**Call for inputs**

**Special Rapporteur on the promotion and protect 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”**

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

This year, a [fourth consecutive failed rainy season](https://www.theguardian.com/global-development/2022/oct/11/overlapping-shocks-are-undoing-efforts-to-end-hunger-in-africa-un-warns) has plunged the Horn of Africa into intense drought and famine – and a fifth is predicted to fail as well. Although droughts are not uncommon in Somalia, over the past decade, climate change has been increasing the frequency, duration and severity of these droughts. Somalia is ranked as the [second most vulnerable country](https://gain.nd.edu/our-work/country-index/rankings/) in the world to climate change. Compounded by other recent shocks such as locust infestations, COVID-19 and food shortages, [one million people](https://www.unhcr.org/uk/news/press/2022/8/62f4c3894/million-people-displaced-drought-somalia.html) in Somalia have been displaced as their homes, fields and livestock are ravaged.

Some of the families displaced by the ongoing drought have fled across the border to Dadaab refugee camp, located in Kenya near the Somali border. Dadaab was set up in [1991](https://www.aljazeera.com/features/2022/9/14/from-dadaab-to-mogadishu-returnee-refugees-build-new-somalia) to temporarily host Somali refugees fleeing the civil war, and has provided shelter for subsequent waves of refugees fleeing the militant group Al-Shabaab, Somalia’s 2011 famine, and now, the current drought. It currently hosts over [200,000 registered refugees](https://www.unhcr.org/ke/wp-content/uploads/sites/2/2022/02/Kenya-Infographics-31-January-2022.pdf) and an uncounted number of unregistered refugees, many who have arrived in the past 12 to 18 months fleeing the latest climate-induced catastrophic drought in Somalia.

In September 2022, a team from EJF partnered with Gargaar Humanitarian Radio to film a [documentary](https://vimeo.com/762298589/ef18744225) on the impacts of the drought on people living in Dadaab and on the newly arrived climate refugees. All of the displaced people EJF met with spoke of the devastating impacts of the drought – a drought unlike any they had experienced before – as the primary driver of their displacement. “We would cultivate the land then the crops failed due to the drought and lack of rain water. We ran away from drought, we had nothing to eat, our children would die of starvation” said Iasha, a 22-year old single mother who fled Somalia alone with her children. Another refugee named Mohamed told EJF that his family “used to have 120 cows and around 100 goats. All of them have died.”

Hassan, a father heading a family of ten, has been displaced twice to Dadaab. His family first fled the drought in 2010, and then opted for voluntary repatriation after five years in the camp. They returned to Somalia and restarted farming their land and built up a new herd, until the current drought killed all the livestock and multiple harvests in a row failed, and they were forced to flee once again. He told EJF: “We loved our country and we wanted to stay. But suffering, droughts and hardships made us flee our country.”

In the camp, refugees lose many of the most basic human rights, such as adequate shelter, education or access to adequate clean, safe food. EJF spoke to Halima, a single mother of seven children, and who was forced to flee Somalia to Dadaab. She said “We don't have anything except the things that were donated to us by people. I'm a mom and a father for my kids, and I don't have anything for them.”

[Displaced women in particular face immense risk](https://ejfoundation.org/reports/in-search-of-justice) to their human rights in relocation sites, due to unsafe living conditions and systemic discrimination. Wiilo and Iasha are both single mothers and unregistered Somali refugees who live on the outskirts, with no access to water, food, toilets or healthcare. They told EJF about their fears of violence in the camp as they try to provide for their children, telling EJF about how some men had “chased [them] away [from the woods]. Some [other] girls were beaten up badly.”

These are just a few examples of the hardships currently being experienced by Somalia’s climate refugees, and climate refugees elsewhere across the globe. A new international legal framework is urgently needed to protect climate refugees.

**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?**

Isolating a single push factor for migration can be challenging, but there can be no doubt that the climate crisis is rendering life more dangerous and difficult, and threatening the human rights of communities around the world. The degree to which a decision to leave home due to the impacts of climate change is a voluntary one is even more nuanced, raising questions of individual agency in much the same way that the decision to flee a war zone can represent both lack of other survivable alternatives and simultaneously be an empowered decision. Migration is one form of adaptation to the devastation wrought by the climate crisis, and the degree to which each individual’s choice to engage in it is forced or voluntary will vary, but in all cases does not erode individual agency.

