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FOREWORD

Law and Social Change: Bridging Law, Society and Emerging Challenges

Kathleen Tantuico

In the age of societal transformation, the law is both a mirror and a mechanism of change. It reflects the values, tensions, and inequalities of the societies it governs, while offering tools to challenge and reshape those very structures. This special issue of the Kent Law Review explores the dynamic relationship between law and social change and highlights the deployment and re-imagination of legal norms, institutions, and practices in response to pressing contemporary challenges. Moving beyond the formal letter of the law, these papers examine law demonstrates its power to effect meaningful social, environmental, and political transformation.

The issue opens with *Climate Change, Statelessness, and Digital Sovereignty: Safeguarding Island Nationhood* by E Prema and Ragul OV, which examines the threat posed to Small Island Developing States by climate change. Using Tuvalu as a case study, the authors explore how traditional notions of sovereignty and statehood are being redefined in the face of territorial loss. Through the lens of Tuvalu's "Future Now Project," a pioneering initiative to preserve national identity digitally, the paper introduces the concept of digital sovereignty, challenging conventional international legal frameworks and emphasising the decolonial dimensions of climate justice.

Nathalia Contreras Ceccarelli's *The Role of Judicial Literacy in Climate Change* builds on this exploration of systemic adaptation. It examines the critical role of courts in interpreting complex scientific evidence in climate litigation. Through landmark cases such as *Milieudefensie v. Shell* and *Urgenda v Netherlands*, she underscores how judicial competence and independence are vital to effective environmental governance and underpins the necessity of climate-literate judiciaries capable of responding to global ecological crises while holding powerful actors accountable.

Shifting the focus to human rights and political inclusion, Tamara Hanna's *The Right to Belong: Citizenship and the Crisis of Internal Displacement among Iraq's Assyrians & Chaldeans* examines the gap between formal legal recognition and substantive rights. By analysing the experiences of displaced Assyrians in Iraq, she demonstrates how citizenship alone is insufficient to guarantee protection, security, or meaningful participation. Drawing on Arendt's concept of "the right to have rights" and Habermas' theory of juridification, she argues for the inclusion of minority voices in legal frameworks to address structural barriers to reintegration and belonging.

Together, these contributions illuminate the avenues where law invites social change: from environmental and technological innovation to institutional reform and human rights protection. This issue challenges readers to recognise law's capability to respond to crises and promoting justice in various contexts, and hopes to inspire critical reflection, debate, and action to shape a more equitable and resilient world.

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CLIMATE CHANGE, STATELESSNESS, AND DIGITAL SOVEREIGNTY: SAFEGUARDING ISLAND NATIONHOOD

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ABSTRACT: As climate change accelerates the existential threat facing Small Island Developing States (SIDS), the case of Tuvalu represents a profound legal and moral challenge to international law. Tuvalu has pledged to maintain its sovereignty "in perpetuity," even if rising seas render its territory uninhabitable. This research interrogates a central question: How can international law accommodate a state's sovereign continuity in the absence of physical territory, and what transformative legal frameworks are necessary to support post-territorial statehood in climate-vulnerable contexts? This inquiry situates Tuvalu's constitutional commitment to sovereignty within broader debates on climate justice, environmental displacement, and the postcolonial dimensions of international law. This paper explores how climate-induced statelessness reveals structural inequities embedded in doctrines of statehood, territorial integrity, and recognition. The paper draws upon relevant international legal instruments, including the 1933 Montevideo Convention, the United Nations Convention on the Law of the Sea (UNCLOS), the Paris Agreement, and emerging jurisprudence from the International Court of Justice (ICJ), particularly the 2023 advisory opinion proceedings initiated by Vanuatu. The research also critically examines Tuvalu's Future Now Project, a pioneering initiative that seeks to preserve Tuvalu's cultural, legal, and governmental identity through a digitised state apparatus hosted on cloud infrastructure. This novel strategy challenges traditional understandings of sovereignty, legal personality, and state continuity. In doing so, it introduces the concept of "digital sovereignty" as both a technological and legal innovation aimed at resisting erasure in an international system slow to adapt to ecological collapse. Furthermore, the paper considers the decolonial implications of Tuvalu's stance.

Keywords: Sovereignty, Climate Displacement, Tuvalu, Digital Statehood, UNCLOS, Decolonial International Law

1. Introduction

Climate change presents an unprecedented existential threat to small island states, forcing a re-examination of fundamental concepts like statehood and sovereignty. If rising seas submerge an entire nation, does it cease to exist as a legal person?[1] This article asks precisely that: How can international law recognise and safeguard a state's continuity when its physical territory disappears, and what novel tools (such as digital sovereignty) can forestall climate-induced statelessness? To address this, we undertake a doctrinal analysis of treaties and case laws. We examine traditional criteria for statehood under the Montevideo Convention, recent state practice (especially by Pacific Island Forum members) preserving maritime claims despite inundation, and new legal instruments (including the 2025 ICJ advisory opinion on climate change). We also explore emerging concepts like digital statehood, exemplified by Tuvalu's Future Now project, as a form of cyber-sovereignty. Finally, we situate these developments in a climate-justice framework, highlighting how principles like common but differentiated responsibility (CBDR) and decolonial perspectives demand that the rights and identity of vulnerable peoples endure even if their land is lost. Our methodology blends treaty analysis (UNFCCC, UNCLOS, Paris Agreement), judicial pronouncements, and scholarly commentary to propose how international law might evolve – through new treaties, declarations or custom – to explicitly protect sinking states and their peoples.

2. Climate-Induced Statelessness & Statehood

The disappearance of territory challenges the classic Montevideo criteria: a state must have a permanent population, a defined territory, an effective government, and capacity for foreign relations.[2] Total inundation would plainly frustrate the defined territory requirement. Doctrinally, nothing in the Montevideo Convention or customary

[1] Jane McAdam, 'Preserving Statehood through Population and Government: Safeguarding Nationality and Franchise in the Context of Sea-Level Rise and Mobility' (2022) 20 NZ YB Intl L 3.
[2] International Law Commission, 'Chapter X: Sea-level rise in relation to international law', *Report of the International Law Commission: Seventy-fifth session* (29 April–31 May and 1 July–2 August 2024), UN Doc A/79/10, <https://legal.un.org/ilc/reports/2024/english/chp10.pdf> accessed 31 October 2025.

law explicitly addresses a state with no land. Yet scholars note that no minimum land area is required – even a tiny or de facto space can suffice to meet the criterion.[3]

As long as there is some physical remnant or symbolic claim, the territory element may be stretched. The more vexing issue is population: if a state's citizens relocate elsewhere, their link to their nation persists via nationality law.[4] International law provides no neat answer for a population without land, but raises analogies to governments-in-exile, which have historically retained recognition when overthrown.[5]

2.1 Montevideo Criteria & Territorial Loss

Under Montevideo, territory and population are core statehood elements. A disappearing island state literally loses its land, calling into question whether it still has a defined territory.[6] Even a few remaining rocks could preserve this element. Others argue that entirely submerged land cannot fulfil Montevideo's intent – leading to at least legal ambiguity. Likewise, if all inhabitants must evacuate, the permanent population is in exile.[7]

However, international practice offers precedents: in cases of state collapse or diaspora (e.g. governments-in-exile), state continuity has often been presumed where there is political will and recognition. Thus, even if Tuvalu's land vanished, its citizens and institutions remain, pointing to continuity despite territorial loss.[8] The key doctrinal question is whether Montevideo's language should be rigidly applied. Many experts

[3] Michael B Gerrard, 'Statehood and Sea-Level Rise: Scenarios and Options' (2023) 17 Charleston L Rev 579.

[4] Michel Rouleau-Dick, 'Sea Level Rise and Climate Statelessness: From 'Too Little, Too Late' to Context-Based Relevance' (2021) 3 Statelessness & Citizenship Review 287.

[5] Bruce Burson, Walter Kälin and Jane McAdam, 'Statehood, Human Rights and Sea-Level Rise: A Response to the International Law Commission's Second Issues Paper on Sea-Level Rise in Relation to International Law' (2023) 4 YB Intl Disaster Law Online 265.

[6] Emma Allen and Mario Prost, 'Ceci n'est pas un État: The Order of Malta and the Holy See as precedents for deterritorialised statehood?' (2022) 31 Review of European, Comparative & International Environmental Law 171.

[7] Alex Green, 'Three Reconstructions of 'Effectiveness': Some Implications for State Continuity and Sea-level Rise' (2024) 44 OJLS 201.

[8] Yejoon Rim, 'State Continuity in the Absence of Government: The Underlying Rationale in International Law' (2021) 32 E J Intl L 485.

now stress flexibility: the disappearance of territory need not automatically annul statehood.[9]

2.2 Presumption of Continuity

State practice and emerging jurisprudence have moved towards a presumption of continuity even if territory is lost. Pacific leaders and scholars insist international law does not contemplate the extinction of an existing state due to sea-level rise.[10] The Pacific Islands Forum's 2023 Declaration affirms that once established, a state will continue to exist and endure despite climate-related loss, rooted in principles of equity and people's self-determination.[11]

Crucially, the 2025 ICJ advisory opinion echoed this: it explicitly held that once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood.[12] Thus, despite Montevideo's silence, emerging legal consensus is that established states enjoy a status quo stability: existing legal personality and rights survive land loss. This presumption of continuity aims to protect vulnerable SIDS against a legal vacuum and potential statelessness.[13]

2.3 Maritime Baselines & Declarations

SIDS have also taken unorthodox steps to safeguard maritime entitlements. International law grants islands large exclusive economic zones (EEZs) and continental shelves (UNCLOS Arts. 57, 76, 121). Under traditional law, these zones

[9] International Law Commission, *Study Group on Sea-level rise in relation to international law: Report* UN Doc A/CN.4/L.1002 (15 July 2024), <https://docs.un.org/en/A/CN.4/L.1002> accessed 31 October 2025.

