Buford, *Climate Change and Vulnerable Communities – Let’s Talk About This Hot Mess*, PROPUBLICA (May 3, 2018, 5:00AM), <https://www.propublica.org/article/climate-change-and-vulnerable-communities-lets-talk-about-this-hot-mess>; S. Nazrul Islam & John Winkel, *Climate Change and Social Inequality*, (U.N. Dep’t of Econ. & Soc. Aff., Working Paper No. 152, 2017).

<sup>3</sup> Sarah Kaplan, *Climate Change is Also a Racial Justice Problem*, WASH. POST (June 29, 2020), <https://www.washingtonpost.com/climate-solutions/2020/06/29/climate-change-racism/>.

Children in these marginalized groups are at the greatest risk of harm associated with climate inequity. The developing bodies of children are more sensitive to the impact of climate change, including rising temperatures, decreased air quality, ecosystem disruption, floods, droughts and wildfires. Research shows that these climate change impacts directly contribute to asthma, infectious and respiratory diseases, food insecurity, and increased mortality.<sup>4</sup> “Although data is limited, existing evidence suggests young people are the most likely to move in response to climate related shocks. The inclination to migrate tends to be highest among young people in general and they are often overrepresented in contexts of migration and displacement.”<sup>5</sup> Children also experience exacerbated intersecting vulnerabilities that leave them increasingly at risk of harm.<sup>6</sup> Girls, indigenous children, children with disabilities, and other children with heightened vulnerabilities experience climate inequity at disparate levels.

## II. The Legal Paradigms and the False Narrative Surrounding Climate Migration

As social and legal researchers develop a firmer understanding of climate inequity, rights-based frameworks including climate impact, international human rights law, and the paradigm for refugee protection are converging. What is becoming clear is that climate inequity is driving migration, and that many “climate migrants” can and should come under the rubric of refugee protection.

### a. The Climate Impact Paradigm

The Global Refugee Compact calls for protection of persons displaced by disasters and recognizes that climate, environmental degradation, and natural disasters “increasingly interact with the drivers of refugee movements.”<sup>7</sup> Although the Refugee Convention does not explicitly cover persons who migrate due to climate change, the Global Refugee Compact recognizes that when environmental degradation and natural disasters force external migration, the UN High Commissioner for Refugees (UNHCR), the International Organization for Migration, and other special mechanisms must respond with growing engagement.<sup>8</sup>

UN climate reports recognize that the impact of natural disasters does not affect everyone equally; the impact can differ across factors such as class, ethnicity, and gender.<sup>9</sup> The poor and marginalized are often highly vulnerable to natural disasters, particularly because they are often

---

<sup>4</sup> Daniel Helldén et al., *Climate Change and Child Health: a scoping review and an expanded conceptual framework*, *The Lancet Planetary Health*, Vol. 5, Issue 3 (Mar. 1, 2021).

<sup>5</sup> UNICEF, U.N. MAJOR GRP. FOR CHILD. & YOUTH, & INT’L ORG. FOR MIGRATION, CHILDREN UPROOTED IN A CHANGING CLIMATE, 11 (2021) (available at <https://www.unicef.org/media/109421/file/Children%20uprooted%20in%20a%20changing%20climate.pdf>) (citing UK AID, RAPID EVIDENCE ASSESSMENT ON THE IMPACT OF CLIMATE CHANGE ON MIGRATION PATTERNS 59 (2021); INT’L ORG. FOR MIGRATION, YOUTH AND MIGRATION – ENGAGING YOUTH AS KEY PARTNERS IN MIGRATION GOVERNANCE 3 (2020) (citing U.N. DEP’T OF ECON. & SOC. AFF., INTERNATIONAL MIGRATION IN A GLOBALIZING WORLD: THE ROLE OF YOUTH (2011)); Martina Belmonte & Simon McMahon, SEARCHING FOR CLARITY: DEFINING AND MAPPING YOUTH MIGRATION, INT’L ORG. FOR MIGRATION 4 (2019)).

