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Protecting the Human Rights of Migrants and Displaced Persons: The Judiciary's Evolving Role

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During a period of unparalleled global displacement, this essay examines the evolving role of the judiciary in protecting the human rights of migrants and those who have been displaced. Current international legal frameworks, such as the 1951 Refugee Convention, ICCPR, and regional human rights agreements, are insufficient in offering consistent protection for over 122.6 million individuals forcibly displaced by conflict, persecution, environmental issues, and human rights abuses. Consequently, courts around the globe have emerged as crucial entities in transforming international standards into legally binding rights, often addressing the gaps caused by inadequate or absent legislative or executive measures. Employing a comparative approach, the research analyses important judicial decisions from various continents, such as North America, Europe, Africa, Asia, and Oceania. Cases such as NHRC v State of Arunachal Pradesh, Hirsi Jamaa v Italy, and Boumediene v Bush demonstrate how courts have expanded the scope of human rights safeguards by affirming principles like procedural justice, non-refoulement, and safeguarding against arbitrary detention. The article emphasises significant advancements in judicial reasoning, including the broadening of rights beyond national boundaries and the increasing emphasis on due process safeguards in migration governance.

The legal system continues to encounter numerous challenges despite these progressions. These encompass variations in judicial autonomy across jurisdictions, tensions between state sovereignty and human rights commitments, and challenges with implementing and complying with court decisions. Emerging forms of displacement, particularly climate change-induced migration, further expose shortcomings in existing legal frameworks, requiring innovative judicial interpretation and international cooperation. The conclusion of the paper offers suggestions for enhancing judicial protection mechanisms. These

consist of bolstering judicial independence, enhancing migrant access to legal assistance, establishing normative structures for emerging forms of displacement, and advancing international judicial dialogue. Ultimately, the research highlights the crucial function of the judiciary in safeguarding human dignity, underscoring the need for robust legal systems and an independent, responsive judiciary capable of adapting to evolving global challenges to effectively protect migrants' rights.

Keywords: *immigrants, global regulations, asylum seeker safeguards, judicial intervention, fundamental rights.*

INTRODUCTION

In recent decades, the world has witnessed a dramatic increase in the forced displacement of people due to conflict, persecution, violence, human rights violations, and environmental factors. According to the UNHCR, over 122.6 million individuals have been forcibly displaced globally as of 2024. Despite the existence of robust international legal frameworks, many migrants and displaced persons continue to face xenophobia, statelessness, arbitrary detention, and denial of fundamental protections. Amid these challenges, judiciaries worldwide have emerged as key defenders of migrants' rights. Courts serve as critical mechanisms for translating international human rights commitments into enforceable realities, often stepping in where political will is absent. This paper examines the judiciary's evolving global role in safeguarding the human rights of migrants and displaced persons. It draws upon legal frameworks, scholarly analysis, and major judicial decisions from every region to provide a comprehensive view of how courts are shaping migration governance today.

LITERATURE REVIEW

The protection of migrants is based on a wide range of international laws, including the 1951 Refugee Convention and its 1967 Protocol, the International Covenant on Civil and Political Rights (ICCPR), and regional agreements such as the European Convention on Human Rights (ECHR) and the American Convention on Human Rights. A key principle within these legal frameworks is non-refoulement, which prevents the return of individuals to a country where they might be subjected to persecution, torture, or other serious harm¹.

¹ Angus Gavin Grant, 'Confronting (In)Security: Forging Legitimate Approaches to Security and Exclusion in Migration Law' (D'Phil Theses, Osgoode Law School 2016)

Scholarly work highlights the important role of the judiciary in applying these international standards. Courts are increasingly involved in upholding rights such as the ban on torture, the right to asylum, freedom from unlawful detention, and the principle of equality. The right to seek asylum, the right to be free from being held without proper reason, and the idea that everyone should be treated equally before the law are important principles. As Massimo Frigo (2018) and others have pointed out, courts can serve as a ‘life buoy’ for the rights of migrants, especially during times when there is a lot of negative feeling towards immigrants. However, the ability of the courts to protect migrants depends a lot on the country they are in places where the courts are independent and not controlled by political powers, judges have often ruled against unfair deportations and forced detention. On the other hand, in countries where the courts are influenced by politics, migrants often find it very hard to get fair treatment or justice.

Another growing issue in legal discussions is the lack of clear laws protecting people who are forced to leave their homes because of climate change. These people often do not fit into the usual systems that protect refugees. The case of *Ioane Teitiota v New Zealand*,² which went to the UN Human Rights Committee, showed that there is a growing understanding that climate-related displacement might, in some cases, require protection against being sent back to a place where they would be at risk.