[10] United Nations, *Sea-level rise in relation to international law — Additional paper to the second issues paper* (International Law Commission, UN Doc A/CN.4/774, 19 February 2024), <https://docs.un.org/en/A/CN.4/774> accessed 31 October 2025.

[11] Pacific Islands Forum, 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise (6 August 2023) <https://forumsec.org/sites/default/files/2024-05/2023%20Declaration%20on%20the%20Continuity%20of%20Statehood%20and%20the%20Protection%20of%20Persons.pdf> accessed 31 October 2025.

[12] Frances Anggadi, 'What States Say and Do about Legal Stability and Maritime Zones, and Why It Matters' (2022) 71 ICLQ 767.

[13] International Court of Justice, Obligations of States in respect of Climate Change, Advisory Opinion, 23 July 2025, General List No. 187, para 363, <https://3vb.com/wp-content/uploads/2025/07/Advisory-Opinion.pdf?utm_campaign=news&utm_medium=miragenews&utm_source=miragenews> accessed 31 October 2025.

fluctuate with baselines set at the low-tide coastline.[14] To prevent shrinkage from erosion, Pacific states unilaterally fixed their baselines. In 2021 and 2023, the Pacific Islands Forum declarations explicitly proclaimed that maritime zones established and notified shall continue to apply, without reduction, notwithstanding any climate change-related sea-level rise.[15]

For example, Tuvalu and neighbours have maintained that their 200-mile boundaries remain frozen even if the supporting islets submerge.[16] These acts, though not binding under current law, aim to create state practice supporting stable baselines. They signal a collective effort to bind UNCLOS rights to historical baselines, preventing loss of fishing and resource zones.[17]

3. International Legal Obligations

3.1 Climate Regime & Rights

The global climate regime embodies obligations that implicate SIDS' survival. The UNFCCC and Paris Agreement reaffirm that states must mitigate emissions and support vulnerable nations under common but differentiated responsibilities (CBDR).[18] UNFCCC Article 3 imposes a general duty to ensure that activities do not cause damage to the environment of other States, reflecting a no-harm rule for climate pollution.[19]

The Paris Agreement further sets a binding goal of limiting warming to 1.5°C and mandates adaptation support and finance tailored to those most at risk (e.g.

[14] Tsung-Han Tai and Wenxian Qiu, 'Assessing the impact of sea level rise on maritime entitlement and delimitation: an interdisciplinary investigation through legal and technical analysis' (2024) 11 Frontiers in Marine Science 1, <https://doi.org/10.3389/fmars.2024.1448292>.

[15] Pacific Islands Forum, Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise (6 August 2021) <https://forumsec.org/sites/default/files/2024-03/2021%20Declaration%20on%20Preserving%20Maritime%20Zones%20in%20the%20face%20of%20Climate%20Change-related%20Sea-level%20rise.pdf> accessed 31 October 2025.

[16] Matthias Nouvet, 'Maintaining Maritime Entitlements in Troubled Waters: Assessing the Influence of the 2021 Pacific Island Forum Declaration' (2023) 36 Hague YB Intl L 119.

[17] Frances Anggadi, 'Establishment, Notification, and Maintenance: The Package of State Practice at the Heart of the Pacific Islands Forum Declaration on Preserving Maritime Zones' (2022) 53 Ocean Development & Intl L 19.

[18] Michalis I Vousdoukas and others, 'Small Island Developing States under threat by rising seas even in a 1.5 °C warming world' (2023) 6 Nature Sustainability 1552.

[19] Lavanya Rajamani, 'Interpreting the Paris Agreement in its Normative Environment' (2024) 77 *CLP* 167.

Arts. 2, 4, 8). Its preamble expressly acknowledges obligations on human rights and the special needs of highly vulnerable countries.[20]

3.2 ICJ Advisory Opinion

In 2025 the International Court of Justice's advisory opinion on climate change made two key findings. First, it confirmed that statehood survives land loss.[21] It stresses that even if an entire landmass were lost and its people displaced, the state should still be presumed to continue as a legal entity; once statehood is achieved, losing territory does not automatically strip a state of its sovereign status. Thus, the Court endorsed the presumption of continuity articulated by SIDS.[22]

Second, the ICJ emphasised that states have binding duties to curb climate harm. It affirmed a general obligation of due diligence to prevent, mitigate, and remedy climate harm, flowing from treaties (UNFCCC, Paris, UNCLOS) and custom, and linked to rights such as life and a healthy environment.[23] Failure to honour these duties (e.g. by excess emissions) would amount to an internationally wrongful act under general international law. The advisory thus reinforced both the continuing legal personality of disappearing states and the climate obligations of all states.[24]

3.3 Law of the Sea & UNCLOS

The UNCLOS is central to protecting SIDS' maritime rights. Under UNCLOS Art. 121, islands generate full EEZs (200 nm) and continental shelves, affording rich fishery and mineral entitlements.[25] Sea-level rise itself was not envisaged in 1982, but the Convention imposes general duties relevant to climate threats: Article 192 obliges

[20] Alice L Venn, 'Rendering International Human Rights Law Fit for Purpose on Climate Change' (2023) 23 Human Rights L Rev 1.

[21] Zana Syla and Avidan Kent, 'Statehood in the Climate Crisis: The ICJ's Climate Advisory Opinion and the Presumption of State Continuity' (Columbia Law School Climate Law Blog, 21 August 2025) <https://blogs.law.columbia.edu/climatechange/2025/08/21/statehood-in-the-climate-crisis-the-icjs-climate-advisory-opinion-and-the-presumption-of-state-continuity/> accessed 31 October 2025.

[22] ICJ, Obligations of States in respect of Climate Change (n 13) para 363.

[23] Alexandra L Phelan, 'The ICJ Advisory Opinion: a legal mandate for planetary health' (The Lancet, 28 August 2025) <www.thelancet.com/journals/lancet/article/PIIS0140-6736(25)01725-8/abstract> accessed 31 October 2025.

[24] Susan McCluskey, 'Calibrating states' emissions reduction due diligence obligations with reference to the right to life' (2022) 31 Review of European, Comparative and International Environmental Law 483.

[25] Harry Hobbs and Donald Rothwell, 'Towards a Legal Era of Islands: The International and Constitutional Legal Status of Island Territories' (2024) 73 ICLQ 609.

every State to protect and preserve the marine environment, and Article 300 requires parties to honour rights in good faith without abuse.[26] Pacific declarations invoke Article 300 to argue that fixed baselines and associated zones must be respected in good faith. While UNCLOS contains no express sea-level rule, these principles imply that deliberate loss of EEZ via SLR (if caused by others' emissions) could violate the duty not to abuse rights.[27]

Moreover, the exclusive zone itself is a form of resource sovereignty – Pacific leaders have underscored that recognition of permanent maritime jurisdiction follows from their continuing statehood.[28] UNCLOS entitles island states to vast maritime areas, and coupled with duties of cooperation (Art. 123) and no harm, it buttresses claims to an enduring exclusive zone even if physical baselines shift.[29]

4. Digital Sovereignty and Nation Continuity

The prospect of disappearing homelands has spawned the concept of digital or cyber sovereignty: preserving a nation's identity and government function in cyberspace when its territory vanishes. This involves creating a virtual state – a digital twin of government, culture, and populace – so the nationhood endures online. This is seen as a radical reimagining of sovereignty.[30] Tuvalu's plan is described as forming a 'digital nation' supported by a deterritorialised government, to preserve its statehood into the future. Such ideas, they caution, remain nascent but carry profound implications for how democracy and sovereignty operate in the Anthropocene.[31]

[26] International Tribunal for the Law of the Sea, *Advisory Opinion on the Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, 21 May 2024, <https://itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf> accessed 31 October 2025.

[27] Chris Armstrong and Jack Corbett, 'Climate Change, Sea Level Rise, and Maritime Baselines: Responding to the Plight of Low-Lying Atoll States' (2021) 21 Global Environmental Politics 89.

[28] VC Tilot and all, 'The Concept of Oceanian Sovereignty in the Context of Deep Sea Mining in the Pacific Region' (2021) 8 Frontiers in Marine Science 1, <https://doi.org/10.3389/fmars.2021.756072>.

[29] Mara R Wendebourg, 'Interpreting the Law of the Sea in the Context of Sea-Level Rise: The Ambulatory Thesis and State Practice' (2023) 35 JEL 499.

[30] Sebastián Lehuedé, 'An alternative planetary future? Digital sovereignty frameworks and the decolonial option' (2024) 11 Big Data & Society 1 <https://doi.org/10.1177/20539517231221778>

[31] Delf Rothe and others, 'Digital Tuvalu: state sovereignty in a world of climate loss' (2024) 100 International Affairs 1491.

