**Special Rapporteur on the promotion and protection of human rights in the context of climate change**

Call for inputs: Report on addressing the human rights implications of climate change displacement including legal protection of people displaced across international borders

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**Introduction to the submitting organisation and reasons for giving evidence**

1. The School of Law at the University of Bristol have a strong focus on international, migration and human rights law. This evidence was prepared by Dr. Kathryn Allinson, Lecturer in Law and Co-Director of the Centre for International law, who researches and teaches in these areas and is affiliated with the research institute Migration, Mobilities Bristol. As such, this input comes from an expert in international refugee, human rights and state responsibility law. It is based upon a chapter that will be published in Vincent Chetail (ed) *Oxford Commentary on the Global Compact on Migration* (OUP, 2023)
2. This input addresses Questions 3 and 4 of the call.
3. **Questions 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.**
4. There is no such thing as a climate change refugee. Under Article 1(A) of the 1951 Refugee Convention, climate-related displacement does not constitute grounds for international protection.[[1]](#footnote-1) Consequently, we must look to other legal frameworks for ensure protections for people displaced across international borders as a consequence of being forcibly displaced by climate change. The human rights implications of climate change displacement includes the legal protection of people displaced across international borders. The International Covenant on Civil and Political Rights (ICCPR)[[2]](#footnote-2) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[[3]](#footnote-3) outline the applicable human rights protections for all people, including migrants, and include obligations of non-discrimination, access to basic services, ensuring freedom from torture and non-refoulment.[[4]](#footnote-4) The applicability of human rights law to people displaced by climate change has been discussed extensively.[[5]](#footnote-5) As such, individuals may have access to complementary protection mechanisms and States will have obligations under human rights law to provide protection to individuals displaced by climate change.
5. There is also a large framework of relevant non-binding agreements that seek to give protection and provide solutions to communities displaced by climate change. In 2018, most States endorsed the Global Compact for Migration (GCM)[[6]](#footnote-6). It recognized for the first time “the adverse effects of climate change, environmental degradation, as well as other precarious situations” as co-drivers of human mobility (Objective 2). The Compact in Objective 5 distinguishes between migrants compelled to leave their country of origin due to “sudden-onset natural disasters and other precarious situations”, and those leaving due to “slow-onset natural disasters, the adverse effects of climate change and environmental degradation, such as desertification, land degradation, drought and sea level rise”. In the first case, according to point 21(g), states should develop existing national and regional practices for admission and stay of appropriate durations by providing “humanitarian visas, private sponsorships, access to education for children and temporary work permits”. In the latter case, point 21(h) only mentions planned relocation and visa options.
6. The GCM builds on other soft-law agreements and frameworks that are seeking to respond to climate-change displacement. The 2010 Cancun Adaptation Framework, which seeks to enhance action on adaptation, including through international cooperation, in para 14(f) commits ‘to enhance understanding, coordination and cooperation about climate change induced displacement, migration and planned relocation’[[7]](#footnote-7). The 2015 Paris Agreement creates a task force to ‘develop recommendations for integrated approaches to avert, mitigate and address climate-induced displacement.[[8]](#footnote-8)’
7. The Sendai Framework for Disaster Risk Reduction 2015-2030 is a 15-year global agreement to reduce, prevent and respond to disaster risks globally. It aims to strengthen social and economic resilience to disasters caused by natural, biological and technological disasters, which are further exacerbated by climate extremes and slow onset events, including responding to displacement caused by natural disasters. Additionally, the Nansen Initiative on Disaster-Induced Cross-Border Displacement sought to develop an agreement on addressing the needs of people displaced across borders. The ‘Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change[[9]](#footnote-9)’ (Protection Agenda Vol.1) and the Platform on Disaster Displacement provide a toolbox of policy guidance and recommendations[[10]](#footnote-10). This work is focused on concrete tools to address climate movement, such as humanitarian visas, stays of deportation, and bilateral or regional arrangements for the free movement of persons.[[11]](#footnote-11)’
8. **Question 4: What international, regional and national policies and legal approaches are necessary to protect people and communities displaced by climate change**
9. Unlike refugee movements, climate-induced displacement will be gradual and localised. This means a few things, first, we can plan for it. Second, where it does not concern a loss of state territory (as with sinking islands) it will likely be circular or seasonal and so movement to seek safety and job opportunities, will likely also be circular. Third, in such circumstances, regional and national level approaches that are context specific are often better than abstract international frameworks.
