

Chapter 4.0: Analysis of Judicial Trends and Emerging State Obligations in Climate-Induced Displacement (CID)

4.1 Introduction

Chapter 3 examined a wide range of judicial interpretations of international human rights of relevance to climate-induced displacement (CID). It pointed to several tendencies, from the conservative enforcement of the classical refugee law on one end to expansive interpretations of human rights (such as the right to life) developing in human rights tribunals and national, regional and international courts. Chapter 4 offers a synthesis of relevant doctrine and judicial findings. It aims to critically evaluate the nature of the obligations of states to protect vulnerable groups against CID, their evolution, and their enforceability. This chapter establishes general trends and the emerging normative framework.

4.2 The Emergence of a Normative Framework for CID Protection

The jurisprudence analysed in Chapter 3, especially landmark rulings in *Teitiota*, *Fadeyeva*, *Leghari*, and *Urgenda*, suggest that a set of unofficial but persuasive legal standards is emerging. Even without a specific treaty for climate displacement, these rulings are beginning to define how states are expected to handle individual and community harm caused by climate change. Although a specific international convention on climate refugees remains elusive, the case law examples show how current human rights frameworks and constitutional rights can be understood and extended to respond to the legally disruptive nature of climate change.¹ This dynamic legal environment is slowly establishing the responsibilities of states in the absence of a *lex specialis*.

¹ Elizabeth Fisher, Eloise Scotford and Emily Barritt, 'The Legally Disruptive Nature of Climate Change' (2017) 80(2) MLR 173.

One key development is the widening of non-refoulement, as shown in *Teitiota*. Although the UNHRC eventually dismissed *Teitiota* due to lack of demonstration of imminence of risk at the time of deportation, its ruling was remarkable. The UNHRC acknowledged that in the absence of strong national and international action, the consequences of climatic change in receiving states could bring people under a breach of the human rights provided in articles 6 (right to life) or 7 (right not to be subjected to torture or inhumane treatment) of the ICCPR, which would precipitate the non-refoulement requirement of states.² This statement represents a significant expansion of the principle of non-refoulement beyond historical claims of persecution, recognising the existence of severe environmental degradation as a possible catalyst of human rights violations, especially the right to life (Article 6 ICCPR). Setzer and Higham state that non-refoulement in the CID context is one of the human rights-based claims that have increased, with more than 3,000 such cases worldwide identified by mid-2025.³ Most of these cases involve the state responsibilities to avoid sending people back to uninhabitable environment due to climate consequences.

In addition, courts have increasingly emphasised environmental degradation as grounds for human rights claims. For example, the ECHR in *Fadeyeva* held that serious industrial pollution could constitute a violation of Article 8 of the Convention, which guarantees respect for private and family life as well as for the home.⁴ Significantly, the Court imposed an obligation on states to act to prevent or mitigate harmful environmental conditions. The IACtHR Advisory Opinion OC-23/17 further reinforced this idea by explicitly recognising the

² *Ioane Teitiota v. New Zealand* 2020 CCPR/C/127/D/2728/2016 (UNHRC).

³ Joana Setzer and Catherine Higham 'Global Trends in Climate Change Litigation: 2025 Snapshot' (2025) Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science.

⁴ *Fadeyeva v. Russia* 2005 55723/00 (ECHR).

indisputable link between environmental protection and human rights. The IACtHR affirmed the right to a healthy environment and elaborated on extraterritorial environmental obligations, that is, the obligation of states to avert considerable environmental harm even beyond their territory.⁵ These judicial interpretations align with views of Boyd et al., who argue that courts are increasingly integrating climate science into rulings to establish state obligations for preventing displacement through environmental safeguards.⁶

On the domestic front, the rights approach has been employed as a potent instrument to induce climate-related action by states. In *Leghari*, the Lahore High Court took extraordinary measures to link climate change inactivity to the infringement of constitutional fundamental rights to life and dignity. The court gave to the government the mandate to implement its National Climate Change Policy; thereby the court imposed a judicially enforceable duty upon the government for mitigation and adaptation.⁷ Similarly, the German Federal Constitutional Court in *Neubauer* established that the state's duty to protect life and physical integrity under the Basic Law extends to risks posed by climate change.⁸ For this purpose, the court coined the term 'intergenerational freedom rights,' compelling the German legislature to put in place more ambitious GHG emission reduction targets to secure the interests of future generations. These cases bear testimony to how national courts are attempting to curb the threats of displacement by enforcing existent constitutional human rights in the absence of suitable climate displacement laws.

