

**Submission to the US Department of State Bureau of Population,
Refugees and Migration on the impacts of climate change on
migration, protection and resettlement**

Professor Jane McAdam, Erica Bower, Sanjula Weerasinghe and Dr Tamara Wood

28 May 2021

We thank you for this opportunity to provide a written submission on the impacts of climate change on migration, protection and resettlement. Please do not hesitate to let us know if we can provide any further information or assistance, including by providing feedback on drafts if useful (j.mcadam@unsw.edu.au). We would be happy to speak with you directly or provide comments via email.

Much of our analysis below is relevant to the session on planned relocation, evacuation and statelessness on 4 June. As such, we hope that this document will also be helpful for that thematic area. If you would like copies of any of the materials referenced below, please let us know.

TOPIC 1: CROSS-BORDER PROTECTION INSTRUMENTS AND GOOD PRACTICES

- 1 How can we make use of existing regional and international legal instruments to provide protection to people fleeing the effects of climate change across borders? Could greater adherence to or full implementation of such instruments improve protection and solutions? What are the legal gaps?**

Background

For a detailed analysis of these questions, please see Jane McAdam's chapter '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) (**attached**). A brief overview is provided below.

For a clear set of sound, empirically based and legally progressive principles to guide your work, please see the [Sydney Declaration of Principles on the Protection of Persons Displaced](#)

[in the context of Sea Level Rise](#), developed by the International Law Association in 2018, with its accompanying commentary (**attached**). Jane McAdam led the drafting process, together with Professor Walter Kälin, Envoy of the Chair of the Platform on Disaster Displacement, and Bruce Burson (who was the decision-maker responsible for much of the New Zealand jurisprudence in this area). The Sydney Declaration sets out States' obligations under human rights law, refugee law, and disaster law to protect people from foreseeable risks. Although drafted with the specific impacts of sea-level rise in mind, the principles also apply in other contexts where the impacts of climate change affect human movement. The commentary provides an explanation of how, when and why particular international legal duties are engaged, and we believe it will be very useful for the US process.

Introduction

Some preliminary observations need to be made:

- the impacts of climate change and disasters do not cause displacement on their own, but interact with a range of other drivers (economic, social, and political) that themselves affect mobility
- climate change amplifies the frequency and/or severity of certain disasters, and slower-onset impacts can make sudden-disasters worse (eg higher sea levels/storm surges)
- some disasters are not affected by climate change at all (eg earthquakes) but can have an equally devastating impact on people, giving rise to the same protection/assistance needs
- from a human rights/protection perspective, it does not make sense to distinguish between climate change and disasters, nor to make protection contingent on a person 'proving' the cause of movement (especially since climate change/disasters interact with other drivers, and scientists argue it is impossible to pinpoint 'climate change' as 'the' cause)¹
- thus, from a human rights/protection perspective, focusing on the rights at risk (rather than the cause of movement) is more likely to identify people with protection needs (and may be facilitated/butressed by existing human rights instruments, such as the ICCPR)
- most movement occurs within countries rather than across borders; when cross-border movement does occur, people will generally remain within their own region.
- migration can be an important adaptation strategy, but currently domestic law tends to hinder rather than facilitate this.

¹ For these reasons, we do not endorse the framing of the issue in the 2019 US [bill](#) to authorize the admission of climate-displaced persons, to establish a Global Climate Change Resilience Strategy, and for other purposes.

In our view, legal and policy frameworks should be developed that enable people to:

- stay in their homes, when this is what they desire
- move elsewhere, before disaster strikes
- receive protection if they are displaced
- have their rights and dignity respected (including through a secure legal status).

International and regional law has much to offer already when it comes to the protection of people moving in the context of climate change and disasters. However, some protection gaps exist, and these are both normative and practical. Some of the normative gaps could be overcome by a more nuanced application of existing refugee and human rights law – in particular, by understanding how disasters, and changes and variability in the climate, provide a context in which conventional persecution can occur, and by recognizing the cumulative impacts of harm as amounting to a risk to life, or cruel, inhuman or degrading treatment (based on articles 6 and 7 of the ICCPR). Greater adherence to, and full implementation of, existing legal instruments would vastly improve protection and solutions on the ground.

