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Climate Change and Internal Displacement in Colombia: Chronicle of a Tragedy Foretold?

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CLIMATE CHANGE AND INTERNAL DISPLACEMENT IN COLOMBIA: CHRONICLE OF A TRAGEDY FORETOLD?

Camila Bustos [†]

ABSTRACT

One of the key challenges stemming from climate change will be climate displacement, as sudden and gradual events disrupt livelihoods and force millions to leave their homes. Despite the existing scholarship's focus on cross-border movement, the majority of climate displaced people will move internally instead of or before seeking refuge outside their nation's borders. What obligations do states owe to their citizens when those states have historically not been emitters but have still failed to protect domestic populations from displacement related to environmental disasters and climate change impacts? Through exploring the disaster management framework in Colombia and conducting a case study of the town of Gramalote, this Article discusses the obligations that states like Colombia owe to their internally displaced populations in the context of climate change. Given the inexorability and foreseeability of climate displacement, this Article argues that states have an obligation to recognize climate displacement, plan ahead to protect their populations' rights, and implement best practices under international human rights law throughout relocation and resettlement processes. Irrespective of the driver of displacement, displaced individuals should not be subject to a bifurcated regime of protection that treats displacement due to civil disruption, violence, or armed conflict distinctly from displacement in the context of climate change and environmental disasters.

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I. INTRODUCTION

“i want to talk about disasters.

*how men make them
with embargoes, exploitation,
stigma, sabotage, scalding
debt and cold shoulders.”¹*

—Lenelle Moïse

In 2010, Colombia experienced the worst flooding in its history.² La Niña³ affected millions of people across the country, imposing

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1. Lenell Moïse, *Quaking Conversation*, POETRY FOUND. (2014), <https://www.poetryfoundation.org/poems/91756/quaking-conversation> [https://perma.cc/XS3P-F4XG].
 2. Naciones Unidas, Comisión Económica para América Latina y el Caribe (CEPAL), Valoración de Daños y Pérdidas Ola Invernal En Colombia, LC/BOG/L.23, at 14 (2012) [hereinafter CEPAL].
 3. See, e.g., Natalia Hoyos et al., *Impact of the 2010–2011 La Niña Phenomenon in Colombia, South America: The Human Toll of an Extreme Weather Event*, 39 APPLIED GEO. 16 (2013) (“Colombia experienced a strong El Niño Southern Oscillation (ENSO) cold phase known as La Niña, from 2010 to 2011. The weather event affected approximately four million people as of September 2011 and caused losses of more than US \$7.8 billion, as a consequence of destruction of infrastructure, flooding of agricultural lands and payment of government subsidies.”); see also *What are El Niño and La Niña?*, NOAA, <https://oceanservice.noaa.gov/facts/ninonina.html> [https://perma.cc/LV8M-SRLF] (“La Niña has the opposite effect of El Niño. During La Niña

devastating losses of life and property.⁴ The town of Gramalote was so severely impacted that it had to be relocated, becoming the first known town in Colombia to be displaced and relocated due to climate-related events.⁵ More than a decade after the destruction, the World Bank refers to the town as a successful story of resettlement in the aftermath of disaster.⁶ Yet the case study of Gramalote serves as a cautionary tale of internal climate relocation, illustrating the legal and policy failures of disaster law to deliver protections for climate displaced communities.

The World Meteorological Association predicts that at least one of the next five years will be the hottest year ever recorded.⁷ According to climate scientists, the average global temperature has already increased by roughly 2°F (1°C) since 1880.⁸ Climate change is driving severe climate impacts across the world, with heat waves, hurricanes, and other extreme weather events threatening life as we know it.⁹ Current atmospheric concentrations also indicate further warming, particularly given that climate mitigation pledges are not on-track to achieve the greenhouse gas reductions necessary to stabilize warming to 2°C.¹⁰

Climate change has significant implications for human rights.¹¹ Indeed, climate change impacts have already affected the fulfilment of

events, trade winds are even stronger than usual, pushing more warm water toward Asia. Off the west coast of the Americas, upwelling increases, bringing cold, nutrient-rich water to the surface.”).

4. See CEPAL, *supra* note 2, at 22.
5. DISPL. SOL'S., CLIMATE DISPLACEMENT AND PLANNED RELOCATION IN COLOMBIA: THE CASE OF GRAMALOTE 4 (2015).
6. See BANCO MUNDIAL, *LA EXPERIENCIA DE INTERVENCIÓN EN GRAMALOTE: UN CASO DE REASENTAMIENTO EN COLOMBIA, SUR AMÉRICA* 10 (2016).
7. *July 2023 Is Set to Be the Hottest Month on Record*, WORLD METEOROLOGY ORG. (Jul. 31, 2023), <https://wmo.int/media/news/july-2023-set-be-hottest-month-record> [<https://perma.cc/SN2Q-AN2Z>].
8. Rebecca Lindsey & Luann Dahlman, *Climate Change: Global Temperature*, CLIMATE.GOV (Jan. 18, 2024), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature> [<https://perma.cc/ZG6B-X65F>].
9. See *id.*
10. See J.B. Ruhl & Robin Kundis Craig, *4°C*, 106 MINN. L. REV. 191, 205-09 (2021) (providing an overview on current emission trajectories) (“[T]here is no evidence that global greenhouse gas emission levels have peaked and turned the corner . . . there is little to suggest that nations are on track to achieve emission-reduction goals set through various international and domestic institutions.”).
11. U.N. High Comm’r for Hum. Rts., *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, ¶ 20–41, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009); see also Eliza Pan, *Reimagining the Climate Migration Paradigm: Bridging Conceptual Barriers to Climate Migration Responses*, 50 ENV’T. L. 1173, 1198–99 (2020); see also Margaux J. Hall & David C. Weiss, *Avoiding Adaptation Apartheid*

the rights to food, water, health, housing, and other fundamental rights globally.¹² Climate impacts are also shaping and exacerbating migration flows.¹³ Since the 1990s, the Intergovernmental Panel on Climate Change (IPCC) has warned that millions of people will be displaced as a result of climate impacts such as flooding and agricultural disruption.¹⁴ Yet despite the scale and gravity of the issue, the international community has failed to provide a holistic and ambitious response.¹⁵

Climate change adaptation is generally understood to encompass three modalities: resistance, resilience, and retreat.¹⁶ Climate displacement or migration is often categorized under *retreat*, with specific actions falling under mobility, resettlement, relocation, or avoidance.¹⁷ In these retreat scenarios, adaptation policies focused on reducing risk and increasing resilience are insufficient to reduce or avoid harm.¹⁸ As J.B. Ruhl and Robin Craig observe, “retreat is increasingly being included in policy discussions as either a potentially necessary or more cost-effective adaptation strategy for human communities.”¹⁹ Managed retreat may occur in anticipation or in the aftermath of a

Climate Change Adaptation and Human Rights Law, 37 YALE J. INT’L L. 309, 332–33 (2012); see also John H. Knox, *Linking Human Rights and Climate Change at the United Nations*, 33 HARV. ENV’T. L. REV. 477, 486 (2009).

12. U.N. High Comm’r for Hum. Rts., *supra* note 11, ¶¶ 20–41.
13. See International Organization for Migration (IOM), No. 31, *Migration and Climate Change*, 9–10 (2008).
14. *Id.* at 11.
15. Pan, *supra* note 11, at 1177. There has been some progress, notably the 2015 Paris Agreement establishment of a task force to tackle climate change displacement. United Nations Framework Convention on Climate Change, art. 9, Dec. 12, 2015, 3156 U.N.T.S. 79; G.A. Res. 73/195, 9, 13 (Dec. 19, 2018) (recognizing climate-related migration).
16. Ruhl & Kundis Craig, *supra* note 10, at 232.
17. *Id.*; Some scholars resist the notion that migration can be seen as adaptation when the movement of people is forced and therefore can function as another form of dispossession or displacement. See generally, Jaya Ramji-Nogales, *Slow-Onset Climate Justice and Human Mobility*, 93 TEMP. L. REV. 671 (2021); Erika Castro-Buitrago & Juliana Vélez Echeverri, *Procesos de reasentamiento en Colombia: ¿Una medida de adaptación y protección de derechos humanos de las víctimas del cambio climático?*, VNIVERSITAS, May 30, 2018, at 1; see, e.g., Sarah E. Jordan, *The Aftershock of Haiti’s Earthquake: Response Efforts in the Wake of Natural Disasters Perpetuate the Violation of Internally Displaced Persons’ Human Rights*, 42 CAL. W. INT’L L.J. 221, 231–33 (2011).
18. Ruhl & Kundis Craig, *supra* note 10, at 236.
19. *Id.* at 238.

disaster.²⁰ Unsurprisingly, managed retreat has been critiqued for potentially posing a threat to self-determination because relocation programs can often undermine community autonomy and well-being.²¹

A significant portion of academic literature grapples with the proper way to conceptualize and define migration and displacement in the context of climate change.²² One of the inherent challenges of this

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20. *Id.* at 237; see also Katharine J. Mach & A.J. Siders, *Reframing Strategic, Managed Retreat for Transformative Climate Adaptation*, 372 SCI. 1294, 1294 (2021).
 21. See Beatriz Felipe Pérez & Alexandra Tomaselli, *Indigenous Peoples and Climate-Induced Relocation in Latin America and the Caribbean: Managed Retreat as a Tool or a Threat?*, 11 J. ENV'T. STUD. SCI. 352, 354–55 (2021); see also Carmen Gonzalez, *Racial Capitalism, Climate Justice, and Climate Displacement*, 11 OÑATI SOCIO-LEGAL SERIES 108, 133 (2021); see also Castro-Buitrago & Vélez Echeverri, *supra* note 17, at 1; see also Brooke Wilmsen & Michael Webber, *What Can We Learn from the Practice of Development-Forced Displacement and Resettlement for Organised Resettlements in Response to Climate Change?*, 58 GEOFORUM 76, 77 (2015) (noting that key failings of the development-forced displacement and resettlement praxis include “limited regard for the agency of the affected population as people who are themselves capable of responding to changes going on around them; the lack of interrogation of development as an approach to improving resettlement outcomes; limited consideration of the politics surrounding the identification of the affected population; and a simplistic understanding of community dynamics and livelihoods.”); Ruhan Sidhu Nagra, *Relocating Justice*, 74 DUKE. L.J., at 1 (forthcoming) (arguing that two main, seemingly opposite problems stem from managed retreat: (1) “managed retreat can be inaccessible to marginalized communities, many of whom lack the resources to successfully navigate the relocation process”, while (2) “managed retreat can disproportionately harm marginalized communities, who may experience greater relocation-related psychosocial and financial harms.”).
 22. Walter Kälin, *Locating International Law on Human Mobility in the Context of Climate Change*, 116 PROC. OF THE ASIL ANNU. MEET. 160, 161 (2022); see, e.g., Elizabeth Keyes, *Environmental Refugees? Rethinking What's in A Name*, 44 N.C. J. INT'L L. 461, 461 (2019); Rina Kuusipalo, *Exiled by Emissions—Climate Change Related Displacement and Migration in International Law: Gaps in Global Governance and The Role of The Un Climate Convention*, 18 VT. J. ENV'T. L. 614, 615 (2017); Emily Naser-Hall, *Square Pegs in Round Holes: The Case of Environmentally Displaced Persons and the Need for a Specific Protection Regime in the United States*, 22 TUL. J. INT'L & COMP. L. 263, 270–71 (2014); Walter Kälin & Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change*, at 29, U.N. Doc. PPLA/2012/01 (2012); see Mostafa Mahmud Naser, *Climate Change Environmental Degradation and Migration: A Complex Nexus*, 36 WM. & MARY ENV'T. L. & POL'Y REV. 713, 715 (2012); Mostafa Mahmud Naser, *Climate Change-Induced Displacement: Definitional Issues and Concerns*, 2 CHI.-KENT J. ENV'T ENERGY L. 1, 1 (2011-2012) (explaining that conceptualization of the issues “is important from a legal perspective, because the development of law and policy framework depends on how the issue of climate change displacement is characterized. It has significant

phenomenon is understanding the role of climate impacts when migration is multicausal, often attributed to several economic, social, and political factors.²³ Several scholars have focused on the unique challenges associated with cross-border migration and displacement²⁴ and the potential legal and policy frameworks to address this phenomenon.²⁵ Other authors have focused on critiquing and

governance implications as well as implications for determining the nature and extent of procedural, thematic and institutional frameworks.”).

