**PDD Secretariat Submission to the Special Rapporteur on the promotion and protection of human rights in the context of climate change – Geneva, 21 November 2022**

This submission to the call for inputs by the Special Rapporteur on the promotion and protection of human rights in the context of climate change on “Addressing the human rights implications of climate change displacement including legal protection of people displaced across international borders” is made on 21 November 2022 by the Secretariat of the Platform on Disaster Displacement.

To date, no greater effort at consulting with States and other stakeholders on the protection of persons displaced across borders in the context of disasters and climate change has been undertaken than the 2012-2015 Regional and Global Consultations of the Nansen Initiative resulting in the [Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Protection Agenda)](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwip4rCO5r77AhUaY6QEHfs0CoEQFnoECBAQAQ&url=https%3A%2F%2Fdisasterdisplacement.org%2Fwp-content%2Fuploads%2F2014%2F08%2FEN_Protection_Agenda_Volume_I_-low_res.pdf&usg=AOvVaw0vn7NNxVUEbBA7xJdwQd8_) which was endorsed by 109 States in October 2015. The Platform on Disaster Displacement (PDD) was established in July 2016 as a state-led initiative to follow-up on the work of the Nansen Initiative and to support States and other stakeholders to implement the recommendations of the Protection Agenda.

The PDD Secretariat is hereby putting forward brief answer elements that should be read in conjunction with the Protection Agenda and the materials referenced via hyperlinks below.

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

The Platform on Disaster Displacement focusses on cross-border displacement in the context of disasters and the adverse effects of climate change. That said, there are several forms of population movement in the context of disasters, climate change and environmental degradation, whose scope and associated challenges differ between regions and places.

Human mobility serves as an encompassing term designating three types of population movement in line with terminology used in the 2010 Cancun Climate Change Adaptation Framework and the 2016 New York Declaration for Refugees and Migrants: (i) displacement, understood as the primarily forced movement of persons, whether short-term or protracted, which can include spontaneous flight, or evacuations or an involuntary planned relocation process; (ii) migration, understood as the primarily voluntary movement of persons; and (iii) planned relocation, understood as a planned process of settling persons or groups of persons to a new location.

Typically, the large majority of human mobility in the context of disasters and the adverse effects of climate change occurs within countries or (sub-)regions. Most disaster displaced persons remain in their own country as internally displaced persons (IDPs), with a smaller number moving regionally and beyond, although data on cross-border movement in the context of disasters and the adverse effects of climate change is limited and uncertain.

* For an analysis and recommendations on internal displacement in the context of disasters and the adverse effects of climate change, see the [Submission to the High-Level Panel on Internal Displacement by the Envoy of the Chair of the Platform on Disaster Displacement](https://www.un.org/internal-displacement-panel/sites/www.un.org.internal-displacement-panel/files/27052020_hlp_submission_screen_compressed.pdf).
* For concepts and an initial evidence base on planned relocation in the context of hazards, disaster and climate change, see [Leaving Place, Restoring Home: Enhancing the Evidence Base on Planned Relocation Cases in the Context of Hazards, Disasters, and Climate Change.](https://disasterdisplacement.org/leaving-place-restoring-home-enhancing-the-evidence-base-on-planned-relocation-cases-in-the-context-of-hazards-disasters-and-climate-change-2)
* For an overview of regional dynamics of disaster-related human mobility, see the [Nansen Initiative Agenda for the Protection of cross-border displaced persons in the context of disasters and climate change Volume II (p. 8-34).](https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-2.pdf)
* For an overview of regional human mobility dynamics in the Americas and the Caribbean, please see the 2018 study on [Cross-Border Displacement, Climate Change and Disasters: Latin America and the Caribbean - Study Prepared for UNHCR and PDD at Request of Governments Participating in the 2014 Brazil Declaration and Plan of Action](https://disasterdisplacement.org/portfolio-item/brazil-declaration-study).
* For an overview of regional human mobility dynamics in the Pacific, see [In the Same Canoe: Building the Case for a Regional Harmonisation of Approaches to Humanitarian Entry and Stay in ‘Our Sea of Islands’](https://disasterdisplacement.org/portfolio-item/in-the-same-canoe) and [Clusters and Hubs: toward a regional architecture for voluntary adaptive migration in the Pacific.](http://www.nanseninitiative.org/sites/default/files/DP_Clusters_and_Hubs_Toward_a_Regional_Architecture_for_Voluntary_Adaptive_Migration_in_the_Pacific.pdf)
* For analysis of international protection in the context of nexus dynamics between conflict or violence and disaster or climate change see [In Harm’s Way](https://www.unhcr.org/5c1ba88d4.pdf).
1. *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?*

As per the Protection Agenda, and in line with the terminology suggested by paragraph 14(f) of the Cancun Climate Change Adaptation Framework, “migration” refers to human movements that are preponderantly voluntary insofar as people, while not necessarily having the ability to decide in complete freedom, still possess the ability to choose between different realistic options.