(a) International refugee law

International refugee law is often the starting point in the analysis, given that it is the key international treaty dealing with displacement. That said, in many cases of displacement in the context of disasters and climate change, people [generally won't qualify for protection as refugees](#). This is because it is difficult to show that the impacts of disasters or climate change, on their own, amount to 'persecution', and that they are occasioned 'for reasons of' one's race, religion, nationality, political opinion or membership of a particular social group.

However, refugee law should not be dismissed automatically. Even though there's no such thing as a 'climate refugee' legally speaking, there is such a thing as a refugee whose circumstances are worsened because of climate change. Conflict, persecution, disasters and environmental degradation are often interlinked, and the impacts of disasters or environmental degradation may [reinforce ... claims for refugee status](#), for instance by exacerbating discrimination, or resulting in a breakdown of law and order.

UNHCR's October 2020 [legal considerations document](#) stresses the importance of understanding climate change impacts in a broad social and political context, and their capacity to adversely affect government and societal structures. As legal scholar Matthew Scott has [argued](#), it is essential that we appreciate 'the deeply social nature of disasters, within which existing patterns of discrimination and marginalisation are exacerbated'. This understanding has long been recognized in the scholarly literature, including in the fields of disaster risk reduction and management.

In our view, at this point in time the Refugee Convention should *not* be revisited – for the reasons why, please see Jane McAdam's [opinion piece](#) and her more detailed [article](#).

(b) Regional refugee law

Regional refugee law frameworks in Africa and Latin America offer even [more scope for protecting people](#) displaced in the context of climate change, due to their expanded criteria for refugee status. Under the [1969 OAU Convention](#) (Africa) and [1984 Cartagena Declaration](#) (Latin America), refugee protection focuses less on the personal characteristics or risk to the refugee, and more on events or circumstances in the refugee's country – including serious disturbances to public order and massive violations of human rights.

UNHCR has [noted](#) 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' in these instruments, because impacts could constitute events 'seriously disturbing public order'.

These are critical protection frameworks given that both regions experience special vulnerability to climate change and the complex interactions between climate change other factors – including conflict, poor governance, socio-economic inequality, and political and religious tensions.

For more detail on the relationship between disasters and conflict, and the scope for protection under regional instruments, see Sanjula Weerasinghe's reports for UNHCR: [In Harm's Way: International Protection in the context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change](#) (2018) and [Refugee Law in a Time of Climate Change, Disaster and Conflict](#) (2020). Both reports provide evidence of instances in which States have used the regional refugee definitions, as incorporated under domestic law, to protect people fleeing across international borders in the context of disasters and conflict.

(c) International human rights law

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. However, in the cases brought so far on this basis, decision-makers have found that the risk of harm is not yet sufficiently severe to warrant protection.

In late 2019, the UN Human Rights Committee [considered](#) the situation of a man from Kiribati, who said that if he were deported by New Zealand, his life would be at risk because of climate impacts. The Human Rights Committee found that there was not enough evidence at the present time to show that he would 'face life-threatening environmental conditions', or that 'the Government of Kiribati had failed to take programmatic steps to provide for the basic necessities of life, in order to meet its positive obligation to fulfill the author's right to life.' However, as a matter of legal principle, the Committee accepted that climate change may expose people to risks that trigger 'the *non-refoulement* obligations of sending states'. Although the Committee's decision itself is not legally binding, the international legal obligations on which it is based are. For a detailed analysis of the Committee's findings, see Jane McAdam, [Protecting People Displaced by the Impacts of Climate Change: The UN](#)

Further, the Committee made the important point 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 a situation becomes imminently life-threatening. Indeed, neither refugee nor human rights law requires individuals to show that they face an imminent risk of harm if removed. The relevant test is whether there is a real risk of harm occurring in the reasonably foreseeable future. Every protection claim, in whatever context, involves an element of speculation as to future risk. In refugee law, that risk may be as low as 10 per cent, provided that it is plausible and reasonable. An interesting counterpoint is provided by the precautionary principle in international environmental law, which provides that ‘full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation’ where ‘threats of serious or irreversible damage’ exist.

