ARTICULATING AND CLAIMING THE RIGHT TO STAY IN THE CONTEXT OF CLIMATE CHANGE

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ABSTRACT

Climate-related displacement is a topic of increasing concern in both academic research and the political, social, and humanitarian spheres. As many seek to develop legal regimes that will allow those living in the most climate-affected areas to move with dignity, individuals and communities living in these countries, regions, and localities are often resistant to the idea of migration as their best adaptation option, and instead call for policy choices that will allow them to stay in place. In this article we seek to legally situate these calls for a right to stay and examine the specific forms that they are taking on the ground. We suggest that there is a typology of right to stay claims, ranging from classic claims—primarily against local government or private actors, against takings or for protection from forced eviction or relocation—to more expansive claims for revised economic, social, or environmental policies to address the underlying drivers of displacement, which may also involve national government and even the international community. We argue that the full range of these different types of claims have relevance in the climate change context, and that such claims may have important legal, moral, and discursive power in efforts to meaningfully address climate change-related displacement in a manner consistent with the rights of those most affected.

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INTRODUCTION

In the Pacific Islands, political leaders wrestle with whether to buy lands for their people in foreign countries, and what it will mean for their national survival if their territories cannot survive rising waters. In Louisiana and Alaska, tribal communities are faced with voting on whether to try to leave for uncertain new homes or stick it out on lands where traditional ways of living are severely threatened. In the Sahel, families of agriculturalists contemplate long periods of separation as some family members seek alternative employment to reduce the risks associated with climate shocks and decreasing crop yields. As the impacts of climate change intensify, affected communities face critical questions regarding migration, displacement, and relocation, and discussion of climate change-related migration surfaces in academic and policy circles.

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However, while many focus on developing legal and policy regimes that will allow the choice of safe, legal, and dignified migration as a climate change adaptation measure, or on planning for managed retreat, many individuals and communities living in climate-affected areas are resistant to the idea that leaving their homes is inevitable. Instead, they call on their local and national governments and the international community to make legal and policy choices to mitigate climate change before its worst effects can be felt, and to allow for in-situ adaptation—strategies to adjust to environmental changes while staying in place. To varying degrees, these individuals and communities are articulating a right to stay.

In this article we explore the legal basis for a right to stay and examine the specific forms that these calls are taking on the ground. We propose a typology of right to stay claims, which vary from traditional claims—mainly directed against local governments or private entities, focusing on prevention of unjust expropriation or protection from forced eviction or relocation—to broader claims that advocate for changes in economic, social, or environmental policies to tackle the underlying drivers of displacement. These wider claims may involve not only national governments but also the international community. We argue that understanding the full spectrum of these claims is crucial in the climate change context, where they can wield significant legal, moral, and discursive influence. Such influence is vital for effectively addressing climate change-induced displacement in a way that respects the rights of those most impacted.

We acknowledge a focus on what can enable populations to stay in place may be misconstrued as support for anti-migration initiatives. Calls to enable people to stay in place are often criticized for giving implicit support to initiatives to decrease migration, to implement migration controls, and to enact immigration regimes that deprive people of the right to movement. When a focus on staying prioritizes outcomes, and when it implicitly portrays migration as something negative—a "problem that needs to be 'fixed' by appropriate policies"[1]—this results in superficial measures that restrict rather than enhance well-being. This critique is often raised when development aid is purportedly directed towards the alleged root causes of migration, much of which is diverted towards migration "management" or containment.[2] It was also voiced when the former UN High Commissioner for Refugees Sadako Ogata declared in 1993 that crisis-affected populations should have the 'right to remain,' because this statement may have indirectly supported policies that restricted the right to seek asylum.[3] In contrast, this article seeks to situate the right to stay as one element in a menu of options and claims available

1. Stephen Castles, *Understanding Global Migration: A Social Transformation Perspective*, 36 J. ETHNIC & MIGRATION STUD. 1565, 1567 (2010).

2. Richard Black & Michael Collyer, *Populations 'trapped' at times of crisis*, 45 FORCED MIGRATION REV. 52 (2014).

3. *Id.*

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to climate-affected communities—a menu that will allow those communities a choice of response strategies that correspond to their preferences and ensure their ability to live with dignity and realize their human rights.

The remainder of the article proceeds as follows. In Section I, we provide an overview of current academic literature on climate-related displacement and the right to stay, including situating claims of the right to stay within the naming, blaming, and claiming framework originated by Felstiner et al.[4] This framework investigates when and why injurious experiences are or are not perceived (naming), do or do not become grievances (blaming) and ultimately disputes (claiming).[5] In Section II, we discuss the foundations of claims of the right to stay, addressing the moral and philosophical groundings of such claims, the relationship to the theory of a right to the city, and the elements of international human rights law that would provide a basis for legal claims of the right to stay. Section III provides some examples of communities that are making these claims in the context of climate change. Finally, Section IV draws on these examples to analyze claims of a right to stay in the context of climate change and proposes questions for future exploration.

I. LITERATURE REVIEW: CLIMATE-RELATED DISPLACEMENT AND THE RIGHT TO STAY

Global environmental change threatens to displace billions of people from the lives and livelihoods they have long known. Recent research finds that climate change has already placed more than 600 million people outside the "human climate niche"—the environmental conditions most appropriate for human life—and by the end of the century, current policies leading to around 2.7˚C global warming could leave between 22–39 percent of humanity living outside this niche.[6] In this foreboding context, academic research, policy, and climate advocacy understandably focus on comprehending and preparing for climate-related migration and displacement, and developing legal regimes that will allow those living in areas threatened by climate change to migrate or relocate with dignity.

However, adapting to environmental change will not always involve migration or relocation. In fact, in the rapidly growing literature on climate change and migration over the last several decades, one of the most surprising findings has been how *few* people are moving in response to environmental

4. *See generally* William L.F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980–81).

5. *Id.* at 632.

6. Timothy M. Lenton, Chi Xu, Jesse F. Abrams, Ashish Ghadiali, Sina Loriani, Boris Sakschewski, Caroline Zimm, Kristie L. Ebi, Robert R. Dunn & Marten Scheffer, *Quantifying the Human Cost of Global Warming*, 6 NATURE SUSTAINABILITY 1237 (2023).

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stress or threat.[7] In some cases, this immobility is involuntary and people may become displaced in place.[8] Climate change impacts can constrain migration and suppress mobility, particularly among already disadvantaged populations, leading to what some call "trapped populations."[9]

Yet, in many other cases, populations do not *want* to move, despite facing significant climate disruption. Grounded, empirical research is uncovering many sociocultural, political, and psychological reasons for "voluntary immobility" that override technical, outsider assessments of the benefits of migration or relocation.[10] The material and immaterial ties that motivate voluntary immobility are often theorized in terms of "attachments": territorial attachments, whether to local, regional, or national territories; social attachments to family and community living in a particular place; economic attachments to location specific assets or investments that are not easily transferred elsewhere (e.g., a home or local business); cultural attachments and place-based identities and belonging; even psychological attachments, like the "intimacy the mind makes with the place it awakens in," as the philosopher poet Wendell Berry puts it.[11] Human geographers and environmental psychologists often use the umbrella term "place attachment" to describe the person-place bond that motivates a desire to stay in place.