⁵ Inter-American Court of Human Rights (IACtHR) 'Advisory Opinion OC-23/17 Requested by the Republic of Colombia: The Environment and Human Rights' 15 November 2017.

⁶ David R Boyd and others 'Strategies for navigating competing climate science in human rights courts' (2024) 3(11) PLOS Climate e0000462.

⁷ *Ashgar Leghari v. Federation of Pakistan* 2015 25501/2015.

⁸ The *Neubauer et al. v. Germany* case 2021 BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20 (Federal Constitutional Court).

Many scholars support this kind of judicial activism. For example, McNeilly argues that anniversary commemorations of human rights declarations are encouraging courts to expand obligations in CID cases.⁹ Sultana, argues for critical climate justice frameworks that incorporate displacement trends.¹⁰

Even with these great advances, the primary limitation remains the absence of a binding treaty obligation for ‘climate refugees’, particularly those impacted by CID. As seen in Chapters 2 and 3, the definition of a refugee under the 1951 Refugee Convention, premised on persecution, does not readily cater to persons fleeing from generalised environmental degradation. While the International Court of Justice has clearly identified the applicable legal framework, integrating the Paris Agreement with international human rights law, uncertainty persists regarding how these global obligations translate into concrete protections for individuals forced to move. The jurisprudence appears to be extending the interpretation of existing human rights law, but in the absence of an existing *lex specialis* for climate-displaced persons, the protection of these individuals depends on courts’ willingness to make far-reaching interpretations, rather than clear-cut and universally accepted legal obligations meant for their specific circumstances. Chesler further critiques this gap, noting that armed conflict and sustainable development intersections exacerbate displacement without adequate state obligations.¹¹

⁹ Kathryn McNeilly ‘If Only for a Day’: The Universal Declaration of Human Rights, Anniversary Commemoration and International Human Rights Law’ (2023) 23 Human Rights Law Review 1–22.

¹⁰ Farhana Sultana ‘Critical Climate Justice’ (2021) 188 The Geographical Journal 118–124.

¹¹ Angela Chesler ‘Environmental Displacement and Political Instability: Evidence from Africa’ (2024) 61(2) Journal of Peace Research 1–19.

4.3 Reflections on Divergent Judicial Attitudes toward State Obligations

The cases discussed reveal divergent judicial attitudes towards states' obligations in the context of CID. Mariconda identifies a spectrum among judicial responses to climate litigation, ranging from courts that strictly defer to political branches to others that actively uphold legal obligations rooted in climate and human rights norms, reflecting divergent judicial philosophies and constitutional contexts.¹² A comprehensive discussion of the reasons for the divergence falls outside of the scope of this dissertation. However, it is worth noting that while some courts have adopted a relatively expansive and proactive interpretation of human rights and the consequent imposition of duties on the states to deal with climate change, other courts have demonstrated restraint.

In *Urgenda*, Dutch Courts compelled the government to raise its targets for GHG emission reduction. This landmark decision established climate change inaction as a concept for potential human rights violations, enforcing, under Articles 2 (right to life) and 8 (right to respect for private and family life) of the ECHR, a clear state duty of care.¹³ Likewise, the Lahore High Court's 'Green Bench' also displayed a progressive approach in *Leghari*. And in *Neubauer*, the German Federal Constitutional Court demonstrated a willingness to interfere with legislative policy-making to protect society against climate-related future consequences, which could include displacement.¹⁴

While not possessing direct binding enforcement power in the same manner as national courts, human rights tribunals have played a crucial role in interpreting human rights treaties and

¹² Antonio Mariconda, 'Separation of Powers and Climate Litigation: International Law as a Guide Between Judicial Activism and Legislative Prerogatives' (2025) 5(1) *Athena: Critical Inquiries in Law, Philosophy and Globalization* 142.

¹³ *Urgenda Foundation v. The Netherlands* 2015/2019 HAZA C/09/00456689 (District Court of the Hague, and The Hague Court of Appeal) (affirmed by the Supreme Court, 20 December 2019).

¹⁴ Joana Setzer and Catherine Higham (n1).

expanding their scope to climate change in a progressive manner. The UNHRC in *Teitiota* made remarkable statements concerning the expansion of non-refoulement relative to climate change, as discussed above. Similarly, the UNCRC in *Sacchi*, pioneered the use of child rights (CRC Arts. 3, 6, 24) in climate litigation, thereby opening a new pathway in human rights discourse to emphasise the disproportionate impact of climate change on children. Aiming toward the most vulnerable groups, these tribunals can help to develop and expand the interpretive potential of existing human rights instruments vis-à-vis climate change.¹⁵ However, they exert influence only on a persuasive level.