Apart from cases focused specifically on climate impacts, there is a long line of UK and European jurisprudence recognizing that ‘destitution’ or ‘dire humanitarian conditions’ may constitute inhuman or degrading treatment. However, to date, protection has only been forthcoming when exposure could be attributed to a State’s direct actions or omissions rather than to a general state of affairs. For further details, see McAdam *Handbook* chapter.

Of course, human rights law is not just remedial, and States have positive *duties to respect, protect and fulfil human rights* to safeguard people from foreseeable harm. In certain circumstances, the duty to protect the right to life may require States to evacuate or relocate people. Both are considered measures of last resort, and permanent relocation, in particular, is a complex and fraught process that requires in-depth consultation and planning to avoid greater vulnerability. On this point, see further Bruce Burson, Walter Kälin, Jane McAdam and Sanjula Weerasinghe, ‘The Duty to Move People out of Harm’s Way in the context of Climate Change and Disasters’ (2018) 37 *Refugee Survey Quarterly* 379; Jane McAdam and Elizabeth Ferris, ‘Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues’ (2015) 4 *Cambridge Journal of International and Comparative Law* 137. On the particular complexity involved in historical cross-border relocations, see Jane McAdam, ‘“Under Two Jurisdictions”: Immigration, Citizenship and Self-Governance in Cross-Border Community Relocations’ (2016) 34 *Law and History Review* 281. Further literature can be provided on request.

(d) *The law on statelessness*

Since the territorial integrity of some low-lying small island States is at risk from sea-level rise, it is often asked whether their citizens might be rendered stateless. The short answer is ‘probably not’. First, the protection afforded by the statelessness treaties is deliberately restricted to people who are ‘not considered as a national by any State’. Unless a small island State were to deprive its citizens of nationality, which would be unlawful in this context, the statelessness definition would only be triggered if there were no longer a State in existence to recognize them as nationals. This is a highly speculative and convoluted legal argument, and also unlikely to offer much protection in reality. This is because well before territory is

inundated, people will need to move because fresh water supplies will decline, temperatures may be intolerable, and some areas may become uninhabitable. It could be many decades or more before the territory itself 'disappears', by which time many former inhabitants (and their descendants) might be citizens of other States. As such, the timeframes between leaving one's country and needing protection elsewhere are mismatched. From a purely practical perspective, too, the statelessness treaties are not well ratified, and few States have a procedure in place to determine who is stateless (and thus provide an appropriate legal status).

For further analysis, please see McAdam *Handbook* chapter; other material can be provided if required.

(e) Regional free movement agreements

Regional and sub-regional agreements for the free movement of persons between states, such as those in Africa and the Caribbean, can protect people fleeing the effects of climate change by providing:

- lawful access to territory
- status and rights during stay
- opportunities for lasting solutions

A 2019 [study](#) and 2020 [Stakeholder Workshop](#) by the Platform on Disaster Displacement identified several advantages of free movement agreements in addressing cross-border displacement in this context, including: broad eligibility criteria for free movement, opportunities for access to employment and other livelihoods for those who move, and flexibility for smaller-scale arrangements between neighbouring countries to address specific contexts or situations.

Further support is needed for the full implementation of such agreements in national laws and practice. Poor implementation (including discriminatory migration restrictions or suspension of free movement in emergency situations) can undermine access for people affected by the impacts climate change.