Consider an example from the Pacific Islands, where Farbotko and McMichael show that, even facing rising sea-levels and coastal degradation, many Indigenous populations prefer to remain on their ancestral homelands for reasons that include a deep connection to land and place-based identity, knowledge, and culture.[12] Some even express a preference to die on their traditional territories than relocate, "representing a new type of agency and resistance to dispossession."[13] It is particularly in such contexts—where populations face environmental threats associated with climate change yet aspire to stay in place—that we consider the "right to stay."

In looking at claims of the right to stay, we draw on the naming, blaming, and claiming framework originated by Felstiner et al., and investigate the ways in which assertions of the right to stay are happening on the ground. The types of action being brought by individuals and groups in response to

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7. Caroline Zickgraf, *Where Are All the Climate Migrants? Explaining Immobility amid Environmental Change*, MIGRATION POL'Y INST.: MIGRATION INFO. SOURCE (Oct. 4, 2023), https://perma.cc/FGL9-55MZ.

8. *Cf.* Stephen C. Lubkeman, *Involuntary Immobility: On a Theoretical Invisibility in Forced Migration Studies*, 21 J. REFUGEE STUD. 454 (2008).

9. Richard Black, Stephen R. G. Bennett, Sandy M. Thomas & John R. Beddington, *Migration as Adaptation*, 478 NATURE 447, 449 (2011).

10. *See* Helen Adams, *Why Populations Persist: Mobility, Place Attachment, and Climate Change*, 37 POPULATION & ENV'T 429 (2016); Carol Farbotko, Olivia Dun, Fanny Thornton, Karen E. McNamara & Celia McMichael, *Relocation Planning Must Address Voluntary Immobility*, 10 NATURE CLIMATE CHANGE 702 (2020); Suzy Blondin, *Staying Despite Disaster Risks: Place Attachment, Voluntary Immobility and Adaptation in Tajikistan's Pamir Mountains*, 126 GEOFORUM 290 (2021).

11. Wendall Berry, *A Native Hill*, 21 HUDSON REV. 601, 605 (1968).

12. Carol Farbotko & Celia McMichael, *Voluntary Immobility and Existential Security in a Changing Climate in the Pacific*, 60 ASIA PAC. VIEWPOINT 148 (2019).

13. *Id.*

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climate harms range from impact litigation designed to have wide-ranging effects to individual claims seeking compensation following specific climate-related disasters.[14] However, not all claims involving rights, including the right to stay, will involve formal litigation pathways or individual compensatory actions; rather, some are based on "collective legal mobilization such as class actions or systemic claims and other nonlegal forms of collective claiming."[15] Much of the literature evaluating claims made in the context of climate change-related displacement and migration focuses on ex post claims for protection or compensation, rather than ex ante claims centering on prevention.[16] We seek to bring a new dimension to this analysis by examining how individuals and communities are calling for action to ward off predicted climate-related displacement.

Given the global, far-reaching, and multifaceted impacts of the climate crisis, right to stay claims arise in a range of geographies and social, economic, and cultural contexts. Much of the literature addressing climate-related migration and displacement focuses on the emblematic story of potentially disappearing Small Island States, which form part of the discussion below, but there are numerous circumstances where potential climate-related displacement is giving rise to claims for protection.[17] Sterett argues that localized claims for multifaceted governance in the face of climate-related disasters can provide support for decisions and the ability to stay in areas at climate risk.[18] She notes that "not everyone can easily leave or resettle where they were. Telling people to leave not only is unlikely in a place with multiple opportunities to object to policy, it tells people to give up, and misses local attachments as an inroad to mitigating climate damage."[19]

In examining claims on the right to stay, we center the lived experiences of climate-affected communities and their ideal policy outcomes. In the context of fighting for the right to stay, "desire entangles histories of dispossession and possession, insurance, work, zoning, homeownership and mortgage policies, immigration practices, and difficulties living unhoused in a place. To say that it is puzzling why people stay also denies the power of fighting for

14. Susan M. Sterett & Laura K. Mateczun, *Legal Claims and Compensation in Climate-Related Disasters*, 137 POL. SCI. Q. 293 (2022).

15. Catherine R. Albiston, Lauren B. Edelman & Joy Milligan, *The Dispute Tree and the Legal Forest*, 2014 ANN. REV. L. & SOC. SCI. 105, 123 (2014). *See also* Susan M. Sterett, *Domestic Structures, Misalignment, and Defining the Climate Displacement Problem*, 10 SOC. SCI. 425, 428 (2021) ("In the absence of the planned mass relocation climate governance documents imagine, local, national, and private rules shape where people live now, while facing climate-related disasters that do not completely obliterate land. A polycentric lens requires turning from global instruments and planning to the claims people make and the structures that shape them.").

16. Sterett, *supra* note 14; Sterett, *supra* note 15; Rebecca J. Barber, *Protecting the Right to Housing in the Aftermath of Natural Disaster: Standards in International Human Rights Law*, 20 INT'L J. REFUGEE L. 432 (2008).

17. Sterett, *supra* note 15, at 426–27.

18. *Id*. at 427.

19. *Id*.

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home, which adapting to climate change requires."[20] We draw on Arnall et al.'s articulation of "bottom-up claims-making," which contrasts "broad frameworks of justice, rights and humanitarianism that can be extended 'downwards' from international and national levels to local-level populations" with "the capacities of affected people themselves to develop and formulate their own justice-based solutions to the problems of climate-induced displacement."[21] This framework also contrasts claims-making, which involves "targeting a source of perceived injustice" with "approaches such as resilience and adaptation" that focus on the actions that individuals can take to help themselves rather than allocating responsibility to a wrongdoer.[22]

II. THEORETICAL FOUNDATIONS OF THE RIGHT TO STAY

A. *Philosophical and moral foundations*

Human mobility may be defined as people's capability (or freedom) to choose where to live, including the option to stay.[23] This definition of human mobility thus encompasses both the freedom to migrate and the freedom to stay. As de Haas argues, "migration can only be seen as genuinely well-being-enhancing and empowering if people also have the option to stay."[24] Indeed, the distinction between so-called "forced" and "voluntary" migration depends crucially on whether one has a reasonable option to stay.[25]

A number of scholars have discussed the moral foundations of a right to stay in one's home. In theorizing a moral human right to stay, Oberman defines the right to stay "at its core, [as] a right not to be forced to leave one's home state."[26] This right protects people against three kinds of threats: forcible *expulsion* from their home state by orders of their government or some other agent; *persecution* that forces people to leave "for want of security or liberty;" and *desperate poverty*, where people leave to satisfy their basic needs for subsistence.[27] Asylum law recognizes the violations of human rights associated with forced expulsion and persecution. However, Oberman argues existing human rights law does not yet recognize how migration motivated by desperate poverty equally violates the human right to stay.[28] Oberman