10. GCM Objective 5, the ILO and UNHCR, are all calling for local and regional arrangements that create access to legal pathways that are open to all, not just highly skilled individuals to respond, adapt and mitigate climate change-induced displacement.[[12]](#footnote-12). Regular labour migration, when in line with human rights and labour standards, can contribute to climate adaptation and development in CoOs.
11. Labour migration and humanitarian visas can contribute to climate adaptation and development in the country of origin and destination[[13]](#footnote-13). Actionable commitments g) and (h) of Objective 5 GCM respond to sudden and slow on-set natural disasters, respectively and encourage States to provide humanitarian visas or visa options in these situations. Humanitarian visas enable people who are forced to move to enter a new country where they may be able to apply for asylum or it may facilitate admission for other pathways such as private sponsorship programmes, scholarships or family reunification.[[14]](#footnote-14) For example, in New Zealand’s the Pacific Access Category facilitates access for Pacific Islanders through work and visa waivers for people from Tuvalu, Kiribati and Tonga, this is in addition to New Zealand’s temporary migration schemes and evidence the IPT will grant permission to stay on the humanitarian grounds of climate change.[[15]](#footnote-15)
12. The GCM thus highlights that a range of pathways should be available to people who are compelled to leave due to climate change and natural disasters. Labour mobility agreements and temporary work permits enable individual’s greater agency in deciding when and where to move, as well as giving them access to employment opportunities, when the effects of climate change are gradual.[[16]](#footnote-16) This aligns with calls by States affected by climate change for ‘migration with dignity[[17]](#footnote-17)’. It is necessary to supplement this with humanitarian visas in situations of sudden onset disasters where more planned movement is not possible. The first biennial report by the UN Secretary-General on the implementation of the GCM highlighted how countries had incorporated climate change considerations into their national migration policies.[[18]](#footnote-18) For example, development programmes by Germany in cooperation with the government of Fiji seek “to develop solutions such as human-rights-based disaster displacement and relocation guidelines”[[19]](#footnote-19).
13. These pathways can be in the form of visa liberalisation wherein States minimize visa requirements for short stays (this can be useful for individuals seeking work abroad).[[20]](#footnote-20) An alternative is labour mobility agreements where states agree on pathways to seek work and individuals may travel without a visa to take up that employment, they will be able to bring family and have access to basic services but only for the duration of the employment.[[21]](#footnote-21) Such agreements are already being utilized in the Pacific region and elsewhere between island states and NZ and Australia, where they are actually in the process of drafting a Framework on Climate Mobility in the hope they can get states within the region to commit to it. There are also free movement regimes, such as seen in the EU, where individuals are free to move to seek work in another state and will have full access to social welfare whilst there.[[22]](#footnote-22) Humanitarian visas is another avenue which would be provided to individuals based upon the humanitarian emergency and enable them to enter a country on humanitarian grounds; these are often temporary and do not always have access to work provisions, however, for the solutions to be durable they should enable access to work and basic services and avoid discrimination.
14. Any pathways for migration must be founded upon existing human rights law and be open to all skill levels to avoid entrenching inequalities. In 2009, the UN Human Rights Council recognised under resolution 10/4 that there is a ‘core inter-linkage between human rights and climate change’ such that those displaced by climate change would be able to rely on the obligations outlined in the ICCPR and the ICESCR[[23]](#footnote-23). Individuals who access legal pathways should be protected by human rights and labour law to ensure equal and fair treatment, non-discrimination, access to basic services, healthcare and education, as well as protection from refoulement. OHCHR guidance should be utilised to implement these commitments, in particular the 2017 principles and guidelines on the human rights protection of migrants in vulnerable situations,[[24]](#footnote-24) and that on protecting the rights of those displaced due to climate change.[[25]](#footnote-25)
15. A further challenge in looking to soft-law agreements to respond to climate change is that, whilst they provide a framework for how States should be better cooperating to share the responsibility of responding to all forms of displacement, but they do not create binding obligations on States. As such, there is a gap both in regard to legal accountability for people who have been displaced by climate change but cannot access protection and for ensuring responsibility sharing and international cooperation between states for responding to climate displacement.
16. States are not willing to share in the responsibility for displacement. This huge inequality is perfectly demonstrated in the displacement climate change will cause – it will affect countries already hugely vulnerable and with great inequality. States in the global north will suffer less and will, likely, attempt to ignore their responsibility.
17. Under refugee law, responsibility is for the provision of protection and responsibility sharing is about developed states supporting developing states through financial assistance or resettlement. It is not concerned with the states contribution to or causing the displacement. Accountability arises when a states breaches its obligations re provision of protection not for causing refugee flows. However, Goodwin-Gill has suggested that the country of origin (CoO) should provide financial support to provide humanitarian assistance.[[26]](#footnote-26) In the case of CC displacement, it is not the CoO that is responsible but carbon-emitting States.