2 What opportunities do you see to improve protection and solutions for people displaced by climate change through complementary (non-binding) policy frameworks such as the Global Compact on Refugees, the Global Compact for Safe, Orderly and Regular Migration, and the Nansen Initiative Protection Agenda for People Displaced Across Borders in the Context of Disasters and Climate Change?

These instruments provide an excellent foundation for improving protection and solutions.

The **Nansen Initiative's Protection Agenda** provides a clear roadmap for action and a blueprint of good practices from around the world. 109 governments, including the United States, endorsed its recommendations, which in short involve:

- averting the conditions that lead to displacement and enhancing resilience through disaster risk reduction, climate change adaptation and sustainable development
- protecting those who are displaced, whether internally or across an international border (at least temporarily)
- expanding opportunities for internal and cross-border migration (by considering migration as a form of adaptation)
- engaging in planned relocations within countries as a matter of last resort, with full consultation and participation of those affected

This ‘toolkit’ of responses recognizes the importance of: (a) finding ways to help people remain in their homes, when that is what they desire; (b) creating pathways to assist people to move out of harm’s way before disaster strikes; and (c) ensuring that people who are displaced receive protection (including – importantly – a legal status that safeguards their human rights). This approach is reflected in the two Global Compacts, discussed below.

This approach was highly influential in the language of the **Global Compact on Safe, Orderly and Regular Migration** (GCM), which addresses mobility in the context of disasters, climate change and environmental degradation. It reaffirms that governments have an obligation to not return people to situations of irreparable harm. It urges governments to address risk reduction, resilience and adaptation, and to create more flexible migration pathways and programs to help people who are at risk of displacement. The challenge now lies in implementation. The upcoming International Migration Review Forum in 2022 provides an important opportunity to assess progress, challenges and opportunities, and the UN Network on Migration’s new workstream on climate change and migration provides further possibilities for action. It would also be desirable for the United States to endorse the GCM’s principles.

Although the GCM is not a treaty and does not create new legal obligations, the duty to avoid irreparable harm is encapsulated in the principle of *non-refoulement* under international human rights law (eg ICCPR, articles 6 and 7). See further Walter Kälin’s short [Q&A on the GCM](#), as well as his [more detailed analysis](#).

The **Global Compact on Refugees** (GCR) acknowledges that climate, environmental degradation and disasters ‘increasingly interact with the drivers of refugee movements’, and that ‘external forced displacement may result from sudden-onset natural disasters and environmental degradation’. The instrument reflects national, regional and international legal standards that apply to protection for those fleeing in this context, with paragraph 61 stating that guidance on ‘international and regional obligations’ should be applied ‘in a way which avoids protection gaps and enables all those in need of international protection to find and enjoy it’. As senior UNHCR officials involved in the drafting of the GCR [noted](#), that provision ‘furthermore supports an expansive approach to the interpretation of refugee and other international protection criteria, to obviate the risk of gaps by ensuring that international protection is afforded to those who need it, including where relevant in the context of climate change and disasters.’ For further analysis of how the GCR acknowledges disasters, environmental degradation and climate change, and further provides a basis for approaches to address these considerations, see UNHCR’s [overview](#).

3 What are examples of good practices by individual States and in cooperation that we should highlight or seek to expand or replicate?

National migration laws, while not originally designed to assist people crossing borders in the context of disasters, may provide some [recourse](#). For instance, as David Cantor has [explained](#), 'ordinary' and 'exceptional' migration categories have been used across States in the Americas to accommodate 'international mobility challenges linked to environmental factors', including by expediting visa or permanent residency applications for people from affected States, thus enabling them to enter/remain for work, education, or family reunion purposes.

As noted above, free movement agreements could help to facilitate admission and stay in the aftermath of disasters. In Africa, the recently adopted Protocol on Free Movement of Persons in the IGAD Region (2020) (IGAD Protocol) has paved the way for [specific protection](#) for people displaced in the context of disasters and climate change within free movement arrangements. The IGAD Protocol includes [specific provisions](#) ensuring entry across borders for people 'moving in anticipation of, during or in the aftermath of disaster', and obliges States to 'take measures to facilitate the extension of stay or the exercise of other rights by citizens of other Member States who are affected by disaster ... when return to their state of origin is not possible or reasonable'.