In Tuvalu's case, the indigenous notion of fenua (land-people-culture nexus) is being extended into virtual space: the goal is to digitally rebuild Tuvalu's islands and traditions, thereby regaining agency in the face of existential climate threats. Digital sovereignty encompasses governmental data archiving (blockchain passports, remote courts, online parliaments) and preserving intangible heritage (language, customs, archives).[32]

The developing field of metaverse diplomacy and initiatives like blockchain-backed national identity illustrate this shift. Digital sovereignty clashes with the power of global tech platforms – yet Tuvalu's state-led approach repurposes these tools to bolster its nationhood (e.g. digital broadcasting, NFT citizenship projects).[33]

4.1 Tuvalu's Future Now Project

Tuvalu's government has pioneered digital-state strategies. In 2021 it launched the Future Now (Te Ataeao Nei) project to prepare for worst-case climate loss. Foreign Minister Simon Kofe famously declared at COP27 that Tuvalu will become the world's first digital nation.[34] Under this plan, Tuvalu will recreate every aspect of the state online. One initiative is a digital government system: key functions (records, ministries, communication) would be hosted on secure digital infrastructure so the government can relocate or continue operations virtually. Vital cultural assets – historical archives, language databases, traditional knowledge – are being digitised to preserve national heritage for future generations.[35]

These plans have even been enshrined in the country's constitution, embedding digital continuity as national policy. The aim is that, should Tuvalu's territory sink, its online avatar (e.g. government websites, digital citizenship registers) will keep the state alive in the international system.[36] The digital nation will replace our

[32] Alfonso Hegde, 'Digital Nations and the Future of the Climate Crisis' (2024) 18 Intl J Communication 755.
[33] Mawaki Chango, 'Building a Credential Exchange Infrastructure for Digital Identity: A Sociohistorical Perspective and Policy Guidelines' (2022) 4 Frontiers in Blockchain 1, <https://doi.org/10.3389/fbloc.2021.629790>.
[34] Liam Saddington, 'Climate change, bodies and diplomacy: Performing watery futures in Tuvalu' (2024) 50 Transactions of the Institute of British Geographers <https://doi.org/10.1111/tran.12731>.
[35] Leighton Evans, 'The Digital Twinning of Tuvalu: deep ecology in the age of virtual reproduction' (2025) 27 New Media & Society 4499.
[36] Kelly Buchanan, Tuvalu: Constitutional Amendment Enshrines Statehood in Perpetuity in Response to Climate Change (Law Library of Congress, 28 September 2023), <www.loc.gov/item/global-legal-

physical presence and allow us to continue to function as a state. Tuvalu also pursues bilateral assurances – communiqués with other states recognising Tuvalu's permanent maritime boundaries – and multilateral backing (Pacific Forum declarations) as part of Future Now's multi-pronged approach.[37]

4.2 Concept of Digital/Cyber Sovereignty

Digital sovereignty broadly refers to a state's control over digital infrastructure and identity independent of physical territory. In the climate context, it means reconfiguring sovereignty in virtual space.[38] Digital sovereignty in this sense is in an embryonic stage but reshapes traditional statehood. Tuvalu's model frames the fenua concept relationally: land, sea, people, and culture are linked in one digital ecosystem.[39] While commercial notions of cyber-sovereignty (e.g. digital borders) often focus on data control, here the emphasis is on continuity of identity and legal personality online.[40]

This overlaps with e-governance trends: for example, Estonia's e-Residency (since 2014) created a virtual nation of remote entrepreneurs, illustrating how citizenship and services can be partially relocated into cyberspace. However, Estonia's case still assumes a physical homeland; Tuvalu pushes further, aiming for full virtualisation if needed.[41]

Key features of digital sovereignty include: digital identity (blockchain IDs, dispersed embassies), digital assets (NFT land deeds, cultural archives), and digital diplomacy (virtual courts, online UN presence).[42] The goal is to sustain state functions and national self-determination via technology. For instance, experts describe Tuvalu's plan as developing a deterritorialised government – a state form where sovereignty is

monitor/2023-09-28/tuvalu-constitutional-amendment-enshrines-statehood-in-perpetuity-in-response-to-climate-change/> accessed 31 October 2025.

[37] Alex Green and Douglas Guilfoyle, 'The Australia–Tuvalu Falepili Union Treaty: Statehood and Security in the Face of Anthropogenic Climate Change' (2024) 118 AJIL 684.

[38] S Fratini and others, 'Digital Sovereignty: A Descriptive Analysis and a Critical Evaluation of Existing Models' (2024) 3 Digital Society 59.

[39] M Vaha, 'Indigenous values in international law and politics: The perpetual state of Tuvalu' (2025) 8 Small States & Territories 205.

[40] Samuele Fratini and others, 'Digital Sovereignty: A Descriptive Analysis and a Critical Evaluation of Existing Models' (2024) 3 Digital Society 59.

[41] Piia Tammpuu and Anu Masso, 'Transnational Digital Identity as an Instrument for Global Digital Citizenship: The Case of Estonia's E-Residency' (2019) 21 Information Systems Frontiers 621.

[42] H Stublić, M Bilogrivić and G Zlodi, 'Blockchain and NFTs in the Cultural Heritage Domain: A Review of Current Research Topics' (2023) 6 Heritage 3801.

maintained without fixed geography. If recognised, such digital sovereignty could prompt new legal recognition (e.g. rights to participate in international forums, retain membership in organisations) even absent land.[43]

4.3 Comparative Initiatives

Other states have toyed with analogous ideas. Beyond Tuvalu, Estonia's e-Residency program has been cited as an early digital nation model: over 100,000 e-residents can form companies and access digital services under Estonian law without living there. While not prompted by climate, Estonia's experience shows how a state can grant legal belonging virtually.[44]

In contrast, Kiribati has pursued a physical strategy: in 2014 it purchased land in Fiji as a refuge for its people. Some micronations (e.g. Sealand, Liberland) have experimented with blockchain IDs or virtual territories. Nevertheless, Tuvalu's case is unique in explicitly tying digital nationhood to survival of statehood.[45] The metaverse embassy of Vanuatu or plans for a Martian colony are far afield; the closest parallels are UN-supported dialogues on climate refugees and statelessness, but no other country has formalised a digital sovereign plan as part of law and policy.[46]

5. Climate Justice & Decolonial Perspectives

5.1 Historical Responsibility & CBDR

Climate-driven land loss is fundamentally a justice issue. Affected states insist that those who did the least to cause the crisis should not suffer first – invoking established principles. The UNFCCC explicitly embeds common but differentiated responsibilities (CBDR) and equity: Article 3 declares that parties must act in accordance with their common but differentiated responsibilities. The Paris Agreement reaffirms this,

[43] Alexandra Giannopoulou, 'Digital Identity Infrastructures: A Critical Approach of Self-Sovereign Identity' (2023) 2 Digital Society 18.
[44] Anna Blue, 'Evaluating Estonian E-residency as a tool of soft power' (2021) 17 Place Branding and Public Diplomacy 359.
[45] P Howson and others, 'Crypto/Space: Computational parasitism, virtual land grabs, and the production of Web3 Exit zones' (2024) 115 Political Geography 103210, <https://doi.org/10.1016/j.polgeo.2024.103210>.
[46] John P Cauchi, Ignacio Correa-Velez and Hilary Bambrick, 'Climate change, food security and health in Kiribati: a narrative review of the literature' (2019) 12 Global Health Action 1603683, <https://doi.org/10.1080/16549716.2019.1603683>.

affirming equity and emphasising the urgent needs of developing countries particularly vulnerable to climate impacts. This means high emitters owe historical debt: the polluter pays notion is implicit in calls for compensation.[47]

International law does not yet quantify this debt, but SIDS invoke human rights instruments (right to life, health, development) and even anti-colonial norms to press claims. For example, Pacific and African LDCs framed climate loss as a form of structural injustice at COP venues and before UN bodies. Ultimately, climate justice demands that responsibility for climate-induced statelessness not fall on victims alone. Tools like the 2022 Loss and Damage Fund, enhanced climate finance, or even reparation schemes can be seen as partial legal recognition of historical responsibility.[48]

5.2 Global South Solidarity

The struggle of SIDS resonates across the Global South. African, Asian and Latin American states often form coalitions (G77+China, AOSIS, African Group, LDCs) to demand ambitious cuts by major emitters and long-term support for climate victims. This solidarity has legal expression: for instance, group interventions in UN fora, and joint statements in the ICJ or UNGA, assert an equitable international order.[49]

South-south cooperation initiatives, like the Bridgetown Initiative by Caribbean and African finance ministers, call for debt relief and new development financing as climate justice tools. Doctrinally, these voices push for recognition that colonial development patterns imposed different capabilities and debts, thus only a unified Global South front can re-balance climate obligations.[50]

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[47] Lavanya Rajamani and others, 'National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law' (2021) 21 Climate Policy 983.

[48] Ike Uri and others, 'Equity and Justice in Loss and Damage Finance: A Narrative Review of Catalysts and Obstacles' (2024) 10 Current Climate Change Reports 33.

[49] Paula Castro, 'National interests and coalition positions on climate change: a text-based analysis' (2021) 42 International Political Science Review 95.

[50] Amar Bhattacharya and others, *Raising Ambition and Accelerating Delivery of Climate Finance: Third report of the Independent High-Level Expert Group on Climate Finance* (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, November 2024) <www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/11/Raising-ambition-and-accelerating-delivery-of-climate-finance_Third-IHLEG-report.pdf> accessed 31 October 2025.