18. Interestingly, under climate law, the differentiation model sees that those who emitted the most, having greater responsibility in regard to emissions targets and supporting developing states.[[27]](#footnote-27) Responsibility for climate change is linked with how much a State contributed to it. Accountability arises where states have failed to reach these targets. Interestingly, in the *Torres Island* decision, a concurring opinion of human rights committee has stated that due diligence obligations on a state to mitigate and adapt the effects of climate change are greater on those states with more significant emissions.[[28]](#footnote-28) Thus, we are starting to see a differentiation approach come through in human rights as due diligence, but whether this will filter into refugee law is unclear. I would argue it is necessary for human rights and refugee lawyers and practitioners to utilize the differentiation model to assign greater responsibility for climate change displacement to those states who have contributed the greatest emissions. Guidance and clarity on such an approach is much needed. However, at the moment, there is still a gap in how responsibility for climate displacement is shared.
1. AF (Kiribati) [2013] NZIPT 800413 , New Zealand: Immigration and Protection Tribunal, 25 June 2013; para 63; (Canada (Attorney General) v Ward, 2 S.C.R. 689 (1993); Horvath v Secretary of State for the Home Department, 1 AC 489, [2000] UKHL 37 held that the Refugee Convention does not protect victims of natural disasters, slow-onset degradation, poor economic conditions or famine’. See also Jane McAdam, ‘Climate Change-Related Displacement of Persons’ (The Oxford Handbook of International Climate Change Law, 24 March 2016); McAdam, ‘The Emerging New Zealand Jurisprudence on Climate Change, Disasters and Displacement’ (n 5) 134; See also UNHCR analysis [here](https://www.unhcr.org/4da2b5e19.pdf) and [here](https://www.unhcr.org/596f25467.pdf). [↑](#footnote-ref-1)
2. UN International Covenant on Civil and Political Rights (ICCPR) 1966, 999 UNTS 171 [↑](#footnote-ref-2)
3. UN International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, 993 UNTS 3. [↑](#footnote-ref-3)
4. For the full list see, OHCHR, The Core International Human Rights Instruments and their monitoring bodies, see https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx [↑](#footnote-ref-4)
5. Sumudu Atapattu, ‘Climate Change and Displacement: Protecting “Climate Refugees” within a Framework of Justice and Human Rights’ (2020) 11 Journal of Human Rights and the Environment 86; Corina Heri, ‘Climate Change before the European Court of Human Rights: Capturing Risk, Ill-Treatment and Vulnerability’ [2022] European Journal of International Law chac047; 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; Matthew Scott and Albert Salamanca, ‘A Human Rights-Based Approach to Internal Displacement in the Context of Disasters and Climate Change’ (2020) 39 Refugee Survey Quarterly 564; Margaretha Wewerinke-Singh, State Responsibility, Climate Change and Human Rights under International Law (Hart Publishing 2020); ibid; Mostafa Mahmud Naser, ‘Climate Change and Forced Displacement: Obligation of States under International Human Rights Law’ (2010) 22 Sri Lanka Journal of International Law 117. [↑](#footnote-ref-5)
6. Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195) [↑](#footnote-ref-6)
7. <https://unfccc.int/process/conferences/pastconferences/cancun-climate-change-conference-november-2010/statements-and-resources/Agreements> [↑](#footnote-ref-7)
8. https://unfccc.int/files/meetings/paris\_nov\_2015/application/pdf/paris\_agreement\_english\_.pdf [↑](#footnote-ref-8)
9. https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf [↑](#footnote-ref-9)
10. https://disasterdisplacement.org/ [↑](#footnote-ref-10)
11. Elizabeth Ferris, Climate Change, Migration and the Incredibly Complicated Task of Influencing Policy’ (Durham University, 2015) 8. See Jane McAdam, ‘From the Nansen Initiative to the Platform on Disaster Displacement : Shaping International Approaches to Climate Change, Disasters and Displacement.’ 39 The University of New South Wales Law Journal 1518, 1524. [↑](#footnote-ref-11)
12. See <https://www.unhcr.org/4da2b5e19.pdf>; <https://www.unhcr.org/596f25467.pdf>; <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_534341.pdf>; A Francis, ‘Climate-Induced Migration & Free Movement Agreements’ (2019) 73 Journal Int. Aff. 123 [↑](#footnote-ref-12)