The [Roadmap for Implementation](#) of the IGAD Protocol calls on Member States of the region to '[d]evelop, review and harmonize laws, policies and procedures to facilitate the movement of persons displaced by disasters in accordance with the Protocol'.

In the Americas, States (including the US) developed a [guide to effective practices](#) in 2016 on protection for people displaced across borders in the context of disasters, while in 2018, member countries of the South American Conference on Migration adopted non-binding regional [guidelines](#) on this issue. These have already started to shape State practice in the region.

For further detail, please see:

Sydney Principles text and commentary (**attached**)

David J Cantor, '[Environment, Mobility, and International Law: A New Approach in the Americas](#)' (2021) 21 Chicago Journal of International Law 263

Ama Francis, '[Free Movement Agreements and Climate-Induced Migration: A Caribbean Case Study](#)' (Sabin Center for Climate Change Law, Columbia University, September 2019)

Tamara Wood, '[The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement: A Study of Africa](#)' (Platform on Disaster Displacement, May 2018)

Jane McAdam and Jonathan Pryke, [Climate Change, Disasters and Mobility: A Roadmap for Australian Action](#) (Kaldor Centre for International Refugee Law Policy Brief 10, October 2020)

Bruce Burson and Richard Bedford, [Clusters and Hubs: Toward a Regional Architecture for Voluntary Adaptive Migration in the Pacific](#) (Nansen Initiative on Disaster-Induced Cross-Border Displacement, December 2013).

4 Where do you see synergies and gaps in the multilateral system, particularly for protection-mandated agencies (UNHCR, IOM, ICRC, UNICEF, OHCHR), and how should the US government seek to address them?

There are particular operational gaps when it comes to the protection of people displaced across borders in the context of slow-onset processes. While there inter-agency arrangements exist in contexts where disasters and persecution clearly intersect/overlap, there is a need for greater coordination of relevant actors in situations where not everyone fleeing across an international borders is a refugee.

5 What laws or policies have proven effective in the United States and what do you recommend we prioritize for USG domestic policy action?

In the US context, the biggest gap is the absence of a domestic status for people at risk of such harm (complementary protection or subsidiary protection). As Jane McAdam noted in a piece for [Just Security](#), the Biden administration should follow the lead of countries around the world – including in Europe, the United Kingdom, Canada, Australia, New Zealand, and parts of Latin America and Africa – and adopt [legislation](#) on [complementary protection](#) to safeguard people from return to ill-treatment, including because of [climate change impacts](#). New Zealand’s approach is arguably the broadest, since the legislation refers directly to the State’s obligations under the ICCPR (rather than creating a narrower domestic version of such obligations, as is the case in many other jurisdictions).

In the US, Temporary Protected Status (TPS) is a useful mechanism in the aftermath of a disaster, for those who are already in the US. However, it is a partial solution since it does not assist those who are actually displaced by the disaster’s impacts, and is not self-executing (ie TPS is conditional on a formal declaration by the Secretary for Homeland Security in a given situation). It also lacks a transition mechanism to a permanent status if return proves impossible. Between 1952 and 1980, [US law](#) did in fact extend protection to people fleeing ‘natural calamities’ (although between 1965 and 1980, [no one](#) was admitted as a refugee on this basis).

We would also note that the US has an obligation to cooperate with countries affected by disaster and climate change, both internationally and [regionally](#). As the Sydney Declaration notes, this may include by providing technical and financial support; strengthening disaster risk reduction and climate change adaptation; evacuating people to save lives; providing humanitarian assistance; and enabling cross-border migration.