The Protection Agenda understands the term “disaster displacement” to refer to situations where people are forced or obliged to leave their homes or places of habitual residence as a result of a disaster or in order to avoid the impact of an immediate and foreseeable natural hazard.

Such displacement results from the fact that affected persons are (i) exposed to (ii) a natural hazard in a situation where (iii) they are too vulnerable and lack the resilience to withstand the impacts of that hazard. It is the effects of natural hazards, including the adverse impacts of climate change, that may overwhelm the resilience or adaptive capacity of an affected community or society, thus leading to a disaster that potentially results in displacement. This notion has the double advantage of capturing the multi-causality of displacement and avoiding the challenge of attribution of climate change or specific natural hazards to a particular population movement:

PDD uses the notion of displacement "in the context of” disasters and the adverse effects of climate change based on the understanding that just as a disaster is complex and multi-causal, so is disaster displacement. In addition to exposure to a natural hazard, a multitude of demographic, political, social, economic and other developmental factors also determine to a large extent whether people can withstand the impacts of the hazard or will have to leave their homes. The Protection Agenda thus recognizes that disaster displacement occurs *in the context of* disasters and the adverse effects of climate change, rather than being exclusively caused by them.

Disasters are defined by the United Nations Office for Disaster Risk Reduction (UNDRR) as "serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts." In the Protection Agenda, disasters refer to disruptions triggered by or linked to hydro-meteorological and climatological natural hazards, including hazards linked to anthropogenic global warming, as well as geophysical hazards.

Terminology focused on “climate” or “climate change displacement” is arguably too narrow since it may exclude persons displaced in the context of geophysical events such as earthquakes, or weather-related events or natural hazards that cannot be attributed to global warming.In short, it is disasters and adverse effects of climate change, rather than natural hazards including those associated with global warming, that are the drivers of population movement.

1. *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.*

For an overview of the connection between the slow onset adverse effects of climate change, human rights, and the cross-border movement of people, please see [The slow-onset effects of Climate Change and Human Rights Protection for cross-border migrants](https://disasterdisplacement.org/wp-content/uploads/2019/01/D18050_OHCHR_slow-onset-of-Climate-Change_EN-web.pdf).

Please consult [Implementing the Commitments Related to Addressing Human Mobility in the Context of Disasters, Climate Change and Environmental Degradation – A Baseline Analysis Report Under the Global Compact for Safe, Orderly and Regular Migration](https://disasterdisplacement.org/portfolio-item/implementing-the-commitments) for a global overview of relevant national instruments and practices, in particular Table 1 (pp. 30-32) with examples of national human mobility instruments addressing protection and assistance needs of people displaced internally or across borders in the context of disasters and the adverse effects of climate change.

Related to the Americas region, please read the [Guide to Effective Practices by Regional Conference on Migration Member Countries: Protection for persons moving in the context of disasters](https://disasterdisplacement.org/wp-content/uploads/2016/11/PROTECTION-FOR-PERSONS-MOVING-IN-THE-CONTEXT-OF-DISASTERS.pdf) as well as the South American Conference on Migration [Regional guidelines on the protection and assistance of cross-border displaced persons and migrants in countries affected by disasters](https://csmigraciones.org/sites/default/files/2022-01/CSM_Lineamientos%20Regionales_ENG.pdf).

Please also see the 2018 study on [cross-border displacement, climate change and disasters: Latin America and the Caribbean, prepared for UNHCR and PDD at request of governments participating in the 2014 Brazil Declaration and Plan of Action](https://disasterdisplacement.org/wp-content/uploads/2020/03/ENGLISH-52708-PDD-Mapping-FINAL_compressed.pdf).

On the development of regionally harmonized approaches in the Pacific to allowing the entry and/or stay of non-nationals on humanitarian grounds when disaster strikes, including in the context of climate change, please see the 2021 study [In The Same Canoe: Building the Case for a Regional Harmonisation of Approaches to Humanitarian Entry and Stay in ‘Our Sea of Islands’.](https://disasterdisplacement.org/portfolio-item/in-the-same-canoe)

An important example to mention exists in the Horn of Africa, where the Intergovernmental Authority on Development (IGAD) Council of Ministers has adopted a Free Movement of Persons Protocol which calls on Member States to facilitate entry and stay for people who are moving in anticipation of, during or in the aftermath of a disaster (Article 16). This is the only Free Movement Protocol so far addressing the needs of persons affected by disasters in that it facilitates their entry during or after a disaster, and/or allows those at risk of displacement to move pre-emptively.

