



Submission to the UN Special Rapporteur on the Promotion and Protection of Human Rights in the context of Climate Change

Addressing the human rights implications of climate change displacement including legal protection of people displaced across international borders

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Thank you for the opportunity to provide a submission to inform your report on addressing the human rights implications of climate change displacement including legal protection of people displaced across international borders, which is to be presented to the 53rd Session of the Human Rights Council in 2023.

For reasons of time and space, I have responded to each question by providing a short summary of my research and links to relevant publications. Since submissions will be made available online, journal copyright precludes me from attaching some materials. I have included weblinks where available and have emailed other pieces to you directly for your personal use. I am able to provide a copy of my book *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012) on request.

I strongly recommend that you consider the Kaldor Centre's 2021 [submission](#) to the US State Department on the impacts of climate change on internal and cross-border migration, protection and resettlement. It provides clear and succinct analysis of many of the issues raised in the Questionnaire, as well as links to additional reading. Please do not hesitate to contact me if I can provide further materials or assist in any other way.

1. What experiences and examples are you aware of, of individuals or communities, displaced by climate change?

As an initial observation, the language of 'displaced by climate change' is problematic. Displacement in the context of climate change is always multi-causal. Climate change acts as a threat and vulnerability multiplier, but does not trigger movement on its own. Climate change amplifies the frequency and severity of natural hazards and therefore disasters, and also aggravates slower-onset processes, such as sea-level rise. The two can also interact.

A vast array of experiences of displacement in the context of climate change and disasters have been encapsulated in reports such as the Internal Displacement Monitoring Centre's annual *GRID*;¹ the many reports commissioned by the Platform on Disaster Displacement and its predecessor, the Nansen Initiative on Disaster-Induced Cross-Border Displacement; and other academic and policy outputs.

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¹ See, in particular, its thematic report on this topic in 2019: Internal Displacement Monitoring Centre (IDMC), [GRID 2019: Global Report on Internal Displacement](#) (IDMC 2019).

How and why people describe their reasons for moving varies significantly, as my research in Bangladesh showed in 2009.² People who had moved from rural areas to slums in Dhaka variously cited loss of livelihoods, increased flooding, poverty and climate as reasons for moving. That is because movement is multi-causal, but also because different elements will feature more or less strongly in people's minds (impacted, too, by individual circumstances, such as age, gender and so on).

Concentrating on the complex issue of causation and responsibility in the present context may be a distraction: the focus here should be on the protection needs of the displaced.

See further:

- Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012), chapter 1
- Sanjula Weerasinghe, [In Harm's Way: International Protection in the context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change](#), UNHCR Legal and Protection Policy Research Series, PPLA/2018/05 (2018)

For recent articles examining many aspects of climate mobility, see the special issue of the *Forced Migration Review* (2022) on ['Climate Crisis and Displacement: From Commitment to Action'](#).

2. Do you think there are differences between the notion of climate change migrants and people displaced by climate change? If yes, what are these differences?

All movement occurs along a spectrum. Migration is traditionally characterized as 'voluntary' movement whereas displacement is typically viewed as 'forced'. However, we know that there are many shades of grey and multiple factors that influence people's decisions to move – even when it comes to displacement.

While the lines are not clear-cut, the idea of a 'climate change migrant' implies a degree of agency and choice, whereas the notion of a person 'displaced' in the context of climate change implies a degree of force or compulsion (and the need for protection). The language of 'climate mobility' is increasingly gaining traction to encompass the range of movement 'types' that are in play: displacement, migration, planned relocation and evacuation. Attention also needs to be given to people who are 'immobile', whether by choice or necessity.³ Unlike the 'voluntary immobility' scholars have ascribed to certain Pacific communities who are determined to stay in their homes,⁴ in some cases, immobility may signal the greatest vulnerability – with people unable to leave precarious conditions whether for individual reasons (eg age or disability), structural reasons (immigration laws) or a combination of both.