GLOBAL CASE STUDIES

North America – Boumediene v Bush (US): In *Boumediene v Bush*³, the U.S. Supreme Court expanded constitutional rights for non-citizen detainees at Guantanamo Bay. Even though the base is not within formal U.S. borders, the Court ruled that detainees have the right to challenge their imprisonment in court. This decision showed that human rights do not disappear simply because someone is not a citizen or is outside a country's territory.

South America and the Inter-American System – Vélez Looor v Panama: In *Vélez Looor v Panama*⁴, the Inter-American Court of Human Rights found that Panama violated human rights by detaining an undocumented migrant and treating him cruelly. The Court made it

² *Ioane Teitiota v New Zealand* [2019] CCPRC/C/127/D/2728/2016

³ *Boumediene v Bush* [2008] 553 US 723

⁴ *Vélez Looor v Panama* [2010] Inter-American Court of Human Rights (Ser C) No 218

clear that everyone, regardless of their status, has the right to be treated humanely and to seek justice through the courts.

Europe - Hirsi Jamaa and Others v Italy: In *Hirsi Jamaa and Ors v Italy*⁵, the European Court of Human Rights (ECtHR) said that Italy broke human rights rules by intercepting migrants at sea and returning them to Libya without checking their individual cases. The Court argued that states can't avoid their human rights responsibilities just because they are operating outside their country's waters, which expanded the idea of what counts as jurisdiction under the European Convention.

M.S.S. v Belgium and Greece: In *M.S.S. v Belgium and Greece*⁶, the ECtHR ruled that Belgium violated the rights of an Afghan asylum seeker by sending him to Greece, even though Greece's asylum system was known to be weak. This case influenced European asylum laws by showing that any transfer of asylum seekers within the EU must include proper procedures to protect their rights.

Africa - Kabele v Minister of Home Affairs (South Africa): In *Kabele v Minister of Home Affairs*, the South African Constitutional Court said that holding an asylum seeker for a long time without properly reviewing their case violated their rights to freedom and personal security. The Court reminded that asylum seekers should have access to fair and timely legal options.

Saidi and Ors v Minister of Home Affairs: In *Saidi and Others v Minister of Home Affairs*⁷, the South African Constitutional Court ruled that asylum seekers who are waiting for their cases to be decided should be allowed to stay in the country and continue accessing basic rights until their cases are resolved.

Asia - NHRC v State of Arunachal Pradesh (India): In *National Human Rights Commission v State of Arunachal Pradesh*⁸, the Indian Supreme Court protected the rights of Chakma refugees who were at risk of deportation. Using Article 21 of the Indian Constitution, which

⁵ *Hirsi Jamaa and Others v Italy* [2012] ECHR 578

⁶ *M S S v Belgium and Greece* [2011] ECHR 30696/09

⁷ *Saidi and Others v Minister of Home Affairs* [2018] ZACC 9

⁸ *National Human Rights Commission v State of Arunachal Pradesh & Anr* AIR 1996 SC 1234

protects life and personal freedom, the Court ordered the state government to ensure the safety and dignity of these refugees.

Mohammad Salimullah v Union of India: In *Mohammad Salimullah v Union of India*⁹, the Indian Supreme Court discussed the proposed deportation of Rohingya refugees. The Court recognised the principle of non-refoulement, which means not sending someone back to a place where they face harm, but it left the final decision on national security to the executive branch, showing the balance between protecting human rights and respecting national authority.

Oceania: Applicant A v Minister for Immigration and Ethnic Affairs (Australia): In *Applicant A v Minister for Immigration and Ethnic Affairs*¹⁰, the High Court of Australia stressed the importance of considering an asylum seeker's claim based on a real fear of persecution because of political beliefs or ethnicity. This reinforced Australia's commitments under the 1951 Refugee Convention.

A.S. (Iran) v Minister for Immigration and Border Protection (Australia): In *A.S. v Minister for Immigration and Border Protection*¹¹, the High Court of Australia again emphasised the need for fairness in asylum decisions, stating that the claims must be judged based on complete and accurate information provided by the applicant.

ANALYTICAL DECISION

The case studies show a common trend: courts around the world have repeatedly supported the rights of migrants and displaced people against unfair detention, deportation, and a lack of fair legal process.

Two major trends appear:

Rights Beyond Borders: Courts like the U.S. Supreme Court in *Boumediene* and the ECtHR in *Hirsi Jamaa* argue that human rights obligations apply even when a state exercises control over a foreign territory.