23. Intergovernmental Panel on Climate Change [IPCC], *Climate Change 2014: Impacts, Adaptation, and Vulnerability*, at 6.
24. See, e.g., Jane McAdam, *Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement*, 114 AM. J. INT. L. 708, 712 (2020) (recognizing that “[a]t present, international legal instruments do not directly address the movement of people who cross borders in response to, or in anticipation of, climate change-related harms.”); see also Katrina M. Wyman, *Response to Climate Migration*, 37 HARV. ENV’T. L. REV. 167, 169 (2013); see generally Sumudu Atapattu, *Climate Change: Disappearing States, Migration, and Challenges for International Law*, 4 WASH. J. ENV’T. L. & POL’Y 1 (2011).
25. See, e.g., Robin Bronen, *Climigration: Creating A National Governance Framework for Climate-Forced Community Relocation*, 45 N.Y.U. REV. L. & SOC. CHANGE 574, 627–30 (2022); see also MATTHEW SCOTT, CLIMATE CHANGE, DISASTERS, AND THE REFUGEE CONVENTION 132 (2020); Alice Kaswan, *Creating Home Multilevel Governance Structures for Emerging Climate Migration*, 93 TEMP. L. REV. 735, 736–38 (2021); Ama Francis, *Free-Movement Agreements & Climate-Induced Migration: A Caribbean Case Study*, SABIN CENTER CLIMATE CHANGE L. Sept. 2019, at 1–3; Elizabeth Ferris, *Climate Change Migration Law and Global Governance*, 44 N.C. J. INT’L L. 425, 427 (2018); Phillip Dane Warren, *Forced Migration After Paris COP21: Evaluating the “Climate Change Displacement Coordination Facility,”* 116 COLUM. L. REV. 2103, 2016–07 (2016); Jane McAdam, *Swimming Against the Tide: Why a Climate Change Displacement Treaty is Not the Answer*, 23 INT’L J. REFUGEE L. 2, 3–4 (2011); Sheila C. McAnaney, *Sinking Islands? Formulating A Realistic Solution*, 87 N.Y.U. L. REV. 1172, 1174 (2012); David Hodgkinson et al., *‘The Hour When the Ship Comes In’: A Convention for Persons Displaced by Climate Change*, 36 MONASH U. L. REV. 69, 70–71 (2010); Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 HARV. ENV’T. L. REV. 349, 350–51 (2009); Frank Biermann & Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, in CLIMATE CHANGE, HUMAN SECURITY AND VIOLENT CONFLICT 291, 291 (Jüren Scheffrean et al. eds., 2012); Ramji-Nogales, *supra* note 17, at 672–73.

reimagining the climate migration paradigm²⁶ and the ways in which a human rights framework may be implicated or developed.²⁷

Climate displacement raises questions about the extent to which states have a broader duty to assist non-nationals who are forced to move due to climate impacts.²⁸ Some scholars have leveraged corrective justice and distributive justice principles to argue that developed countries have a duty to assist climate migrants.²⁹ For instance, Katrina Wyman³⁰ explores whether developed countries have a moral obligation to assist persons displaced by climate change.³¹ She argues that although “it is difficult to identify a special moral reason for assisting climate migrants as a category,” there may be other “reasons for assisting a subset of climate migrants,” namely the citizens of small island states who face an existential threat.³² Eliza Pan³³ discusses the ethical duty states have to assist climate migrants, particularly when the states themselves have been significant contributors to greenhouse gas emissions.³⁴ After all, Global North countries³⁵ have not only historically contributed to global emissions, but have also acquired

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26. Pan, *supra* note 11, at 1220 (proposing a hybrid framework of prudential humanitarianism, which seeks “to account for the actual costs and benefits of different climate migration responses, to find points of convergence among different states’ courses of action, and to develop normative principles for joint responses”); *see generally* Giovanna Lauria, *A Critical Appraisal of the Concept of Climate Migration*, 9 LONDON REV. INT’L L. 375 (2022).
 27. Siobhán McInerney-Lankford, *Climate Change and Human Rights: An Introduction to Legal Issues*, 33 HARV. ENV’T L. REV. 431, 431 (2009).
 28. Pan, *supra* note 11, at 1202–03.
 29. *See, e.g.* MATHIAS RISSE, ON GLOBAL JUSTICE 146–47 (2012) (arguing Kiribati nationals have a right to relocate).
 30. Wilf Family Professor of Property Law at NYU School of Law. *Katrina M. Wyman*, NYU LAW, <https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.overview&personid=20659> [https://perma.cc/FD4C-NEPM].
 31. Katrina M. Wyman, *Are We Morally Obligated to Assist Climate Change Migrants?*, 7 L. & ETHICS HUM. RTS. 185, 186–87 (2013); *see also* Tally Kritzman-Amir, *Looking Behind the “Protection Gap”: The Moral Obligation of the State to Necessitous Immigrants*, 13 U. PA. J. L. & SOC. CHANGE 47, 48–49 (2009–2010).
 32. Wyman, *supra* note 31, at 189.
 33. Eliza Pan is an Associate General Counsel at Northwell Health. *Eliza Pan*, LINKEDIN, <https://linkedin.com/in/elizapan/> [https://perma.cc/ZDZ7-GFDP].
 34. Pan, *supra* note 11, at 1200–01.
 35. *Global North*, COLLINS ENG. DICT. <https://www.collinsdictionary.com/dictionary/english/global-north> [https://perma.cc/EEA9-2XLA].

wealth through a fossil fuel-based economy.³⁶ Maxine Burkett³⁷ applies John Rawls' *A Theory of Justice* to defend a theory of justice that "ensures the rights of all and particularly the most [climate] vulnerable,"³⁸ while Carmen Gonzales³⁹ argues for "migration as reparation."⁴⁰

Despite the focus on cross-border movement, climate displaced people often move internally instead of or before seeking refuge outside their nation's borders.⁴¹ Internal displacements in 2022 were 41 percent higher than the annual average in the past decade, with a total of 32.6 million internal displacements.⁴²

Given this reality, it is imperative that scholars and practitioners alike devote attention to how internal climate displacement is already posing governance challenges and rendering existing legal frameworks obsolete in light of a warming climate. What obligations do states owe to those living under their jurisdiction, particularly when the states themselves have not been historical emitters but have failed to protect domestic populations from displacement related to environmental disasters and climate change impacts?

While the notion of borders and their utility as a framework has been contested—particularly in the context of a global environmental

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36. Sumudu Atapattu & Carmen G. Gonzalez, *The North-South Divide in International Environmental Law: Framing the Issues*, in INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH 1, 9–10 (Shawkat Alam et al. eds., 2015).
 37. Professor of Law at the William S. Richardson School of Law and a Global Fellow at the Woodrow Wilson International Center for Scholars. *Maxine A. Burkett*, U. OF HAW. SCH. OF L., <https://law.hawaii.edu/people/maxine-a-burkett/> [<https://perma.cc/JHV7-98Z5>].
 38. Maxine Burkett, *Behind the Veil: Climate Migration, Regime Shift, and a New Theory of Justice*, 53 HARV. CIV. RTS. L. REV. 445, 451–52 (2018).
 39. Morris I. Leibman Professor of Law at Loyola University Chicago School of Law. *Carmen G. Gonzalez*, U. CHICAGO SCH. OF L., <https://www.luc.edu/law/faculty/facultyandadministrationprofiles/gonzalez-g-carmen.shtml> [<https://perma.cc/3F4C-TF5W>].
 40. See generally Carmen G. Gonzalez, *Migration as Reparation: Climate Change and the Disruption of Borders*, 66 LOY. L. REV. 401 (2020); see also Tendai Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509 (2019).
 41. *Why UNHCR is Taking Action on Climate Change Displacement*, UNHCR, <https://www.unhcr.org/innovation/why-unhcr-is-taking-action-on-climate-change-displacement/> [<https://perma.cc/XJ92-MFRD>]; U.N. High Comm'r for Refugees, *Global Trends: Forced Displacement in 2017*, at 1 (June 25, 2018).
 42. IDCM, GRID 2023: INTERNAL DISPLACEMENT AND FOOD SECURITY 10 (2023).

phenomenon like climate change⁴³—human rights law ultimately imposes an affirmative duty on nation states to protect individuals living within their borders.⁴⁴ Under the existing human rights framework, states hold the duty to protect the rights of their citizens “because of the link between membership in a state and the protection of human rights.”⁴⁵ This, arguably, implicates obligations in the context of climate change adaptation.⁴⁶

Through exploring the disaster management framework in Colombia and the case study of Gramalote, this Article discusses the obligations that states that have historically low emissions and are understood as still “developing,” such as Colombia, owe to their climate displaced populations. Given the inexorability and foreseeability of climate displacement, this Article argues that developing states must (1) recognize climate displacement; (2) protect their populations’ rights to stay and to adequate housing— particularly for communities living in high-risk areas; and (3) implement best practices under international human rights law throughout relocation and resettlement processes involving climate displaced communities. Irrespective of the driver of displacement, displaced individuals should not be subject to a

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43. See H  l  ne Benveniste et al., *Effect of Border Policy on Exposure and Vulnerability to Climate Change*, 117 PNAS, Oct. 2020, at 26692.
 44. Pan, *supra* note 11, at 1202; see also JOHN RAWLS, A THEORY OF JUSTICE 3–4 (1971); Hall & Weiss, *supra* note 11, at 311 (observing that “because human rights analyses are typically centered on state action, human rights provides a lens through which to analyze developed countries culpability.”); Marc Limon, *Human Rights and Climate Change: Constructing a Case for Political Action*, 33 HARV. ENV’T. L. REV. 439, 458 (2009) (“[E]xisting human rights law is concerned primarily with how a government treats its own citizens and others living within its territory and under its jurisdiction.”).
 45. Wyman, *supra* note 31, at 201–03 (explaining that the international community often requires assistance to be channeled through states because individual rights protections often rely on the nation state and states serve “as the primary institution through which human affairs are coordinated to overcome collective action problems.”); see also HANNAH ARENDT, THE ORIGINS OF TOTALITARIANISM 268 (1951) (discussing “the right to have rights”).
 46. Hall & Weiss, *supra* note 11, at 322 (arguing in favor of holding developing states to a human rights standard); but see Benoit Mayer, *Climate Change Adaptation and the Law*, 39 VA. ENV’T. L.J. 141, 174–75 (2021) (“[I]nstead of making up for the damage suffered by developing states, most of the substantive norms on climate change adaptation impose new obligations on developing states. Even non-binding guidelines would likely erode the sovereignty of developing states; instead of making their development policy based on their own priorities, developing states would be required, or at least expected, to follow value judgments made by international institutions. Thus, instead of providing reparations, adaptation law would likely result in unjustified limitations to the rights of the states most affected by climate change to sustainable development, and to the right of their peoples to self-determination.”).

bifurcated regime of protection that treats displacement due to other causes (e.g., armed conflict) distinctly from displacement in the context of climate change and environmental disasters.

Part II provides an overview of the methodology employed in this Article. Part III examines Colombia's obligations in the context of climate displacement, stemming from both domestic and international law. Part III looks at the case study of Gramalote, the first town in Colombia to be destroyed and later relocated in the context of climate-related events. Part IV discusses lessons for future relocation processes and implications for domestic law, arguing that climate displaced individuals are entitled to the same protection regime as those displaced in the context of armed conflict.