20. *Id*. at 428.
21. Alex Arnall, Chris Hilson & Catriona McKinnon, *Climate Displacement and Resettlement: The Importance of Claims-Making 'from Below,'* 19 CLIMATE POL'Y 665, 666 (2019).
22. *Id*. at 668.
23. Hein de Haas, *A Theory of Migration: The Aspirations-Capabilities Framework*, 9 COMPAR. MIGRATION STUD. no. 8, 2021, at 1.
24. *Id*. at 20.
25. de Haas uses the term "reasonable" to imply that staying would not put them in dangerous, highly exploitative, or life-threatening situations. *Id*. at 23.
26. Kieran Oberman, *Immigration, Global Poverty and the Right to Stay*, 59 POL. STUD. 253, 257 (2011).
27. *Id*. at 257–58.
28. It is worth noting that the most impoverished tend to be less mobile, and those with greater resources and education tend to move internationally. Desperate poverty is more often associated with immobility or short-distance movements. Although this goes against Oberman's overarching framing that

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extends the argument to suggest that the right to stay should "include more than simply the right not to be forced to leave one's home state but also a right not to be required to leave one's home state in order to achieve one's just entitlements."[29]

Angeli provides an alternative moral argument for the right to stay grounded in two core interests. Individuals, he argues, have both place interests—"strong interests in the enjoyment of facilities, goods and relationships that are tied to a particular place"—and autonomy interests, which relate to the ability to make meaningful choices about the direction of their lives.[30] For him, the combination of these two sets of interests justifies protection of the right to stay.

Whereas Oberman and Angeli consider the moral right to stay in relation to the nation-state, Nine argues for an even more geographically circumscribed right to place, with emphasis, like Angeli, on the links between place and autonomy.[31] More specifically, Nine explores the link between *home* and the "functional context for conditions of autonomous agency."[32] She considers "the moral importance of attachment to small-scale places like homes, rather than to regions. . . the moral importance of places that actually feature into the individual's ability to function (and plan)."[33] Indeed, individuals often make plans and exercise their agency in the context of local communities, rarely the entire imagined community of the nation-state. This is one reason why most of the social scientific literature on "place attachment" to date has been in the context of residential attachment.[34] Understanding attachment to small-scale places can help explain "why some people would face death rather than leave their homes."[35] This dimension is important to consider when weighing community claims to stay in place in resistance to displacement or resettlement *within* a country.

B. *The Right to the City*

The link between the right to a particular place and the exercise of human agency and autonomy resonates with Lefebvre's concept of the "right to the city."[36] Writing in reaction to the urbanization and commodification of social life, Lefebvre introduced the concept as both a "cry and demand" for cities

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desperate poverty drives international migration, his core argument remains valid for those instances in which migration is motivated by deprivations of basic needs and freedoms.

29. Oberman, *supra* note 26, at 265.

30. Oliviero Angeli, *Freedom of Movement and Emigration Pressures: A Defence of Immigration Fees*, 3 MORAL PHIL. & POL. 269, 271–74 (2016).

31. Cara Nine, *Water Crisis Adaptation: Defending a Strong Right Against Displacement from the Home*, 22 RES PUBLICA 37 (2016).

32. *Id*. at 37.

33. *Id*. at 50.

34. *E.g.,* Carmen Hidalgo & Bernando Hernández, *Place Attachment: Conceptual and Empirical Questions*, 21 J. ENV'T PSYCH. 273 (2001).

35. Nine, *supra* note 31, at 50.

36. Henri Lefebvre, *Le Droit à la Ville*, 6 L'HOMME ET LA SOCIÉTÉ 29 (1967).

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where the needs, rights, and aspirations of everyday people are prioritized over profit-making. Although there is neither formal legal basis nor application of the right to the city in human rights law, the concept has been evoked by urban activists and social movements around the world to demand protection against displacement, participation in urban governance, and access to affordable housing.[37] Collective and inherently political, the right to the city represents "far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city."[38] As Harvey argues, "the freedom to make and remake our cities and ourselves is one of the most precious yet most neglected of our human rights."[39]

The right to the city, however, need not necessarily be limited to urban areas. In her article "Is there also a right to the countryside?", Barraclough argues that rural transformation is an integral part of urban restructuring, and thus the lives of people living in the countryside are increasingly structured by decision-making that takes place in cities.[40] "[C]apitalism and industrialization endanger rural and urban areas simultaneously."[41] If the conceptual power of the right to the city lies in its concern for economic justice and participatory decision-making, then "the right to the city might be created anywhere and everywhere, including the places we imagine to be 'rural.'"[42] Rural areas might even be distinct, she suggests, for the more immediate connection to the natural environment, and as a result a "right to the countryside" might more explicitly protect human relationships to the natural environment.[43]

Social mobilization inspired by the right to the city highlights that staying put is often a conscious choice and a political act. As Gallaher writes, staying put "is a process of staking a claim to the city, and a home within it, even if one does not own that home. It is a recognition that people have ties to the city that are more than economic—they are familial, cultural, and emotional—and that these connections should count for something."[44] Yet, the right to the city raises many questions equally relevant to the right to stay. Both are complex rights, made up of many more specific rights (e.g., to housing, to political participation, to basic needs, to protection from displacement or expulsion). What specific right is being invoked?[45] Both concepts are also spatially indeterminate: What counts as "the city"? What counts as "staying"—in a home, a village, a region, a state? Nevertheless, both the right to the city and

37. Anna Domaradzka, *Urban Social Movements and the Right to the City: An Introduction to the Special Issue on Urban Mobilization*, 29 VOLUNTAS 607 (2018).
38. David Harvey, *The Right to the City*, 53 NEW LEFT REV. 23 (2008).
39. *Id*.
40. Laura Barraclough, *Is There Also a Right to the Countryside?* 45 ANTIPODE 1047 (2013).
41. *Id*. at 1048.
42. *Id*. at 1047.
43. *Id*. at 1048.
44. CAROLYN GALLAHER, THE POLITICS OF STAYING PUT: CONDO CONVERSION AND TENANT RIGHT-TO-BUY IN WASHINGTON, DC (2016).
45. Kafui A. Attoh, *What* Kind *of Right is the Right to the City?* 35 PROGRESS HUM. GEOGRAPHY 669 (2011).

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the right to stay direct attention to the important dimension of *place*—whether access to or the right to remain in place—to political participation, well-being, and human freedom.

C. *Legal basis*

While there are clear normative bases for a human right to stay, and while it is intuitively simple to understand and support the idea that "people ought not to be moved against their will," the right to stay as such has generally not been explicitly articulated in international or domestic law.[46] As Shelby articulates with regard to domestic property law, "[w]hen property rights come to be seen as primarily the right to transfer, those without property rights often must call on other rights if they want to stay put."[47] Fortunately for those wishing to stay put, there are a number of strands of international human rights law that can be read in support of a "right to stay" that "rumbles and boils through the law."[48] This section provides an overview of key international human rights—including rights related to freedom of movement, rights related to home, land and work, and the right to a healthy environment—that might be called on in support of protection of the right to stay.