Finally, we reiterate the point above that migration pathways – including labour, family reunion and education – are important mechanisms for enabling people to move, both proactively and reactively. There are good examples from State practice of governments expediting processes for people from disaster-affected areas, or relaxing/waiving certain visa requirements. The US could start to identify processes now that would enable such flexibility, rather than operating on an ad hoc basis each time a crisis arises.

Similarly, creating resettlement opportunities for people from ‘hotspot’ countries would enable targeted protection.

TOPIC 2: INTERNAL DISPLACEMENT PROTECTION INSTRUMENTS AND GOOD PRACTICES

1 **How can we make use of existing regional and international legal instruments to provide protection to people fleeing the effects of climate change within their own countries? Could greater adherence to or full implementation of such instruments improve protection and solutions? What are the legal gaps?**

For an overview, please see the Sydney Declaration [text](#) and commentary (**attached**), and Jane McAdam’s chapter from *The Oxford Handbook for International Refugee Law* (**attached**). In short, much wider use could and should be made of existing instruments to protect people fleeing in this context, and doing so would enhance protection and solutions.

In short, the Guiding Principles on Internal Displacement expressly include people ‘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’. 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. Although not directly enforceable themselves, the Guiding Principles reflect binding international legal standards and set out in detail how internally displaced persons (IDPs) should be treated, assisted, and protected. The challenge lies in strengthening their normative and operational implementation in the disaster context and developing the capacity of the relevant authorities to apply them.

Furthermore, more attention should be given to the plight of particular groups, such as women, children, older persons, indigenous groups, and those with disabilities, whose specific needs may be overlooked (notwithstanding specific legal instruments concerning them). There is a risk that people may become trapped, and invisible to policymakers whose focus is on displacement (ie movement). Conversely, people may be assumed to be ‘voluntary migrants’ (and thus not in need of assistance of protection) – such as pastoralists who have traditionally moved (see further Kaldor Centre [submission](#) to the UN Secretary-General’s High-Level Panel on Internal Displacement).

The Global Protection Cluster (GPC) has a [global database](#) on IDP laws and policies. According to analysis there, a range of countries have laws and policies that in some way consider disaster and climate dimensions. However, there is substantial variation in the scope

and quality of this recognition across domestic laws and policies. Evaluating which laws and policies robustly address internal displacement associated with disasters and climate change may provide helpful insights for US policy action. The GPC task team on law and policy has recently begun efforts to update the database.

A notable gap constraining the adoption and implementation of laws and policies on internal displacement relates to data. While the Internal Displacement Monitoring Centre (IDMC) compiles data on internal displacement associated with disasters by country, this does not necessarily mean that in all countries, government actors are integrally engaged in data collection processes. As a consequence, domestic understanding and sensitivity to internal displacement associated with disasters may be limited. Identifying ways to sensitize governments and other relevant stakeholders to these dimensions, and to support collection of short-term and longitudinal data on displacement associated with disasters, is an essential step towards addressing legal and policy gaps, including as they relate to prevention, responses and solutions.

As well, conceptions of what amounts to a disaster may vary from country to country. For instance, while movements associated with floods may be conceived as displacement, movements associated with drought may be covered under different frameworks. Lack of data on movements associated with drought may also constrain opportunities to capture and address such displacement under IDP frameworks.

In the Kaldor Centre's [submission](#) to the UN Secretary-General's High-Level Panel on Internal Displacement in 2020, we noted that more targeted measures may be appropriate to assist governments in identifying, and responding to, internal displacement in the context of climate change and disasters. These could include:

- promoting ratification of normative frameworks and incorporation into national law and policy;
- providing technical advice to States in the application of normative frameworks to the disaster context, such as by identifying key provisions and giving guidance on their application in disaster situations; providing guidance on integrating national internal displacement policies with national disaster risk reduction and response strategies; and providing model legislation;
- developing practical guidance and capacity-building activities to support the implementation of national internal displacement policies and programmes in the context of climate change and disasters – for instance, through joint training across relevant agencies and ministries; standard operating procedures for responding to such displacement; and simulation exercises for relevant agencies and officials in the implementation of internal displacement policies in this context;
- providing additional support and capacity-building for monitoring and enforcement mechanisms established (or envisaged) under normative frameworks, including technical guidance for human rights monitoring and peer-review mechanisms.