These factors may be relevant to the protection needs of those who move. In general, the more agency and choice that people are able to exercise when they move, the more likely it is that they will be able to move safely and with dignity. In the right circumstances, planned and voluntary movement may be an effective form of adaptation to climate change, facilitating access to less exposed territory and more secure livelihood opportunities. Those with the least

² Jane McAdam and Ben Saul, ['Displacement with Dignity: Climate Change, Migration and Security in Bangladesh'](#) (2010) 53 *German Yearbook of International Law* 233, 266.

³ See eg Caroline Zickgraf, 'Immobility' in Robert McLeman and François Gemenne (eds), *Routledge Handbook of Environmental Displacement and Migration* (Routledge 2018); Caroline Zickgraf, ['Keeping People in Place: Political Factors of \(Im\)mobility and Climate Change'](#) (2019) 8 *Social Sciences* 1.

⁴ See eg Carol Farbotko and Celia McMichael, ['Voluntary Immobility and Existential Security in a Changing Climate in the Pacific'](#) (2019) 60 *Asia Pacific Viewpoint* 148; Carol Farbotko, ['Voluntary Immobility: Indigenous Voices in the Pacific'](#) (2018) 57 *Forced Migration Review* 81.

agency and choice are more likely to have their rights adversely affected and to require assistance and protection.

3. What legislation, policies and practices are you aware of that are in place to give protection to the rights of individual and communities displaced by climate change?

International refugee law and human rights law already contain some protective mechanisms for people displaced in the context of climate change and disasters. For instance, the principle of *non-refoulement* precludes States from removing people to situations where they face a real risk of persecution or other serious harm, and States must ensure that the human rights of all people within their territory and/or jurisdiction are safeguarded.

As such, it is inaccurate to conclude that the New Zealand tribunal and courts' findings in the *Teitiota* matter mean that in the context of climate change, 'persons displaced across international borders are not defined as refugees under the 1951 UN Refugee Convention',⁵ and that '[c]onsequently, there are limited legal protections for people displaced across international borders as a consequence of being forcibly displaced by climate change.'⁶

Refugee law

Climate change and its impacts may be a relevant and contributing factor when determining a refugee's claim for international protection. In addition, there are also refugees whose circumstances are made worse due to the adverse effects of climate change. Conflict, persecution, disasters and environmental degradation are often interlinked, and the impacts of disasters or climate change may generate or exacerbate persecution or discrimination, or result in a breakdown of law and order.

UNHCR has highlighted how refugee law may apply in some cases. It emphasizes the importance of understanding climate change impacts within a broad social and political context, noting that these impacts:

are often exacerbated by other factors such as poor governance, undermining public order; scarce natural resources, fragile ecosystems, demographic changes, socio-economic inequality, xenophobia, and political and religious tensions, in some cases leading to violence. As a result of these negative impacts of climate change and disasters, combined with social vulnerabilities, people may be compelled to leave their country and seek international protection.⁷

The regional refugee law frameworks in Africa⁸ and Latin America⁹ may offer more scope for protection, given their focus on events or circumstances in the refugee's country provoking flight – including serious disturbances to public order and massive violations of human rights. UNHCR argues that 'an evolutionary approach to interpretation' means that 'people displaced by the adverse effects of climate change and disasters can be refugees under regional refugee criteria' since such impacts may constitute events seriously disturbing public order.¹⁰

⁵ Special Rapporteur on the Promotion and Protection of Human Rights in the context of Climate Change, '[Call for inputs: "Addressing the Human Rights Implications of Climate Change Displacement including Legal Protection of People Displaced across International Borders"](#)' (2022).

⁶ Ibid. See critique by Michelle Foster and Jane McAdam, '[Analysis of "Imminence" in International Protection Claims: *Teitiota v New Zealand and Beyond*](#)' (2022) 71 *International and Comparative Law Quarterly* 975, 978.

⁷ UNHCR, '[Legal Considerations regarding Claims for International Protection Made in the context of the Adverse Effects of Climate Change and Disasters](#)' (1 October 2020) para 2.

⁸ [Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa](#) (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45, art 1(2).