5.3 Rights of People and Culture

Beyond states, climate law must uphold the rights of individuals and cultures whose homelands vanish. Human rights law protects related interests: the Universal Declaration guarantees everyone a nationality; the 1954 Refugee Convention forbids rendering people stateless. If a state loses land, its citizens face potential statelessness, violating norms of nationality and non-discrimination. Indigenous and cultural rights also loom large. UNESCO's conventions safeguard intangible heritage, and human rights instruments (ICCPR, ICESCR) imply rights to life, culture, language, and community. The Pacific Declaration on continuity explicitly links state survival to peoples' self-determination and cultural integrity.[51]

Thus, climate-displaced persons have claims under existing rights law: for example, resettlement should preserve their cultural identity and gender/nationality rights. A decolonial climate justice approach emphasises that wiping out an island is erasing a people's history and dignity. International law must therefore ensure that even if lands disappear, the community's identity, governance and cultural rights are legally recognised – effectively extending human-rights protections to the novel domain of collective climate justice.[52]

6. Conclusion

Climate change demands that international law evolve to save states from extinction. Doctrinally, the Montevideo criteria and UNCLOS must be reinterpreted or amended to accommodate non-territorial sovereignty. States such as Tuvalu show how far this evolution must go: converting a physical nation into a persistent digital one requires fresh legal recognition. The paper proposes several avenues: first, a new international instrument (treaty or declaration) explicitly guaranteeing state continuity in extremis, akin to a climate statelessness convention. Such an instrument could codify the Pacific practice of frozen baselines and enshrine the presumption that loss of land does not

[51] Michelle Foster and others, *The Future of Nationality in the Pacific: Preventing Statelessness and Nationality Loss in the Context of Climate Change* (Peter McMullin Centre on Statelessness, Melbourne Law School, May 2022) <https://law.unimelb.edu.au/__data/assets/pdf_file/0010/4119481/The-Future-of-Nationality-in-the-Pacific_May2022.pdf> accessed 31 October 2025.

[52] Alejandra Mancilla and Patrik Baard, 'Climate Justice and Territory' (2024) 15 WIREs Climate Change e870 <https://doi.org/10.1002/wcc.870>.

nullify sovereignty. Second, states could agree on a custom or protocol that permits alternative seat-of-government arrangements (e.g. government-in-exile rules) for submerged nations, along with reserved rights (UN membership, citizenship) for their peoples. Third, the climate justice imperatives of CBDR should be operationalised by legalising reparations – for example through binding loss-and-damage treaties or climate liability mechanisms – thereby affirming historic polluter-payer responsibilities. Finally, cyberspace institutions must adapt: international organisations (UN, courts, maritime tribunals) should recognise digital embodiments of nations as legitimate participants. By fusing traditional sovereignty with digital innovation, and embedding equity and human rights into the legal architecture, the international community can ensure that disappearing states like Tuvalu remain intact entities under international law. The law of the Anthropocene must thus embrace flexibility over strict territoriality, upholding both the identity and entitlements of nations in extremis.

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THE ROLE OF JUDICIAL LITERACY IN CLIMATE CHANGE

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ABSTRACT: As climate change litigation increasingly emerges as a crucial instrument in global environmental governance, courts are frequently tasked with the interpretation of complex scientific and technological evidence. This paper critically investigates whether legal frameworks genuinely shape the global response to climate change or whether this response is becoming more influenced by corporate technological power, leaving courts struggling to keep pace; in particular, through the case studies of *Milieudefensie v. Shell*,[1] *Urgenda v Netherlands*,[2] *and Juliana v United States*.[3] By integrating environmental law, judicial studies, and Foucault's theoretical framework on power and knowledge, this paper advocates for reforms that enhance judicial literacy and independence. Without climate-literate judiciaries, there is a risk of creating dangerous precedents and an overall delay in climate change action.

Keywords: Climate change litigation; environmental law; Foucault; judicial literacy and independence.

1. Introduction

The rise in global climate litigation has made the judiciary a key mediator in pressing states and corporations to take action on climate change.[4] However, this trend highlights a significant vulnerability, which is that judges often lack the understanding of the complex scientific and technological issues essential for effective climate governance. This paper argues that judicial responses to the climate crisis are increasingly shaped by corporate technology, creating a power imbalance. As courts

[1] *Milieudefensie et al. v Royal Dutch Shell Plc* (Case No C/09/571932 / HA ZA 19-379.
[2] *Urgenda Foundation v The State of the Netherlands* (Supreme Court of the Netherlands, 20 December 2019) ECLI:NL:HR:2019:2007.
[3] *Juliana v United States* 217 F Supp 3d 1224 (D Or 2016).
[4] Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2022 Snapshot* (Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science 2022) 1.

rely on complex climate technologies, the lack of specialised knowledge among judges allows corporate entities that control data and expertise to disproportionately influence legal outcomes and public discourse.

To substantiate this claim, this paper will be organised into four parts. First, it will precisely define the concepts of a “climate-literate judiciary”, “corporate technological power”, and “dangerous precedents”. Second, it will deploy Foucault’s framework of power/knowledge to theorise how corporate actors produce and legitimise technological "truths" within the courtroom. Third, through a comparative analysis of key case law from various jurisdictions, including *Milieudefensie v Shell,*[5] *Urgenda v Netherlands,*[6] *and Juliana v United States,*[7] it will demonstrate how judicial interpretation, or avoidance, of technology creates tangible legal outcomes. "Global" refers not to universal legal applicability, but to the difficulties courts face in addressing complex scientific and technological evidence in climate disputes. Lastly, the paper examines the societal implications of this judicial blind spot and suggests ways to enhance it.

2. Key Concepts

Before exploring the topic, it is useful to clarify key concepts. First, "climate-literate judiciary" refers to the need for judges to evolve their understanding and skills. This would assist them in engaging with the complex evidence presented in climate-related cases. Rather than simply accepting this evidence or dismissing claims due to the complexity of the research. In other words, the climate-literate judiciary is to move beyond a simple "battle of the experts" to a deeper inquiry into the political economy of knowledge production. As Smith and others explain, climate attribution science is currently underutilised in litigation, which leads to the dismissal of cases due to a lack of proof and understanding.[8] If the Judiciary evolves, climate change litigation could be more progressive and have more impact worldwide.

The British Institute of International and Comparative Law recognise that judges need to be more knowledgeable about climate change to make strong decisions

[5] *Milieudefensie et al. v Royal Dutch Shell Plc* (Case No C/09/571932 / HA ZA 19-379).
[6] *Urgenda Foundation v The State of the Netherlands* (Supreme Court of the Netherlands, 20 December 2019) ECLI:NL:HR:2019:2007.
[7] *Juliana v United States* 217 F Supp 3d 1224 (D Or 2016).
[8] Rupert Stuart-Smith and others, 'Filling the evidentiary gap in climate litigation' (2021) 11 Nature Climate Change 651.

regarding the urgency of climate litigation.[9] This judicial evolution is required because of the rise of corporate technological power. This technology includes peer-reviewed science and speculative or commercially motivated studies. The judiciary should have the ability to evaluate, considering their affiliations, funding sources, and any potential biases that may influence their decisions and provide transparency and acknowledge this in their decisions.

On the other hand, failing to develop this literacy leads to the creation of "dangerous precedents". This term goes beyond simply indicating an unfavourable judgment for environmental claimants. A dangerous precedent is a legal outcome that, while seeming to address an issue, embeds weak standards into the foundation of environmental law. Examples of such legal precedents include rulings that, either formally or informally, endorse ineffective or speculative technologies as legitimate alternatives. Furthermore, procedural judgments that classify the scientific and technical complexities associated with climate change as "political questions," which are considered to fall outside the court's jurisdiction, present significant challenges. A notable case in this context is *Juliana v United States,* where such a ruling effectively closes the courthouse doors to future claims, creating a legal vacuum in which accountability should otherwise exist.[10] These precedents pose risks beyond their individual cases, leading to delays in climate change action, which affects everyone.

3. Power, Knowledge, and the Judiciary's Weaknesses

Michel Foucault's theory of power/knowledge provides a lens for analysing these dynamics. Foucault posits that knowledge is never neutral. It is produced within regimes of power that shape what counts as truth.[11] Foucault suggested that modern power functions not necessarily by repression, but by generating knowledge that shapes perceptions of truth and normality.[12] In the context of the law, legal rulings not only validate existing laws but also play a crucial role in shaping them. In climate litigation, courts often depend on expert testimony, disclosures, or scientific models to

[9] Roberto Buizza and others, 'The Role of Science in Climate Change Litigation' (BIICL Blog, 2023).
[10] *Juliana* (n 7).
[11] Michel Foucault, *Power/Knowledge Selected Interviews and Other Writings 1972-1977* (Gordon Colin ed, The Harvester Press 1980) 98-107.
[12] Michel Foucault, 'Order of Discourse' in Robert Young (ed), *Untying the Text: A Post-Structuralist Reader* (Routledge & Kegan Paul 1981) 53.

assist them in their decisions. However, as Kotze and others analyse, these sources of knowledge can be influenced by corporate interests, proprietary data systems, and unclear methodological choices.[13] Therefore, embedding them into jurisprudence and thereby shaping climate governance. Moreover, the courtroom serves as a venue where information provided by corporations is presented, scrutinised, and ultimately accepted as "truth". As Smith explains, legal institutions do not merely apply existing expert knowledge. They actively shape, endorse, and assert their power over what is deemed valid scientific evidence.[14] However, when there is a significant imbalance in resources and understanding, this process can be misused and therefore influence the judge's judgment and the outcome of the cases.

A judiciary that lacks the capacity to question the foundational assumptions of a complex climate model or to examine the limitations of a proposed technology risks becoming a passive recipient of the corporate narrative. In Foucault's terms, it transforms into an institution that, without any overt coercion, disciplines itself to function within the regime of truth set by the more powerful entity.[15] Judicial evolution is necessary because, without climate-literate judges and independent scientific oversight, courts risk setting dangerous precedents that could delay climate change action. Judges are faced with extensive data from a corporate defendant and limited information from a non-profit plaintiff may favour the more detailed submission. When a corporation showcases a significant investment in speculative technology, it appears proactive and reasonable, leading the court to accept it without fully assessing the actual risks.