<sup>6</sup> *Id.*

<sup>7</sup> UNHCR, *Global Compact on Refugees*, U.N. Doc. A/73/12 (Part II) ¶ 8, 12 (2018).

<sup>8</sup> *Id.* ¶ 63.

<sup>9</sup> Islam, *supra* note 2, at 4; see also Eric Neumayer & Thomas Plümper, *The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981–2002*, 97 ANNALS OF THE ASS’N OF AM. GEOGRAPHERS 551, 561 (2007).

forced to move into the most disaster vulnerable areas due to unaffordable land and housing markets.<sup>10</sup> When disasters strike these vulnerable areas, these individuals are more likely to lose income and assets.<sup>11</sup> In societies where women are marginalized in everyday life, natural disasters and the indirect effects of those disasters (such as post-disaster events) often kill more women than men.<sup>12</sup> Indigenous groups are also particularly vulnerable to adverse impacts from natural disasters, due to certain risk factors such as climate change, environmental factors, geographical factors, vulnerable livelihoods, resource extraction, and health risks.<sup>13</sup> There is also a growing body of research that shows climate change will disproportionately impact children’s health and wellbeing. “Climate change will challenge the very essence of children’s rights to survival, good health, wellbeing, education, and nutrition, as enshrined by the Convention on the Rights of the Child (CRC) and emphasized in the UN Sustainable Development Goals.”<sup>14</sup>

The Committee on the Rights of the Child, in its Joint Statement on Human Rights and Climate Change, has expressed that climate inequity “poses significant risks to the enjoyment of the human rights [of children]”<sup>15</sup>, including the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water, and the right to cultural rights.<sup>16</sup> It also noted that “failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.”<sup>17</sup> Moreover, “[i]n accordance with the principle of common but differentiated responsibility, as reflected in the Paris Agreement, the Committee finds that the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location.”<sup>18</sup> In fact, the Committee on the Rights of the Child has taken strides to recognize accountability for Global North/Global South transboundary climate-induced harm in egregious cases. In distinct cases, children can now be considered “under the jurisdiction of the state on whose territory *the emissions originated*”<sup>19</sup>—further recognizing domestic and interstate responsibility in climate inequity.

Of course, as a rule, U.S. domestic refugee law requires more than “general country conditions” or “overly broad social groupings” to achieve protectability. Thus, the convergence of legal paradigms, understanding climate inequity, understanding the right to life, and an expanded

---

<sup>10</sup> Stephane Hellagatte et al., *Shock Waves, Managing the Impacts of Climate Change on Poverty*, in CLIMATE CHANGE AND DEVELOPMENT SERIES, WORLD BANK GROUP 85 (2016).

<sup>11</sup> *Id.* at 9.

<sup>12</sup> Neumayer, *supra* note 2, at 561.

<sup>13</sup> Human Rights Council, Promotion and Protection of the Rights of Indigenous Peoples in Disaster Risk Reduction, Prevention and Preparedness Initiative, U.N. Doc. A/HRC/27/66 ¶¶ 29-44 (2014).

<sup>14</sup> See Helldén, *supra* note 4, at e164.

<sup>15</sup> Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of & Child and Committee on the Rights of Persons with Disabilities, Statement on Human Rights and Climate Change, ¶ 3, U.N. Doc. HRI/2019/1 (Sept. 16, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* ¶ 10.

<sup>18</sup> See Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No.104/2019, ¶ 10.10, U.N. Doc. CRC/C/88/D/104/2019 (Oct. 8, 2021) (unedited version) [hereinafter Sacchi Decision].

<sup>19</sup> *Id.* ¶ 10.7 (emphasis added).

understanding of how people become displaced gives advocates and adjudicators a stronger perspective on the nexus between climate inequity and the nuance of refugee protection.