In sharp contrast, restrained courts tend to be more cautious, and often, they follow the political branches or strictly apply the jurisdiction restrictions, despite the recognition of the harshness of climate change. Though being a very publicised youth-led climate case, the case of *Duarte Agostinho* before the ECtHR was deemed inadmissible. While the ECtHR recognised the very existential problem of climate change, it chose not to create a new extraterritorial test of jurisdiction asserting it was concerned with operating the Convention as a global climate-change treaty.¹⁶ This shows that the judiciary was not willing to trespass historical jurisdictional limits and venture into complicated policy issues. Likewise, in Australia, *Sharma* saw the Full Federal Court overturn an initial ruling that had imposed a duty of care on the Minister to protect children from climate change harms.¹⁷ The court cited concerns about indeterminate liability, the difficulty of establishing a direct causal link between a single project and global climate effects, and the issue being a matter for the executive and legislative branches.¹⁸ These instances

¹⁵ Walter Leal Filho and others 'Climate Change Adaptation on Small Island States: An Assessment of Limits and Constraints' (2021) 9 Journal of Marine Science and Engineering 602.

¹⁶ *Duarte Agostinho and Others v. Portugal and 32 Other States* 2024 39371/20 (ECHR).

¹⁷ *Minister for the Environment v Sharma* (No 2) 2022 FCAFC 65 (FCA).

¹⁸ *Sharma* (n17).

exemplify judicial restraint, particularly in common law jurisdictions, regarding the creation of novel duties of care for diffuse, future climate harms, often prioritising the separation of powers. According to Bodansky such restraint limits state accountability in drought-related displacement cases.¹⁹

4.4 The Role of Human Rights Treaties and Emerging Legal Principles in Shaping Judicial Findings on State Duties relating to CID

The right to life enshrined in Article 6 of the ICCPR has been one of the most potent legal tools ever to be resorted to in support of strengthening states' obligations concerning CID, as evidenced by the UNHRC's interpretation in *Teitiota*.²⁰

Similarly, the ECtHR, in *D v. United Kingdom* interpreted Article 3 of the ECHR (prohibiting inhuman or degrading treatment) as forbidding deportation when the individual's 'special health vulnerabilities' would amount to 'inhuman treatment' due to the absence of necessary treatment facilities in the receiving country, a principle that can possibly be used for persons severely affected by climate.²¹

Fadeyeva gave further precedence to Article 8 (the right to privacy and family life) by recognising severe environmental degradation as a violation of human rights, thereby placing a positive obligation on states to either prevent or abate such degrading environmental conditions.²²

Urgenda linked the failure of the state to adequately mitigate climate change with breaches of ECHR Articles 2 (the right to life) and 8 (the right to privacy and family life),

¹⁹ Daniel Bodansky 'The Legal Character of the Paris Agreement' (2022) 31(1) Review of European, Comparative & International Environmental Law 142–150.

²⁰ *Teitiota* (n2).

²¹ *D v United Kingdom* 1997 30240/96 ECHR 25 (ECHR).

²² *Fadeyeva* (n4)

directing the Dutch state to increase emission reduction targets, thus establishing an enforceable duty to mitigate.²³

The Convention on the Rights of the Child (CRC) has also seen innovative application. In *Sacchi*, child complainants argued that states' climate inaction violated their rights under CRC Articles 6 (right to life), 24 (right to health), and 30 (cultural rights), read in conjunction with Article 3 (best interests of the child).²⁴ Though procedural reasons made the case inadmissible, it eloquently put forward the disproportionality of the effects of climate change on children and emphasised the opportunity for the CRC to solve the climate-related harms and the possibility of future displacement.

Legal principles, such as intergenerational equity have also been recognised as emerging from constitutionally protected rights. As such, the court in *Neubauer* found that Germany was obligated to make sure that benefits of the current generation do not unduly weigh on the future generation in terms of their loss of the basic freedom, including given the possibility of displacement due to the consequences of climate change.²⁵

The idea of 'duty of care' has been proposed as a foundation for state responsibilities to safeguard people against climate-related damage, as in the *Urgenda* case,²⁶ but remains controversial, evidenced by its rejection in *Sharma*.²⁷

Moreover, the precautionary principle, referenced in *Leghari*, has been found to require that precaution should be taken where there is a scientific uncertainty about environmental

²³ *Urgenda* (n13).