4. Case Studies: *Milieudefensie v Shell*, *Urgenda v Netherlands*, and *Juliana v United States*

Milieudefensie concerns Shell's corporate responsibility to reduce its global emissions by 45% by 2030.[16] The ruling was based on Dutch tort law (Article 6:162 of the Dutch Civil Code), interpreted in light of human rights and international climate obligations.

[13] Louis Kotzé and others, 'Courts, climate litigation and the evolution of earth system law' (2023) *Global Policy* 6-11.
[14] Carole Smith, 'The Sovereign State v Foucault: Law and Disciplinary Power' (2000) 48(2) *The Sociological Review* 284-296.
[15] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Pantheon Books 1975) 184-224.
[16] *Milieudefensie* (n 5).

The court determined that Shell owes a duty of care not only to Dutch citizens but also to global populations affected by climate change.[17] It rejected Shell's argument that fulfilling such targets was speculative and beyond its control. The courts initially ruled in favour of the claimant, but Shell appealed, leading to significant ambiguities. While the judgment clarified that companies like Shell must contribute to climate change mitigation, it allowed them to set their own reduction targets instead of following the Paris Agreement's recommended 45% reduction.[18] This gives companies latitude to increase profits without fully addressing climate change.

The courts often avoid technical disputes over emissions accounting, which limits the effectiveness of climate litigation. For instance, the court ruled in favour of Shell regarding Scope 3 emissions, which make up about 95% of its reported emissions. The court set a high standard for scientific evidence and rejected specific reduction percentages due to a lack of consensus. Although it acknowledged that the 45% target is just an average, the appellate court's approach does not adequately address the systemic nature of climate change, and transnational corporate liability adds further complexity to the issue.

Other important landmark cases confirm the judiciary's mixed record in grappling with technological claims. In *Urgenda v Netherlands*,[19] the Dutch Supreme Court in 2019 affirmed that the state had violated its duty of care under the European Convention on Human Rights (Articles 2 and 8) by failing to meet minimum emissions reductions. As noted by Spinjkers, this ruling highlights that the court adopted a progressive stance, primarily relying on established international scientific consensus instead of conducting a critical assessment of the underlying data.[20] This dependence raises important questions about the ability of judges to evaluate scientific information. The *Urgenda* legacy should not be viewed as a universal model but rather critically assessed for future legal cases. Civil courts in this jurisdiction have a strong tradition of intervening in matters of public interest. For climate law to be effective, judges must improve their ability to navigate complex data systems and understand legal

[17] Maurits Dolmans and Andreas Wildner, '*Milieudefensie v Shell* – a Pyrrhic victory for the oil and gas industry?' (Law Forward Review, 13 November 2024) 1-3.
[18] ibid.
[19] *Urgenda Foundation* (n 6).
[20] Otto Spijkers, 'The Influence of Climate Litigation on Managing Climate Change Risks: The Pioneering Work of the Netherlands Courts' (2022) 18(2) Utrecht Law Review 127, 134-138.

intricacies, rather than relying solely on established frameworks, to avoid endorsing misleading climate claims.

In contrast, the case of *Juliana v United States* in the U.S. involves young plaintiffs who claim that the government violated their constitutional rights by failing to act on climate change, as the government's inaction endangers future generations' right to life, liberty, and property.[21] While acknowledging the climate crisis, the court dismissed the case on the basis of standing and redressability, stating that it lacked the institutional competence to mandate comprehensive climate policy. This case highlights the challenges that courts face when addressing complex scientific and policy issues. The Harvard Law Review notes that attempts to tie courts to limited and precise legal standards effectively restrict their ability to address existential issues, such as those presented by climate change.[22] This case and its critiques highlight the central thesis of this paper, which is that unless judges improve their scientific literacy and flexibility, their role in climate litigation is largely symbolic rather than transformative.

Judges are trained legal experts who resolve disputes based on established principles. However, the complexity of climate claims linked to science and long-term projections often clashes with traditional legal doctrines such as standing and causation. The case of *Juliana* highlights how strict thresholds can impede engagement with relevant climate science. The focus should not be on judges always favouring climate action, but on evolving legal reasoning to tackle the distinct challenges of climate litigation. Additionally, differences in judicial independence and legal systems worldwide complicate the assessment of climate claims.

5. Policy, Societal Impact, and Implications

The judicial failure to critically engage with corporate technological power has wide-ranging implications. First, it undermines public trust in climate law as a mechanism for justice. If courts validate speculative data from these decisions, citizens may view legal systems as complicit in climate delay rather than for accountability. Recent

[21] *Juliana* (n 7).
[22] 'Juliana v. United States: Ninth Circuit Holds That Developing and Supervising Plan to Mitigate Anthropogenic Climate Change Would Exceed Remedial Powers of Article III Court.' (2021) 134 Harvard Law Review 1929

research highlights the significant judicial implications of climate litigation. The LSE Grantham Institute points out that the rise in greenwashing lawsuits demonstrates growing societal frustration with vague or misleading corporate climate claims.[23] Without strong judicial engagement, climate law risks being viewed as merely performative, offering a facade of accountability while allowing corporate inaction to persist.

Second, the issue exacerbates climate inequality, as Tigre and others explain, judges and courts often marginalise communities that lack financial resources, despite the validity of their claims.[24] These marginalised communities raise claims against multinational companies, which have the financial means to support their legal battles. This factor should also be considered in judicial decisions. Marginalised communities suffer the most from climate impacts but have the least access to technical expertise or legal remedies.[25] When courts accept data controlled by corporations without scrutiny, they risk worsening inequality by favouring resource-rich companies over the rights of populations vulnerable to climate change. Seen from a Foucauldian view, corporations can use data to escape liability, and climate law becomes a tool of exclusion rather than empowerment.

Third, it risks creating dangerous or weak precedents. Courts that decline to set enforceable emissions standards or scrutinise corporate technologies may make it harder for future litigants to challenge inadequate climate strategies and therefore delay meaningful action.[26]

Finally, after the analysis, a policy reform would be recommended to address these risks, including the establishment of specialised Climate Benches. These courts would consist of divisions with judges trained in climate science and environmental economics. Additionally, judicial panels should be supported by independent scientific advisors who can audit corporate climate claims. Lastly, courts should implement

[23] Juliana Vélez-Echeverri, Catherine Higham and Joana Setzer, ‘Climate-washing litigation: towards greater corporate accountability?’ (Grantham Research Institute, 17 April 2024).
[24] Maria Antonia Tigre, Melanie Jean Murcott and Susan Ann Samuel (eds), *Climate Litigation and Vulnerabilities: Global South Perspectives* (1st edn, Routledge 2025) 301- 304.
[25] Jessica Wentz and others, 'Research Priorities for Climate Litigation' (2023) 11 Earth’s Future e2022EF002928 5-7.
[26] ibid 8-12.

evidence transparency requirements, mandating the disclosure of the methodological assumptions, data sources, and models used in corporate climate plans.

6. Conclusion

This paper argues that climate litigation is a vital tool in addressing the climate crisis, yet its effectiveness is hindered by the judiciary's challenges in handling complex technological claims, as seen in cases such as *Milieudefensie*, *Urgenda*, and *Juliana.* While the judiciary can hold governments and corporations accountable, limitations arise from procedural barriers and a reluctance to engage with scientific evidence. To enhance the effectiveness of climate law in promoting accountability and justice, the judiciary needs greater climate literacy, alongside institutional reforms that foster transparency and collaboration. Without these changes, climate litigation risks setting harmful precedents and delaying necessary actions against climate change.

Through the lens of Foucault's concept of power/knowledge, this paper highlights how legal authority can reinforce, rather than challenge, corporate dominance over climate narratives. Without critically examining methodological assumptions, funding sources, and biases, judges may unintentionally reinforce climate inequality by favouring the perspectives of wealthy litigants over those of marginalised communities most affected by climate impacts.

In conclusion, as previously mentioned, without reforms that enhance judicial literacy and independence in evaluating scientific evidence, courts may inadvertently reinforce corporate narratives, diminish public trust, and delay crucial climate action. It is essential to ensure that legal institutions can critically assess climate-related knowledge so climate law can continue to be a credible and just tool for governance.

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THE RIGHT TO BELONG: CITIZENSHIP AND THE CRISIS OF INTERNAL DISPLACEMENT AMONG IRAQ'S ASSYRIANS & CHALDEANS

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ABSTRACT: By critically examining the relationship between citizenship, legal recognition, and internal displacement, this dissertation focuses on the Assyrian people (inclusive of Chaldeans and Syriacs) in Iraq. Following the rise of ISIS between 2014 and 2017, this paper explores how Assyrians, despite holding Iraqi citizenship, were and continue to be, systematically displaced internally and denied effective protection. Drawing on Hannah Arendt's concept of "the right to have rights" and Jürgen Habermas' theory of juridification and communicative power, this article argues that formal legal status of citizenship alone is insufficient to guarantee political inclusion or access to rights, particularly in the context of internal displacement. While the Iraqi Constitution and international frameworks such as the UN Guiding Principles on Internal Displacement recognise minority rights and the protections owed to internally displaced persons (IDPs), these recognitions have not been meaningfully implemented. A significant gap is revealed between Iraq's legal commitments and the lived experiences of internally displaced Assyrians, particularly regarding property restitution, return support, security, and political participation. Using a critical legal approach, it demonstrates that the Iraqi state's response to internal displacement has remained largely symbolic, failing to adequately protect and restore the rights of its minority indigenous populations. Conclusively, a more substantive approach to legal recognition, integrating minority voices and addressing structural barriers to reintegration, is necessary to facilitate a safe and dignified return for displaced Assyrians to their ancestral homelands. This dissertation contributes to the broader discourse on displacement, legal citizenship, and the limits of state protection in post-conflict societies.