### **b. The Human Rights Paradigm: The right to life in the protection of refugees**

Globally, an increasing number of individuals are advancing claims for refugee status in the context of climate change.<sup>20</sup> As the understanding of our obligations under a human rights paradigm expands, these developments can be drawn upon to reframe our understanding of how governments persecute such that certain migrants meet the refugee definition.<sup>21</sup> The UN Human Rights Committee (the “Committee”) recently recognized that states may not deport individuals who face climate change induced conditions that violate the right to life in their originating state.<sup>22</sup> Similarly, the CRC requires states to specifically ensure children's rights to life and health by considering the dangers and risks of environmental pollution.<sup>23</sup>

The global community has broadened its understanding that the right to life creates an obligation upon the states to not only refrain from the arbitrary deprivation of life but to ensure conditions conducive to life.<sup>24</sup> This approach emphasizes that refugee status determinations in the context of climate change must “take into account wider social context”<sup>25</sup> in which climate change impacts unfold.<sup>26</sup>

The approach calls for a more nuanced understanding of the nexus between state-facilitated harm (through action or more often through *inaction*) and the refugee definition. Where failures of state protection resulting from systemic discrimination tantamount to persecution are the principal cause of an individual’s exposure to serious denials of human rights due to climate inequity, the refugee definition must be considered.<sup>27</sup>

### **c. The Refugee Paradigm: State action or inaction leading to discrimination so severe as to be considered persecution**

As a general observation of immigration practice, there appears to be a failure to connect climate inequity and protectability under the Refugee Convention. The prevailing theory is that the Refugee Convention cannot be used to protect climate refugees because most of these refugees migrate internally and/or it is difficult to characterize the environmental drivers of migration as “persecution” under the Refugee Convention.<sup>28</sup> The Refugee Convention is seen as inapplicable to climate refugees because climate change, in theory, does not *discriminate*—a key feature of the

---

<sup>20</sup> Matthew Scott, *Finding Agency in Adversity: Applying the Refugee Convention in the Context of Disasters and Climate Change*, 35 REFUGEE SURV. Q. 26, 27 (2016).

<sup>21</sup> MATTHEW SCOTT, CLIMATE CHANGE, DISASTERS, AND THE REFUGEE CONVENTION 154 (2020).

<sup>22</sup> Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016, ¶ 9.14, International Covenant on Civil and Political Rights (2016).

<sup>23</sup> General Assembly resolution 44/25, Convention on the Rights of the Child, 20 Nov. 1989, art. 24.

<sup>24</sup> See generally Alexandra R. Harrington, *Life as We Know It: The Expansion of the Right to Life Under the Jurisprudence of the Inter-American Court on Human Rights*, 35 LOY. L.A. INT’L & COMP. L. REV. 313 (2013).

<sup>25</sup> Scott, *supra* note 21, at 154

<sup>26</sup> *Id.*

<sup>27</sup> See Scott, *supra* note 21, at 156 (supporting this proposition).

<sup>28</sup> PIERRE-MARIE DUPUY & JORGE E. VIÑUALES, INTERNATIONAL ENVIRONMENTAL LAW 442 (2nd ed. 2018).

Refugee Convention.<sup>29</sup> However, the Human Rights Committee has stressed that people fleeing climate change may have valid claims under the Refugee Convention, including in situations where climate change and violence are intertwined, and that international refugee law is applicable in the context of climate change and disaster displacement.<sup>30</sup> The UNHCR has urged states and practitioners that “the impacts of climate change must be understood within a broader socio-political context, and disasters might exacerbate existing persecution, discrimination or marginalization, proving a refugee claim.”<sup>31</sup>

Refugee law cannot be dismissed automatically in claims for refugee status as a “climate migrant.”<sup>32</sup> Instead, human rights defenders and decision-makers must be aware of the social nature of natural disasters and climate change effects and how these conditions can exacerbate already existing discrimination, thereby bolstering claims for refugee status under the Refugee Convention.<sup>33</sup> Decision makers must look at each claimant’s status within her local and wider social context and determine whether she is facing discrimination, including direct, indirect and systemic discrimination.<sup>34</sup> That discrimination, of course, must rise to the level of persecution.<sup>35</sup> Many climate migrants, however, face dispossession of land, appropriation of resources, and deracination resulting from severe and persistent discrimination such that persecution can be demonstrated.<sup>36</sup>