⁹ [Cartagena Declaration on Refugees](#) (adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, 22 November 1984), conclusion III(3).

¹⁰ UNHCR (n 7) para 14. See also Tamara Wood, '[Protection and Disasters in the Horn of Africa: Norms and](#)

See generally:

- UNHCR, '[Legal Considerations regarding Claims for International Protection Made in the context of the Adverse Effects of Climate Change and Disasters](#)' (1 October 2020)
- Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (Cambridge University Press 2020)
- Jane McAdam, '[Moving beyond Refugee Law: Putting Principles on Climate Mobility into Practice](#)' (Keynote Address, Refugee Law Initiative Conference, June 2022)

Human rights law

As explained below, people may be protected from removal under international human rights law. In domestic legal systems, human rights law-based *non-refoulement* obligations may be reflected in complementary protection regimes (which generally give rise to a legal status/visa).¹¹

As I have written elsewhere:¹²

Under human rights law, the principle of *non-refoulement* relevantly protects people from forcible return to life-threatening circumstances or other cruel, inhuman or degrading treatment.¹³ The Human Rights Committee has accepted in principle that the effects of climate change may expose people to such risks, 'thereby triggering the *non-refoulement* obligations of sending states'.¹⁴ It has also noted that 'the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized', meaning that protection should be forthcoming before the situation is imminently life-threatening.¹⁵

The right to life is enmeshed with other human rights, such as the right to an adequate standard of living and the right not to be deprived of a means of subsistence. The Convention on the Rights of the Child links it to the State's duty 'to ensure to the maximum extent possible the survival and development of the child',¹⁶ and the Committee on the Rights of the Child has explained that it must be implemented holistically, 'through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of

[Practice for Addressing Cross-Border Displacement in Disaster Contexts](#) (Nansen Initiative on Disaster-Induced Cross-Border Displacement 2013); Sanjula Weerasinghe, *Refugee Law in a Time of Climate Change, Disaster and Conflict*, UNHCR Legal and Protection Policy Research Series, PPLA/2020/01 (2020) 59–80.

¹¹ For details, see Jane McAdam, 'Complementary Protection' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021). For an analysis of Italian law, see Francesco Negrozio, '[What Legal Options for Environmental and Climate-Displaced People under the Italian Protection System? Complementary Protection on Humanitarian Grounds v Ad Hoc Regimes](#)', RLI Blog (30 September 2022). Negrozio concludes: 'Rather than proposing *ad hoc* protection regimes by adopting new international protocols, conventions or guidelines on environmental and climate-displacement, which could prove useless or counterproductive, an evolutive interpretation of current international legal tools should be consolidated, extending their personal scope to new vulnerabilities emerging from climate change and environmental degradation.'

¹² Jane McAdam, 'Displacement in the context of Climate Change and Disasters' in Costello, Foster and McAdam (n 11) 838–39 (drawing on footnotes in original).

¹³ See Jane McAdam, 'Complementary Protection' in Costello, Foster and McAdam (n 12).

¹⁴ *Teitiota v New Zealand*, UN doc CCPR/C/127/D/2728/2016 (24 October 2019) para 9.11.

¹⁵ *ibid.* See further Jane McAdam, '[Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement](#)' (2020) 114 *American Journal of International Law* 708.

¹⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 6(2).

living, [and] a healthy and safe environment'.¹⁷

The UN Human Rights Committee in *Teitiota v New Zealand* reinforced the long-held scholarly view that 'without robust national and international efforts', the effects of climate change may put people's lives at risk or expose them to cruel, inhuman or degrading treatment, thus triggering States' *non-refoulement* obligations.¹⁸ However, as Michelle Foster and I have explained, a concerning consequence of the decision is the problematic way in which the UN Human Rights Committee is using the notion of 'imminence' in limiting when protection should be available – namely, its (erroneous) suggestion that a violation is only possible where rights are immediately threatened. As we clarify:

In international human rights law, a person does not have to show that they face an *imminent* risk of harm on removal for a human rights violation to be established. In the international protection space, neither refugee law nor human rights law imposes an imminence requirement. Rather, the principle of *non-refoulement* applies where a person has a well-founded fear of being persecuted (refugee law) or faces a real risk of being subjected to irreparable harm (human rights law). Imminence is only relevant when it comes to establishing admissibility requirements as a 'victim' of a violation under the First Optional Protocol to the ICCPR.¹⁹

We explain that the appropriate timeframe is *foreseeability* of harm.