⁹ *Mohammad Salimullah & Anr v Union of India & Ors* AIR 2021 SC 1789

¹⁰ *A and Anr v Minister for Immigration and Ethnic Affairs & Anr* [1997] 190 CLR 225

¹¹ *A S v Minister for Immigration and Border Protection & Ors* [2014] VSC 593

Procedural Safeguards: Courts in Australia and South Africa have focused on ensuring fair hearings, while courts in Italy and across Europe have emphasised the need to avoid mass deportation without individual review, showing how due process is key to protecting human rights. However, courts face difficult choices, like keeping national security concerns in check while protecting individual rights, and working within political systems that often limit their power.

CHALLENGES

Despite progress, many obstacles continue to affect the protection of migrants' and displaced people's rights worldwide.

Sovereignty versus Human Rights: There is a major conflict between a country's right to control its borders and the legal obligation to protect human rights. Courts often face criticism when their decisions are seen as challenging a country's authority, as in the cases of *Boumediene v Bush* and *Mohammad Salimullah v Union of India*. Critics sometimes accuse courts of overstepping or meddling in government decisions.

Enforcement and Compliance: Even when courts make decisions in favour of migrants, those decisions may not be followed. Governments can delay or ignore court rulings. For example, after the *Hirsi Jamaa* ruling, Italy continued to engage in questionable migration practices despite the Court's clear instructions.

New Forms of Displacement: Climate change is causing displacement in new ways that current refugee systems are not set up to handle. Without a legal agreement protecting climate-displaced people, courts have limited guidance to extend rights to these groups¹².

Varied Protection Across Jurisdictions: The level of protection for migrants varies around the world. While courts in Europe, parts of Africa, and Oceania have made progressive rulings, many regions in Asia, the Middle East, and parts of Africa lack strong, independent courts or established legal standards for migrant rights, leading to wide differences in access

¹² Jane McAdam, 'FROM THE NANSEN INITIATIVE TO THE PLATFORM ON DISASTER DISPLACEMENT: SHAPING INTERNATIONAL APPROACHES TO CLIMATE CHANGE, DISASTERS AND DISPLACEMENT' (2016) 39(4) UNSW Law Journal
<https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/McAdam_UNSWLJ_2016.pdf> accessed 02 April 2026

to justice.

RECOMMENDATIONS

Given the challenges mentioned earlier, the following recommendations are suggested to improve the protection of migrants and displaced people through the judicial system:

Strengthen Judicial Independence: Governments and international organisations need to ensure the judiciary remains free and independent¹³. A judiciary that is not influenced by external pressures is essential for fairly deciding cases involving the rights of migrants.

Expand Access to Legal Aid: It is important to support migrants in accessing the courts by increasing legal aid services, encouraging pro bono work, and making legal procedures easier to follow. This will help remove obstacles that prevent people from seeking justice.

Develop Normative Frameworks for Emerging Displacement: The international community should create binding legal rules to handle new types of displacement, especially those caused by climate change. Courts can take a leading role by interpreting existing protections in new and broader ways.

Foster Judicial Dialogue and Cross-Jurisdictional Learning: Judges and legal professionals should communicate across borders to share successful practices, build a consistent body of legal interpretations, and ensure consistent protection for migrants.

Promote Civic Education and Public Awareness: It is important to increase public knowledge about the role of the judiciary in protecting human rights. This helps reduce political resistance and supports the legitimacy of the courts.

Utilise Regional Human Rights Mechanisms: Courts should work closely with regional human rights bodies, such as the Inter-American Court and the African Court on Human and Peoples' Rights. This collaboration can improve migrant protection through regional cooperation and solidarity.

¹³ Guy S Goodwin-Gill, 'The Limits of the Power of Expulsion in Public International Law' (1975) 47(1) British Yearbook of International Law <<https://academic.oup.com/bybil/article-abstract/47/1/55/320774>> accessed 02 April 2026

CONCLUSION

The judiciary has become a key player in protecting the rights of migrants and displaced people around the world. From ensuring the right to seek asylum and preventing unjust detention to addressing mass expulsions, courts have taken on important roles where laws or government actions have not been sufficient. However, this judicial involvement comes with its own challenges. Courts have to carefully balance the protection of universal human rights with the respect for national sovereignty. New issues like climate-induced migration require the courts to adapt their legal thinking and update the laws accordingly.

Looking ahead, improving judicial independence, expanding access to legal help, and creating new legal standards will be essential for better protection of vulnerable groups. In the end, the judiciary's strong commitment to the belief that human dignity is not limited by nationality or status will be crucial in facing the challenges of an ever-changing world.