Keywords: Human Rights, Belonging, Citizenship, Internal Displacement, Iraq.

1. Introduction

Citizenship and rights within a state are deeply connected, forming the legal framework through which governments protect their citizens. Citizenship grants civil, political, and

social rights, as Hannah Arendt famously argued the "right to have rights".[1] However, despite citizenship being a legally regulated framework – it is not always permanent. Wars and conflict can displace communities, stripping them of citizenship's protections.

This article examines the internal displacement of Assyrian communities in Iraq during the rise and rule of the Islamic State of Iraq and Syria (ISIS) from 2015 to 2017. As one of Iraq's oldest indigenous ethnic and religious groups, Assyrians are formally recognised as Iraqi citizens.[2] However, during the ISIS insurgency, thousands of Assyrians were forcibly displaced, their villages destroyed, and they faced murder, torture, persecution, and the deliberate targeting of their cultural heritage.[3] This is notable as an extreme form of political evil, further defined by international law as "crimes against humanity." [4]

Using both Arendt's theory and Jürgen Habermas' theory of systems, lifeworld, and juridification, this study argues that the displacement of Assyrians exposes Iraq's political and legal failures to protect minorities.[5] First, Iraqi policies and legislation failed to prevent or respond to persecution. Second, Assyrian voices were excluded from democratic processes. These failures reveal that citizenship alone does not guarantee rights, and that legal protections risk becoming symbolic when disconnected from lived experience. Thus, this article first outlines Habermas' and Arendt's theories whilst examining citizenship and displacement, before analysing the ISIS case study within Iraq's post-2003 legal context.

2. A Habermasian Lens on Citizenship, Statelessness & Human Rights

[1] Hannah Arendt, The Origins of Totalitarianism (Penguin, 2017); TH Marshall, 'Citizenship and Social Class' in TH Marshall and Tom Bottomore, Citizenship and Social Class (Pluto Press 1992) https://doi.org/10.2307/j.ctt18mvns1.

[2] Yuri Mantilla, 'ISIS's Crimes against Humanity and the Assyrian People: Religious Totalitarianism and the Protection of Fundamental Human Rights' (2016) 23 ILSA Journal of International & Comparative Law 77 <https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1954&context=ilsajournal> accessed October 2025.

[3] ibid.

[4] Assyrian Universal Alliance, Australia Recognises Crimes Committed By ISIS Against Assyrians As Genocide, ASSYRIAN INTERNATIONAL NEWS AGENCY (May 2, 2016 6:25 GMT), <http://aina-org/news/20160502022530.htm> accessed October 2025.

[5] Jürgen Habermas, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy (William Rehg tr, Polity Press 1996)

Habermas distinguishes between two spheres: the 'lifeworld' and 'systems.'[6] The lifeworld encompasses everyday social life including norms, behaviours, and interactions, while systems refer to the technical structures of the state, such as its economy, politics, and administration.[7] Between the two spheres, the law plays an integrative role by invading social spheres, such as the family or education, and turns them into legal categories that interact with the systems. The best and most efficient way for the systems to communicate with the lifeworld is through the law. However, Habermas warns that the systems often prioritise efficiency, wealth, and power over human well-being, leading to outcomes of social harm.[8] This suggests that the goal is to accumulate more wealth, data, resources, or power through efficient mechanisms that may be cheaper, or faster.

Central to his democratic theory is communicative rationality.[9] Legitimacy derives not merely from formal legal enactment, but from laws justified through inclusive, rational discourse.[10] The "will of the people" emerges from reasoned deliberation in a public sphere where all can participate freely and equally.[11] This process is termed as "communicative power" or "communicative rationality" where democratic societies formulate laws to carry on normative legitimacy.[12] While juridification can protect rights, it risks the "colonization of the lifeworld" if legal frameworks are imposed from above without participatory input.[13] As Blichner and Molander argue, juridification remains legitimate only when lawmaking is inclusive and participatory, rather than dictated by political or economic elites.[14] This theoretical lens is vital for assessing the limits of legal protections for displaced populations, particularly where legal status fails to secure actual safety or inclusion.

Citizenship is central to political and legal systems, conferring rights, protections, and political participation.[15] Ideally, citizens are recognised by the state,

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[6] Max Travers, *Understanding Law and Society* (Taylor & Francis Group 2009) <https://ebookcentral.proquest.com/lib/kentuk/detail.action?docID=446944> accessed October, 2025.
[7] ibid
[8] ibid
[9] Lars Chr. Blichner and Anders Molander, 'What is juridification?' (2005) ARENA Working Paper No. 14.
[10] ibid
[11] ibid
[12] ibid
[13] Habermas (n 5).
[14] Blichner & Molander (n 9).
[15] Marshall (n 1).

entitled to protection, and included in political life.[16] However, this becomes tested in states of conflict and instability where the reality of citizenship becomes more precarious, especially to marginalized and minority groups of people. This precariousness is seen through statelessness and displacement of individuals within states. The United Nations High Commissioner for Refugees (UNCHR) defines a stateless person as someone "who is not considered as a national by any State under the operation of its law".[17] Displacement, meanwhile, involves forced movement from one's home due to conflict, persecution, or disaster.[18] The Assyrian case in Iraq exemplifies this paradox: despite formal Iraqi citizenship, Assyrians suffered violence, marginalization, and displacement during the ISIS conflict, with minimal state intervention. Where despite being recognised as Iraqi citizens, they faced widespread violence, marginalisation, and displacement during the ISIS conflict with minimal intervention or support from state institutions.[19]

This article focuses specifically on internally displaced persons (IDPs), individuals forced to flee their homes yet remain within their country's borders.[20] IDPs are known as the most vulnerable people in the world, often enduring prolonged displacement, insecurity, and deprivation.[21] Unlike refugees, they receive no special international legal protections, making them functionally stateless when their own government fails to safeguard their rights.[22]

3. Arendt on Rights and Citizenship

Hannah Arendt's concept of the "right to have rights" developed in her analysis of statelessness in 'The Origins of Totalitarianism' frames citizenship as the foundation for belonging to a political community that recognises and enforces rights.[23] Following World War II, Arendt observed that those who lost membership in any political

[16] ibid.
[17] United Nations High Commissioner for Refugees (UNHCR) What is Statelessness? <www.unhcr.org/about-unhcr/who-we-protect/stateless-people> accessed October 2025.
[18] ibid.
[19] Mantilla (n 2).
[20] United Nations High Commissioner for Refugees (UNHCR) What is Internal Displacement? <www.unhcr.org/about-unhcr/who-we-protect/internally-displaced-people> accessed October, 2025.
[21] ibid.
[22] ibid.
[23] Arendt (n 1).

community also lost rights tied to it.[24] When a state is unwilling or unable to provide protection, citizenship's value is tested as seen with internally displaced Assyrians.[25]

The "right to have rights" entails that political membership is a precondition for securing basic rights such as protection and participation.[26] This is "the one human right" according to Arendt, since without membership (citizenship) in a community where an individuals' rights are recognised, all rights to security, politics, and law become meaningless.[27] Without membership, an individual becomes "rightless" and stateless, with no authority responsible over them as a citizen.[28] This, she argues, should be reframed as a universal guarantee, a "right to belong" which should be supported by international structures capable of compelling states to protect vulnerable populations.[29] This ideal promotes legal implications of universally recognised citizenship or stronger international efforts in securing human rights. Citizenship in this context is the legal concept and embodiment of the "right to have rights" that guarantees rights to an individual as the concept signifies them as a part of a political community.[30] In this view, citizenship is not merely a legal status on paper, but an active inclusion in the political community.[31]

Habermas' theory of juridification further highlights how legitimate law must emerge from inclusive, rational discourse among all members of a political community, especially marginalized groups.[32] The Assyrian case reveals how exclusion from such processes undermines both legal recognition and democratic participation. Displacement leaves IDPs without effective access to housing, healthcare, education, or safety, rendering them unprotected despite formal citizenship.[33]

4. Case Study: Assyrians In Iraq - A Brief History

[24] Arendt (n 1).
[25] ibid.
[26] ibid.
[27] ibid.
[28] ibid.
[29] ibid.
[30] ibid.
[31] ibid.
[32] Blichner & Molander (n 9).
[33] Walter Kalin, 'Internal Displacement' in Elena Fiddian-Qasmiyeh and others (eds), The Oxford Handbook of Refugee and Forced Migration Studies (OUP 2014)

With a rich historical and cultural heritage, the Assyrian people are an ethnic and religious group that inhabited the territory of Iraq for thousands of years.[34] They live and have indigenous roots in northern Iraq, particularly around Mosul and the Nineveh Plains, with historical ties extending into Syria, Turkey, and Iran.[35] Descended from ancient Mesopotamian peoples, they speak Syriac, a modern form of Aramaic, and belong to various Christian denominations which includes the Chaldean Catholic Church, the Assyrian Church of the East, and the Syrian Orthodox Church, yet share a unified Assyrian identity.[36] Generally speaking, though, all three ethnically follow in the Assyrian identity, as this article will consistently refer them.