²⁴ *Chiara Sacchi et al v Argentina* Communication No 104/2019, UN Doc CRC/C/88/D/104/2019 (2021).

²⁵ *Neubauer* (n8).

²⁶ *Urgenda* (n13).

²⁷ *Sharma* (n17).

damage. This supports the notion that states have a responsibility to adopt a cautious approach in the face of uncertainty concerning climatic-induced harm.

.4.5 Towards Concrete Legal Obligations: What Has Emerged?

Despite the diverse judicial approaches analysed, a nascent set of concrete legal obligations for states regarding CID is gradually emerging. Whereas such rights do not materialise into one uniform binding block of rights, these obligations show an increasing awareness by courts and human rights bodies about the disastrous human rights consequences of climate change.

First, mitigation obligations have become quite explicit, exemplified by *Urgenda*.²⁸ The German Federal Constitutional Court's decision in *Neubauer* is in the same vein, urging the legislature to lay down more ambitious GHG reduction targets for the future on the ground of intergenerational equity and, thus, setting forth a mitigation duty that is oriented into the future.²⁹ This shift from national jurisprudence to international authority was recently affirmed by the International Court of Justice (ICJ) in its Advisory Opinion on Climate Change. The ICJ clarified that a state's failure to meet its mitigation commitments is not merely a policy lapse, but a breach of international obligations that triggers responsibility for the resulting human rights violations. The introduction of such mitigation obligations reveals that failure to respond to climate change is an unlawful act that violates human rights.³⁰

Second, adaptation and relocation duties are being developed, including in *Leghari*. The Lahore High Court directed Pakistan's federal government to operationalise the National Climate Change Policy, including in relation to adaptation.³¹ The court imposed on the state a judicially

²⁸ *Urgenda* (n13).

²⁹ *Neubauer* (n8).

³⁰ *Neubauer* (n8).

³¹ *Leghari* (7).

enforceable obligation to take steps to protect people from climate impacts, including through strategies for relocation and adaptation to prevent displacement.³² Although the decision did not command the state to relocate people, it highlighted the importance of the state in addressing climate change impacts within its boundaries to secure fundamental rights. Filho et al. argue that adaptation strategies in small island states must similarly be expanded, especially in the context of sea-level rise and climate-related displacement.³³

Third, the principle against repatriation to risk zones is gaining traction. The UNHRC's ruling in *Teitiota* was a turning point. Boyd et al. highlight the increasing recognition of non-refoulement in CID cases, where returning individuals to environments facing imminent climate risks constitutes a violation of their right to life.³⁴ This is consistent with the line of authority established under the ECHR in *D v. United Kingdom*, where Article 3 (prohibition of inhuman or degrading treatment) was construed as forbidding the deportation of persons to territories where their serious health vulnerabilities and lack of access to essential services would amount to inhuman treatment.³⁵ The same reasoning can be readily applied in climate-vulnerable settings.

Fourth, protective obligations concerning environmental due diligence and environmental impact assessments are being reaffirmed. The first *Greenpeace Nordic* judgment resulted in the need for more stringent EIAs that take into account all relevant emissions.³⁶ In addition, the Advisory Opinion OC-23/17 of the IACtHR clarified that states hold an extraterritorial due diligence obligation to prevent significant environmental harm, including by way of regulation,

³² Ibid.

³³ Walter Leal Filho and others 'Climate Change Adaptation on Small Island States: An Assessment of Limits and Constraints' (n9).

³⁴ David R Boyd and others 'Strategies for navigating competing climate science in human rights courts' (n2).

³⁵ *D v. United Kingdom* (23).

³⁶ *Greenpeace Nordic and Nature & Youth v. Energy Ministry* 2024 23-099330TVI-TOSL/05 (Oslo District Court).

supervision, and monitoring of activities that may lead to such harm.³⁷ This principle was recently reinforced by the International Court of Justice (ICJ) in its Advisory Opinion on Climate Change, which confirmed that the duty of due diligence is a cornerstone of international environmental law. The ICJ emphasized that states are required to conduct rigorous, climate-sensitive EIAs for any project with potential transboundary effects, specifically mentioning the need to align these assessments with the goal of limiting global warming. Consequently, states now face a comprehensive duty to conduct thorough assessments of activities with potential climate impacts, both domestically and transnationally.