1. *Freedom of movement and return to one's own country*

Article 12, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) states that "[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence," while paragraph 4 of that same article guarantees the right to reenter one's country. The U.N. Human Rights Committee, which is charged with monitoring and enforcing the ICCPR, has stated that "the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement,"[49] including a national strategy to address such displacement.[50] The Committee has also held that the right to enter one's country "implies the right to remain in one's own country."[51] This has been upheld in a number of cases before the Committee challenging expulsions.[52] Article 12(4) has been used by the Committee to rule against deportations, including deportations of non-citizens with strong ties to a particular country.[53]

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46. Patrick McFadden, *The Right to Stay*, 29 VAND. J. TRANSNAT'L L. 1, 4 (1996).
47. Hayden Shelby, *The Right to Remain in the City: How One Community Has Used Legal Rights and Rights Talk to Stay Put in Bangkok*, 29 BERKELEY PLANNING J. 129, 147 (2017).
48. McFadden, *supra* note 46, at 40.
49. U.N. Human Rights Committee, *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (Nov. 2, 1999).
50. PAUL TAYLOR, A COMMENTARY ON THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, CAMBRIDGE UNIVERSITY PRESS, 328, 332 (2020).
51. U.N. Human Rights Committee, *supra* note 49.
52. TAYLOR, *supra* note 50, at 345.
53. Timothy Lynch, *The Right to Remain*, 31 WASH. INT'L L. J. 315, 329 (2022).

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"Freedom to choose where to reside may also be violated by the destruction of homes, to which minorities are the common victim."[54] Stavropoulou similarly understands "the right *not* to move" as a "component freedom" of the right to freedom of movement, asserting that "[t]he right to remain and, once flight has already occurred, the right to return, are all expressions of the freedom of movement."[55] This interpretation of the right to freedom of movement as providing support for the right to stay is also reflected in the soft-law *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*, which "indicate that the right should be understood as 'including the right to freely decide whether to remain in or to leave an endangered zone.'"[56] There is some debate over this interpretation. McFadden suggests that the freedom to choose one's residence "is an illusive freedom" as it "clearly covers the initial decision to move to a place, but not so clearly the continuing residence in a place."[57] However he acknowledges that "a freedom to make the initial choice of residence would largely be eviscerated if the state were permitted to overturn that choice immediately or whenever, thereafter, it wished."[58] When considering displacement, the rights to freedom of residence and movement may interact with other rights, including the right to be free from torture and cruel, inhuman, or degrading treatment, the right to non-interference in private and family life and home, the right to non-discrimination, and cultural rights,[59] further bolstering claims for a right to stay.

2. *Rights relating to home and work*

In addition to rights relating to freedom of movement, there are a number of protections in international and regional human rights law that recognize the deep commitments that people have to their homes, their lands, and to livelihoods tied to those homes and lands, and that provide further support for claims on the right to stay. According to McFadden the right to one's home is "especially interesting for two reasons:" its "protection against interference by private persons" and its function "as an early warning system for future dislocations, tripping an alarm at interferences that fall short of forced physical movement, but that could lead to or encourage such a movement."[60] Under international human rights law, the right to adequate housing informs the right to remain.[61] In particular, "[f]orced evictions, potentially including coercive evacuation and/or permanent relocations of populations from disaster-prone areas, are a breach of the obligation to respect the right to legal

54. *Id*.
55. Maria Stavropoulou, *The Right Not to Be Displaced*, 9 AM. U. J. INT'L L. & POL'Y 689, 726 (1994).
56. Ronan McDermott & Pat Gibbons, *Human Rights and Proactive Displacement: Determining the Appropriate Balance Between the Duty to Protect and the Right to Remain*, 41 DISASTERS 587, 590 (2017).
57. McFadden, *supra* note 46, at 35.
58. *Id*.
59. TAYLOR, *supra* note 50, at 328–29.
60. McFadden, *supra* note 46, at 38.
61. McDermott, *supra* note 56, at 592.

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security of tenure," which is a component of the right to adequate housing.[62] Thus such evictions or relocations are permitted only when strict procedural precautions are followed to ensure that human rights are respected.[63] "Historically, the 'home right' has been understood primarily as a component of a wider 'right to privacy,' not as a bulwark against forced movement. Even so, there is some precedent for invoking the 'home right' in cases of forced movement, and such use may increase in the future."[64]

Forced displacement was recognized by the European Commission on Human Rights in *Cyprus v. Turkey*[65] as violating the European Convention on Human Rights' prohibition on interference with private or family life. Subsequent cases have established that this right can be violated when the State fails to protect people from environmental factors that displace them or destroy their homes. The right was evoked, for example, by "Nonna Peppina," an Italian grandmother who insisted on her right to continue living in her home village after it was severely affected by the 2016 central Italian earthquake.[66]

Some theorists have also tied the idea of the right to stay to rights related to dignity and work – in other words, the right to stay home is the right to have the economic drivers of migration addressed. For example, in Mexico,

> 'el derecho a no migrar' in Spanish, was originally coined by Mexican rural development strategist Armando Bartra. He framed it in the context of the 1917 Mexican Constitution's Article 123, which promised: 'All persons have the right to socially useful and dignified work; to that end job creation and social organization for work will be promoted. . .'[67]

This understanding has also been promoted by the U.N. Research Institute for Social Development, which has noted:

> Rights of migrants and migrant precarity are relevant right from the first phase of migration, because the lack of decent work at home is often one of the key push factors leading to outmigration. Decent work at home can therefore allow workers to exert their 'right not to migrate', preventing social costs for migrant communities and families and helping to break the vicious cycle of migration—return—re-migration.[68]

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62. *Id*.
63. *Id*. at 593.
64. McFadden, *supra* note 46, at 39.
65. Apps. Nos. 6780/74 & 6950/75, 99 (July 10, 1976), https://perma.cc/67QN-EAXM.
66. Lecia Vicente, Lucia Ruggeri & Kozue Kashiwazaki, *Beyond Lipstick and High Heels: Three Tell-Tale Narratives of Female Leadership in the United States, Italy, and Japan*, 32 HASTINGS WOMEN'S L. J. 3, 15 (2021).
67. Xóchitl Bada & Jonathan Fox, *Persistent Rurality in Mexico and 'the Right to Stay Home,'* 49 J. PEASANT STUD. 29, 30 (2022).
68. U.N. RESEARCH INST. FOR SOC. DEV., EVENT BRIEF 03: MULTIPLE FORMS OF MIGRANT PRECARITY 1 (2015).

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3. *Rights of Indigenous Peoples*

International human rights law also contains specific protections of the rights of Indigenous Peoples, whose abilities to occupy their traditional lands may face particular threats in the context of climate change and other environmental crises. These protections are based in the recognition that Indigenous Peoples often have unique cultural, economic, social, and spiritual ties to the lands that they have traditionally occupied, and that their displacement from such lands thus risks the realization of a number of human rights. For example, Article 14 of the International Labour Organization (ILO) Convention on Indigenous Peoples provides:

> The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.