This is consonant with the forward-looking assessment in international refugee law, well entrenched in the jurisprudence,²⁰ which requires a degree of speculation about future harm.²¹ Framing the analysis as whether there is a well-founded fear or real risk of harm in the 'reasonably foreseeable future'²² orients the decision-maker to the true question at the heart of the protection regime, namely risk of harm, without dictating an artificially narrow time period which delimits the ambit of protection.²³

Finally, it is important to note that in the *Global Compact for Safe, Orderly and Regular Migration*, States commit to respecting the prohibition on returning migrants to situations of irreparable harm, and to ensuring the effective respect, protection, and fulfilment of their human rights.²⁴

For a detailed analysis of *Teitiota v New Zealand*, see:

- Jane McAdam, '[Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement](#)' (2020) 114 *American Journal of International Law* 708
- Michelle Foster and Jane McAdam, '[Analysis of "Imminence" in International Protection Claims: Teitiota v New Zealand and Beyond](#)' (2022) 71 *International and Comparative Law Quarterly* 975

¹⁷ Committee on the Rights of the Child, '[General Comment No 7 \(2005\): Implementing Child Rights in Early Childhood](#)', UN doc CRC/C/GC/7/Rev.1 (20 September 2006).

¹⁸ *Teitiota v New Zealand* (n 14) para 9.11.

¹⁹ Foster and McAdam (n 6) 976–77.

²⁰ Adrienne Anderson, Michelle Foster, H el ene Lambert and Jane McAdam, '[Imminence in Refugee and Human Rights Law: A Misplaced Notion for International Protection](#)' (2019) 68 *International and Comparative Law Quarterly* 111, 120; Adrienne Anderson, Michelle Foster, H el ene Lambert and Jane McAdam, '[A Well-Founded Fear of Being Persecuted ... But When?](#)' (2020) 42 *Sydney Law Review* 155.

²¹ Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (4th edn, Oxford University Press 2021) 57; *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259, 288 (Kirby J).

²² See generally Anderson et al 2020 (n 20).

²³ Foster and McAdam (n 6) 982 (drawing on footnotes in original).

²⁴ [Global Compact for Safe, Orderly and Regular Migration](#), UN doc A/RES/73/195 (19 December 2018), Objective 21, para 37; see also para 11.

National laws and regional approaches

Many countries have existing laws and policies in place that can be adapted to the climate change context, as documented by the Nansen Initiative and others.²⁵

As I have written elsewhere:²⁶

Beyond the legal principle of *non-refoulement*, there is support in State practice for what Kälin and Schrepfer describe as a 'returnability test' based on 'whether, in light of the prevailing circumstances and the particular vulnerabilities of those concerned, [people] can be required to return to their country of origin.'²⁷ A survey of State practice shows that at least 50 countries in recent decades have received or refrained from returning people in the aftermath of disasters because it is unsafe or impractical.²⁸ Practices have been very ad hoc, ranging from the issuance of special humanitarian visas in the aftermath of a disaster,²⁹ to temporary stay arrangements for people abroad at the time of a disaster and unable to return home,³⁰ to expedited processing of, and/or flexibility with requirements for, regular migration visa applications, and to temporary labour migration schemes to assist those living in precarious circumstances.³¹ Free movement agreements may also facilitate admission and stay in the aftermath of a disaster.³²

The 2018 *Global Compact for Migration* calls on States to build on such practices for those displaced by disasters, 'such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation in or return to their country of origin is not possible'.³³

Some countries have developed, or are developing, specific policies on displacement in the context of climate change and disasters, particularly in the Pacific. Argentina recently created a new community-sponsorship humanitarian visa for people displaced by disasters in Mexico,

²⁵ See Nansen Initiative on Disaster-Induced Cross-Border Displacement, [Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change](#) (vol 2, 2015). For a more recent overview, see eg Daria Mokhnacheva, [Implementing the Commitments related to Addressing Human Mobility in the context of Disasters, Climate Change and Environmental Degradation](#) (Platform on Disaster Displacement, April 2022).