### **III. Case Studies: Illustrating the Nexus between Climate Inequity and Refugee Protection**

The following case studies illuminate the socio-political landscape that gives rise to refugee protection for many “climate migrants.” It bears noting again that children, though under-studied in this emerging intersection, often bear the brunt of the harms of climate inequity which, in turn, violate their human rights<sup>37</sup>:

Children comprise up to 50 per cent of the population in the Global South, the part of the world which is most affected by the impacts of climate change. People are displaced from

---

<sup>29</sup> Scott, *supra* note 21, at 3.

<sup>30</sup> *UN Human Rights Committee Decision on Climate Change is a Wake-Up Call, According to UNHCR*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (Jan. 24, 2020), <https://www.unhcr.org/en-us/news/briefing/2020/1/5e2ab8ae4/un-human-rights-committee-decision-climate-change-wake-up-call-according.html>.

<sup>31</sup> UNICEF, U.N. MAJOR GRP. FOR CHILD. & YOUTH, & INT’L ORG. FOR MIGRATION, CHILDREN UPROOTED IN A CHANGING CLIMATE, 11 (2021) (available at <https://www.unicef.org/media/109421/file/Children%20uprooted%20in%20a%20changing%20climate.pdf>).

<sup>32</sup> Jane McAdam, *Current Developments - Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement*, 114 AM. J. OF INT’L L. 708, 712 (2020) (citing AF (Kiribati) [2013] NZIPT 800413 (N.Z.) ¶ 56; Teitiota v. The Chief Executive of the Ministry of Business Innovation and Employment [2013] NZHC 3125 (N.Z.) ¶ 54).

<sup>33</sup> *Id.* at 712.

<sup>34</sup> Scott, *supra* note 21, at 133.

<sup>35</sup> Persecution does not include discrimination, except in extraordinary cases. *Sharari v. Gonzales*, 407 F.3d 467, 474-75 (1<sup>st</sup> Cir. 2005); To establish a claim for asylum based on discrimination, the discrimination must be extremely serious, regular, and frequent. *Alibejaj v. Gonzales*, 469 F.3d 188, 191 (1<sup>st</sup> Cir. 2006).

<sup>36</sup> Persecution may include significant economic deprivation. *Koval v. Gonzalez*, 418 F.3d 798, 805-06 (7<sup>th</sup> Cir. 2005).

<sup>37</sup> Sacchi Decision, *supra* note 18, ¶ 2, 3.1.

and migrating away from regions affected by climate change hazards such as sea level rise, storms, and drought to escape risks, have secure livelihoods, and work towards a better future. Sometimes, children may embark on this journey by themselves, families may bring their children with them, or the children are left behind as their caregivers are compelled to seek opportunities separating families.<sup>38</sup>

While observing the case studies below, we must at all times consider the enhanced impact upon particularly vulnerable children within these groups.

### **a. Palm Oil Magnates, *Campesinos* and Violence in Honduras**

In Honduras's Bajo Aguán region, small farmers (*campesinos*) and agricultural cooperatives have been involved in land disputes with local palm oil agribusinesses for over 20 years.<sup>39</sup> The disputes date back to a World Bank modernization program in which acres of land that had been used for subsistence farming were illegally conveyed to palm oil agribusinesses.<sup>40</sup> Palm oil is a key component of the Global North's move to a clean economy. Specifically, palm oil is exported to the Global North where it is used for biofuels and traded in the carbon market.<sup>41</sup> Since the modernization program, *campesinos* have tried to regain their land by appealing to the courts, installing roadblocks, and illegally occupying the land.<sup>42</sup> Violence, often backed by money from the Global North and other international institutions,<sup>43</sup> has forced many *campesinos* and agricultural cooperative members to flee the region.<sup>44</sup> For example, one cooperative has seen half of its families leave.<sup>45</sup> The Honduran government has failed to resolve contested titles, failed to address allegations that the land was obtained by force and at an unfair price and failed to solve many of the murders that occurred in the region.<sup>46</sup>