Determining whether climate-related migration is forced or voluntary, or untangling global heating from a web of interrelated push factors for leaving home, may not be practicable in the vast majority of displacement cases, but this may not be the most relevant issue for the international community. The crux of the matter will be whether these displaced communities need international protection, and clearly defining the grounds on which this need can be codified into a legal right.

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.**

The current international protection regime does not meet the needs of climate refugees. There remains a deficit of adequate legal and policy frameworks governing climate-induced displacement at the international level. We refer to a ‘protection gap’ to describe the lack of satisfactory measures addressing the various adaptation, disaster risk reduction, humanitarian assistance and legal protection needs of climate refugees. As the climate crisis intensifies, this gap will present a growing humanitarian crisis and risk the erosion of human rights achievements and the failure of the Sustainable Development Goals agenda across the world. For a more detailed discussion and legal analysis of policies and practices to protect those displaced by the climate crisis, please refer to [EJF’s report](https://ejfoundation.org/reports/no-shelter-from-the-storm-the-urgent-need-to-recognise-and-protect-climate-refugees) “No shelter from the storm: The urgent need to recognise and protect climate refugees.”

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.**

The most important thing that States, businesses, civil society and the international community as a whole can do is to rapidly reduce greenhouse gas emissions and limit global heating to below 1.5C in order to minimise the amount of people who will suffer catastrophic climate impacts and be forced to flee their homes. Equally important to this is scaling up investment in and deployment of adaptive capacity, to shield communities from the worst impacts of the climate crisis and enable them to fully exercise and enjoy their rights to life, livelihoods and home. Wealthy nations and the private sector have a critical role and a moral obligation to lead in both emissions reduction and delivery of climate finance on mitigation, adaptation and compensation for loss and damage. By reducing the extent of climate change impacts and the vulnerability of communities to them, we can protect potential climate refugees from ever being displaced – prevention is the best medicine.

However, even under the most ambitious emissions reductions scenario, there will be significant numbers of climate refugees. Indeed, we are already witnessing climate displacement occurring today, from the Horn of Africa to Central America to Bangladesh. As such, durable and dignified solutions must be developed urgently. Certain international legal norms can be interpreted to begin pointing the way for States and intergovernmental organisations to provide protection for climate refugees, both those displaced internally and across international borders. For example, the 1998 UN Guiding Principles on Internal Displacement have a clear relevance to climate-induced displacement. They refer explicitly to flight from ‘natural or human-made disasters’ and cover the before, during and after phases of displacement – meaning that they contain pertinent requirements for States, such as the need to develop adequate early-warning and disaster preparedness systems. The Guiding Principles offer a soft law approach which is not legally binding and as such provides no mechanisms for enforcement or accountability. However, they are predominantly based on established international legal norms and, in this sense, it may be possible to invoke the existing instruments to which it refers, such as can be seen in Principle 6, “the right to be protected against being arbitrarily displaced”, which draws creatively from existing binding international law to make explicit the implicit right to not be arbitrarily displaced.[[1]](#footnote-1) Another example is the 2015 Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change. The Protection Agenda seeks to help states to better prevent and prepare for disaster-induced displacement, and to improve the standard of responses in situations of large-scale displacement. Notably, the Protection Agenda sets out suggested state practice in identifying and admitting crossborder disaster-displaced persons and the status of such persons once admitted. States must fully adhere to the best practices outlined in the Guiding Principles and the Protection Agenda as a first step to protecting climate refugees, but non-binding soft law alone is not a sufficient solution to meet the needs of climate refugees.

Another example of existing legal rulings relevant to the protection and determination of status of climate refugees was the ruling of the UN Human Rights Committee in the case of Ioane Teitiota, who fled rising sea levels, failing crops and other climate impacts in Kiribati with his family. The UN Human Rights Committee ruled against Teitiota in October 2019 based on his failure to prove that his deportation to Kiribati consisted of an immediate threat to his right to life. However, the Human Rights Committee also indicated that it may be unlawful for governments to return people to countries where their right to life with dignity would be put at risk by the climate crisis.[[2]](#footnote-2) While the Teitiota case provides a glimmer of hope as to the willingness of international bodies to legally recognise the threat of the climate crisis, it also highlights how our existing legal frameworks are currently failing to protect those most at risk from the climate emergency. We urgently need a new and binding legal framework specifically for the protection of climate refugees, separate from the 1951 Convention, specifically designed and fit-for-purpose for the complexity of climate-induced displacement.