13. <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_534341.pdf> [↑](#footnote-ref-13)
14. See UN High Commissioner for Refugees (UNHCR), UNHCR Position on Safe and Legal Pathways, 8 February 2019; UNHCR, Final report: The Three-Year Strategy (2019-2021) on Resettlement and Complementary Pathways (March 2022) p.24-25, available at: <https://globalcompactrefugees.org/sites/default/files/2022-03/Three%20Year%20Strategy%20%282019-2021%29%20End%20Report_Final%20for%20copy%20edit_final-compressed.pdf> [↑](#footnote-ref-14)
15. See Jane McAdam, ‘Climate Change-Related Displacement of Persons’ (The Oxford Handbook of International Climate Change Law, 24 March 2016) 535–6; Stahl and Appleyard, Migration and Development in the Pacific Islands: lessons from the New Zealand experience (April 2007, AusAid) p.iv; The New Zealand Immigration and Protection Tribunal (IPT) has considered claims of individuals displaced from the Pacific Small islands states due to slow onset climate change, granting them permission to stay on humanitarian grounds. Seee McAdam J (2015) The emerging New Zealand jurisprudence on climate change, disasters and displacement. Migration Studies 3:131–142 [↑](#footnote-ref-15)
16. Denise Margaret S Matias, ‘Climate Humanitarian Visa: International Migration Opportunities as Post-Disaster Humanitarian Intervention’ (2020) 160 Climatic Change 143; ‘New Zealand’s “Climate Refugee” Visas: Lessons for the Rest of the World - World | ReliefWeb’ <https://reliefweb.int/report/world/new-zealands-climate-refugee-visas-lessons-rest-world> accessed 26 October 2022. [↑](#footnote-ref-16)
17. See speech of President of Kiribati Anote Tong to the 106th Council Session of IOM, (November 2015) p.2-3 available at <https://governingbodies.iom.int/system/files/en/council/106/Kiribati%20-%20Statement%20new%20Member%2C%20106th%20Council.pdf> [↑](#footnote-ref-17)
18. <https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/english.pdf>; para 40 [↑](#footnote-ref-18)
19. https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/germany.pdf [↑](#footnote-ref-19)
20. Kacarska, Europeanisation through mobility: visa liberalisation and citizenship regimes (2012); Delcour, the EU’s visa liberalisation policy (2018); [↑](#footnote-ref-20)
21. ILO 2020 Geneva Guidelines for skills modules in bilateral labour migration agreements; Piyasiri Wickramasekara (2015), Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review, ILO, Geneva; ILO, Fostering labour mobility through bilateral and multilateral labour agreements based on ILOs Model Bilateral Labour Agreement inc ILOs Recommendation No.86.; ILO, Protected Mobility for employment and Decent work: labour market security in a Globalisaed world (2005); ILO, Guidance on bilateral labour mobility agreement (February 2022) [↑](#footnote-ref-21)
22. A Pécoud and P de Guchteneire (eds), Migration without Borders. Essays on the Free Movement of People (Berghahn 2007); R Cholewinski, R Perruchoud and E MacDonald (eds), International Migration Law: Developing Paradigms and Key Challenges (Asser Press 2007) chapters 18-22 on specific regions; K Popp, ‘Regional Processes, Law and Institutional Developments on Migration’ in B Opeskin, R Perruchoud and J Redpath-Cross (eds), Foundations of International Migration Law (Cambridge University Press 2012); S Iglesias Sánchez, ‘Free Movement of Persons and Regional International Organisations’ in R Plender (ed) Issues in International Migration Law (Brill 2015); [↑](#footnote-ref-22)
23. See https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E [↑](#footnote-ref-23)
24. OHCHR and GMG, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf> [↑](#footnote-ref-24)
25. OHCHR, The slow onset effects of Climate Change and Human Rights Protection for cross-border migrants, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_slow_onset_of_Climate_Change_ENweb.pdf>; OHCHR, Human Rights, Climate Chage and Migration, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMMigration.pdf>; [↑](#footnote-ref-25)
26. Guy S Goodwin-Gill and Selim Can Sazak, ‘Footing the Bill’ <https://www.foreignaffairs.com/articles/africa/2015-07-29/footing-bill> accessed 30 July 2019. [↑](#footnote-ref-26)
27. Christina Voigt and Felipe Ferreira, ‘“Dynamic Differentiation”: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement’ (2016) 5 Transnational Environmental Law 285. [↑](#footnote-ref-27)
28. Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019; CCPR/C/135/D/3624/2019 (September 2022) [↑](#footnote-ref-28)