II. METHODOLOGY

This Article is based on an extensive review of the legal framework (e.g., laws and decrees), domestic case law, and scholarly literature relating to cross-border and internal displacement in the context of climate change and environmental disasters, particularly around the event of La Niña between 2010 and 2011 in Colombia and the relocation of the town of Gramalote.

As a former researcher at the Center for the Study of Law, Justice, and Society (Dejusticia) in Bogotá, Colombia, this Author conducted more than twenty semi-structured interviews with former and then-current government officials, disaster risk practitioners, human rights attorneys, and scholars working on climate displacement and disaster risk management. The research took place between 2017 and 2018 as part of a team analyzing the experience of the town of Gramalote. The project culminated in the publication of the book *Entre dos pueblos – Desastre, desplazamiento ambiental y reasentamiento en Gramalote, Norte de Santander*.⁴⁷

III. STATE OBLIGATIONS IN THE CONTEXT OF CLIMATE DISPLACEMENT

At the end of the day, most of those displaced by the effects of climate change, who will remain within the borders of their countries, will have to depend on national laws and programs for protection and assistance.

– Elizabeth Ferris⁴⁸

47. SEBASTIÁN ROJAS CABAL & HELENA DURÁN CRANE, *ENTRE DOS PUEBLOS: DESASTRE, DESPLAZAMIENTO AMBIENTAL Y REASENTAMIENTO EN GRAMALOTE, NORTE DE SANTANDER* 34 (2021).

48. Ferris, *supra* note 25, at 436.

A. *Desplazados or Damnificados?*

Colombia ranks as one of the countries with the highest rates of internal displacement in the world.⁴⁹ Over the course of five decades, ongoing internal armed conflict has forced more than seven million people to leave their homes.⁵⁰ Internally displaced persons (IDPs) who are displaced by armed conflict tend to settle in high-risk and peripheral areas, and are thus more likely to be displaced again when a disaster occurs.⁵¹ As some experts have observed, “displaced people have had to weigh up the threats they face against limited resettlement options, in an ongoing context of marginalisation.”⁵²

While displacement related to environmental disasters is a common occurrence,⁵³ the government has not officially recognized this as a reality.⁵⁴ The government’s treatment of climate displaced individuals—whether temporary or permanent—is grounded in disaster policy. The regulatory frameworks for disaster prevention and response do not employ the terms “migrant” or “displaced person.” Nor do they outline the rights to which populations affected by climate change or climate-related events are entitled. Pursuant to national legislation, the term *desplazado* (“displaced”) only applies to those who have been forced to

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49. See James M. Shultz et al., *Internal Displacement in Colombia: Fifteen Distinguishing Features*, 2 DISASTER HEALTH 13, 14 (2014).
50. Beatriz Eugenia Sánchez & René Urueña, *Colombian Development-Induced Displacement: Considering the Impact of International Law on Domestic Policy*, 5 GRONINGEN J. INT’L. L. 73, 74 (2017).
51. Katherine Bustamante González & Martha Isabel Gómez Vélez, *Gestión del riesgo de desastres en Colombia: ¿forma de generación de desplazamiento forzado de población?*, 1 CLÍNICA JURÍDICA DE INTERÉS PÚBLICO UNAULA 75, 93–94 (2015).
52. Roger Few et al., *Moving with Risk: Forced Displacement and Vulnerability to Hazards in Colombia*, 144 WORLD DEV., Aug. 2021, at 1, 2 (2021) (noting that “the humanitarian category of ‘internally displaced person’ labels and stigmatises people, fixing them in particular social positions that can undermine their dignity, restrict their possibilities and continue to produce uncertain futures.”); see also AYESHA SIDDIQI ET AL., ‘DOBLE AFECTACIÓN’: LIVING WITH DISASTERS AND CONFLICT IN COLOMBIA 11 (2019).
53. See OCDE, EVALUACIÓN DE LA GOBERNANZA DEL RIESGO EN COLOMBIA 27 (2019).
54. Sánchez & Urueña, *supra* note 50, at 73 (observing that “[t]o this day the only forced displacement whose existence has been officially recognized in Colombia is that linked to the internal armed conflict. Exoduses caused by mining, the production of biofuels or any other kind of development project, face not only the absence of programmes to repair their rights and meet their basic needs, but also the denial of their status as IDPs. Indeed, authorities responsible for designing and implementing plans and projects on these industries have not recognized even the faintest possibility of them triggering an involuntary exodus.”).

move inside the country's borders due to armed conflict or related events.⁵⁵

Meanwhile, the term "*damnificado*" is used to refer to those in need of special governmental assistance after an environmental disaster strikes.⁵⁶ The term in English translates to the adjectives "affected" and "damaged," or the nouns of "victim" and "survivor."⁵⁷ The Spanish Royal Academy defines *damnificado*⁵⁸ as someone "who has suffered a serious, collective harm."⁵⁹ The category itself evokes notions of humanitarian support and assistance.

The benefits associated with the label of *desplazado* instead of *damnificado* have resulted in tensions between those who are politically categorized as IDPs and those who were displaced by factors other than violence but are not protected under the IDP regime.⁶⁰ Government agencies have failed to focus on the ways in which communities impacted by environmental disasters identify themselves and conceive

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55. L. 387/1997, julio 24, 1997, art. 1, DIARIO OFICIAL [D.O.] (Colom.) ("A displaced person is any person who has been forced to migrate within the national territory, abandoning his place of residence or customary economic activities, because his life, physical integrity, personal freedom or safety have been violated or are directly threatened as a result of any of the following situations: internal armed conflict, civil tension and disturbances, general violence, massive Human Rights violations, infringement of International Humanitarian Law, or other circumstances arising from the foregoing situations that drastically disturb or could drastically disturb the public order."); L. 1448/2011, junio 10, 2011, D.O., arts. 3, 60(2) (same). Recent scholarship has also explored the relationship between conflict and climate change, namely whether climate impacts contribute to conflict. *See, e.g.,* Vally Koubi, *Climate Change and Conflict*, 22 ANN. REV. POL. SC. 343, 343 (2019) ("Substantial agreement exists that climatic changes contribute to conflict under some conditions and through certain pathways. In particular, the literature shows that climatic conditions breed conflict in fertile grounds: in regions dependent on agriculture and in combination and interaction with other socioeconomic and political factors such as a low level of economic development and political marginalization.").
56. Sebastián Rubiano et al., *La Protección del Desplazamiento Forzado por Desastres Ambientales en Colombia: Hacia una Perspectiva de Derechos Humanos*, DERECHOS HUMANOS DE LOS GRUPOS VULNERABLES, July 2014, at 458.
57. *Damnificado*, WORDREF., <https://www.wordreference.com/es/en/translation.asp?sopen=damnificado> [<https://perma.cc/9UJZ-PYH9>].
58. *Damnificado*, REAL ACADEMIA ESPAÑOLA, <https://dle.rae.es/damnificado> [<https://perma.cc/NN4R-GJ76>].
59. *Id.*
60. Skype Interview with Researcher on Risk Management, Professor, London Sch. of Econ. & Pol. Sci. (Mar. 2018).

of their own rights.⁶¹ This is unsurprising since Colombian law does not recognize climate displacement as a phenomenon requiring a distinct legal framework to proactively protect—and not merely assist—climate displaced individuals.⁶²

Notably, the Ministry of Environment does not consider resettlement or planned migration as climate adaptation strategies, even though planned migration has been proposed as a response to climate displacement.⁶³ However and perhaps perplexingly, the Nationally Determined Contribution of Colombia before the United Framework Convention on Climate Change mentions that certain vulnerable groups can be disproportionately affected by climate events and therefore be more likely to face “environmental displacement.”⁶⁴

B. Constitutional Obligations in a Bifurcated Regime

Congress established the framework governing IDPs through Law 387 of 1997,⁶⁵ which applies only in the context of armed conflict. In the seminal judgment T-025 of 2004, the Constitutional Court recognized armed conflict as the sole underlying cause of forced displacement.⁶⁶ Separately, the development of disaster law closely followed large-scale environmental events and disasters, with different administrations often revamping or creating agencies or institutions in the aftermath of a specific earthquake, volcanic eruption, or landslide.⁶⁷ For decades, the agency responsible for managing environmental disasters focused on risk reduction instead of disaster management.⁶⁸ However, the institutional framework underwent a massive transformation following the 2010 and 2011 events associated with La Niña.⁶⁹ Congress consolidated the current disaster management

61. Sebastián Albuja & Isabel Cavelier Adarve, *Protecting People Displaced by Disasters in the Context of Climate Change: Challenges from a Mixed Conflict/Disaster Context*, 24 TULANE ENV'T L.J. 239, 252 (2011).

62. See Sánchez & Urueña, *supra* note 50, at 74.

63. See Interview with Public Officials at the Ministry of Env't and Sustainable Dev., Consultants, in Bogotá, Colom. (Feb. 2018).

64. GOV'T OF COLOM., ACTUALIZACIÓN DE LA CONTRIBUCIÓN DETERMINADA A NIVEL NACIONAL DE COLOMBIA (NDC) 2–3 (2020).

65. L. 387/1997, julio 24, 1997, art. 4, DIARIO OFICIAL [D.O.] (Colom.).

66. Corte Constitucional [C.C.] [Constitutional Court], enero 22, 2004, Sentencia T-025/2004 (Colom.); see Sánchez & Urueña, *supra* note 50, at 83.

67. Rubiano et al., *supra* note 56, at 458–59.

68. See PAULA R. FAJARDO, LA GESTIÓN DEL RIESGO EN EL ORDENAMIENTO JURÍDICO COLOMBIANO [Risk Management in the Colombian Legal System] 11 (2015).

69. *Id.*

framework through Law 1523 of 2012,⁷⁰ which governs those affected by environmental disasters and classifies them as *damnificados*.

Significantly, the Colombian Constitutional Court, the highest court on constitutional matters, has issued several decisions related to the rights of populations temporarily or permanently displaced by environmental disasters,⁷¹ particularly with regards to the right to dignified or adequate housing as enshrined in Article 51 of the Constitution:

All Colombians have a right to decent housing. The State Shall determine the conditions necessary to give effect to this right and shall promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programs.⁷²

The Constitutional Court has upheld the right to housing for individuals living in high-risk areas on multiple occasions. For instance, in a *tutela* action—a constitutional mechanism where a plaintiff can seek protection of their fundamental rights⁷³—the plaintiff sued a local government that refused to relocate her after ordering the demolition of her home, which was in a high-risk flood zone.⁷⁴ The Constitutional Court concluded that the government had indeed violated her fundamental right to housing after failing to relocate her.⁷⁵ The Court also observed that to protect the right to housing of conflict IDPs, the government must “relocate displaced persons who, due to said circumstance, have been forced to settle in high-risk areas.”⁷⁶ The Court has previously held that the government violates the right to decent housing, which is connected to the right to life and to a living wage, when it does not “adopt the adequate and necessary measures to finalize in a timely fashion the relocation process of families living in precarious

70. L. 1523/2012, abril 24, 2012, DIARIO OFICIAL [D.O.] (Colom.).

71. See *infra* notes 72-78.

72. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 51. Law 74 of 1968 incorporated the right to housing in the International Covenant on Economic, Social and Cultural Rights. L. 74/1968, diciembre 26, 1968, art. 11, DIARIO OFICIAL [D.O.] (Colom.); G.A. Res. 2200A (XXI) art. 11(1), International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1996).

73. See Camila Bustos & Whitney Richardson, *Implementing Nature’s Rights in Colombia: The Arato and Amazon Experiences*, REVISTA DERECHO DEL ESTADO, no. 54, 2023, at 227, 230.