The ILO Convention on Indigenous Peoples explicitly addresses the right to stay in Article 16, saying: "1. Subject to the following paragraphs of this Article, the peoples concerned shall not be moved from the lands which they occupy." Paragraph 2 of that article provides for necessary relocation only with free and informed consent, while paragraph 3 provides a right of return. Paragraphs 4 and 5 provide rights of remedy if return is not possible or if damage is suffered during relocation.

Similarly, the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP), a soft law instrument, is accorded significant weight as the primary human rights document specifically articulating the rights of Indigenous Peoples, and it contains a number of provisions on the protection of land rights and protection from displacement. These rights include those enshrined in Article 10, which states that "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."[69] Another key provision is Article 26, which provides in its first paragraph that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."[70] The provisions in UNDRIP on land rights reflect an attempt to resolve conflict that arises between the "spiritual dimension" and "its economic purpose" which "are not ordinarily in conflict for indigenous peoples."[71] In contrast to

69. G.A. Res. 61/295, annex, United Nations Declaration on the Rights of Indigenous Peoples (Oct. 2, 2007).

70. *Id.*

71. DOMINIC O'SULLIVAN, 'WE ARE ALL HERE TO STAY': CITIZENSHIP, SOVEREIGNTY AND THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 74 (2020).

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traditional Indigenous understandings of land use and value, "[c]onflicts emerge when state policies privilege the economic development of non-indigenous commercial interests over the spiritual interests of an indigenous population."[72]

Commentators have observed that the right to free, prior, and informed consent implies a right to refuse relocation: ". . .if an indigenous property right is a substantive one, the possibility of a veto must always exist, even though it cannot be exercised until good faith negotiations have failed."[73] Of course, the rights of Indigenous Peoples do not provide protection in all situations in which communities might face climate-related displacement. As Shelby notes, "[t]he misalignment between the historical claims of long-time urban residents and declarations aimed at protecting indigenous groups is just one example of how the juridical aspect of the global movement of human rights falls short."[74]

4. *Right to a healthy environment*

A final source of support for the right to stay in international human rights law comes from the right to a clean, healthy, and sustainable environment, which was recently recognized as a global right by the U.N. Human Rights Council and the U.N. General Assembly. The former U.N. Special Rapporteur on human rights and the environment has suggested that this right's guarantee of a safe climate includes protections in situations of displacement.[75] He has also highlighted that substantive realization of this right requires addressing "sacrifice zones" "where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas." He suggests climate change "is creating a new category of sacrifice zones as a result of unabated greenhouse gas emissions, as communities have become, and are becoming, uninhabitable because of extreme weather events or slow-onset disasters . . ."[76] Greater recognition and implementation of the right to a healthy environment also provides support for claims of the right to stay and additional forums for making those claims by empowering communities to "address[] the circumstances that compel [them] to leave their homes" through greater participation and accountability in environmental and development decision-making.[77]

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72. *Id*. at 74–75.
73. *Id*. at 92.
74. Shelby, *supra* note 47, at 140.
75. David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment), *Right to a Healthy Environment: Good Practices*, ¶¶ 68–69, U.N. Doc. A/HRC/43/53 (Dec. 30, 2019).
76. David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment), *The Right to a Clean, Healthy, and Sustainable Environment: Non-toxic Environment*, ¶ 27, U.N. Doc. A/HRC/49/53 (Jan. 12, 2022).
77. Monica V. Iyer, *How Recognition and Implementation of the Right to a Healthy Environment Can Advance the Human Rights of Migrants*, 1 ENV'T RIGHTS REV. 5, 7–10 (2023).

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III. EXAMPLES OF CONTEMPORARY CLAIMS OF THE RIGHT TO STAY

A. *Existential advocacy in small island states*

Small island states in the Pacific are at the forefront of the climate justice movement. Facing dire environmental threats associated with sea level rise, ocean acidification, and increasingly severe natural disasters, small island and atoll nations have multiple, intersecting demands that include the rights to stay, adapt in place, migrate, and relocate with dignity. In 2022 the Prime Minister of Tuvalu, Kausea Natano, wrote an article for *Time Magazine* titled "The Climate Crisis Is Making the Pacific Islands Uninhabitable. Who Will Help Preserve Our Nations?" Acknowledging the need for the eventual relocation of Tuvalu's population, Natano demands the right to preserve the statehood of Tuvalu.[78] Against the looming threat of climate-induced displacement, Tuvalu and the Marshall Islands launched the Rising Nations Initiative (RNI), which aims to protect the statehood of Pacific Atoll countries, preserve their sovereignty, and safeguard the rights and heritage of affected populations.[79]

Critical perspectives question the notion that Pacific Islands are already or will inevitably be lost to climate change. As Farbotko and Campbell ask, "Who defines atoll 'uninhabilitability'?"[80] The concept of "habitability" is open to multiple truth claims,[81] and there are "Pacific Island governments and other advocates who have made clear their aspirations to resist 'hopeless' displacement narratives."[82] Narratives of "sinking islands" and "tragic victims" flatten future possibilities for adaptation and place the primary policy emphasis on the need for international treaties on migration and relocation.[83] Current climate justice discourse for the Pacific "runs the real risk of conveying that displacement is inevitable and efforts towards mitigation and adaptation are futile."[84]

Many communities in Pacific Island nations resist the notion that relocation is inevitable and challenge representations of affected populations as passive victims. The Pacific Climate Warriors is one example of active resistance centered around the right to stay. The Pacific Climate Warriors are a youth-led, grassroots network that works to highlight the impacts of climate change and the resilience of Pacific Island nations. Actively rejecting the

78. Kausea Natano, *The Climate Crisis Is Making the Pacific Islands Uninhabitable. Who Will Help Preserve Our Nations?* TIME, Sept. 28, 2022, https://perma.cc/7QJX-C6DQ.

79. *Id.*

80. Carol Farbotko & John Cambell, *Who Defines Atoll 'Uninhabitability'?* 138 ENV'T SCI. & POL'Y 182 (2022).

81. *Id.*

82. Dylan Asafo, *The Racism in Climate Change Law: Critiquing the Law on Climate Change-Related Displacement with Critical Race Theory*, 39 BERKELEY J. INT'L L. 249, 277 (2021).

83. *Id.* at 278–79.

84. *Id.* at 279. *Accord* Hannah Fair, *Not Drowning but Fighting: Pacific Islands Activists*, 49 FORCED MIGRATION REV. 58, 58 (2015) ("Indisputably, there is a severe threat that people will be displaced, internally or internationally [. . .] Yet if we focus solely on managing displacement in these countries then we run the risk of making the loss of those homes a self-fulfilling prophecy.").