They sustain a distinct cultural, religious, and linguistic identity. The religious and cultural traditions that remain in practice not only predate the dominant religion of Islam in the Middle East but is also foundational to early Christianity in the region amongst other early Orthodox and Christian groups.[37] Culturally, the Assyrians have contributed significantly to the development of philosophy and architecture in the Middle East with their villages located in the Nineveh and Mosul regions which are considered to be the heart of Assyria, but have also endured persistent marginalization and treatment as second-class citizens, excluded from political and sociolegal rights.[38]

In the 19th and 20th centuries, Assyrians suffered massacres and persecution under the Ottoman Empire, including a World War I genocide that killed an estimated 175,000–250,000 people. [39] In 1932, the Assyrian people refused to become a part of the state of League of Nations at the end of the British mandate rule under the leadership of Patriarch Mar Shimun XXI.[40] However, executions held by King Faysal of Iraq occurred against Assyrians loyal to the nation and Mar Shimun which was

[34] Mantilla (n 2).
[35] JG Browne, 'The Assyrians' (1937) 85 Journal of the Royal Society of Arts 170 <www.jstor.org/stable/41360915>; Sargon Donabed, Reforging a Forgotten History: Iraq and the Assyrians in the Twentieth Century (Edinburgh University Press 2015).
[36] Sargon Donabed, Reforging a Forgotten History: Iraq and the Assyrians in the Twentieth Century (Edinburgh University Press 2015)
[37] ibid.
[38] Hannibal Travis, 'Cultural and Intellectual Property Interests of the Indigenous Peoples of Turkey and Iraq' (2009) 15 Tex Wesleyan L Rev 415.
[39] Rabi Y. Joseph, 'Negotiating the Assyrian Identity in Iraq, 1919–1933' (2000) *CiteseerX* <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=db7fb11bc84bc320e2822b873f0b66c13676cb7f> accessed October 2025.
[40] ibid.

approved by the Ikha government at the time.[41] These executions included thousands of unarmed Assyrian men, women and children in the village of Simele, with a similar massacre under the Iraqi Kurdish General, Bakr Sidqi, in the village of Alqosh (located north of Mosul).[42] Now, most infamously known as the Simele massacre, where thousands of unarmed Assyrians, including women and children, were killed and aided in part by Kurdish groups, deepening ethnic tensions.[43]

Displacement has been a recurring theme. Between 2003 and 2009, over 350,000 Assyrians fled Iraq due to conflict and insecurity.[44] The rise of ISIS in 2014 marked a new wave of devastation, leading to the mass internal and external displacement of Assyrians from their ancestral lands, the destruction of their villages, and the targeting of their cultural heritage.[45]

5. ISIS Conflict & Internal Displacement

The rise of ISIS in 2014 marked a turning point for Assyrians in Iraq, as the group seized the Nineveh Plains, the heart of Assyrian heritage, along with surrounding villages. Entire communities were uprooted, churches and homes destroyed, and cultural sites deliberately erased.[46] During this conflict, Assyrians had three options: flee, convert to Islam at the force of ISIS, or be persecuted.[47] Nearly 56% of Iraq's Christians, majorly Assyrians, have fled the country in the last two decades, and those who survived ISIS became and are still internally displaced in Iraqi-Kurdish regions or refugees in neighbouring countries.[48]

Today, only about 140,000 Assyrians remain in Iraq, and many villages abandoned during ISIS's rise remain empty.[49] The UNCHR recognises that IDP

[41] Joseph (n 39).
[42] ibid.
[43] ibid.
[44] Mantilla (n 2).
[45] ibid.
[46] ibid.
[47] ibid.
[48] Kurdistan24 News, 'Will Iraq's Christians Ever Return? Hurdles Persist Eight Years After ISIS' (15 March 2025) <www.kurdistan24.net/en/story/829831/will-iraqs-christians-ever-return-hurdles-persist-eight-years-after-isis> accessed October 2025
[49] Mina Aldroubi, 'Fight to Protect Endangered Iraqi Christians Continues after Years of War' (*The National*, 20 March 2023) <www.thenationalnews.com/world/2023/03/20/fight-to-protect-endangered-iraqi-christians-continues-after-years-of-war/> accessed October 2025.

include being displaced and being in the process of reintegration.[50] While some families have returned, large numbers remain in Erbil, Ankawa, Duhok, and Zakho, often in temporary shelters, makeshift camps, or church compounds under poor conditions. As well, many Assyrians were forced to live in poor conditions through makeshift camps and church compounds.[51] Kurdish authorities have struggled to meet the needs of this displaced population and have called for greater aid.[52]

This displacement highlights the humanitarian cost of conflict and the legal gap that arises when citizenship fails to secure protection for minority populations. It is crucial to examine the legal framework of citizenship, which determines access to rights, state protection, and justice. The slow and inadequate legal response to Assyrian IDPs illustrates how law can both address and perpetuate the vulnerabilities of displaced communities.

6. Citizenship Rights & Communicative Power

Citizenship plays a central role in determining whether displaced communities can access rights and protection.[53] While formally recognised as Iraqi citizens under the 2005 Iraqi Constitution, this recognition has not translated into meaningful safeguards during crises.[54] Assyrians are recognised in the constitution to have a mother tongue that is not one of the two national official languages (Arabic and Kurdish) and guaranteed the rights to educate their children, and hold administrative, political, cultural rights.[55] However, while the constitution guarantees their cultural and linguistic rights and affirms the right to life, security, and liberty, these protections were absent

[50] UNHCR, 'Internally Displaced People' (UNHCR) <www.unhcr.org/about-unhcr/who-we-protect/internally-displaced-people> accessed October 2025

[51] International Organisation for Migration (IOM), *Protracted Displacement in Iraq: Revisiting Categories of Return Barriers* (2021) < https://iraq.iom.int/sites/g/files/tmzbdl1316/files/documents/IOM%20Iraq%20Protracted%20Displacement%20in%20Iraq-Revisiting%20Categories%20of%20Return%20Barriers%203.pdf> accessed October 2025.

[52] Martin Chulov, 'Isis Offensive in Iraq Sparks Mass Christian Exodus from Qaraqosh' (*The Guardian*, 7 August 2014) <www.theguardian.com/world/2014/aug/07/isis-offensive-iraq-christian-exodus> accessed October 2025

[53] Marshall (n 1).

[54] Constitution of the Republic of Iraq 2005 (entered into force 15 October 2005) <www.constituteproject.org/constitution/Iraq_2005> accessed October 2025.

[55] ibid.

during and after the rise of ISIS. [56] Without enforcement, constitutional and legal recognition become ineffective.

During the ISIS conflict, Iraqi forces prioritised defending Baghdad and the south, leaving minority-populated northern regions inhabited not only by Assyrians, but also by Yazidis and Kurds, exposed to ISIS and their destruction and persecutions.[57] Despite Iraq's commitment to frameworks like the UN Guiding Principles on Internal Displacement, the execution of the frameworks falls short.[58] The destruction during the conflict had been so grave, for example, that only 1% of Batnaya's houses (an Assyrian village) was left standing, which hinders returnees while many villages remain partly in ruins.[59] Multiple structural and security challenges prevented a full return and reintegration of Assyrians into their villages, most of the infrastructure being devastated along with unresolved property disputes and lack of effective government support.

Moreover, in 2017, the Chaldean Bishop of the old village of Alqosh stated that most families that fled Mosul would most likely not return due to psychological pain.[60] By late 2017, studies found that Nineveh's Christian villages had the lowest rate of IDP return in Iraq, concluding that only about 12% of the displaced Assyrians made their return to the Ninevah Plains.[61] The International Organisation for Migration (IOM) reveals that significant barriers to the reintegration of IDPs in Iraq is the absence of personal documentation and unresolved property disputes.[62] Many returnees face challenges in reclaiming their homes due to destruction and damaged properties, and proving ownership became onerous and complex since most records have been missing or destroyed.[63] Making matters more difficult, it was reported by the

[56] Constitution of the Republic of Iraq (n 54).
[57] Chulov (n 52).
[58] IOM (n 51).
[59] Syriac Press, 'People Return to Batnaya, Christian Village in Nineveh Plains after Reconstruction' (29 February 2020) <https://syriacpress.com/blog/2020/02/29/people-return-to-batnaya-christian-village-in-nineveh-plains-after-reconstruction/> accessed October 2025.
[60] Vatican News, 'Iraq: Christian Families Refuse to Return to Mosul After ISIS' (*Vatican News*, 12 June 2024) <www.vaticannews.va/en/church/news/2024-06/iraq-christian-families-refuse-return-mosul-isis.html> accessed October 2025.
[61] Nineveh Reconstruction Committee, *Proposal to USAID: Nineveh Reconstruction Committee* (15 September 2017) < https://chrissmith.house.gov/uploadedfiles/17_09_15_proposal_to_usaid_nineveh_reconstruction_committee_usa.pdf> accessed October 2025, 2.
[62] IOM (n 51).
[63] ibid.

Norwegian Refugee Council that formal IDP camps within Federal Iraq have been closed, limiting Assyrian IDPs with two choices: to return to their original villages, usually through duress and limited information about aid available there, or prolonged displacement in informal settlements such as Church compounds with a lack of basic services and legal protection.[64]

As of 2023, eight years after ISIS's defeat, the return of many Assyrians remains unlikely. Of the 102,000 who lived in the Nineveh Plains before ISIS, only about 23,000 remain by 2024, with numbers expected to fall without international aid.[65] Rather than return, 69% of Assyrians consider leaving Iraq, citing security, economic, and political strain, exposing the gap between citizenship and real protection.[66] This gap between formal citizenship and actual protection reflects Arendt's "right to have rights," where citizenship is meaningless without a political and legal community that enforces it.[67] The nature of citizenship, state protection, and legal recognition in Iraq when discussing the internal displacement of Assyrians becomes questioned. For Assyrians, citizenship has meant exclusion and vulnerability rather than security and inclusion.