74. Corte Constitucional [C.C.] [Constitutional Court], enero 21, 2008, Sentencia T-079/2008 (Colom.).

75. *Id.*

76. Corte Constitucional [C.C.] [Constitutional Court] julio 27, 2006, Sentencia T-585/2006. Quote translated from Spanish to English by Author.

conditions.”⁷⁷ Relatedly, the Court had said that people displaced by a disaster must have priority in accessing housing subsidies.⁷⁸

Although Law 715 of 2001 does not explicitly recognize *damnificados* as a subject of protection under the IDP regime, the Constitutional Court has characterized them as vulnerable in several instances.⁷⁹ The Court has recognized that “[p]eople affected by natural disasters are left in extremely difficult conditions given the loss of their belongings, livelihoods and housing, hence the urgency and need for public authorities to offer an adequate and timely response to address the tragedy.”⁸⁰ Further, the Court concluded that:

In terms of disaster prevention and response, special constitutional attention is given to the protection of the affected population, which holds a position of evident vulnerability and weakness, and thus to guarantee their fundamental rights to life, subsistence, dignity, and health, among others. In addition, the general principle of solidarity prevents society from being indifferent to the evident suffering of people or insensitive to the situation of helplessness and extreme need that these people find themselves in.⁸¹

In this manner, the Constitutional Court has called upon the principle of solidarity enshrined in Article 1 of the Constitution to

77. Corte Constitucional [C.C.] [Constitutional Court], agosto 6, 2009, Sentencia T-544/2009. Quote translated from Spanish to English by Author.

78. See Rubiano et al., *supra* note 56, at 460 (citing Corte Constitucional [C.C.] [Constitutional Court], julio 27, 2006, Sentencia T-585/2006). Quote translated from Spanish to English by Author.

79. See, e.g., Corte Constitucional [C.C.] [Constitutional Court], noviembre 27, 2003, Sentencia T-1125/2003; see also Corte Constitucional [C.C.] [Constitutional Court], diciembre 13, 2007, Sentencia T-1075/2007; see also Corte Constitucional [C.C.] [Constitutional Court], junio 9, 2011, Sentencia T-467/2011; see also Corte Constitucional [C.C.] [Constitutional Court], marzo 22, 2013, Sentencia T-163/2013. In 2010, the Court affirmed that municipal governments must order an eviction and provide decent housing to those who reside in high-risk sites to eliminate the risk to their lives and personal integrity. In this case, the Court considered that “the negligence and omission of the mayor [was] evident and practically absolute, thus violating the right to decent housing of the plaintiffs, which becomes essential because it is connected to the rights to life and physical integrity.” Corte Constitucional [C.C.] [Constitutional Court], febrero 1, 2010, Sentencia T-036/2010. Quote translated from Spanish to English by Author.

80. Corte Constitucional [C.C.] [Constitutional Court], diciembre 3, 2013, Sentencia T-903/13. Quote translated from Spanish to English by Author.

81. Corte Constitucional [C.C.] [Constitutional Court], noviembre 27, 2003, Sentencia T-1125/03. Quote translated from Spanish to English by Author.

establish the State's obligation to protect communities displaced by environmental disasters.⁸² The Court has specified that the State has an obligation to relocate persons threatened or affected by an environmental disaster since relocation is one of the many manifestations of the solidarity principle. In turn, solidarity is exercised by providing a differential treatment to those affected by environmental hazards and seeking to protect their fundamental rights.⁸³

The Court, clarifying its position regarding relocations for persons living in high-risk areas, stated the following:

[T]he duty towards the population located in high-risk areas . . . is directly based on the provisions of article 2 of the Political Constitution, a precept from which “it follows a generic duty to act that dictates the authorities of any territorial level to prevent threats or violations of the rights of residents in Colombia. The Court has also clarified that, even though the government has a scope of discretion in these cases when assessing the seriousness of the facts and selecting the measures to be applied, said margin is reduced to find the most appropriate means to protect and guarantee the effective enjoyment of the fundamental rights of the affected persons, given the urgency of the situation. The Chamber reiterates that it is imperative for the municipal administrative authorities (i) to develop suitable and efficient tools that allow the relocation of the population settled in areas classified as high risk, in order to protect the lives of this group of people; (ii) carry out the necessary administrative acts so that those affected can find another place to live in conditions similar to those they enjoyed before.”⁸⁴

Regarding the responsibility of local governments, the Court has further articulated that:

i) local authorities have specific obligations and powers regarding disaster prevention and management, (ii) they must have current and complete information about the areas at high risk of landslides or collapses within their municipality, (iii) once the

82. *Id.*; see also Corte Constitucional [C.C.] [Constitutional Court], diciembre 3, 2013, Sentencia T-903/13 (providing an overview of the disaster management framework and outlining government obligations); CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 1.

83. Corte Constitucional [C.C.] [Constitutional Court], diciembre 13, 2007, Sentencia T-1075/07 (reasoning that the impact of disasters justifies a differentiated approach since ignoring situations of vulnerability and “ignoring both the disaster and its consequences on the social, economic, environmental and family setting implies a violation of the fundamental rights of the victims.”).

84. Corte Constitucional [C.C.] [Constitutional Court], junio 9, 2011, Sentencia T-467/11 (quotation marks omitted). Quote translated from Spanish to English by Author.

census on the areas at high risk of landslides is obtained, they must proceed to relocate those people who are at risk, (iv) they must promote and support public housing programs or projects . . . (v) [Congress] has delegated to the municipal government prevention and mitigation duties towards the population located in areas where a disaster can occur.⁸⁵

The Constitutional Court has explained that the State's general obligations when assisting *damnificados* include fulfilling minimum housing standards, protecting the right to return for affected communities, promoting deliberation and participation by those communities, refraining from discrimination on the basis of arbitrary factors, providing special protection to already vulnerable populations, facilitating access to dignified housing without unfounded obstacles, and, finally, preventing backsliding in the protections offered or already accomplished.⁸⁶

Significantly, the Court recently declined to recognize climate displacement in Colombia.⁸⁷ In a 2022 case, plaintiffs from the *Raizal* population—an ethnic community living in the islands of Providencia and Santa Catalina who were severely affected by hurricane Iota in 2020—brought a lawsuit asking the Constitutional Court to protect their right to land, access to information, and prior consultation.⁸⁸

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85. Corte Constitucional [C.C.] [Constitutional Court], marzo 22, 2013, Sentencia T-163/13. Prior to the new regime established in 2012, the Constitutional Court had observed that mayors should have up-to-date and complete information about areas facing a high-risk of flooding or landslides, adopt the measures necessary to relocate persons living in areas where their rights are threatened, and evacuate people when necessary to protect their lives. Corte Constitucional [C.C.] [Constitutional Court], diciembre 5, 2002, Sentencia T-1094/02. Quote translated from Spanish to English by Author.
86. Corte Constitucional [C.C.] [Constitutional Court], febrero 4, 2011, Sentencia T-047/11 (noting that protecting the right to return for affected communities may in turn unduly perpetuate habitation of areas increasingly exposed to climate risks.)
87. Corte Constitucional [C.C.] [Constitutional Court], septiembre 26, 2022, Sentencia T-333/22. Although the judiciary branch has declined to recognize climate displacement, a group of legislators introduced legislation 2023 to recognize forced displacement as a result of climate change. PL 299/2022, marzo 2023, <https://www.camara.gov.co/camara/visor?doc=/sites/default/files/2023-03/Informe%20de%20Ponencia%201er%20Debate%20PL%20299%20de%202022%20-%20Desplazamiento%20por%20causas%20clim%C3%A1ticas.docx> [https://perma.cc/4U2N-73XG].
88. Camila Bustos & Juliana Vélez-Echeverri, *A Human Rights Approach to Climate-Induced Displacement: A Case Study in Central America and Colombia*, 31 MICH. ST. INT'L L. REV. 403, 432-35 (2023); Corte Constitucional [C.C.] [Constitutional Court], septiembre 26, 2022, Sentencia T-333/22; Maryluz Barragán et al., *Le pedimos a la Corte Constitucional que analice la situación de desplazamiento climático en*

Although the petitioners asked the Court to declare climate displacement in Providencia and Santa Catalina, the Court refused to do so even as it issued several orders to protect the population.⁸⁹

In essence, the Constitutional Court has developed jurisprudence protecting the fundamental rights of persons affected by environmental disasters, recognizing that they are in a vulnerable situation and are therefore subjects of constitutional protection. However, the Court has maintained a distinction between IDPs (i.e., *desplazados*) and climate-displaced individuals (i.e., *damnificados*), upholding two separate protection regimes. The former is subject to special constitutional protection under a comprehensive framework developed after decades of internal armed conflict, while the latter is primarily governed under a humanitarian regime in the aftermath of an environmental disaster.

C. State Obligations Under International Law

Outside of judicial decisions recognizing (and outlining the contours of) the rights of climate displaced populations, there are international human rights standards relevant to internal displacement in the context of climate change.⁹⁰

For example, Article 13 of the Universal Declaration of Human Rights recognizes that “[e]veryone has the right to freedom of movement and residence within the borders of each State.”⁹¹ Similarly, Article 12 of the International Covenant on Civil and Political Rights safeguards the freedom of movement and the right to choose where one lives.⁹² Further, the prohibition against discrimination on the basis of sex, race, religion, political opinion, or national origin in Article 2 is relevant to the treatment of displaced individuals, who are often

Providencia, DEJUSTICIA (Jan. 26, 2022), <https://www.dejusticia.org/litigation/le-pedimos-a-la-corte-constitucional-que-analice-la-situacion-de-desplazamiento-climatico-en-providencia/> [https://perma.cc/3NQD-7KFS].

89. *Corte Profiere Órdenes para Proteger a la Población Raizal de Providencia y Santa Catalina ante los Problemas que se Presentan en la Reconstrucción de Estas dos Islas* [Court Issues Orders to Protect the Raizal Population of Providencia and Santa Catalina from the Problems that Arise in the Reconstruction of these Two Islands], CORTE CONSTITUCIONAL DE COLOM. [CONST. CT. OF COLOM.] (Oct. 28, 2022), <https://www.corteconstitucional.gov.co/noticia.php?Corte-profiere-%C3%B3rdenes-para-proteger-a-la-poblaci%C3%B3n-raizal-de-Providencia-y-Santa-Catalina-ante-los-problemas-que-se-presentan-en-la-reconstrucci%C3%B3n-de-estas-dos-islas-9378> [https://perma.cc/3NQD-7KFS].

90. Burkett, *supra* note 25, at 470–71.

91. G.A. Res. 217 (III) A, art. 13, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter U.D.H.R.].

92. International Covenant on Civil and Political Rights, art. 12, Dec. 19, 1956, 999 U.N.T.S. 171 [hereinafter ICCPR].

members of marginalized groups.⁹³ In the same vein, Article 5 of the 1967 Convention on the Elimination of All Forms of Racial Discrimination mandates that states provide equality before the law for all without distinction to race, color, or national or ethnic origin, notably in the enjoyment of the right to freedom of movement.⁹⁴ These instruments—which Colombia has ratified—underscore the right to stay by affirming the principles of freedom of movement, non-discrimination, and the right to remain in one’s country of origin.⁹⁵

Some “[s]oft law instruments relevant to climate migration include the U.N. Principles on Housing and Property Restitution for Refugees and Displaced Persons (“the Pinheiro Principles”), the U.N. Inter-Agency Standing Committee’s Operational Guidelines on Human Rights and Natural Disasters [IASC Operational Guidelines], the Human Rights Council Resolutions 7/23, 10/4, and 18/ 22 on Human Rights and Climate Change, among others.”⁹⁶

Perhaps most importantly, the Guiding Principles on Internal Displacement (hereinafter “the Guiding Principles”) contemplate those displaced by environmental disasters.⁹⁷ The Guiding Principles, though non-binding, provide guidance to states responding to internal displacement under existing international law.⁹⁸

Principle 5 articulates that States “shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.”⁹⁹ Principle 6 states that the “right [of every human being] to be protected against being arbitrarily displaced from his or her home or place of habitual

93. U.D.H.R., *supra* note 91, art. 2.

94. G.A. Res. 2106 (XX), art. 5(d)(i) (Mar. 7, 1966).

95. *Id.* art. 5; ICCPR, *supra* note 92, art. 12.

96. Burkett, *supra* note 38, at 471; *see also* BROOKINGS ET AL., GUIDANCE ON PROTECTING PEOPLE FROM DISASTERS AND ENVIRONMENTAL CHANGE THROUGH PLANNED RELOCATION (2015).