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narrative of inevitable climate-induced displacement, the Pacific Climate Warriors "offer a positive alternative vision of climate-threatened communities – 'We are not drowning, we are fighting'. Their campaign articulates a culturally grounded narrative of strength, agency, and courage in the face of potential displacement."[85]

Tuvalu, the Marshall Islands, and other small island nations continue to insist that their first aspiration is to help their populations remain in place and preserve their territory.[86] Even as the Government of Tuvalu makes plans for international migration[87] and advocates for international recognition of its statehood untethered to territory, the government's official policy remains "against relocation as a solution to the climate crisis."[88] Similarly, the Republic of the Marshall Islands considers relocation a "last-resort option."[89] "The Government will need to simultaneously assure the right of citizens to remain in the islands as best it can, and ensure continued opportunity for migration for those who so choose to relocate."[90]

B. *Resisting relocation*

The "existential threat" climate change poses to small island states is an important and attention-grabbing topic, but there are climate hotspots all over the world. In these places, from coastal areas affected by rising sea water to rural areas threatened by drought or desertification, habitation may become more difficult but not impossible. Although some people may have the resources and desire to leave these locations, others may want to stay or be unable to go.[91] In these contexts, people's movements, or lack thereof, in response to environmental change promise to be as mixed and muddled as migration has always been. Planned relocation as a default strategy for climate adaptation becomes particularly challenging, raising many practical and ethical questions about how best to support communities facing climate hazards.

Case studies find that planned relocations risk increasing the vulnerability of resettled populations and often ignore traditional and Indigenous methods of adapting to environmental change that would allow communities to remain in place. For example, Arnall documents how efforts to resettle inhabitants from the Lower Zambezi valley in Mozambique failed to recognize how

85. Fair, *supra* note 84, at 58.
86. Melissa Stewart, *Cascading Consequences of Sinking States*, 59 STANFORD J. INT'L L. 131 (2023).
87. *See, e.g.*, Sam Huckstep & Helen Dempster, *The Australia-Tuvalu Climate and Migration Agreement: Takeaways and Next Steps*, CENTER FOR GLOBAL DEVELOPMENT (Dec. 4, 2023), https://perma.cc/PV7Q-RJGX.
88. Stewart, *supra* note 86, at 158.
89. REPUBLIC OF THE MARSHALL ISLANDS, NATIONALLY DETERMINED CONTRIBUTION 46 (2018), https://perma.cc/Y78T-G3DQ.
90. *Id*.
91. Sterett, *supra* note 15, at 426–27.

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farmers in the region traditionally managed flooding cycles and dealt with flood risks.[92] In Mozambique, the negative impacts of resettlement included:

> significant changes in resettlers' natural resource base, particularly access to land, and alteration of the annual agricultural calendar; loss of social networks; rising prices and greater reliance on local markets; power struggles between leaders and disputes with host communities; increased risk of crime, both in new settlements, and due to cattle and crops left unattended in the low area; psychological risks due to sudden changes in life circumstances; loss of ancestors and sacred sites; and a host of cultural problems, such as toilet-sharing in close confines.[93]

On a practical level, many resettled populations continued to rely on farming in the low-lying areas, making long, daily journeys to continue to cultivate their crops. It is unsurprising, then, that many individuals and households strongly resisted government-led efforts to move people out of flood risk areas, and some families chose to "abandon resettlement areas in favour of the low area again."[94]

Similar patterns have been observed among Afro-Indigenous communities subject to increased flood risk in Ecuador.[95] While these communities recognize their increased vulnerability, they have resisted government relocation efforts in hopes of maintaining their livelihoods and socio-cultural associations with the land. Importantly, they believe there are in-situ adaptation options available to them.[96] Around the world, Indigenous and other marginalized communities have reasons to be skeptical of government relocation plans. Many governments have incentives, unrelated to climate adaptation, to move populations living in peripheral regions towards more central locations. Providing social services and adaptation investments in peripheral areas is often more costly than if these same populations were moved to more convenient places—where they are also more easily controlled by the state.[97]

Resistance to relocation remains a common occurrence in coastal and low-lying areas of the United States. Maldonado quotes an Indigenous inhabitant of a Bayou community in Lousiana who insists:

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92. Alex Arnall, *A Climate of Control: Flooding, Displacement and Planned Resettlement in the Lower Zambezi River Valley, Mozambique*, 180 GEOGRAPHICAL J. 141, 144 (2014).

93. *Id.* at 145.

94. *Id.*

95. Victoria Salinas, William Cevallos & Karen Levy, *Afro-descendants and Indigenous People Vulnerable to Climate Change: Disagreements About Preventative Measures of the Ecuadorian State*, 24 ÍCONOS REVISTA DE CIENCIAS SOCIALES 107 (2020).

96. *Id.*

97. *See*, *e.g.*, Uma Kothari, *Political Discourses of Climate Change and Migration: Resettlement Policies in the Maldives* 180 GEOGRAPHICAL J. 130 (2014) (describing how "environmental concerns are drawn upon to justify unfavourable government policies of mobility and resettlement" in the Maldives); Christopher McDowell & Arjan de Haan, *Migration and Sustainable Livelihoods: A Critical Review of the Literature* 5-12 (Inst. Dev. Stud., Working Paper No. 65, 1997) (discussing historical motivations for resettlement and villagization programs in Ethiopia following a period of drought).

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> My home is this, my people is this right here. It's the place I've always known as home. This land has fed our people. It may not be much, but it is ours. Being Native there is a strong connection to the land; it gives to you and you give back to it. If a storm brought oil into our homes and the government said we couldn't go back, I couldn't put the impact into words. I still want to live here because I'm Native American, because I'm connected to the land. I'm going to live here as long as I can. I belong here.[98]

Residents in these communities identify displacement and government failures to protect them from displacement as a rights violation.[99]

It is not only Indigenous communities who have a strong sense of place attachment. Smith Island, Maryland, with a population numbering only in the hundreds, has lost over 3,300 acres of wetlands over the last 150 years.[100] The island continues to shrink as sea levels rise and shorelines erode. In the wake of Hurricane Sandy in 2012, the federal government offered property buyouts to enable residents to move away from the island. Local residents "strongly opposed the buyouts" and instead "organized into Smith Island United (SIU), a grassroots organization to advocate for the preservation of Smith Island" and its community, focusing first on infrastructure investment in shoreline preservation.[101] In organizing, the residents emphasized their long-standing roots on the Island and the wish to preserve its way of life, stating: "Our island community has existed for over 400 years. Smith Island United accepts it as our responsibility to ensure that this island, its people, and its culture are around 400 years from now."[102]

Examples like Smith Island show that calls for the protection of the right to stay also come from communities that have historically enjoyed a more privileged position. In these contexts, residents who refuse forced relocation may also disagree with the scientific consensus that climate change is real.[103] Many ground their right to stay in private property rights and resistance to government intervention.[104] Using social survey data from Australia, Lo finds that climate skepticism is associated with the tendency to see private-property rights as a fundamental entitlement irredeemable in the prospect of forced retreat, regardless of the potential for compensation like the payouts

98. Julie Koppel Maldonado, *A Multiple Knowledge Approach for Adaptation to Environmental Change: Lessons Learned from Coastal Louisiana's Tribal Communities*, 21 J. POL. ECOLOGY 61, 71 (2014).

99. *Id*. at 74.

100. GOV'T ACCOUNTABILITY OFF., CLIMATE CHANGE: A CLIMATE MIGRATION PILOT PROGRAM COULD ENHANCE THE NATION'S RESILIENCE AND REDUCE FEDERAL FISCAL EXPOSURE 20 (2020).