²⁶ McAdam (n 12) 841.

²⁷ Walter Kälin and Nina Schrepfer, [Protecting People Crossing Borders in the context of Climate Change: Normative Gaps and Possible Approaches](#), UNHCR Legal and Protection Policy Research Series, PPLA/2012/01 (2012), 65. Goodwin-Gill identifies an even a broader principle of refuge in customary international law, which includes that 'deeper level of obligation which underpins, among others, rescue at sea, the landing of the shipwrecked, and the admission of victims of conflict or other humanitarian disaster': Guy S Goodwin-Gill, 'Non-Refoulement, Temporary Refuge, and the "New" Asylum Seekers' in David J Cantor and Jean-François Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Brill 2014) 440.

²⁸ Nansen Initiative on Disaster-Induced Cross-Border Displacement, [Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change](#) (vol 1, 2015) 6.

²⁹ Nansen Initiative (n)on Disaster-Induced Cross-Border Displacement, [Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change](#) (vol 2, 2015) 40, 46, referring to examples from Argentina, Peru, the United States, Finland, Mexico, Peru, and Sweden, among others.

³⁰ *ibid* 26, 40, 51, 52, referring to Canada, the Americas, and Singapore. See also UNHCR, 'Guidelines on Temporary Protection and Stay Arrangements' (February 2014).

³¹ Nansen Initiative (n 25) 43 (Spain and Senegal). See also International Law Association, [Resolution 6/2018 and accompanying Sydney Declaration of Principles on the Protection of Persons Displaced in the context of Sea Level Rise](#) (2018), 64.

³² Nansen Initiative (n 25) 43–44; Bruce Burson and Richard Bedford, [Clusters and Hubs: Toward a Regional Architecture for Voluntary Adaptive Migration in the Pacific](#) (Discussion Paper, Nansen Initiative on Disaster-Induced Cross-Border Displacement 2013) 7–10.

³³ Global Compact for Migration (n 24) Objective 5, para 21(g).

Central America, and the Caribbean.³⁴ At various times, other countries have had visas on the books for environmentally-related displacement (even if rarely used).³⁵

For detailed analysis and details of these various options, see:

- Bruce Burson, Richard Bedford and Charlotte Bedford, [*In the Same Canoe: Building the Case for a Regional Harmonisation of Approaches to Humanitarian Entry and Stay in 'Our Sea of Islands'*](#) (Platform on Disaster Displacement, 2021)
- Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012), chapter 4
- Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (Cambridge University Press 2020), chapter 3
- David J Cantor, '[Environment, Mobility and International Law: A New Approach in the Americas](#)' (2021) 21 *Chicago Journal of International Law* 263
- Jane McAdam, '[The Emerging New Zealand Jurisprudence on Climate Change, Disasters and Displacement](#)' (2015) 3 *Migration Studies* 131 (published version shared directly)

4. Please provide examples of policies, practices and legal remedies and concepts of how States, business enterprises, civil society and intergovernmental organizations can provide protection for people and communities displaced by climate change.

For an overview and analysis of the key issues, see:

- Jane McAdam, 'Displacement in the context of Climate Change and Disasters' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021)

5. What international, regional and national policies and legal approaches are necessary to protect people and communities displaced by climate change?

There is no 'one-size-fits-all' response to human mobility in the context of climate change. Rather, a 'toolbox' approach is needed across a range of law and policy fields, to address the different types and stages of human mobility, and the different needs of those affected. Broadly speaking, legal and policy approaches should aim to: (a) help people stay safely at home when they so desire; (b) facilitate safe and dignified opportunities for migration and planned relocation for those who wish to move; (c) provide protection to those who are displaced, whether internally or across an international border; and (d) ensure the rights of all those affected by climate mobility, including those who move, those who are unable to move, and home and host communities. Some particular recommendations are listed below.