97. U.N. Office of the Coordination of Humanitarian Affairs, *U.N. Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Ad.2 (1998) [hereinafter GPID].

98. Ferris, *supra* note 27, at 433; IASC, IASC OPERATIONAL GUIDELINES ON THE PROTECTION OF PERSONS IN SITUATIONS OF NATURAL DISASTERS, INTER-AGENCY STANDING COMMITTEE 12 (2011) (“[P]ersons who have been ordered or forced to flee or to leave their homes or places of habitual residence or who have been evacuated as a result of a natural disaster or its effects, or were obliged or forced to leave in order to avoid them, and have not crossed an internationally recognized State border are internally displaced persons in accordance with the 1998 Guiding Principles on Internal Displacement and should be treated accordingly.”).

99. GPID, *supra* note 97, Principle 5.

residence,”¹⁰⁰ while Principle 14 recognizes that “[e]very internally displaced person has the right to liberty of movement and freedom to choose his or her residence.”¹⁰¹ Further, Principle 28 establishes that the authorities “have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.”¹⁰²

Legal experts interpret the Guiding Principles and existing international law to impose upon states the duty to (1) respect the right not to be displaced by refraining from carrying out arbitrary displacement, and (2) protect the right not to be displaced because of the threat of disasters.¹⁰³ Scholars observe that “the right not to be displaced has on various occasions been recognised as a universally applicable human right, and can therefore be considered as an emerging right in international law.”¹⁰⁴

The Guiding Principles also recognize that states should protect both citizens and residents within their areas of jurisdiction and provide adequate assistance.¹⁰⁵ The Guiding Principles “have been used by many governments as the basis for the development of national laws and policies on IDPs.”¹⁰⁶ Notably, the Colombian Constitutional Court has recognized and incorporated the Guiding Principles regarding the situation of conflict IDPs.¹⁰⁷ However, the Guiding Principles do not

100. *Id.* principle 6(1).

101. *Id.* principle 14(1).

102. *Id.* principle 28.

103. Michèle Morel et al., *The History and Status of the Right Not to be Displaced*, 41 FORCED MIGRATION REV. 5, 5 (2012); *see generally* G.A. Res. 58/177 (Dec. 22, 2013).

104. Morel et al., *supra* note 103, at 6; *see generally* G.A. Res. 58/177, *supra* note 103.

105. GPID, *supra* note 97, principle 3(1), 6(1), 28.

106. Ferris, *supra* note 25, at 434 (discussing examples of countries like Vanuatu and Kenya, which have incorporated the Guiding Principles into national legislation and policy).

107. DISPL. SOL’S., *supra* note 5, at 60–61; *see also* Corte Constitucional [C.C.] [Constitutional Court], enero 22, 2004, Sentencia T-025/04; Federico Guzmán Duque, *The Guiding Principles on Internal Displacement: Judicial Incorporation and Subsequent Application in Colombia*, in JUDICIAL PROTECTION OF INTERNALLY DISPLACED PERSONS: THE COLOMBIAN EXPERIENCE 175 (Rodolfo Arango Rivadeneira ed., 2009). Despite these principles being “soft law,” the Court has explained that the Guiding Principles and the Pinheiro Principles serve as the basis to interpret domestic law on internal displacement. Andrés Celis, *Protection of the Internally Displaced by Constitutional Justice: The Role of the Constitutional Court in Colombia*, in JUDICIAL PROTECTION OF INTERNALLY DISPLACED PERSONS: THE COLOMBIAN EXPERIENCE 99 (Rodolfo Arango Rivadeneira, ed., 2009) (“The Court held that the

“provide specific provisions to guide domestic decision-making” and are non-binding, which limits their impact.¹⁰⁸

Regional legal systems have also produced relevant jurisprudence and guidance applicable in the context of climate displacement. For example, the African Union has adopted the Kampala Convention, a legally binding instrument that imposes human rights duties in the context of forced displacement, including displacement related to environmental disasters.¹⁰⁹

The Inter-American System on Human Rights is another relevant forum—composed of the Inter-American Commission on Human Rights (“the Commission”) and the Inter-American Court on Human Rights (“the Court”)—particularly for those countries in the Americas that have ratified the American Convention on Human Rights.¹¹⁰

Article 22(1) of the American Convention states that “[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”¹¹¹ Further, the Inter-American Convention Against All Forms of Discrimination and Intolerance clarifies that “discrimination” may be based on “internally displaced status.”¹¹²

The Commission has recognized that climate change and environmental disasters can trigger protection under the Inter-American System on Human Rights because environmental disasters affect the right to freedom of movement and residence.¹¹³ Internal displacement implicates a number of additional rights, namely:

Guiding Principles form part of the [constitutionality block] because the majority of these principles originate from treaties duly ratified by the Colombian State. This means that the Guiding Principles constitute a fundamental parameter for interpretation of domestic legislation and for the design and execution of policies and programs in favor of the displaced population”).

108. Burkett, *supra* note 38, at 466.

109. Convention for the Protection and Assistance of Internally Displaced Persons in Africa art. 1(k), art. 4(2), art. 5(4), Oct. 23, 2009, 3014 U.N.T.S. 3. (“States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.”).

110. The American Convention on Human Rights is a human rights treaty adopted by many countries in the region, which seeks “to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man.” American Convention on Human Rights, Preamble, Nov. 22, 1969, 1144 U.N.T.S. 123.

111. *Id.* art. 22(1).

112. Organization of American States G.A. Res. 2804 (XLIII-O/13), art. 1 (June 5, 2013).

113. Inter-Am. Comm’n on Hum. Rts., Human Mobility Inter-American Standards, OEA/Ser.L/V/II, at 12 (2015).

the right to life, the right to health, food, property, housing, work, and others. Vulnerable groups within society, like women, children, seniors, the disabled and persons living in poverty, are those hardest hit by phenomena of this type and, at the same time, are those least able to adapt to the challenges that such disasters pose.¹¹⁴

The Inter-American System has articulated States' human rights obligations with respect to IDPs.¹¹⁵ Although the Court's jurisprudence has been developed primarily in the context of forced displacement due to civil disruption, violence, and conflict,¹¹⁶ these protection standards are also applicable in the context of climate displacement.¹¹⁷

In *Masacre de Mapiripán v. Colombia* (2005), the Court emphasized that under Article 22(1) of the American Convention, States have an obligation not only to prevent displacement, but to also ensure suitable conditions for individuals to return home safely.¹¹⁸ This case underscores that the right to stay involves more than protection from forced displacement; it also includes the obligation of states to provide an environment where people can live with dignity and security.¹¹⁹ The Court further articulated these obligations in *Ituango v. Colombia* (2006), observing that States' obligations to respect individuals' rights to stay and to freedom of movement require both refraining from violating these rights directly and taking proactive steps

114. *Id.* ¶ 65.

115. *Id.* ¶ 232 (“Article 22(1) of the American Convention also protects the right to live in a place of one’s choosing with the territory of a State, which includes protection against any form of forced internal displacement. In their case law and writings, the organs of the Inter-American Human Rights System have interpreted freedom of movement and residence, recognized in Article 22(1) of the American Convention, as also obligating the State not to take any measures that would necessitate a person’s internal displacement and to refrain from assisting third parties in the commission of acts that cause internal displacement.”).

116. *See, e.g.,* Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits, Reparations, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶¶ 249, 255 (2012); *see also* Restrepo and Family Members v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 245, ¶ 220 (2012); *see also* Valle Jaramillo v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 192 (2008).

117. *See* GPID, *supra* note 97, principle 14(1); *see also* Michèle Morel et al., *supra* note 103, at 5; *see also* G.A. Res. 58/177, *supra* note 103.

118. *Masacre de Mapiripán v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 122, ¶188 (Sept. 15, 2005).

119. *Id.* ¶¶ 170, 175.

to ensure an environment where these rights can be fully realized.¹²⁰ The *Ituango* decision emphasized the importance of implementing policy mechanisms to assist IDPs and guaranteeing the safe return and resettlement of those facing internal displacement.¹²¹

Both cases articulate the scope of protection under Article 22(1) and reinforce that human rights are not isolated concepts but rather a complex web of interrelated protections. The violation of one right, such as the freedom of movement or the right to stay, can lead to violations of other fundamental rights, such as the right to life and the right to humane treatment.¹²²

Further, several scholars have explained how the current jurisprudence of the Court on environmental protection may be leveraged to provide effective human rights remedies for human rights violations related to climate change.¹²³ At the time of publication, at the request of the governments of Colombia and Chile, the Court agreed to issue an advisory opinion on the climate emergency and human rights. The Court will also provide guidance regarding the scope that States should give to their obligations under the American Convention in relation to human mobility.¹²⁴

IV. THE *OLA INVERNAL* AND THE INSTITUTIONAL RESPONSE

The IPCC estimates that Colombia will continue to face increasing temperatures, rising sea-levels, and other climate-related impacts.¹²⁵ The country's geographic location, high poverty levels, institutional weaknesses, and vast inequalities have resulted in a large segment of the population living in hazardous areas, rendering these populations

120. *Ituango v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶¶ 205–09, 225 (July 1, 2006).

121. *Id.* ¶¶ 209, 395, 404.

122. The Court concluded that the situation of displacement endured by the victims also implicated other rights, including the right of the next of kin of the victims to a decent life. Mapiripán, *supra* note 118, ¶¶ 186–89; *Ituango*, *supra* note 120, ¶ 234.

123. See, e.g. Juan Auz, *Climate Crisis and the Testing of International Human Rights Remedies: Forecasting the Inter-American Court of Human Rights*, in 26 THE HAGUE ACAD.'S CTR. FOR STUD. AND RSCH. IN INT'L L. AND INT'L REL.'S SERIES 1 (Sandrine Maljean-Dubois & Jacqueline Peel eds., 2023).

124. Request for an Advisory Opinion on the Climate Emergency and Human Rights, Inter-Am. Ct. H. R. (ser A) (Jan. 9, 2023).

125. Intergovernmental Panel on Climate Change [IPCC], *Regional Fact Sheet—Central and South America, Sixth Assessment Report* (2021).

vulnerable to climate disruption and limiting their capacity to adapt.¹²⁶ According to the U.N. Mortality Risk Index, Colombians are among the top ten populations at most risk from earthquakes, floods, tropical cyclones, and landslides.¹²⁷ The National Disaster Risk Management Unit (UNGRD) reports that ninety percent of the emergencies between 1998 and 2011 were related to hydroclimatological phenomena.¹²⁸

Between 2010 and 2011, Colombia experienced extreme flooding and landslides across sixty percent of its territory as a result of La Niña,¹²⁹ which resulted in devastating losses across all economic and social sectors.¹³⁰ Official data registered over 100,000 houses in need of reconstruction and relocation and over 445,000 in need of repair.¹³¹ The total cost of the disaster amounted to almost six percent of the country's GDP.¹³² GermanWatch ranked Colombia third on its global Climate Risk Index for the most climate-change-affected countries in 2010.¹³³

La Niña impacted more than 3.2 million people, or approximately seven percent of the national population.¹³⁴ The most affected municipalities shared two characteristics: they were located in areas that were highly exposed to flooding and suffered from high levels of

126. See José Juan Amar-Amar et al., *Adaptation Strategies and Care Practices Among Climate-Displaced Communities: Colombian Case*, 24 PSIC. ESTUD. 1, 3–5 (2019).

127. *Mortality Risk Index*, U.N., https://www.preventionweb.net/files/9929_MRIA3.pdf [<https://perma.cc/AB52-PJJV>].