A comprehensive approach to the protection of cross-border disaster-displaced persons also requires tackling disaster displacement risk in the country of origin. Measures to manage disaster displacement risks in the country of origin include effective practices to reduce vulnerability and build resilience to disaster displacement risk, facilitate migration and conduct planned relocation out of hazardous areas, and respond to the needs of internally displaced persons.

1. *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.*

As mentioned above, most disaster displaced persons remain within their own country. However, some persons cross borders in order to reach safety and/or protection and assistance in another country. The Nansen Initiative identified at least 50 countries that in recent decades have received or refrained from returning people in the aftermath of disasters, in particular those caused by tropical storms, flooding, drought, tsunamis, and earthquakes. Thus, providing protection abroad to cross-border disaster-displaced persons can take two forms. States can either admit such persons to the territory of the receiving country and allow them to stay at least temporarily (including through procedures related to visa, regularization or a change in status), or they can refrain from returning foreigners to a disaster affected country provided they were already present in the receiving country when the disaster occurred. International law does not explicitly address whether and under which circumstances disaster displaced persons shall be admitted to another country, what rights they have during their stay, and under what conditions they may be returned or find another durable solution. In the absence of clear provisions in international law, some States, particularly in the Americas, selected regions in Africa and a few States in Europe, have developed and applied a multitude of measures to admit or not return disaster displaced persons on their territory on an individual or group basis, which are generally humanitarian, temporary and discretionary in nature. They may be based on regular immigration law, exceptional immigration categories such as humanitarian visas and temporary protection status, the relaxing of visa requirements and fees including through regional and sub-regional agreements for the free movement of persons, provisions related to the protection of refugees and subsidiary protection, and the application of international human rights law standards (also see UN Migration Network [Guidance Note: Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability](https://migrationnetwork.un.org/resources/guidance-note-regular-pathways-admission-and-stay-migrants-situations-vulnerability-0)). Please also refer to the studies referenced in the answer to question 3.

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

In line with the recommendations by the Protection Agenda, the PDD does not advocate for the development of new legally binding standards and legal instruments for admission and stay of cross-border disaster-displaced persons at the global level, but rather, promotes better implementation of existing standards and legal instruments. At the same time, it promotes and supports ongoing standard-setting activities at the national and regional levels in line with the recommendations of the Protection Agenda. Policies, standards, and legal instruments exist, and in particular domestic and regional level provisions have large potential to be scaled up and provide protection in cross-border disaster-displacement situations.

At the global level, paragraphs 21 g) and h) of the Global Compact for Safe, Orderly and Regular Migration (GCM) speak of persons “compelled to leave their countries of origin” owing to sudden- and slow-onset natural disasters, consolidating and linking to many of the effective practices promoted by the Nansen Initiative and the PDD on admission and stay in a global framework. It also outlines relevant actions for countries to take into account when planning and implementing their national migration policies.

There are many opportunities to promote policy development and standard-setting activities at the national and regional levels, for example regarding common markets, free movement of persons arrangements or through the development of regional guidelines on admission and stay, as explained under question 3.

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

The considerations provided in this submission refer to persons displaced across international borders. For a specific analysis and recommendations on internal disaster displacement, please see the [Submission to the High-Level Panel on Internal Displacement by the Envoy of the Chair of the Platform on Disaster Displacement](https://www.un.org/internal-displacement-panel/sites/www.un.org.internal-displacement-panel/files/27052020_hlp_submission_screen_compressed.pdf) mentioned in answer to question 2.

1. *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?*

“Climate Refugee” is often used in the media to define a person displaced in the context of disasters. This concept does not exist in international law and is not endorsed by the PDD.

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

N.N.

**Summary**

The Nansen Initiative Protection Agenda compiles a broad set of effective practices that could be used by States and other actors to ensure more effective responses to cross-border disaster-displacement. Rather than calling for a new binding international convention on cross-border disaster-displacement, the PDD supports an approach that focuses on the integration of effective practices by States and (sub-)regional organizations into their own normative frameworks in accordance with their specific situations and challenges. To advance the discussion on legal protection of cross-border disaster-displaced persons, it is important to establish common terminology. In addition to measures for legal protection of cross-border disaster-displaced persons, the existing ‘toolbox’ of effective practices also includes a variety of soft law measures that may achieve protection in disaster and climate change contexts.

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