At the international level:

- Strengthened commitments to mitigation
- More predictable, sustainable financing for disaster risk reduction, climate change adaptation, loss and damage and climate mobility
- Recognition of displacement as a form of loss and damage
- Enhanced technical support and resourcing to address climate mobility

³⁴ Ministry of the Interior (Argentina), '[Migraciones anunció ante la ONU un visado para desplazados por desastres socio-naturales de México, Centroamérica y el Caribe](#)' (9 May 2022).

³⁵ See eg Margit Ammer, Monika Mayrhofer and Matthew Scott, '[Disaster-related Displacement into Europe: Judicial Practice in Austria and Sweden](#)' (Ludwig Boltzmann Institute of Fundamental and Human Rights and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, April 2022).

- Consideration of a dedicated financing mechanism to support States to implement measures to address climate mobility
- Cooperate to raise awareness of climate mobility
- Reiteration of States' *non-refoulement* obligations in the specific context of climate change and disasters

At the regional level:

- Incorporate measures to avert and minimize displacement into regional disaster risk reduction activities
- Develop regional agreements concerning (at least temporary) admission and stay in the aftermath of disasters
- Consider creating (and strengthening the implementation of) free movement agreements³⁶ to enable people affected by climate change and disasters to move on their own terms
- Consider reciprocal visa waivers or 'special purpose' visas to facilitate admission and stay in the aftermath of a disaster
- Consider harmonizing approaches to humanitarian admission and stay of people displaced in the context of climate change and disasters
- Consider creating specific mobility pathways for people vulnerable to climate change
- Strengthen regional mechanisms to protect and preserve culture, cultural practices and cultural heritage
- Facilitate information-sharing and participation, including by affected communities

Regionally, there are some frameworks that specifically relate to displacement in the context of climate change and disasters, including the 2006 Great Lakes IDP Protocol³⁷ and the 2009 Kampala Convention.³⁸ In 2022, the Kampala Ministerial Declaration on Migration, Environment and Climate Change was adopted to *inter alia* take action to avert, minimize and address internal and cross-border displacement in the context of climate change and disasters, and to strengthen cooperation on and implementation of treaties and other agreements concerning free movement, labour mobility and transhumance.³⁹ In this context, the 2020 Protocol on Free Movement of Persons in the IGAD Region is of particular relevance.⁴⁰

In the Americas, specific guidance has been developed on protection and assistance for people displaced across borders in the context of disasters:

- [*Protection for Persons Moving across Borders in the context of Disasters: A Guide to Effective Practices for RCM Member Countries*](#) (2016)
- South American Conference on Migration, [*Regional Guidelines on the Protection and Assistance of Cross-Border Displaced Persons and Migrants in Countries affected by Disasters*](#) (2018)

³⁶ On free movement agreements, see: Tamara Wood, '[The Role of Free Movement Agreements in Addressing Climate Mobility](#)' (2022) 69 *Forced Migration Review* 62; Tamara Wood, [The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement: A Study of Africa](#) (Platform on Disaster Displacement 2019); Ama Francis, [Free Movement Agreements & Climate-Induced Migration: A Caribbean Case Study](#) (Sabin Center for Climate Change Law 2019).

³⁷ [Protocol on the Protection and Assistance to Internally Displaced Persons \(International Conference on the Great Lakes Region](#), 30 November 2006) arts 1, 3(2), 3(5), 6(4)(c).

³⁸ [African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa](#) (Kampala Convention) (adopted 22 October 2009, entered into force 6 December 2012) 49 ILM 86, art 1(k).

³⁹ [Kampala Ministerial Declaration on Migration, Environment and Climate Change](#) (29 July 2022).

⁴⁰ [Protocol on Free Movement of Persons in the IGAD Region](#) (26 February 2020).