128. See MARIANA LOJAS-LASERNA, ADAPTATION TO CLIMATE CHANGE IN COLOMBIA: EFFECTIVE INSTITUTIONAL ARRANGEMENT FOR NAP FORMULATION AND IMPLEMENTATION (2014); World Bank, *International Bank for Reconstruction and Development: Program Document for a Proposed Loan in the Amount of US \$300 Million to the Republic of Colombia for the Third Disaster Risk Management Development Policy Loan with a Cat DDO*, at 7, Rep. PGD301 (Nov. 19, 2021), <https://documents1.worldbank.org/curated/en/432571641932084011/pdf/Colombia-Third-Disaster-Risk-Management-Development-Policy-Loan.pdf>; WORLD BANK GROUP, CLIMATE RISK COUNTRY PROFILE: COLOMBIA 11 (2021).

129. CEPAL, *supra* note 2, at 22, 25; *La Niña Phenomenon Wreaked Havoc in Colombia*, PAHO/WHO EMERGENCIES NEWS (Apr. 2011), <https://www3.paho.org/disasters/newsletter/458-el-fenomeno-de-la-nina-hizo-estragos-en-colombia-215-286-es.html> [<https://perma.cc/GEZ4-6CXH>].

130. CEPAL, *supra* note 2, at 61, 145, 207.

131. *Id.* at 79.

132. *Id.* at 61.

133. SVEN HARMELING, GLOBAL CLIMATE RISK INDEX 2012: WHO SUFFERS MOST FROM EXTREME WEATHER-RELATED EVENTS? WEATHER RELATED LOSS EVENTS IN 2010 AND 1991 TO 2010 1, 4, 7 (2011).

134. DISPL. SOL'S., *supra* note 5, at 4, 13.

social vulnerability.¹³⁵ Approximately sixty-five percent of those impacted lived in rural areas and twenty-five percent self-identified with an ethnic group (primarily Afro-Colombian or indigenous).¹³⁶ While the flooding affected large areas of the country, the extreme weather had disproportionate impacts on populations in situations of vulnerability, such as those previously displaced by violence.¹³⁷ Indeed, “four in ten people affected by the floods” were identified as conflict IDPs.¹³⁸ The disaster highlighted how those with financial resources and robust social networks fared better than those without.¹³⁹ Unfortunately, the registry of disaster victims or *damnificados*, did not identify how many people relocated because of the disaster.¹⁴⁰

The torrential rains caused by La Niña surpassed and overwhelmed the institutional capacity of the national system for disaster prevention and response.¹⁴¹ In a 2011 report, the Ombudsman’s Office recognized that:

climate change . . . manifests itself in an unwieldy fashion in the country for several reasons: poor planning around development and territorial occupation, disorderly natural resources exploitation, lack of technical clarity in land use, lack of or inadequate waste disposal management, the advance of the agricultural frontier and conurbation over ecosystems, and the transformation and destruction of natural systems that make it so that in the rainy season or when there are severe dry periods, more catastrophic emergencies and disasters occur, as it happen[ed] with the 2010-2011 season.¹⁴²

The 2010-2014 National Development Plan observed that the events had “changed the future of environmental and risk management policy in the country, transformed Colombians’ perception about the possible consequences of climate change, and inevitably altered the plan

135. N. Hoyos et al., *Impact of the 2010–2011 La Niña Phenomenon in Colombia, South America: The Human Toll of an Extreme Weather Event*, 39 APPLIED GEOGRAPHY 16, 16 (2013).

136. CEPAL, *supra* note 2, at 39.

137. Albuja & Cavelier Adarve, *supra* note 61, at 246.

138. Alice Thomas, *Protecting People Displaced by Weather-Related Disasters and Climate Change: Experience from the Field*, 15 VT. J. ENV’T L. 803, 825 (2014).

139. See Amar-Amar et al., *supra* note 126, at 4.

140. CEPAL, *supra* note 2, at 39.

141. DISPL. SOL’S., *supra* note 5, at 5, 17.

142. OMBUDSMAN’S OFFICE, *Emergencia en Colombia por el fenómeno de la Niña 2020–2011*, (2011) at 2, ¶ 7. Quote translated from Spanish to English by Author.

of this government for the next four years”¹⁴³ Through Decree 4579 of 2010, the government declared a national emergency and determined that only those identified through the local census of affected individuals would be considered *damnificados*, and thus, entitled to government assistance.¹⁴⁴

The extreme flooding marked a turning point in Colombian climate and disaster management policy by signaling the severity of climate change impacts. Following the events, President Juan Manuel Santos’ administration reevaluated the national disaster response, seeking to integrate a more comprehensive risk management approach through the creation of the National Disaster Risk Management Unit (“UNGRD”).¹⁴⁵ The government also created a special agency, *Colombia Humanitaria*, to provide timely aid to *damnificados*.¹⁴⁶

The Adaptation Fund was charged with recovery, construction, and reconstruction of areas affected by La Niña and given technical and administrative autonomy and the legal ability to disburse funds.¹⁴⁷ Initially, the creation of this new agency generated institutional tension between UNGRD and the Adaptation Fund, given that a substantial amount of money had been directed towards the creation of the Adaptation Fund instead of strengthening UNGRD.¹⁴⁸ While the tension between these two entities lessened over time, it hindered the integration of prior lessons on risk and disaster management.¹⁴⁹

In addition to having to ensure that funds reached specific recipients, local governments were responsible for compiling and updating a *damnificado* census. One of the challenges in identifying those affected and providing them with assistance stemmed from the ongoing nature of the emergency, with torrential rains and flooding lasting several months.¹⁵⁰ The census soon became politicized because

143. REPÚBLICA DE COLOMBIA, PLAN NACIONAL DE DESARROLLO: 2010–2014, 561 (Departamento Nacional de Planeación ed., 2011). Quote translated from Spanish to English by Author.

144. D. 4579/2010, diciembre 7, 2010, Función Pública, arts.3(1), 5 (Colom.). The decree also defined ten action areas to manage the disaster, from providing humanitarian assistance and temporary shelters to reactivating local economies.

145. L. 1523/2012, *supra* note 70.

146. JAIRO NÚÑEZ MÉNDEZ, EVALUACIÓN DE LOS PROGRAMAS PARA LA ATENCIÓN DEL FENÓMENO DE LA NIÑA 2010–2011 1, 5 (2013).

147. D. 4819 /2010, diciembre 29, 2010 (Colom.).

148. Interview with Former Emp, Colom. Humanitaria, in Bogotá, Colom. (Dec. 2017).

149. *See id.*

150. Interview with Former Dir., Colom. Humanitaria, in Bogotá, Colom. (Jan. 2018); *La Niña Phenomenon Returns and Will Last Until 2012*, PORTAFOLIO (Sept. 13, 2011, 1:27 AM), <https://www.portafolio.co/>

government benefits could not be received without being included on the official registry.¹⁵¹ *Colombia Humanitaria* revised and modified the requirements to qualify for benefits several times, as it became clear that some of the conditions, such as proof of an existing rental contract, were unrealistic in the context of a disaster where people had lost their houses to flooding.¹⁵² Following the closing of *Colombia Humanitaria*, the Ministry of Finance established the Adaptation Fund to conduct the long-term processes of reconstruction and recovery.¹⁵³ Among other projects, the Adaptation Fund became responsible for the reconstruction and relocation of Gramalote.¹⁵⁴

A. The Reconstruction of Gramalote

Gramalote is “the first municipality in Colombia in the process of relocating in its entirety as a result of weather-related events directly linked to changes in the climate system.”¹⁵⁵

The town is located in the Colombian northeast, in the department of Norte de Santander. In 2010, Gramalote had 5,928 inhabitants and comprised an area of 150 square kilometers.¹⁵⁶ At the time of the disaster, thirty-three percent of the town did not have their basic needs met.¹⁵⁷ Additionally, about half of the town did not have any titles for the land or houses they occupied.¹⁵⁸ During the 2010–2011 flooding, authorities evacuated Gramalote’s urban area, and the only part of the

economia/finanzas/fenomeno-nina-regresa-estaria-2012-128550 [https://perma.cc/WW85-VHN5].

151. See Interview with Former Emp., Colom. Humanitaria, *supra* note 148; see also ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 60.

152. See Interview with Former Off., in Bogotá, Colom. (Dec. 2017).

153. ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 32–33; *Colombia Humanitarian Fund (CHF) 2009–2018 Closing Document*, OCHA, <https://www.unocha.org/publications/report/colombia/colombia-humanitarian-fund-chf-2009-2018-closing-document> [https://perma.cc/K237-QKWQ].

154. Note that the Adaptation Fund does not actually conduct adaptation projects, at least for now. The Fund, which is housed under the Ministry of Finance, oversees rebuilding after the 2010–2011 flooding, focusing on four main megaprojects, including Gramalote. See ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 33.

155. DISPL. SOL’S., *supra* note 5, at 4.

156. DANE, BOLETÍN: CENSO GENERAL 2005 1 (2010).

157. BANCO MUNDIAL, *supra* note 6, at 14.

158. ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 73–74 (“This made it difficult to decide who would be compensated for the loss of their homes in the old urban area, since many times, even if the community recognized someone as the owner of a property and they acted as such, they did not have legal documents certifying their status as owners.”).

town that remained standing was an informal settlement known as La Lomita.¹⁵⁹

The tragedy was not exactly a surprise. The town was highly susceptible to landslides, with seventeen percent of all neighborhoods located in high-risk areas.¹⁶⁰ Widespread deforestation had increased the area's vulnerability to rainfall and facilitated landslides during La Niña.¹⁶¹ In early December 2010, there was some land movement and ground instability in the area.¹⁶² However, neither governmental authorities nor residents took corrective measures in time.¹⁶³

After declaring a national state of emergency, the President promised to relocate the residents of Gramalote and rebuild the town "better than before."¹⁶⁴ *Colombia Humanitaria* provided food assistance and rent subsidies to families affected by the disaster.¹⁶⁵ The majority of the population relocated to other cities in the department of Norte de Santander.¹⁶⁶

In response to the town's destruction, the government published the Resettlement Plan for Gramalote.¹⁶⁷ The Resettlement Plan not only aimed to reconstruct the town and provide housing to everyone that had been affected, but also sought to develop economic reactivation processes, promote opportunities for income generation, and strengthen the social fabric of the community.¹⁶⁸ The underlying premise of the plan was that relocation be voluntary, consensual, and an opportunity to vindicate rights.¹⁶⁹

As is the case with relocation and reconstruction processes elsewhere, the success of Gramalote's process has been hotly contested,¹⁷⁰ with significant delays throughout.¹⁷¹ Further, while the

159. FONDO ADAPTACIÓN, PLAN DE REASENTAMIENTO DE LA PROBLACIÓN HABITANTE DEL CASCO URBANO DE GRAMALOTE 17–18 (2015).

160. *Id.* at 28–30.

161. ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 41.

162. *Id.* at 40.

163. *See id.* at 43–44.

164.

165. ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 61.

166. *Id.* at 81.

167. DISPL. SOL'S., *supra* note 5, at 11.

168. *See id.* at 31–32, 52–54.

169. The plan contemplated the following, among other activities: i) the determination of the new site where the town would be rebuilt; ii) the development of land surveys; iii) land title management; iv) infrastructure development; and v) access to public and social services. *See* FONDO DE ADAPTACIÓN, *supra* note 159, at 86–89, 149.

170. *See* ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 59.