### **b. Guatemala Subsistence Farmers & Pervasive Flood and Drought**

In 2020, Guatemala experienced “[u]npredictable storms and back-to-back hurricanes [which] brought heavy downpours to the hills of western Guatemala, triggering mudslides that buried [] crops and left pests and disease in their wake. When the land dried out, it stayed dry, and the region is once again gripped by prolonged heat waves and persistent drought.”<sup>47</sup> In indigenous regions,

---

<sup>38</sup> Robert Oakes, *Climate Change, Migration, and the Rights of Children*, U. N. UNIV. (Nov. 15, 2016), <https://unu.edu/publications/articles/climate-change-migration-and-the-rights-of-children.html>.

<sup>39</sup> Nina Lakhani, *Honduras and the Dirty War Fuelled by the West's Drive for Clean Energy*, THE GUARDIAN (Jan. 7, 2014, 2:00PM), <https://www.theguardian.com/global/2014/jan/07/honduras-dirty-war-clean-energy-palm-oil-biofuels>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Sasha Chavkin, *Lawsuit: World Bank Arm Aided Firm that Hired 'Death Squads'*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Mar. 7, 2017), <https://www.icij.org/inside-icij/2017/03/lawsuit-world-bank-arm-aided-firm-hired-death-squads/>.

<sup>44</sup> Laura Gottesdiener, *How a Bloody Land Feud in Honduras is Stoking Migrant Flight to U.S.*, REUTERS (Dec. 23, 2021), <https://www.reuters.com/investigates/special-report/honduras-migration-land/>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Denise Chow & Carlos P. Beltran, *Hungry and Desperate: Climate Change Fuels a Migration Crisis in Guatemala*, NBC NEWS (Sept. 22, 2021, 6:51PM), <https://www.nbcnews.com/science/environment/hungry-desperate-climate-change-fuels-migration-crisis-guatemala-rcna2135>.



which have faced decades of structural racism, the effects of climate inequity are the most profound.<sup>48</sup> Indigenous children often face the most significant perils of Guatemala's climate inequity: "Acute malnutrition in children under five has more than doubled since 2019 due to the hurricane related crop losses, volatile commodity prices and the pandemic."<sup>49</sup> Yet, as more and more indigenous or other marginalized Guatemalans arrive in the United States, they are continually referred to as "economic migrants."

### c. Indigenous Children in Colombia's La Guajira Region

Climate inequity caused by climate change and extractive practices in Colombia's wealthy region of La Guajira is so severe that it led one advocate to explain that "indigenous children are more likely to die in La Guajira than cattle."<sup>50</sup> Indigenous communities suffer the effects of severe drought, compounded by private companies diverting a river to sustain regional mining practices. "In a semidesertic region in Colombia, Cerrejón (the largest open-pit coal mine in Colombia and Latin America, and the 10th biggest in the world) has created environmental inequalities and control and infrastructure arrangements that transform local water dynamics, affecting Wayúu people in a differentiated way."<sup>51</sup> The government of Colombia recognizes the problem:

[Colombia's Constitutional Court] ruling T-302 of 2017 included figures on infant mortality and malnutrition [for the Wayuu people] that make for difficult reading... The Constitutional Court... reported 4,770 deaths of children due to malnutrition or associated diseases over an eight-year period. According to the statistical analysis, these deaths were related to a lack of access to improved water sources, unmet basic needs and barriers to health services in early childhood. For 2013, the mortality rate associated with malnutrition in children under 5 years of age in La Guajira was 32.54 per 1,000 children, while the national average was 6.76.<sup>52</sup>

Much of this climate inequity can be traced back to both persistent government discrimination in the allocation of state resources as well as the private extraction industry (specifically, diverting a river and precluding access to water by the Wayuu people). The Colombian government, nonetheless, "has declared the extractive industries to be of 'national interest', condemning communities to involuntary resettlement and displacement." When these individuals migrate across borders, in search of survival, this implicates the right to life and their claims must be understood in the context of the Refugee Convention.