In 2022, I led a team to draft the Pacific Regional Framework on Climate Mobility. The draft is currently being deliberated by Pacific governments and is not publicly available, but information about the process can be found [here](#).

*At the national level:*⁴¹

- Provide financial and technical support to communities to enable *in situ* adaptation for as long as possible, in line with the wishes and priorities of affected people
- Review urban planning laws and zoning policies to ensure that settlements are not constructed in exposed or unsafe areas and that land is not overdeveloped
- Invest in resilience-building measures, such as improved housing, livelihood diversification, education, food security and health care
- Incorporate mechanisms for the participation of affected communities (including vulnerable or marginalized groups) in laws and policies on disaster risk reduction/management or related to climate mobility
- Collect data to demonstrate how climate displacement impacts on communities
- Incorporate measures to avert and minimize displacement into disaster preparedness strategies
- Incorporate the Guiding Principles on Internal Displacement into domestic laws, policies and practices, and strengthen the capacity of authorities to apply them in the context of climate change and disasters
- Develop safeguards against arbitrary displacement (including as a result of evacuations, planned relocations or evictions)
- Provide non-discriminatory access to appropriate emergency/humanitarian support and assistance, in accordance with human rights law
- Ensure that the principle of *non-refoulement* is reflected and respected in domestic law
- Enable at least temporary entry and stay under domestic law in the aftermath of a disaster (with opportunities to transition to permanent visas where return is not feasible or desirable)
- Expedite the processing of existing visa applications from people from affected countries in the aftermath of a disaster
- Develop guidance for immigration officials about how to exercise discretionary powers to issue visas in the context of disasters
- Consider creating special humanitarian visas for people displaced in the context of climate change and disasters
- Consider creating targeted resettlement schemes for people from affected countries
- Facilitate access to labour, education, family reunion and other visas
- Review citizenship laws to ensure that they contain safeguards against statelessness and/or loss of citizenship

6. Please provide separate considerations for people or communities internally displaced and those displaced across international borders.

The Guiding Principles on Internal Displacement expressly include those ‘who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of . . . natural or human-made disasters’.⁴² They encompass those who flee (or are evacuated) from the anticipated impacts of a disaster, as well as those who are forced to leave their homes in the aftermath of a disaster. The Guiding

⁴¹ Note, too, The White House, [Report on the Impact of Climate Change on Migration](#) (October 2021).

⁴² [Guiding Principles on Internal Displacement](#), UN doc E/CN.4/1998/53/Add.2 (11 February 1998), Introduction, para 2.

Principles set out States' legal obligations before, during and after people are displaced, including the requirement for durable solutions.

In Africa, the 2006 Great Lakes IDP Protocol⁴³ and the 2009 Kampala Convention provide more concrete protection,⁴⁴ with the latter requiring States parties to 'take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change'.⁴⁵

Since the discussion in other sections above focuses on cross-border displacement, this section refers only to internal displacement. For an extensive analysis, please see:

- Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (4th edn, Oxford University Press 2021), chapter 12
- Jane McAdam, Erica Bower, Sanjula Weerasinghe and Tamara Wood, [Submission](#) to the UN Secretary-General's High-Level Panel on Internal Displacement on Internal Displacement in the context of Disasters and Climate Change (Kaldor Centre for International Refugee Law, 6 May 2020)

7. What do you understand by the concept of 'climate change refugee'? Do you think that the UN Refugee Convention should include a separate category for climate change refugees? How do you think this would work? What other legal options may be possible?

I have examined this issue extensively.⁴⁶ In short, the term 'climate change refugee' should not be used because of its legal inaccuracy and the fact that many people to whom it is ascribed strongly reject it.⁴⁷

For reasons set out here (in summary form,⁴⁸ and elaborated here⁴⁹), the Refugee Convention should not be opened up for renegotiation. As the processes to adopt the two Global Compacts showed, States do not have the political will at present to create new binding legal obligations in this area, and opening the treaty to renegotiation would mean that existing protections for refugees could be diluted. An alternative would be to pursue a new protocol to the Refugee Convention, but again, there is not the political appetite for this at the present time, and for the reasons articulated in the references provided above, it would only provide a partial solution for the millions of people displaced in this context.