171. DISPL. SOL'S., *supra* note 5, at 6.

government highlighted public participation as one of the plan's successes, pointing towards the "active participation of the community" in decision-making processes,¹⁷² the experience of the residents proved to be the opposite, at least during the initial stages. As a Displacement Solutions report summarized in 2015:

In almost five years since the disaster, there have been five different entities overseeing and managing the reconstruction and relocation project, with the relocation yet to proceed. It took two years and one change of management and relocation site before a second and final site was identified at a place called Miraflores. Since then, progress has been held up by further changes in management, negotiations over the purchase of property at the Miraflores site, as well as delays in the administrative process in granting the environmental license to build the new town. These changes and delays have caused considerable mistrust and polarization within the Gramalote community, which continues to this day. At the time of the mission, despite all the progress in the attention devoted to Gramalote, and despite concrete progress in the planning and design of the reconstruction project, the victims remained very sceptical about the entire relocation process. The fact that the selected relocation site at Miraflores remained idle until very recently was a major source of concern and suspicion.¹⁷³

Initially, the national government set up an inter-sectoral committee that integrated the different agencies in charge of implementing the relocation plan, where the municipal and departmental governments sat as observers. However, after much pressure from the local community, the committee transformed into a Working Group composed of the mayor, a representative from the Governor's office, the local priest, technical experts, and community leaders, among others.¹⁷⁴ The Working Group oversaw a dialogue between community members and state agencies. However, despite increasing involvement by the community, the process was extremely long and generated numerous conflicts, particularly around two main questions: (1) who would be selected as a recipient of government benefits;¹⁷⁵ and (2) where would the new town be located.¹⁷⁶

First, there was a complex process for determining who had been affected by the flooding and should be categorized as a *damnificado*. As

172. FONDO DE ADAPTACIÓN, *supra* note 159, at 110.

173. DISPL. SOL'S., *supra* note 5, at 5.

174. Interview with Former Off., Adaptation Fund, in Bogotá, Colom. (Feb. 2018); see ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 65–68.

175. ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 73.

176. *Id.* at 69–70.

had occurred in other municipalities across the country, the population census became the main instrument for this categorization and therefore the main way to allocate benefits.¹⁷⁷ As a result, there were people who misrepresented their status in order to receive a title.¹⁷⁸ Others identified themselves as *damnificados* in order to receive groceries or other types of subsidies.¹⁷⁹ There were also affected residents who were left out of the census for a variety of reasons.¹⁸⁰

Second, determining the location for the new town was riddled with delays. The government assigned the Ministry of Housing, who selected the Servivienda Foundation, to conduct the relevant technical studies for deciding the construction site.¹⁸¹ However, the process failed to consider significant risk factors and pre-selected some locations that were owned by a powerful family in the region that was connected to the mayor.¹⁸² Afterwards, the Adaptation Fund assigned the Geological Colombian Service and the Geotechnical Colombian Society to once again conduct the necessary studies and select a site.¹⁸³ The delay in the process created tensions, given the original expectations of the community to be relocated as quickly as possible.¹⁸⁴ After the creation of the Working Group, the evaluation criteria used to select the new site was revised, and the process was once again delayed. In December 2012, two years after the disaster and eight months after the original site was selected, Miraflores was selected as the final resettlement site, a location five kilometers away from the original town.¹⁸⁵ One of the main takeaways from this process is that decisions regarding site

177. The UNGRD compiles a list of *damnificados* after extreme weather events, including during the most recent *ola invernal* associated to la Niña in 2023. Press Release, Gov't of Colombia, UNGRD inicia segunda etapa de entrega de apoyo económico por 500 mil pesos a damnificados por situación de desastre nacional (Jan. 14, 2023), <https://reliefweb.int/report/colombia/ungrd-inicia-segunda-etapa-de-entrega-de-apoyo-economico-por-500-mil-pesos-damnificados-por-situacion-de-desastre-nacional> [<https://perma.cc/G2AJ-BHAA>].

178. See Interview with Indep. Expert on Resettlement Process, in Bogotá, Colom. (Feb. 2018).

179. See *id.*

180. See Interview with Former Off., Adaptation Fund, in Bogotá, Colom. (Feb. 2018).

181. Interview with Former Off., Colom. Humanitaria, in Bogotá, Colom. (Feb. 2018); ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 62–63.

182. There is controversy as to why the Pomarroso site was selected in the first place, with different versions explaining why the site selection was announced before all the necessary technical studies had been completed. ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 62–63.

183. *Id.* at 69.

184. See *id.*

185. Interview with Former Off., Adaptation Fund, *supra* note 174.

selection must be based on technical knowledge and public participation¹⁸⁶ to limit the influence of those with vested interests.¹⁸⁷

The delay in selecting a new site to relocate the town further complicated reconstructing the town's social fabric and creating a sense of ownership over the new location.¹⁸⁸ Government officials had to ensure that everyone who had a housing title before the 2011 disaster received a new title.¹⁸⁹ Therefore, the process created a distinction between property owners and tenants.¹⁹⁰ The government reviewed 955 claims and eventually assigned approximately 950 new houses.¹⁹¹ While many residents were happy to return to Gramalote, some residents faced new obstacles once they relocated. For example, those who previously did not hold an official title and received a new house soon realized that formal ownership implied new obligations such as paying public utilities and higher property taxes.¹⁹²

Government officials and community leaders had to negotiate the return of key social institutions such as the Church, which had a significant role in encouraging old residents to return.¹⁹³ Other structural challenges that the Adaptation Fund faced included long delays to obtain property permits and environmental licenses for projects, and corruption across different levels of government.¹⁹⁴ These challenges caused further delays in the overall reconstruction process, carrying serious consequences for the original residents of Gramalote.¹⁹⁵ While the majority had relocated in the nearby department of Cúcuta, others had started new lives and settled elsewhere.¹⁹⁶

Developing proper planning and preventive measures can facilitate relocation processes, whether temporary or permanent.¹⁹⁷ The

186. ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 65–69.

187. *See* Interview with Former Off., Adaptation Fund, *supra* note 174.

188. *See* ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 81.

189. *Id.* at 74.

190. *See, e.g., id.*

191. *Id.*

192. *Id.* at 91.

193. Interview with Former Emp., Colom. Humanitaria, *supra* note 148; ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 83–85 (“Being a deeply Catholic town, the work of the parish and the celebration of religious festivals served to maintain a sense of shared identity and the relationship between the gramaloteros.”).

194. *See* Interview with Former Off., Adaptation Fund, *supra* note 174.

195. ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 81.

196. *Id.* at 81–82.

197. *See* Annah Piggott-McKellar & Karen Vella, *Lessons Learned and Policy Implications from Climate-Related Planned Relocation in Fiji and Australia*, 5 FRONTIERS CLIMATE, Mar. 2, 2023, at 6.

experiences with disaster response in Colombia have left a mixed legacy in this respect. In the case of Gramalote, the process to select a site and build the town took so long that people were forced to move and rebuild their lives in a different place. By the time government agencies such as the Adaptation Fund and the various Ministries involved had agreed on the specifics of the relocation process, the majority of *Gramaloteros* were living in the department of Cúcuta.¹⁹⁸ A decade after the original town was destroyed, the government had not fully completed the relocation, although construction had been finalized for more than half of the new houses, in addition to the school, the market plaza, and public infrastructure.¹⁹⁹ Although the new town symbolized opportunities, moving to the new Gramalote also created challenges for residents, from developing a real sense of ownership over the new Gramalote and rebuilding the social fabric to reactivating the town's economy, to helping sustain their livelihoods.²⁰⁰

In light of this context, the case study of Gramalote should serve as a cautionary tale of displacement and resettlement. Even when the national government has prioritized and allocated specific resources to the relocation of a community, the process can be extremely challenging. This case study exemplifies how the community's rights to stay, to return, and to adequate housing were severely impacted by government inaction, consistent delays, and incidents of corruption. Before the flooding, the area had already been identified as high-risk, yet the local planning authorities had not fully implemented disaster law and policy frameworks. When the disasters forced the townspeople to relocate, the relocation protocol did not include a human rights approach that guaranteed the needs of the community. While *damnificados* could access certain benefits, they were not understood as subjects of special constitutional protection and were instead treated under a humanitarian framework, primarily designed to assist victims reactively. The story of Gramalote is the story of disasters in Colombia: a chronicle of a tragedy foretold.²⁰¹

198. Interview with Former Off., Colom. Humanitaria, *supra* note 152.

199. ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 21.

200. *Id.* at 91.

201. *See generally* GABRIEL GARCÍA MÁRQUEZ, CHRONICLE OF A DEATH FORETOLD (1981) (telling the story of a wealthy businessman, who is murdered. The story is told in a pseudo-journalistic manner where it is uncovered that everyone in town was aware that the murder would occur, in addition to the when, where, and why. Despite the widespread foreknowledge, there was little action done to stop the killing. The author of this Article draws a parallel between the precognition in the book and the inaction in Colombia to respond proactively to the effects of climate change. The title of this Article even pays reference to the Colombian author, Garcia Márquez's book.).

V. THE GAPS OF DISASTER AND CLIMATE LAW

States have an obligation to protect those forcibly displaced internally, irrespective of the underlying driver of displacement. In the case of Colombia, those displaced in the context of armed conflict or climate change deserve equal protection under the law. Whether a country has historically contributed to greenhouse gas emissions is not relevant to the government's duty to protect those living under its jurisdiction who are already facing climate and environmental displacement.

The bifurcated protection regime for displaced individuals in Colombia illustrates the gaps resulting from the evolution of separate legal frameworks. Whether the government decides to adopt the IDP framework for climate displaced people or a different legal term and regime altogether, those displaced by climate change and environmental disasters should not be subject to a bifurcated regime of protection when climate change is anthropogenic, foreseeable, and already here.

A. *Recognition of Climate Displacement*

The Colombian government has declined to integrate or coordinate the disaster risk management framework with other institutional structures dealing with forced displacement in the context of armed conflict.²⁰² The lack of official recognition of climate-displaced people prevents this group (unless they were also displaced by the armed conflict and recognized as IDPs) from being afforded special protection.²⁰³ While jurisprudence from the Constitutional Court recognizes the rights and vulnerability of populations displaced by environmental disasters, the Court has declined to recognize climate displacement as a phenomenon or that climate-displaced individuals should be subject to a differentiated protection regime.

Relatedly, the government lacks any official data on how many people have left their homes temporarily or permanently because of environmental disasters.²⁰⁴ In fact, expert agencies avoid using the term “*desplazado*” opting for the term “*damnificado*” instead, which places displaced people under the disaster law regime. The terms “environmental migrant” or “climate migrant” are perceived as too technical or political—potentially restricting the protection of people displaced by disasters and raising complicated questions about

202. See Thomas, *supra* note 138, at 824; see also Albuja & Cavelier Adarve, *supra* note 61, at 248, 251.

203. L. 1448/2011, junio 10, 2011, D.O., arts. 1–3. Victims of the armed conflict can register and apply for benefits before the Unidad para la Atención y Reparación Integral a las Víctimas (UARIV). *Atención y Servicios Ciudadanía*, GOV.CO, <https://www.unidadvictimas.gov.co/es/atencion-y-servicios-a-la-ciudadania/> [<https://perma.cc/FP9L-6DU5>].

204. Rubiano et al., *supra* note 56, at 442.

multicausality since there is difficulty in partially or completely attributing population movement to climate change.²⁰⁵

Further, some practitioners believe there are strong reasons to keep disaster and conflict regimes separate given the distinct drivers of displacement and the tensions that arise from equating two forms of dispossession in a complex social and political context.²⁰⁶ For example, because the government has historically applied the term “*desplazado*” to individuals forcibly displaced by armed conflict, officials have been hesitant to use this term in the context of climate displacement.²⁰⁷ During the interviews conducted, some officials explained that the hesitancy to use the term “*desplazado*” stemmed partly from the fact that the term’s historical connotations can undermine the protection of affected communities in practice. For instance, during the 2010–2011 events, some armed actors such as guerilla and paramilitary groups allowed government officials to enter and assist affected municipalities where they were active precisely because officials were not using a victim or peaceable approach.²⁰⁸

However, the separation between IDPs and *damnificados* also meant that in 2010 “none of the existing institutions, protocols, and procedures for responding to conflict-related displacement, which are quite well developed and effective given the country’s long history with internal conflict, was considered or implemented during the flood response because they did not apply.”²⁰⁹ This was particularly challenging in situations where those affected and most vulnerable to climate risk were previous victims of the armed conflict who had relocated to high-risk zones.²¹⁰ Further, critics argue that the status quo renders the plight of climate displaced people invisible, reinforcing the

205. See Interview with Pub. Off., Ministry of Env’t, in Bogotá, Colom. (Feb. 2018).

206. Elly Harrowell & Alpaslan Özerdem, *Understanding the Dilemmas of Integrating Post-Disaster and Post-Conflict Reconstruction Initiatives: Evidence from Nepal, Sri Lanka and Indonesia*, 36 INT’L J. DISASTER RISK REDUCTION, Feb. 16, 2019, at 10.