7. Critical Analysis Using Arendt and the Habermasian lens

Tying back to Arendt, her theory applies to those who hold citizenship but lack the protection and inclusion it should guarantee. Despite formal Iraqi citizenship, displaced Assyrians lack the 'right to have rights.'[68] Many remain in camps or temporary shelters, far from destroyed ancestral lands slowly rebuilt by church-based NGOs, with thousands of homes still uninhabitable.[69] Ongoing land disputes keep villages in ruins, leaving IDPs either in devastated areas or treated as outsiders in other parts of Iraq, including Kurdish regions. Minority Rights Group notes that Assyrians face some of

[64] Norwegian Refugee Council, *Where Should We Go? Durable Solutions for Remaining IDPs in Iraq* (NRC 2021) <www.nrc.no/globalassets/pdf/reports/where-should-we-go/durable-solutions-for-remaining-idps-in-iraq.pdf> accessed October 2025.
[65] Edward Pentin, 'Return or Go Extinct: 5 Things That Must Change Now for Iraq's Christians' (*National Catholic Register*, 31 July 2020) <www.ncregister.com/news/return-or-go-extinct-5-things-that-must-change-now-for-iraq-s-christians> accessed October 2025.
[66] ibid.
[67] Arendt (n 1).
[68] ibid.
[69] Marshall (n 1).

the worst marginalization, with limited access to social and economic rights.[70] While counted as citizens, their substantive rights remain severely diminished.

This case reflects Arendt's view of people unable to reclaim rights after a political collapse, in this case, Iraq's breakdown and failure to protect minorities.[71] Assyrians displaced by ISIS lost the ability to live safely in their homes, practice religion, and participate politically, while also losing state protection. While still being Iraqi citizens, they lost the full benefits of citizenship and thus, lost their right to have rights. Beyond individual violations, this represents a collapse of their belonging to a political community that values and protects them. It is not only a humanitarian crisis but a political one, raising questions about the real value of citizenship and who is deemed worthy of its protections.

The state's inability to prevent persecution or ensure safe return reflects a failure to uphold citizenship rights, compounded by shortcomings in international aid. Habermas argues that law gains legitimacy through inclusive public participation, warning that juridification can fail when disconnected from lived realities.[72] Legal recognition of Assyrians during and after ISIS lacked such legitimacy. Despite constitutional and UN-based minority rights, Assyrians were excluded from political and legal decision-making, limiting their influence over displacement and return policies. This illustrates Habermas's point that law detached from communicative power becomes symbolic rather than empowering.[73] Poor village infrastructure underscores this failure, with roughly 40% of returning Assyrians being displaced again into insecure, inadequate living conditions.[74]

The Assyrian community in northern Iraq has a distinct lifeworld rooted in ancient heritage, language, religion, and village traditions.[75] ISIS's rise shattered this

[70] Minority Rights Group 'Understanding Barriers to health care for minorities and indigenous peoples in Egypt, Iraq, and Tunisia' (Minority Rights Group, 28 June 2023) < https://reliefweb.int/report/egypt/understanding-barriers-health-care-minorities-and-indigenous-peoples-egypt-iraq-and-tunisia#:~:text=The%20main%20objective%20of%20this%20study%20is%20to,and%20Jews%2C%20Amazigh%20and%20Black%20Tunisians%20in%20Tunisia.> accessed October 2025.
[71] Arendt (n 1), 296.
[72] Habermas (n 5).
[73] ibid.
[74] Jarjis Toma, 'The Demographic Change Haunts Minorities in the Nineveh Plain', (Network of Iraqi Reporters for Investigative Journalism 3 February, 2025) <https://nirij.org/en/2025/02/03/the-demographic-change-haunts-minorities-in-the-nineveh-plain/> accessed October 2025.
[75] Habermas (n 5)

identity by overrunning towns, desecrating churches, and displacing communities, severing generational ties to land and erasing sacred sites.[76] Post-conflict governance, dominated by state institutions and armed groups, excluded Assyrian voices from decisions on local security. After ISIS, Assyrians were excluded from local security decisions, while militias imposed curfews and checkpoints restricting movement.[77] In March of 2023, Assyrians in Hamdaniya (Bakhdida) staged protests against attempts by the Babylon Brigade, also known as the Popular Mobilization Forces, (PMF) to seize control of local governance.[78] In 2023, Hamdaniya residents protested the Babylon Brigade's bid for control, reflecting what Habermas calls the colonisation of the lifeworld, where state and military systems override community agency and act as oppressive forces.[79]

The PMF was introduced to replace ISIS and prevent re-infiltration, yet Assyrians were excluded from decisions shaping this security structure.[80] The Babylon Brigade, an official Christian militia often criticized as politically inauthentic,was widely rejected by Assyrian leaders and residents, who saw its involvement in Hamdaniya's municipal offices as external appropriation of local governance As Habermas notes, democratic legitimacy requires inclusive deliberation among affected citizens, yet in the Nineveh Plains, security and governance arrangements have been imposed without Assyrian participation.[81] The attempt to assert Babylon Brigade control without local consent exemplifies a failure of communicative rationality, where power is exercised over a vulnerable community through formal frameworks lacking genuine execution.

Article 125 of the Iraqi Constitution formally recognises the administrative, political, and cultural rights of minorities, including Assyrians, and Iraq endorses the UN Guiding Principles on Internal Displacement.[82] Yet these legal recognitions have

[76] Nicholas Bashour, 'Iraq's Christian Communities Face an Existential Threat' (2024) 28(1) Middle East Policy <https://onlinelibrary.wiley.com/doi/full/10.1111/mepo.12788> accessed October 2025.
[77] Nadine Maenza,*'10 Years After ISIS Genocide, Christians Are Under Threat'* (Wilson Centre, 19 August, 2021) <www.wilsoncenter.org/article/10-years-after-isis-genocide-christians-are-under-threat> accessed October 2025.
[78] Zeynep Kaya, *Minorities and Displacement in Iraq: Defining, Identifying and Enabling Durable Solutions* (LSE Middle East Centre Report, 2021) <https://eprints.lse.ac.uk/111567/> accessed October 2025.
[79] Habermas (n 5).
[80] Kaya (n 78).
[81] Habermas (n 5).
[82] Constitution of the Republic of Iraq 2005 (n 54).

not translated into practical protection or support for Assyrian IDPs returning to destroyed homes and lands. Property restitution has largely failed, with land grabs and protracted disputes leaving many unable to reclaim their homes.[83] Reflecting Habermas' concept of juridification, the law here is procedural and detached from public discourse, serving as a symbolic gesture rather than a lived guarantee of justice.[84] Despite holding Iraqi citizenship, Assyrians face persistent barriers to justice, restitution, and security, with frameworks on displacement and minority rights created without their participation, silencing the lifeworld and allowing the system to override it.

In Habermas' theory, communicative power and thus legal legitimacy arises from inclusive citizen deliberation, echoing Arendt's link between citizenship and societal membership. For Assyrians in Iraq, this power has been denied, leaving them with little political influence over security or post-ISIS reconstruction, which paved the way for the Babylon Brigade. Reconstruction has instead been led by Church-based and NGO initiatives such as the Nineveh Reconstruction Committee and Shlama Foundation, filling the gap left by government exclusion of local voices.[85] Ongoing displacement, unresolved property claims, insecurity, and political marginalisation keep the Assyrian lifeworld subordinated to the system, with its voice muted by a legal framework detached from genuine participation. Their political, security, and homeland rights, the "right to have rights" Arendt describes, remain increasingly under strain.[86]

8. Conclusion

The internal displacement of Assyrians in Iraq after the rise of ISIS exposes the limits of formal citizenship and legal recognition. Drawing on Hannah Arendt's "right to have rights" and Jürgen Habermas' theory of juridification, this study shows that while

[83] US Commission on International Religious Freedom, *Religious Freedom Conditions in Iraq* (2024) <www.uscirf.gov/sites/default/files/2024-05/Iraq.pdf> accessed 22 April 2025; Agenzia Fides, 'Christian Parties Raise Alarm Over Illegal Land Acquisitions in Nineveh' (21 June 2023) <www.fides.org/en/news/73915-ASIA_IRAQ_Christian_parties_raise_new_alarm_over_illegal_land_acquisitions_in_the_Nineveh_plain> October 2025.

[84] Habermas (n 5).

[85] MERI Policy Paper, Congregations Turned to Actors: The Case of Christian Local Reconstruction Committees in Nineveh (Middle East Research Institute, 2023) <www.meri-k.org/publication/congregations-turned-to-actors/> accessed October 2025.

[86] Arendt (n 1).

minority rights are affirmed in law, they fail in practice for Assyrians who remain displaced and excluded from decisions on security, reconstruction, and governance. Constitutional protections and international frameworks exist, yet state and militia systems override local autonomy, access to justice, and restitution. This reflects Habermas' concern that law, when detached from public discourse, becomes procedural rather than protective, and Arendt's warning that citizenship is meaningless without real protection and inclusion.

Ultimately, legal recognition alone cannot secure justice for Assyrians in post-ISIS Iraq. Legitimacy and effectiveness require a participatory legal culture that includes those most affected. Reintegration must go beyond rebuilding infrastructure to transforming how law is conceived and implemented, fostering shared discourse rather than imposing silencing systems. While context-specific, this case speaks to wider issues of citizenship, minority protection, and the structural failures of legal systems in post-conflict societies.

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