An evaluation of the legal nature of these emerging obligations shows a continuum. The court decisions including *Urgenda*, *Leghari*, and *Neubauer* at the national level are binding in their jurisdictions obligating the state to take certain measures. Human rights tribunal decisions, including those of the UNHRC and UNCRC can help the normative development of international human rights law by advising states and future judicial interpretations, albeit not being a direct ruling. Advisory opinions such as the IACtHR OC-23/17 and ICJ AO of 2025, have also offered important clarifications of the current international law and have a strong persuasive power, shaping a state

Despite these developments, some ambiguities remain, particularly in the absence of a *lex specialis* on CID that could protect climate refugees. The jurisdiction of the states is also unclear, particularly extraterritorial obligations. The IACtHR OC-23/17 proposes the obligation to avert transboundary injury, yet in *Duarte Agostinho*, the ECtHR was cautious in creating extraterritorial jurisdiction concerning climate change, emphasising the uncertainty in the law on

³⁷ Inter-American Court of Human Rights (IACrHR) ‘Advisory Opinion OC-23/17 Requested by the Republic of Colombia: The Environment and Human Rights’ 15 November 2017.

what states ought to do to avoid transboundary harm.³⁸ Lastly, the cause and blame of climate impacts is complicated. It is scientifically and legally difficult to directly point to isolated cases of displacement or harm and directly attribute these to the emissions of individual states. These uncertainties support a necessity to provide more legal clarity and create more specific frameworks on CID.

4.6 Strategies to Strengthen States' Legal Obligations in CID Contexts

The analysis above indicates that despite the emerging trends of concrete legal requirements of relevance to CID, they are still incomplete and in most cases do not have a universal binding effect. To overcome these longstanding deficiencies and more effectively safeguard vulnerable communities, a comprehensive strategy incorporating both changes in the international legal framework and leveraging the potential of existing mechanisms is imperative.

An effective approach is reform to the international legal architecture. The concept of 'climate refugees' remains contested, and the *Teitiota* case reveals the constraints of existing law.³⁹ Bodansky critiques the lack of a binding international treaty for climate refugees, arguing that the absence of clear legal definitions and state obligations creates significant policy challenges.⁴⁰ Thus, one of the most important changes would be the expansion of the current definition of refugees by including a new one that would comprise of displacement caused by climate or, more broadly stated, the introduction of a new protocol or even a special treaty on CID. Muluneh argues for a new protocol or treaty specific to climate refugees, which would outline the rights of displaced persons and establish clear duties for states, such as non-

³⁸ Duarte Agostinho (16).

³⁹ *Teitiota* (n2).

⁴⁰ Daniel Bodansky 'The Legal Character of the Paris Agreement' (n7).

refoulement, protection, and relocation.⁴¹ A new tool could offer a specific legal framework, which sets out the rights of persons displaced by climate, outlines states' duties (non-refoulement, assistance, relocation), and informs a burden-sharing system and collaboration between states on this matter. This goes beyond the present tendency of reconfiguring the already available human rights instruments, which, as useful as they are, were not intended to address the unique complexity of climate mobility.

Litigation has already functioned as a norm-development strategy and can continue to be instrumentalised in this way. Hervey discusses how strategic litigation continues to serve as a powerful tool in the human rights context, arguing that it holds states accountable for climate change inaction and establishes judicial precedents for state duties concerning CID.⁴² Even cases such as *Duarte Agostinho* and *Sacchi*, while dismissed on procedural grounds, have managed to bring awareness to legal standards and push the limits of the legal debate. Strategic litigation can create pressure on the need to improve protection mechanisms against CID.

In such litigation, there should be an emphasis on empowering vulnerable and indigenous voices. CID affects vulnerable populations like small island states and indigenous people disproportionately. Their personal experience and the traditional knowledge that they possess are invaluable in understanding the effects of climate change and in putting successful and rights-based solutions into context. They should be empowered to play meaningful roles within policymaking, legal advocacy, and judicial processes as was the case in *Sacchi*, in which children were the complainants. This 'bottom-up' approach is further evidenced in the case of *Asmania et al v Holcim*, where the voices of fisherwomen were elevated to challenge corporate

⁴¹ Melese Genete Muluneh 'Impact of Climate Change on Biodiversity and Food Security: A Global Perspective—a Review Article'.