207. Interview with Former Off., Colom. Humanitaria, in Bogotá, Colom. (Jan. 2018).

208. See *id.*; see J. Marcos & M^a Ángeles Fernández, *William Gutiérrez Nohavá, el ‘primer’ desplazado por una hidroeléctrica en Colombia* [William Gutiérrez Nohavá, The ‘First’ Displaced by a Hydroelectric Plant in Colombia], EL PAÍS (Mar. 5, 2023, 5:35 CET), <https://elpais.com/planeta-futuro/2023-03-05/william-gutierrez-nohava-el-primer-desplazado-por-una-hidroelectrica-en-colombia.html> [<https://perma.cc/53T7-JY8A>].

209. Thomas, *supra* note 138, at 824.

210. Interview with Former Off., Colom. Humanitaria, *supra* note 207; see Interview with Indep. Expert, *supra* note 178.

idea that victims of climate or environmental displacement are “voluntarily” leaving their home in search of refuge.²¹¹

The bifurcation in the protection regime is based on the historical developments of disaster and IDP law, respectively. However, the decision to grant special protection in the context of the armed conflict should not exclude climate-displaced people from protection when the government has existing human rights obligations under domestic and international law. The notion that climate and environmental disasters are merely “natural” phenomena, or “acts of God” is not only outdated, but deeply problematic given the social vulnerability that underlies disasters.²¹² Thus, climate displacement should be recognized as a distinct phenomenon and climate-displaced individuals should be entitled to more comprehensive protections grounded in human rights law as opposed to humanitarian obligations alone derived from the principle of solidarity.

B. The Necessity of a Human Rights Lens

Because climate-displaced people are not treated as IDPs and therefore do not enjoy the same constitutional protection as those displaced by conflict, the legal and policy framework for *damnificados* does not explicitly incorporate a rights protection lens.²¹³

As discussed, legislation on disaster risk management has historically been adopted in response to extreme climate or environmental events, and thus, policy has often been adopted in a reactive manner.²¹⁴ The absence of clear protocols and procedures has resulted in resettlement processes that violate human rights, particularly given that laws and policies give wide discretion to mayors to develop and implement informal and *ad hoc* processes.²¹⁵ Castro-Buitrago and Velez-Echeverri observe:

Attention should be given to cases of natural catastrophes in which people and their families on the move do not receive any attention from the authorities; forced evictions in which decent housing alternatives are not guaranteed and cases in which, although resettlement processes are under way, the latter are executed without the participation of the population, without

211. See ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 31.

212. See, e.g., Emmanuel Raju et al., Commentary, *Stop Blaming the Climate for Disasters*, 3 COMMC’N EARTH & ENV’T, Jan. 10, 2022, at 1 (“Disasters occur when hazards meet vulnerability. We must acknowledge the human-made components of both vulnerability and hazard and emphasize human agency in order to proactively reduce disaster impacts.”); Steve Puttick et al., *Disasters Are Not Natural*, 43 TEACHING GEOGRAPHY 118, 118 (2018).

213. Castro-Buitrago & Echeverri, *supra* note 17, at 2.

214. *Id.* at 5; ROJAS CABAL & DURÁN CRANE, *supra* note 47, at 32.

215. Castro-Buitrago & Echeverri, *supra* note 17, at 5–6.

access to information and legal advice, with payment of derisory prices for abandoned or demolished homes, and without psychological care to deal with the effects of being uprooted.²¹⁶

Considering this, Castro-Buitrago and Velez-Echeverri argue that migration and resettlement processes can only be considered a form of climate change adaptation when they meet specific rights standards.²¹⁷

As the discussion of Gramalote shows, relocation processes are complex, long, and often riddled with tensions, local politics, and significant delays. Rebuilding the social fabric of a community is extremely challenging and may be simply impossible to achieve. Gonzalez reminds us that:

This history of planned relocation should serve as a cautionary note about the dangers of top-down governmental decision-making and the importance of ensuring that community members are well-informed of the options, have a sense of control over the destination and the process of movement, and provide their full, prior, and informed consent. Whether the costs justify the benefits of moving is a highly political decision best left to the affected community.²¹⁸

The right to stay and the right to adequate housing remain central to guaranteeing processes that acknowledge the dignity of those displaced, who are more often than not already vulnerable due to structural reasons related to geography, class, race, gender, and ability. States ought to prioritize the right to stay by (1) mitigating environmental risks and enhancing resiliency to minimize the possibility of displacement; and (2) ensuring a dignified and holistic relocation process in cases where remaining in place is not an option.

C. Implementing Best Practices Under International Human Rights Law

Colombian agencies have recognized that climate change poses a threat to development, but there is still a disconnect between the implementation of climate change adaptation policies and disaster risk management. The UNGRD prioritizes risk and disaster management, leaving other agencies like the Ministry of Environment or the National Planning Department to focus on climate change.²¹⁹ Given the cross-

216. *Id.* at 4. Quote translated from Spanish to English by author.

217. *Id.*

218. Carmen G. Gonzalez, *Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses*, 36 WIS. INT'L L.J. 366, 387 (2019); see also Bronen, *supra* note 25, at 603–05.

219. While risk management is the main issue under the UNGRD's mandate, in the past few years the agency has been responsible for dealing with the humanitarian emergency along the Colombian-Venezuelan border. The UNGRD has organized tents, built temporary shelters, provided aid, and

cutting nature of climate change, greater coordination would ensure a more robust approach to climate displacement and other issues. As Mayer argues, “climate change adaptation should not be conceived of as a separate policy or legal field, but rather as a consideration to be mainstreamed in various policy and legal regimes.”²²⁰

The coordination problems among agencies, gaps in public policy, and the failure to integrate best practices are evident when reconstruction and resettlement processes fail to address chronic vulnerabilities, and promote policies that recreate risk and fail to integrate prior lessons.²²¹ Further, projects often have a limited scope, such as increasing resiliency in the face of climate impacts, and do not necessarily tackle poverty or other socio-economic vulnerabilities that undermine a community’s capacity to adapt to climate impacts in the first place.²²²

Under the existing regime, local governments are responsible for developing and implementing hazard mitigation and land management plans.²²³ Municipalities are also responsible for identifying high-risk zones and evacuating those areas where mitigation is impossible.²²⁴ However, many municipalities lack the financial resources and technical capacity to produce, regularly update, and implement robust disaster

monitored the situation following a Presidential order. The agency has also led the response to the water crisis in the department of Casanare and provided the necessary materials for the creation of *zonas veredales* during the FARC demobilization process. The UNGRD has been critiqued for its involvement in these issues, but some argue that it is the only government agency with the capacity to take over these functions. *See* Interview with Disaster Mgmt. Experts, Indep. Contractor & Nat’l Plan. Dep’t, in Bogotá, Colom. (Feb. 2018); *see* Mission and Vision, Gov. CO, <https://portal.gestiondelriesgo.gov.co/Paginas/Mision-y-Vision.aspx> [<https://perma.cc/7TJN-5ZXB>]; *see, e.g., Las Farc iniciaron en el Meta su movilización hacia las Zonas Veredales Transitorias de Normalización* [The FARC Began its Mobilization Towards the Transitory Local Zones of Normalization in Meta], VIOLETASTEREO, <https://www.violetastereo.com/wp/general/las-farc-iniciaron-meta-movilizacion-hacia-las-zonas-veredales-transitorias-normalizacion/> [<https://perma.cc/K9ZC-NXHP>].

220. Mayer, *supra* note 46, at 141, 146 (“Climate change adaptation is and needs to be reflected in the law but . . . not through distinct substantive norms. Substantive norms applicable to the impacts of climate change fall within the scope of disaster-risk reduction, human rights protection, economic development, and ecological conservation, among other existing legal and institutional fields, but the need to adapt to climate change does not justify reinventing the wheel.”).

221. Interview with Public Off., Nat’l Plan. Dep’t., in Bogotá, Colom. (Feb. 2018).

222. Interview with Public Off., Colom. Ministry of Env’t and Sustainable Dev., in Bogotá, Colom. (Mar. 2018).

223. L. 1523/2012, *supra* note 70, art. 37.

224. *Id.* art. 40.

management plans.²²⁵ Despite the material reality of resource scarcity, officials working in the national government have in the past reproached local governments in the aftermath of a disaster for failing to update municipal plans or take preventative action, ignoring the significant barriers that exist for effective disaster risk management at the local level.²²⁶ This highlights another tension in the current structure: while municipalities are autonomous, they depend on the national government for risk management funds to develop technical capacity.²²⁷

There is already rich literature on how international law requires states to design and implement internal displacement law and policy.²²⁸ Further harmonization of the disaster and IDP law regime that incorporates the Guiding Principles on Internal Displacement and other guidance could strengthen protections for climate displaced people.

VI. CONCLUSION

The development of the Colombian institutional framework on disaster risk management does not contemplate climate displacement or provide specific rights to climate-displaced populations. Recent experiences have made evident the limitations and gaps of the existing system.²²⁹

There is consensus among practitioners and academics that substantial improvements are needed in the rehabilitation and resettlement stages after a disaster, where governmental bodies often reproduce or fail to transform the conditions that made the disaster possible in the first place. Legal and institutional frameworks have historically focused on disaster response instead of addressing the structural social and economic vulnerability that characterizes Colombian municipalities. It was not until 2012 that the country adopted a comprehensive disaster management approach and consolidated all the different norms and laws previously issued.²³⁰ Even then, it is unclear whether this approach has been implemented in response to disasters after 2012. For example, 2016 landslides in Mocoa

225. See, e.g. Hajer Al-Dahash et. al, *Weaknesses During the Disaster Response Management Resulting from War Operations and Terrorism in Iraq*, 34 INT'L J. DISASTER RISK REDUCTION 295, 302–03 (2019).

226. Interview with Indep. Expert, *supra* note 178.

227. Interview with Public Off., Nat'l Unit for Risk and Disaster Mgmt., in Bogotá, Colom. (Mar. 2018).

228. See *supra* Part III(C).

229. WORLD BANK, ANALYSIS OF DISASTER RISK MANAGEMENT IN COLOMBIA 3–4 (Ana Campos G. et al., eds., 2011).

230. See generally L. 1523/2012, *supra* note 70.

evidenced the lack of institutional coordination and called into question the strength and effectiveness of the current system.²³¹

Given this context, disaster law in Colombia must protect communities displaced by environmental and climate disasters. Whether the government adopts the “*desplazado*” framework for climate-displaced people or a different term and regime altogether, displaced individuals should not be subject to a bifurcated protection when climate change is anthropogenic, foreseeable, and already here.

Disaster risk management in Colombia and the experience of Gramalote illustrates why states have an obligation to (1) recognize climate displacement, (2) plan in advance to protect their populations’ rights to stay and to dignified housing, and (3) implement best practices under international law throughout relocation and resettlement processes involving climate-displaced communities. Without a human rights approach that centers the needs of the population, policies will continue replicating harm by rendering communities vulnerable prior and in the aftermath of disaster. Colombians cannot afford more foretold tragedies.

231. See Camila Bustos, *Colombia no debe llorar otra tragedia evitable*, [Colombia Must Not Mourn Another Avoidable Tragedy] DEJUSTICIA (Aug. 31, 2017), <https://www.dejusticia.org/column/colombia-no-debe-llorar-otra-tragedia-evitable/> [https://perma.cc/X683-NWS8]; see also Camila Bustos, *Las víctimas de los desastres naturales también necesitan memoria*, [Victims of Natural Disasters Also Need Justice] DEJUSTICIA (Feb. 9, 2018), <https://www.dejusticia.org/column/las-victimas-de-los-desastres-naturales-tambien-necesitan-memoria/> [https://perma.cc/E8H9-VNS9]; see also SIDDIQI ET AL., *supra* note 52, at 9.