---

<sup>48</sup> Nina Lakhani, 'So Many Have Gone': Storms and Drought Drive Guatemalans to the U.S. Border, THE GUARDIAN (Nov. 1, 2021, 5:30PM), <https://www.theguardian.com/world/2021/nov/01/guatemala-storms-drought-climate-migrants>.

<sup>49</sup> *Id.*

<sup>50</sup> Natali Segovia, Remarks at Loyola University Chicago School of Law's Civitas ChildLaw Center CoffeeTalk (Apr. 6, 2022).

<sup>51</sup> Astrid Ulloa, *The Rights of the Wayúu People and Water in the Context of Mining in La Guajira, Colombia: Demands of Relational Water Justice*, 13 HUM. GEOGRAPHY 6, 6 (2020).

<sup>52</sup> Joanna Barney, *Colombian State Failing the Wayúu Children of La Guajira*, IWGIA (Sept. 16, 2021), <https://www.iwgia.org/en/news/4527-colombian-state-failing-the-way%C3%BAu-children-of-la-guajira.html>.

#### IV. Migration Driven by Climate Inequity under the Rubric of the Refugee Convention

At first blush, when Honduran & Guatemalan subsistence farmers present themselves as having fled their home countries due to lost land, they tend to be lumped in with other “economic migrants.” When indigenous migrants move across borders, they express that they are in search of survival. The type of persecution these migrants experience, resulting from persistent and structural discrimination, is not immediately evident. The violence experienced, the land lost (either due to flood, drought, or lost to seemingly personal disputes) can give rise to the impression that these individuals do not qualify for protection under the rubric of the Refugee Convention.

When their adolescent children arrive in the United States it can be even more difficult to determine the socio-political underpinnings of the forced migration. For example, when indigenous Guatemalan children arrive malnourished in the United States, the parents—not the government of Guatemala—are immediately blamed. Social science research indicates that “[i]n Guatemala, 50% of infants and children are stunted (very low height-for-age), and some rural Maya regions have [an average of greater than] 70% children stunted.”<sup>53</sup> Studies indicate that “stunted” children (children experiencing chronic malnutrition) “experience developmental delays during early childhood.”<sup>54</sup> Nonetheless, the limited understanding of the indigenous experience leads to ongoing disparate treatment. For example, there are reports that indigenous children were forcibly separated from their parents due to presumed neglect when children appeared malnourished.<sup>55</sup> These children are not necessarily considered for public-sphere, state-related persecution cases under the rubric of the Refugee Convention. Instead, they are viewed as economic migrants, some considered climate migrants, in search of a better life.

This misapprehension of the nexus between discriminatory patterns and practices of state violence and the protectability of migrant groups (indigenous migrants, campesinos, women and children or other potential particular social groups) can largely be attributable to the false narrative that climate change and refugee protection are disconnected. The UN holds states of origin primarily responsible for addressing environmental migration by helping their citizens build climate resilience.<sup>56</sup> However, the Honduran, Guatemalan, and Colombian governments, in the examples cited above, have categorically failed to protect (and in some cases directly contribute to harm experienced by) indigenous groups, *campesinos* and other agricultural cooperatives or vulnerable groups—especially children—from the harms of climate inequity including dispossession of land, appropriate of resources, and deracination. This failure demands a greater response from the international community including recognition of the association of protectable characteristics with systemic patterns and practice of structural discrimination resulting in abject persecution.