101. *Id*. at 21.

102. SMITH ISLAND UNITED, https://perma.cc/7Z9V-EU6J (last visited Jan. 27, 2024).

103. Alex Y. Lo, *The Right to Doubt: Climate-change Scepticism and Asserted Rights to Private Property*, 23 ENV'L POL. 549, 549 (2014). We do not suggest that this was motivating the residents of Smith Island, only that it may be a factor in other communities of similar socio-economic status.

104. *See id*. at 553.

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offered to the Smith Islanders.[105] Lo suggests meaningful engagements with climate skeptics using the framework and language of rights may be instrumental in overcoming climate skepticism, collectively grappling with defensible rights, including property rights, and moving towards meaningful adaptation solutions.[106]

C. *Environmental justice and intersecting rights*

Protecting the right to stay requires far more than investment in climate adaptation, mitigation, and resilience. In fact, much can be learned from other environmental justice movements, not only climate justice. These movements highlight that environmental justice is impossible to achieve without engaging questions of economic justice and political participation. For example, Kern and Kovesi use the case study of Chicago's Little Village neighborhood to demonstrate how environmental racism, gentrification, and anti-immigrant practices act "as forms of violence that interlock to undermine marginalized communities' right to stay put."[107] Little Village is a working-class, Latinx neighborhood that has long suffered from industrial pollution.[108] Years of grassroots activism led to important wins in securing environmental protections. Yet, as the neighborhood environment improves, the community faces new challenges related to gentrification and immigration enforcement, confinement, and threats to its long-term undocumented residents.[109]

In Little Village, grassroots community organizing was essential to the success of environmental justice campaigns, and the same groups now advocate for "resistance to displacement and gentrification through an environmental justice lens that foregrounds the right to stay put and enjoy the benefits of their work in improving the local environment."[110] In this context anti-displacement, or the right to stay, is a key principle animating multiple forms of community organizing: "in Little Village, the tight linkages between environmental justice and anti-displacement principles inform community responses to violence in the form of environmental racism, gentrification, and anti-immigrant surveillance and deportations."[111]

The rapid global spread of urban movements claiming the right to the city provides resonant experiences that can inform the conceptualization and application of the right to stay in urban and rural places threatened by climate change. Well-known movements include the Right to the City Alliance in the United States, the Derecho a la Ciudad movements in Latin America, the

105. *Id.* at 549.
106. *See id.* at 566.
107. Leslie Kern & Caroline Kovesi, *Environmental Justice Meets the Right to Stay Put: Mobilizing Against Environmental Racism, Gentrification, and Xenophobia in Chicago's Little Village*, 23 LOCAL ENV'T 952, 962 (2018).
108. *Id.* at 952.
109. *Id.*
110. *Id.* at 960.
111. *Id.* at 953.

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Recht auf Stadt initiatives in Germany and Urban Movements Congress in Poland.[112] Like the right to the city, the right to stay is both a "cry and demand"[113] from communities threatened by a climate crisis that they did not cause.

IV. ANALYSIS: CLAIMING THE RIGHT TO STAY IN THE ERA OF THE CLIMATE CRISIS

A. *Typology of right to stay claims in the era of the climate crisis*

Our review of the case studies above and historical claims of a right to stay reveals three main manifestations of the right to stay, all of which have salience in the context of climate change-related migration and displacement. The first, perhaps most classic case, is where individuals or groups claim protection from forced eviction or relocation, whether such eviction or relocation is carried out directly by the State or where private actors seek to evict or relocate individuals or households who then call on the State for protection. In the climate context, these claims may arise as governments increasingly turn to managed relocation as a tool of climate change adaptation,[114] or resort to "green grabs" so that government or private actors can engage in mitigation and adaptation activities.[115]

A second type of claim of the right to stay is a call for the State to put into place policies enabling resistance to displacement at the local or regional level. In the case of climate-related disasters, this may mean a claim for relocation or return policies that enable people to stay in or return to the general area in which they had been living, even if return to their individual homes is impossible, like those of Nonna Peppina, an Italian grandmother displaced in a 2016 earthquake.[116] It also may mean a claim to a right to maintain traditional lifestyles or some connection to original residence sites, despite engaging in circular migration to urban areas as an adaptation strategy, as identified by Marino & Lazrus with regard to the climate-threatened communities of Shishmaref, Alaska and Nanumea, Tuvalu.[117] In some cases, resistance itself may act as a claim on the right to stay, without an explicit demand for state intervention. As Masuda et al. describe, "[a] reality of many sites of exclusionary displacement is their stubborn durability; something always remains even after human and material losses. Often presented as vestigial remnants a rearguard of a displaced community spared through small victories against

112. *See* Domaradzka, *supra* note 37.
113. *Cf.* Lefebvre, *supra* note 36.
114. Maldonado, *supra* note 98.
115. *See, e.g.*, Stan Weeber, *Nodes of Resistance to Green Grabbing: A Political Ecology*, 1 ENV'T & SOC. PSYCH. 116 (2016).
116. Vicente, *supra* note 66, at 16.
117. Elizabeth Marino & Heather Lazrus, *Migration or Forced Displacement? The Complex Choices of Climate Change and Disaster Migrants in Shishmaref, Alaska and Nanumea, Tuvalu*, 74 HUM. ORG. 341, 345–47 (2015).

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large development forces" may embody claims of "enduring attachments to place, identity, and people."[118]

Finally, and of growing relevance in the era of the climate crisis, right to stay claims may consist of demands for broader economic or environmental policies that support staying, addressing the systemic drivers of displacement. Such claims can be made against the home government of communities facing displacement, but, increasingly, given the global and cross-border nature of climate and environmental harms, can also be made against the international community as a whole, or against high emitting countries in particular. Oberman argues that the failure to provide adequate development assistance to mitigate extreme poverty in States of origin constitutes a violation of the right to stay;[119] accordingly, a similar argument might be made regarding the failure to adequately mitigate climate change or to provide adaptation funding that would allow people to stay in their homes. Additionally, potential legal support for such claims might arise from the Inter-American Court of Human Rights' recognition of the possibility of extraterritorial liability for human rights violations arising from environmental harms.[120]

B. *Allocating blame and making claims on the right to stay in the context of the climate crisis*

Designating climate change-related displacement as a harm is increasingly common. However, the next two phases of the naming, blaming, and claiming process are more complex in this context. The "blaming" step requires first that affected individuals and communities blame their displacement at least in part on climate change or environmental factors, rather than simply pointing to other social or economic factors that may drive migration. They then must also identify "an individual or social entity" who is to "blame" for climate harms.[121] This step helps establish where claims fall in our typology, as it is a matter of establishing which party or parties are responsible for the climate displacement and thus who could in theory be targeted for action. This raises the issue of the geographical scale at which claims-making takes place: In principle, claims might be made at one or more of local, regional or national government, or even at international levels. Equally, the objects of claims could be private sector corporations, states, or sub-state public sector bodies.[122]

Particular benefits and possibilities arise when explicitly claiming that the right to stay is a human right. Making claims for protection from climate

118. Jeffrey R. Masuda, Aaron Franks, Audrey Kobayashi & Trevor Wideman, *After Dispossession: An Urban Rights Praxis of* Remaining *in Vancouver's Downtown Eastside*, 38 EPD: SOC'Y & SPACE 229, 230 (2020).