Finally, a key question in addition to addressing the legal status of climate refugees is the issue of what conditions they will be met with. A significant proportion of climate refugees will be displaced permanently, as a changing climate renders their homes uninhabitable. Therefore, all protective solutions must be durable and dignified, and with an eye towards the long-term wellbeing and resilience of both displaced and host communities. Long-term encampment models are not a durable solution for climate refugees; rather States and intergovernmental organisations should prioritise integrated protection models whereby climate refugees are able to access and exercise their rights within the fabric of the wider host community. Support to the developing and middle income States which are most likely to bear the brunt in welcoming climate refugees is also a key component of a rights-based legal framework for climate refugees.

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

EJF calls on the international community to work towards a new legal framework for the protection of climate refugees. UN Member States must act now to agree on clear definitions for climate-induced migration which can be implemented in international and domestic law to ensure a rights-based approach and give clarity to the legal status of ‘climate refugees’. A new international agreement must be developed which lays out the rights and protections due to those forcibly displaced by the climate crisis, and the duties and obligations of third parties and sovereign states to uphold those rights.

However, amending existing international refugee law by widening its interpretation potentially risks opening it up to renegotiation and thereby undermining existing protection mechanisms. Therefore, it is critical that a new legal framework for the protection of climate refugees be created entirely outside of the scope of the 1951 Convention.

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

Displacement can occur internally within states, or externally, across international borders. Migration due to climate and environmental factors is projected to be primarily internal displacement, and when external, will mostly be across low- and middle-income and primarily agrarian economies and countries.[[3]](#footnote-3) The need for protection is clear whether climate refugees are displaced internally or across international borders; however, when they are displaced across an international border, a particularly acute legal protection gap exists.

In both cases, a new international legal framework for the protection of climate refugees should clearly lay out the rights of displaced people and the responsibilities of States to safeguard them, including pre-displacement (ie: investments in early warning systems, resilience and adaptation measures), during displacement (ie: access to humanitarian services, legal protections and timely asylum processing for those across borders), and post-displacement (ie: designing durable solutions for long-term wellbeing of climate refugees and host communities).

**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?**

EJF defines a climate refugee as “Persons or groups of persons who, for reasons of sudden or progressive climate-related change in the environment that adversely affects their lives or living conditions, are obliged to leave their homes either temporarily or permanently, and who move either within their country or abroad.” By using the term ‘climate refugee’, EJF incorporates humanitarian protection and the cross-cutting issue of justice. Irrespective of debates over terminology, climate refugees are victims of anthropogenic climate change, needing and deserving support and full protection of all enshrined human rights.

The lack of an internationally recognised definition of “climate refugee” is the first obstacle to developing and implementing a comprehensive protective framework for those displaced by the climate crisis. Agreeing a definition is a task for primary urgency. However, EJF does not believe that such a definition should be included as a separate category under the UN Refugee Convention, because reopening settled international asylum law could risk weakening the protections for all types of displaced people, the opposite of the desired outcome. Rather, EJF advocates for a new international legal framework, separate from the UN Refugee Convention, which defines a climate refugee, lays out the rights and protections due to them, and the obligations of States to uphold these protections under international and national law.

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

Indigenous peoples' separate and particular rights under the UN Declaration on the Rights of Indigenous Peoples must be respected and mainstreamed under an eventual international legal framework on climate refugees.

1. Kälin, W. (2001) How hard is soft law? The Guiding Principles of Internal Displacement and the need for a normative framework. Presentation at Roundtable Meeting at Ralph Bunche Institute for International Studies, https://www. brookings.edu/on-the-record/how-hard-is-soft-law-theguiding-principles-on-internal-displacement-and-the-needfor-a-normative-framework/ [↑](#footnote-ref-1)
2. Ioane Teitiota v. New Zealand (advance unedited version), CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020. https://www.refworld.org/ cases,HRC,5e26f7134.html [↑](#footnote-ref-2)
3. Hoffman, R., Dimitrova, A., Muttarak, R., Crespo Cuaresma, J., & Peisker, J. (2020) A meta-analysis of country-level studies on environmental change and migration. Nature Climate Change, vol. 10, pp. 904–912. [↑](#footnote-ref-3)