---

<sup>53</sup> MI Varela-Silva, et al., *Deep Data Science to Prevent and Treat Growth Faltering in Maya Children*, 70 EUR. J. OF CLINICAL NUTRITION 679, 679-80 (2016).

<sup>54</sup> Boris Martinez, et al., *Field Report: Early Child Development in Rural Guatemala*, PERSP. IN INFANT MENTAL HEALTH 7 (2016).

<sup>55</sup> Sarah J. Diaz, Associate Director, Center for the Human Rights of Children, Loyola University Chicago, School of Law (previous professional experience).

<sup>56</sup> Dina Ionesco, *Let's Talk About Climate Migrants, Not Climate Refugees*, SUSTAINABLE DEV. GOALS (June 6, 2019), <https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/>.

## V. Concluding Recommendations

Climate change and its effects are an injustice that disproportionately affects the states and peoples who have contributed the least to the problem.<sup>57</sup> As the effects of climate change worsen, the Global North will experience more and more migration directly resulting from climate inequity. The Global North, particularly the United States, must stop categorizing climate refugees under the narrative that they are unworthy of protection as economic or climate migrants. Instead, we all must take greater strides to research, understand and recognize the nexus between climate inequity and protection under the Refugee Convention. Our specific recommendations to the Office of the Special Rapporteur for the Human Rights of Migrants include:

**First**, the Special Rapporteur should strongly urge the Human Rights Council and the General Assembly to invest in comprehensive research related to structural racism and discrimination against protected groups and the impact of climate inequity.

**Second**, the Special Rapporteur should strongly urge the Human Rights Council and the General Assembly to invest in comprehensive research related to forced child migration due to climate inequity and protection under the Refugee Convention.

**Third**, the international human rights community, especially the Human Rights Council, must provide specific guidance for incorporating climate inequity—resulting in persecution—under the Refugee Convention. The Special Rapporteur should encourage member states of the Global North to reevaluate their narratives and policies related to climate migration to better understand the nexus between climate inequity, forced migration, and protectable characteristics under the Refugee Convention. In order to begin successfully applying for protection under the Refugee Convention, additional research and country conditions experts will be needed to illuminate, for human rights defenders and adjudicators alike, the socio-political underpinnings that give rise to persecution (violations of the right to life in the form of dispossession of land, misappropriation of resources, and deracination) and protection under the Refugee Convention.

**Fourth**, the Special Rapporteur must call upon the United States Government (USG) to recommit to its international obligations under the International Covenant on Civil and Political Rights especially as it relates to a global understanding of the right to life as a positive obligation of the USG. Bringing the United States in line with global human rights norms will help develop more robust domestic law protections for refugees.

**Fifth**, the Special Rapporteur, should call upon the USG to *finally* ratify the CRC so that migrant children will be entitled to the full scope of protections including, especially, the right to have their best interests considered in immigration proceedings. A USG committed to the CRC must facilitate the development of a domestic law framework that treats migrant children as children and ameliorates the risk of harm to children. The protection of a child's best interests is international customary law and will enable the United States to offer appropriate protections for children fleeing climate inequity, regardless of whether they can secure protection under the Refugee Convention.

---

<sup>57</sup> Carmen G. Gonzalez, *Migration as Reparation: Climate Change and the Disruption of Borders*, 66 LOY. L. REV. 401, 402 (2020).

**Sixth**, while the focus of this input relates to deepening our understanding of the nexus between climate inequity and refugee eligibility, in the absence of protections for *all* climate migrants, we urge the Special Rapporteur to work with state parties to create a category of protection which upholds our obligations under the international principle of non-refoulement. “The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or *other serious human rights violations*.”<sup>58</sup> All climate migrants facing threats to their right to life via dispossession of land, misappropriation of resources, and deracination are entitled to protection under the jus cogens prohibition against non-refoulement.

---

<sup>58</sup> *The Principle of Non-Refoulement Under International Human Rights Law*, OFF. OF THE U.N. HIGH COMM’R FOR HUM RTS., <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (last visited Apr. 13, 2022).