⁴² G Hervey 'The Right to a Healthy Environment in West Africa: How a Progressive Ruling Should Be Expanded Upon and Better Implemented'.

contributors to climate harm, demonstrating how intersectional perspectives are essential for justifying and enforcing reinforced obligations.⁴³ Such inclusion ensures that legal frameworks are not merely top-down impositions but are grounded in the specific realities of those most affected by environmental degradation..

4.7 The Path Forward: Reconciling National Sovereignty with Human Rights Duties

Finally, this research recognises that the path toward strengthening states' legal obligations in the context of CID is strewn with the underlying tension between sovereign control of borders and obligations under universal human rights. A traditional definition of national sovereignty envisages that states have exclusive control of their land and of the constitution of their borders, such as the power to determine who may enter and leave as foreign nationals.⁴⁴ Human rights, on the contrary, are universal and are inalienably vested in persons who, despite any differences founded on nationality or domicile, are entitled to basic protection.⁴⁵ Chesler notes that as climate change exacerbates displacement, the reluctance of states to formalise commitments to protect climate-displaced persons threatens to undermine the universality of human rights.⁴⁶ States like New Zealand in the *Teitiota* situation have chosen to exercise sovereign prerogatives in order to deny entry to those persons in the regions that are climatically vulnerable, regardless of the plausible human rights justifications. This is further heightened by the view that as the number of climate refugees grows, these inflows may be

⁴³ Nina Burri and Laura Duarte Reyes, 'Elevating women's voices in transnational climate litigation: The case of *Asmania et al. v Holcim*' in [Editor Names] (eds), *Climate Litigation and Vulnerabilities* (Routledge 2025).

⁴⁴ Vincent Chetail, 'Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel' (2016) 27(4) EJIL 901.

⁴⁵ UNGA, *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

⁴⁶ Angela Chesler 'Environmental Displacement and Political Instability: Evidence from Africa' (n5).

considered a threat to national security or a burden on resources, which makes the states unwilling to formalise or establish general commitments.⁴⁷

This struggle contributes to a significant threat of disintegration in which individual states proceed with actions to combat CID and others decline or fall behind. As seen in the analysis of judicial attitudes, progressive courts in such countries as the Netherlands (*Urgenda*) and Germany (*Neubauer*) have obliged ambitious climate action grounded on human rights, that could also prevent future displacement risks. On the contrary, courts elsewhere (*Sharma, Duarte Agostinho*) have been timid, either leaving matters to the political branch or fulfilling narrow jurisdictional requirements. This forms a patchwork of protections, as the destiny of climate-displaced individuals become incredibly reliant on the legal and political environment of the state they are seeking protection from or in. This kind of fragmentation undermines the idea of universal human rights and results in serious discrepancies and ambiguities in protection outcomes.

The resolution of the tension and fragmentation should involve a high level of focus on the legal international coordination, climate finance, and mechanisms of relocation. Burden-sharing and the creation of common standards should be done through international collaboration, without ad-hoc responses. Climate finance, particularly, for adaptation, loss, and compensation, should provide a vulnerable state with tools to achieve resilience against displacement, internal relocation, and potentially, lessen cross-border pressure. **However, because resilience projects can sometimes cause unintended displacement, it is critical that any relocation framework prioritizes land rights, ensuring that the process is both participatory and respects the dignity of those moved.** By establishing such frameworks, legal certainty concerning

⁴⁷ Carmen G Gonzalez, 'Racial capitalism, climate justice, and climate displacement' (2021) 11(1) *Oñati Socio-Legal Series* 108.

planned relocations, both internal and transnational, would be promoted, and the protection of human rights would be advanced.

4.8 Summary

Chapter 4 has offered findings on the changing approach to human rights obligations of states in the face of CID. **It shows the rise of an informal but powerful set of legal standards. This has been driven by judges who are expanding 'no-return' protections, recognizing that environmental damage directly causes human rights crises, and using existing national constitutions to force governments to act.** An analysis of judicial attitudes was also presented, which differentiated between progressive courts and tribunals, and restrained or cautious courts, which are characterised by a lack of jurisdictional or political willingness to take risks. The most encouraging trends in law include a growing judicial acceptance of mitigation, adaptation, relocation, non-return to risk areas and environmental due diligence as tangible, but diverse, state requirements. Nevertheless, there still persist gaps, especially the absence of a *lex specialis* in climate refugees, the grey areas of extraterritorial jurisdiction and the complicated aspects of apportioning climate harms. The conflict between national sovereignty and universal human rights requirements remains inherent hence posing a major challenge resulting in fragmentation of protective measures.

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