A more feasible approach would be specialist training of immigration officials, judges and other decision-makers about how States' existing *non-refoulement* obligations (under refugee and human rights law) apply in the context of climate-related displacement,⁵⁰ along with consideration of any discretionary humanitarian or compassionate grounds for admission or non-removal that may exist in particular jurisdictions. Particularly in Africa and Latin America, where the scope of refugee protection is broader than under the Refugee Convention, further

⁴³ Great Lakes Protocol (n 37) arts 1, 3(2), 3(5), 6(4)(c).

⁴⁴ Kampala Convention (n 38) art 1(k).

⁴⁵ *Ibid*, art 5(4).

⁴⁶ See eg Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012), chapter 7; Jane McAdam, '[Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer](#)' (2011) 23 *International Journal of Refugee Law* 2.

⁴⁷ Jane McAdam and Maryanne Loughry, '[We Aren't Refugees](#)', *Inside Story* (29 June 2009).

⁴⁸ Jane McAdam, '[Seven Reasons the UN Refugee Convention Should Not Include "Climate Refugees"](#)', *Sydney Morning Herald* (6 June 2017).

⁴⁹ McAdam 2012 (n 46); McAdam 2011 (n 46).

⁵⁰ For example, in 2022 I conducted such training for UNHCR in the Pacific, and for the Sanremo Institute of International Humanitarian Law.

legal guidance and training for decision-makers could facilitate access to protection for a wider range of people displaced in the context of climate change.

One risk of pursuing the ‘climate change refugee’ approach is that decision-makers may believe they need to identify a whole new ‘type’ of refugee. Rather, as UNHCR’s guidance makes clear, people may be refugees in the context of climate change and disasters – the key is ensuring that decision-makers understand how to apply existing refugee law principles to that context.

An examination of the jurisprudence of Australia, New Zealand, Austria and Sweden shows that decision-makers are already considering cases involving the impacts of climate change and disasters. While on the facts, no claim has yet succeeded on the basis of prospective harm linked to climate impacts, protection has been provided in the aftermath of disasters.⁵¹

Finally, the notion of ‘climate change refugees’ may imply that international protection is the ‘right’ or only response, when in fact a suite of mobility options is needed (see question 5). This was a key finding of the Nansen Initiative’s Protection Agenda,⁵² endorsed by 109 States, and has formed the basis of work since. As outlined in the Sydney Declaration, a more holistic approach is needed.

8. Should separate and particular considerations be given to indigenous peoples with respect to climate change displacement? What are these particular considerations?

Special consideration must be given to the particular cultural and collective rights of indigenous peoples and other groups (such as Pacific communities with particular ties to/relationships with land and sea).⁵³ This should include recognizing the value of traditional knowledges in preserving culture, ensuring that people who are relocated or otherwise move elsewhere may continue their cultural practices and preserve their cultural heritage, and investing in digital and other platforms to safeguard traditional practices.

Indigenous peoples are entitled to effective mechanisms to prevent and redress any action that deprives them of their integrity as distinct peoples, aims to dispossess them of their lands, territories or resources, or involves forced population transfer ‘which has the aim or effect of violating or undermining any of their rights’.⁵⁴ In addition, States must take effective measures to recognize and protect the exercise of indigenous peoples’ rights to ‘maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures’.⁵⁵ Relevantly, the Guiding Principles on Internal Displacement also provide that: ‘States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands’.⁵⁶

⁵¹ Ammer et al (n 35).

⁵² Nansen Initiative (n 28).

⁵³ UN Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295 (13 September 2007); [Billy v Australia](#), UN doc CCPR/C/135/D/3624/2019 (21 July 2022).

⁵⁴ UN Declaration on the Rights of Indigenous Peoples (n 53) art 8. Article 10 provides: ‘Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.’

⁵⁵ *Ibid*, art 31.

⁵⁶ Guiding Principles on Internal Displacement (n 42) principle 9.