In addition, many countries are affected by both conflict and disaster. For instance, in the 50 countries and territories that recorded new internal displacement associated with conflict and

violence in 2019, 45 also recorded new internal displacement associated with disasters. Estimates for 2018 and 2017 reveal a comparable picture. This evidence shows that most countries grappling with conflict are also dealing with disasters, which impacts people, institutions and governance. In some countries, conflict and disaster occur in geographically distinct locations and people are displaced in the context of only one trigger. In others, however, conflict and disaster interact and overlap as drivers and triggers of internal displacement, and some people confront these challenges concurrently or episodically. Together they undermine resilience, heighten risks, compound conditions of vulnerability and exacerbate protection needs. The combined effects of conflict and disaster complicate efforts to prevent and mitigate displacement, to protect affected and displaced people and to promote sustainable solutions to internal displacement. In such situations, ensuring that actors responsible for addressing internal displacement, risk reduction and resilience are provided with enabling frameworks and mandates to coordinate and coherently address such challenges is essential. Further information on these challenges and opportunities can be found in a forthcoming study by Sanjula Weerasinghe for UNHCR and IOM, *Bridging the Divide in Approaches to Conflict and Disaster Displacement: Norms, Institutions and Coordination in Afghanistan, Colombia, Niger, the Philippines and Somalia*.

At the **regional level**, the 2006 Great Lakes IDP Protocol and the 2009 African Union Convention for the Protection and Assistance of Internally Displaced in Africa ([Kampala Convention](#)) expressly encompass those displaced by disasters. Uniquely, the Kampala Convention requires 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’. However, ratifications remain low and a lot more work is needed for its principles to be translated into practice. Legal scholar Romola Adeola has made the following [recommendations](#) for supporting governments in Africa to implement the Kampala Convention in the context of climate change:

- institutionalizing a uniform regional guide on protection for people displaced in the context of climate change and disasters, based on the Kampala Convention
- integrating such guidance into national laws and policies to protect IDPs
- ensuring implementation of such measures at various levels of governance
- identifying evidence-based practices to further develop protection for IDPs in this context.

Finally, internal displacement may transform into cross-border displacement if people cannot find durable solutions in their home country. That is why focusing on the prevention elements identified in the Nansen Initiative Protection Agenda (eg disaster risk reduction, climate change adaptation) are so crucial, as they can themselves facilitate protection.

2 What are examples of good practices or domestic instruments used by States for IDP protection and solutions that consider climate change risk and impacts?

(a) *Internal displacement*

Some States directly affected by displacement have adopted their own national policies and guidelines.

Vanuatu's 2018 [National Policy on Climate Change and Disaster-Induced Displacement](#) covers measures to reduce drivers of displacement, minimize the negative impacts of displacement, and ensure progress towards durable solutions. It also explicitly acknowledges the importance of safeguards for planned relocation. The policy outlines both systems-level interventions concerning protection, monitoring and capacity-building, as well as sector-specific interventions (eg on housing and land, livelihoods, and traditional knowledge and culture). Cross-cutting issues underpin these interventions, including 'partnerships, gender responsiveness, social inclusion, community participation'.

Fiji's 2019 [Displacement Guidelines in the context of Climate Change and Disasters](#) were designed to assist the government and other stakeholders 'to address and reduce vulnerabilities associated with displacement' and to consider 'sustainable solutions to prevent and minimize the drivers of displacement on the affected communities in relation to climate change and disaster-associated events'.

While further evaluation of the impacts of these policies is needed, they reflect a political willingness to act on the issues.