119. Oberman, *supra* note 26, at 260–65.

120. The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H. R. (ser. A) No. 23, ¶¶ 95–96 (Nov. 15, 2017).

121. Felstiner, *supra* note 4, at 635.

122. Arnall, *supra* note 21, at 666–67.

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harms grounded in human rights may have a number of goals, including actual compensation or judicial relief, but also "'discursive change' or shifting public understanding."[123] "Viewing rights as cultural or symbolic resources suggests one potential mechanism of social change: Mobilizing rights, even in informal contexts, can undermine taken-for-granted understandings of social organization and delegitimize conduct previously accepted as natural and normal."[124] While some theorize rights mobilization as an individualized practice that may "undermine collective action," Albiston's research illustrates how drawing on language of legal rights in an informal manner may also be a communal process that "can help build connections and common interests" and "may lead to eventual collective action."[125]

Shelby describes how the discursive power of the right to stay operates in practice in a Bangkok community threatened with eviction:

> Despite not having a clear path forward for the juridical use of human rights to make claims to disputed land, activists continue to employ human rights as a motivating discourse . . . The human rights discourse emboldens people [. . .] to think of themselves and their communities as deserving of a higher social status and greater material conditions than society has previously allotted to them.[126]

With no legal claims to the land, there is a need for "collective action, negotiation, and perseverance," and "the discourse on human rights bolsters these efforts."[127] However, there may be limits to what right to stay claims can accomplish. In U.S. property law, for example, "[t]he right to stay is protected not only by limiting the modes of loss, but also by hedging them in with substantive and procedural requirements that limit their actual occurrence."[128] However, the U.S. legal principle does not extend to mandating structural reforms that would prevent mass displacement.

C. *Capability to Stay*

A sociolegal perspective on the right to stay resonates with arguments found in migration and development research related to the capability to stay.[129] The capability to stay is a concept inspired by the Capability Approach, a development theory that places the freedom to achieve well-

123. Sterett, *supra* note 14, at 310.

124. Catherine R. Albiston, *Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights*, 39 LAW & SOC'Y REV. 11, 14–15 (2005).

125. *Id*. at 27.

126. Shelby, *supra* note 47, at 143.

127. *Id*.

128. McFadden, *supra* note 46, at 7.

129. Kerilyn Schewel, *Understanding Immobility: Overcoming the Mobility Bias in Migration Studies*, 54 INT'L MIGRATION REV. 328 (2019); Kerilyn Schewel, *Staying Put: Why It's Time to Pay More Attention to Mixed Immobility*, *in* MIXED MIGRATION REVIEW 2021: REFRAMING HUMAN MOBILITY IN A CHANGING WORLD 191 (Mixed Migration Center, ed., 2021).

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being as the goal of development and suggests evaluating development in terms of people's capabilities to achieve the lives they have reason to value.[130] The capability to stay asks whether people have realistic options to achieve an acceptable state of well-being where they are currently situated.

A core insight of the Capability Approach is that well-being cannot be measured only in basic rights or resources. Whether and how people use those rights or resources depends significantly on other circumstances, often referred to as "conversion factors." There are personal conversation factors, internal to the individual (e.g., literacy, wealth, or physical (dis)ability); social conversation factors related to the society in which one lives (e.g., social norms, public policies, institutional conditions); and environmental conversion factors related to the physical or built environment in which one lives (e.g., climate, pollution, infrastructure).[131] The capability to stay directs attention to the personal, sociopolitical, and environmental conditions that need to be present for people to have a meaningful choice to migrate or to stay.

Securing basic rights and resources remains fundamental to ensuring the well-being of populations, and an examination of people's capabilities adds a grounded assessment of what is possible for particular individuals or social groups to achieve. In the context of climate change, the capability to stay highlights that rights-based claims to stay need to be accompanied by social policies that enhance the meaningful capability to stay in place, which requires engaging political, economic, sociocultural issues not directly related to climate concerns.

D. *Open questions regarding claiming the right to stay in the era of the climate crisis*

Our research shows that implicit and explicit claims of a right to stay are increasingly salient as the world faces the climate crisis, and that international human rights law provides a foundation for such claims. However, a number of questions remain regarding the shape and boundaries of such claims and how they can be fully and strategically utilized to protect human rights and human dignity in the context of climate-related migration and displacement. These include questions of scale: What counts as "staying?" In the cross-border migration context, the State is often understood as the most relevant geographical entity, but it is clear that place attachment may be significantly more localized, such that meaningful protection of the right to stay also requires addressing internal displacement. They also include questions of time: How long does an individual or a community need to live in a place before meaningful protection of the right to stay attaches? Outside of

130. AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999).

131. Ingrid Robeyns & Morten Fibieger Byskov, *The Capability Approach*, *in* THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (SUMMER 2023 EDITION) (Edward N. Zalta & Uri Nodelman, eds., 2023).

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Indigenous contexts, questions of establishing and drawing protections from a long-term attachment to a specific location are more challenging. Further, they include questions of power: Who is meaningfully able to claim the right to stay, and how do these claims and abilities interact with historical patterns of inequality, discrimination, and marginalization? Finally, questions arise regarding the interaction between the right to stay and other aspects of the right to freedom of movement. If claims on rights are derived in part from the ties that people have to a place, how then are we to ensure that they can also choose to migrate in dignity and with full protection? What is the interaction between the right to stay and a life course perspective on migration, where people might migrate with the expectation of being able to return? All of these questions bear future investigation as the right to stay becomes increasingly salient in the context of rising threats from climate change.

CONCLUSION

In all responses to climate-related migration and displacement, centering affected communities is paramount. To support individuals and communities affected by climate change to effectively adapt will require giving voice to their aspirations, perspectives, and knowledge. As Ramji-Nogales argues, "[a]lthough those most impacted by climate change have already begun to demand participation in international processes, these efforts should begin by seeking out those voices. Those who prefer to remain in their home countries should benefit from . . . risk reduction, adaptation, and resilience building strategies."[132] Realizing the right to stay requires enabling communities and individuals to make these claims and taking them seriously. It also requires meaningfully instituting community-led adaptation measures, recognizing that "vulnerable groups themselves . . . are sources of invaluable knowledge about how to solve the challenges they are facing most effectively."[133]

Amplifying the voices of those affected by climate change will require protecting the right to stay and investments to enhance the capability to stay as well as facilitating opportunities for internal and international migration as an adaptation strategy. Strategies to support human mobility in the face of climate change should embrace human mobility as the freedom to choose where to live, including the option to stay.[134] From a normative perspective, all people should have the right to stay, recognizing that many of those who have it may still choose to migrate.

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132. Jaya Ramji-Nogales, *Slow-Onset Climate Justice and Human Mobility*, 93 TEMPLE L. REV. 671, 686 (2021).

133. *Id*. at 685

134. de Haas, *supra* note 23.

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