Finally, [submissions](#) to the High-Level Panel on Internal Displacement provide further examples and analysis of domestic instruments and practices.

(b) *Internal planned relocation*

There is also a considerable body of State practice on planned relocation, which can be a strategy to avert future internal displacement related to disaster or climate risk, or a durable solution for people who have already been displaced. Without proper safeguards based in human rights law, however, planned relocation can undermine socio-economic prosperity and cultural practices. Indeed, evacuating people from a disaster-affected area – intended as an immediate and short-term measure – may result in protracted displacement if return is not possible. (On evacuations as a form of displacement, see Jane McAdam, '[Displacing Evacuations: A Blind Spot in Disaster Displacement Research](#)' (2020) 39 *Refugee Survey Quarterly* 583.)

Erica Bower and Sanjula Weerasinghe's 2021 report, [Leaving Place, Restoring Home: Enhancing the Evidence Base on Planned Relocation Cases in the Context of Hazards, Disasters, and Climate Change](#) provides detailed analysis of State practice on planned relocations. This study, and its accompanying [dataset](#), identifies over 300 cases of planned relocation across the world since 1970, including 36 in the United States alone. The study

analyses 34 cases in depth, including ten from Alaska, Arizona, Wisconsin, Illinois, Missouri, Washington and Louisiana. Interestingly, all ten cases were initiated by community members themselves, and often involved indigenous populations. The study provides a sense of the timeline of relocation processes, key actors involved, participation mechanisms, notable challenges, as well as other key contextual and operational characteristics. It also gives an overview of notable international and domestic norms that define, describe or reference planned relocation. It identifies differences in conceptual understandings of planned relocation and offers a typology of practice. Overall, it aims to provide governments and other actors with an initial evidence base on existing practice, to promote approaches to policy and practice that mitigate risk and protect people's human rights and dignity.

A few countries have specific domestic instruments on planned relocation. In 2018, Fiji developed national [Planned Relocation Guidelines: A Framework to Undertake Climate Change Related Relocation](#), as well as a [Climate Relocation and Displaced Peoples Trust Fund for Communities and Infrastructure](#). Fiji is now in the process of developing standardized operating procedures to implement the guidelines operationally, even though a number of communities have already been relocated from areas highly susceptible to disasters. New Zealand [donated](#) US\$2 million to Fiji's relocation fund (as part of a broader package of climate change assistance).

The Solomon Islands is currently undertaking a similar process to develop a national instrument on planned relocation in climate change contexts.

3 Where do you see synergies and gaps in the multilateral system's efforts to address internal displacement related to climate change, and how should the US government seek to address them?

Broadly, the multilateral system's efforts on IDP protection and on prevention, preparedness and disaster risk reduction occur in silos. This constitutes a critical gap, and demonstrates the need for greater dialogue between relevant protection and prevention stakeholders (both across agencies at the international level, and across national government ministries). Further recommendations in this regard are made in a forthcoming study, *Bridging the Divide in Approaches to Conflict and Disaster Displacement* (noted above).

The mandates and activities of relevant UN agencies and other organizations generally focus on responses to internal displacement associated with sudden-onset extreme events, rather than slow-onset changes that are less visible. Accordingly, there are gaps in the multilateral system's efforts to address internal displacement associated with slow-onset processes, such as droughts and sea-level rise.

On a domestic front, the US government should work with communities requesting relocation support to establish a governance framework that is centered on facilitating their participation and decision-making throughout the process, protecting their rights and dignity, and providing them with adequate financial resources and operational support. Existing guidance and tools at the international level, including [Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation](#) (2015) and [A Toolbox: Planning](#)

Relocations to Protect People from Disasters and Environmental Change (2017) may be helpful in this regard.

Finally, greater thought should be given to the meaning of 'durable solutions' when it comes to displacement in the context of climate change and disasters. In particular, it is important to think about solutions more proactively – not just as a means to address past displacement, but also as a means to avert (or at least minimize) future displacement.