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

***Call for inputs: “Addressing*** ***the human rights implications of climate change displacement including legal protection of people displaced across international borders”***

**- Refugee Law Initiative -**

**Working Group on Climate Change, Disasters and Displacement**

The Refugee Law Initiative (RLI) Working Group on Climate Change, Disasters and Displacement is an interdisciplinary group of specialist researchers and decision makers. We offer the following input to your report on addressing the human rights implications of climate change displacement.

Given the significant body of work in the legal, policy and operational spheres that already exists on this issue (and the relatively limited timescale for responses to the call), rather than responding to each question posed, we provide observations as to the ‘state of play’ is in relation to the concerns raised. It is critically important to get the right starting point on this complex issue.

**1. Questions: framing of ‘climate change’ displacement**

For all of the questions raised, the framing of ‘climate change displacement’ is important, since it determines the kinds of legal, policy and operational responses that will be appropriate.

Based on the evidence, two key points should be borne in mind. Firstly, displacement is but one form of mobility arising in the context of climate change and disasters. Having a clear understanding of how displacement differs from other forms of mobility - including immobility (not moving at all), migration and planned relocation - will be important, as the legal protection issues raised by each are not identical.

The forcible character of displacement (as opposed to, typically, voluntary migration) suggests a broader range of rights will often be engaged with a corresponding stronger emphasis on the state obligation to ensure or fulfil rights (e.g., the rights to adequate housing, food and water). Depending on context, differentiated gendered rights concerns may arise, such as increased exposure to gender-based violence and/or trafficking, which will require specific operational interventions to protect the rights of women and girls.

Secondly, it is important to be clear about what is meant by ‘climate change’ displacement for the purposes of your report. In this regard, the existing research shows that:

1. Natural (and other) hazards have the potential to contribute to all types of mobility but their impact on people and their mobility decisions is filtered through a range of social and geographical factors which together shape exposure, vulnerability and capacity.
2. Mobility in disaster contexts thus tends to be multi-causal and, particularly for slow-onset disasters, the role of the hazard in pushing movement can sometimes be hard to single out from other factors as the main trigger for movement.
3. The role of climate change in influencing mobility decisions is at one step further removed still, i.e. it is a background factor that has the potential to shape the frequency, intensity and duration of climate-related hazards (e.g. storms, temperature extremes).[[1]](#footnote-1)
4. Moreover, although climate-related hazards do contribute to displacement in disaster contexts, other kinds of natural hazards (earthquakes, volcanos etc.) generate similar kinds of disaster displacement, with just as devastating impacts on enjoyment of rights. They should not be side-lined by an exclusive focus on climate-related hazards.
5. The great majority of mobility (of all forms) in the context of disasters appears to be internal, i.e. within the same country, rather than cross-border; and, for cross-border disaster displacement, most tends to be between countries in the same region.
6. The people who are most vulnerable to disasters (and the long-term negative impacts of climate change) tend to be the poorest and most marginalised; as such, they will tend to have resources only to displace internally, if at all, and will be unable to leave the country.[[2]](#footnote-2)
7. Displacement increasingly arises in the context of overlapping climate and conflict drivers. It will be difficult to separate climate change as the proximate driver of displacement. Further, where these drivers lead to cross-border displacement, it may be that regional, if not universal, refugee protection mechanisms can become more readily engaged.[[3]](#footnote-3)

**2. Questions: legal and policy approaches to ‘climate change’ displacement**

Specifically in relation to questions no. 3, 4, 5, 6, 7, the legal and policy implications of the ‘framing’ research outlined above, and the findings of wider research in the legal field, are that:

1. Whilst climate change will likely shape mobility scales and patterns at the macro-level across decades, it is almost impossible to identify as the trigger for individual displacements, such that a legal protection status based on ‘climate change’ impact appears unworkable.
2. A focus on the impact of hazards/disasters offers better prospects for developing legal protection, since they are one step closer to mobility decisions; and climate-related hazards would be included as well as other kinds of hazards that generate displacement.[[4]](#footnote-4)
3. Alongside efforts to address the legal situation of the small resulting flow of persons outside their countries due to disasters, it is crucial to support countries particularly exposed to disasters in dealing with the (im)mobility-related impacts in-country.
4. Refugee law is not an appropriate framework for responding to cross-border displacement in disaster contexts, except where the disaster event or response unleashes persecution, discrimination or violence that brings a person within applicable refugee definition(s).
5. The New Zealand and HRC decisions in *Teitiota* actually suggest that people displaced across borders by disasters may be refugees in some limited circumstances (see above), but that other kinds of protection and migration measures are likely to be more widely applicable.
6. For instance, human rights law continues to apply to all persons impacted by disasters, whether they move or not. For migrants, it may prevent their removal to a situation where disaster risks or conditions present a real risk of certain fundamental rights being breached.
7. Also, many people fleeing disasters end up entering another country under one of the ordinary migration categories; as such, ensuring that ordinary migration routes and channels are not unduly restricted following a disaster is key to facilitating protection in this regard.
8. Considerable State practice in different regions (a) applies ordinary migration categories flexibly, and /or (b) utilises humanitarian entry or other extraordinary migration categories, to facilitate the travel, entry and stay of persons seriously affected by disasters overseas.

These are critical components of the global legal and policy landscape; and there are ongoing efforts at the regional level to ensure harmonisation of approach towards those displaced by disasters based on these key understandings (e.g. in the Americas and Pacific – see below).

**3. RLI suggestions to the Special Rapporteur**

It is evident that a considerable body of research exists on mobility in the context of disasters (driven by climate-related and other hazards). International policy has also increasingly addressed this core issue,[[5]](#footnote-5) as have international legal organisations.[[6]](#footnote-6) In his report, the Special Rapporteur will no doubt seek to build on this existing body of work in ways relevant to the climate change and human rights mandate, whilst at the same time reinforcing the crucial developing frameworks on this issue.

Based on his specific mandate, the Special Rapporteur could have a positive impact on the further development of the understanding of climate change and human rights in relation to mobility in this context by:

* Promoting through studies, position-papers and advocacy a stronger evidence-based understanding within the UN system and beyond of how climate change relates to mobility and the impact on human rights, drawing special attention to the points raised above;
* Outlining where, how and why human rights law requires climate change adaptation and disaster risk reduction, planning and preparedness to avoid or minimise negative impacts of sudden- and slow-onset hazards on populations, including in terms of (im)mobility;
* Recommending how such measures can be targeted in order to ensure that sections of the population who, as a result of social or geographical factors, are particularly exposed or vulnerable to such impact (including indigenous peoples) are specially protected;
* Spelling out how human rights law provides a baseline standard that remains applicable to all migrants, including those displaced in the context of disasters, even where they may find themselves in another country in an irregular immigration situation;
* Studying where, how and why human rights law may prevent the removal of people on the move to a disaster-affected country where they face the prospect of serious human rights violations as a result of the disaster, its aftermath or the disaster response scheme;
* Advocating a human rights basis for the adoption by national governments of appropriate immigration law measures to facilitate the travel, entry and stay of people seriously affected by a disaster, drawing attention to the widespread global State practice on point;
* Encouraging regional and sub-regional forums to develop common standards on the points outlined above, drawing attention to such model initiatives as currently exist within the RCM, SACM and IGAD.

See the Annex overleaf for selected published sources substantiating the input provided in this submission.

**9 November 2022**

**Annex: Selected published sources for reference**

There exists an extensive body of literature on displacement and other forms of mobility in the context of disasters and climate change for reference, including:

* 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, 2013)
  + *In the Same Canoe: Building the Case for a Regional Harmonisation of Approaches to Humanitarian Entry and Stay in ‘Our Sea of Islands’* (Platform on Disaster Displacement 2021) (with Charlotte Bedford)
* David Cantor, ‘[Environment, Mobility and International Law: A New Approach in the Americas](https://chicagounbound.uchicago.edu/cjil/vol21/iss2/3/)’ (2021) 21(2) *Chicago Journal of International Law* 263 [open access]
* Carol Farbotko, Celia McMichael, Olivia Dun, Hedda Ransan‐Cooper, Karen McNamara and Fanny Thornton, ‘Transformative mobilities in the Pacific: promoting adaptation and development in a changing climate’ (2018) 5(3) *Asia & the Pacific Policy Studies* 393
* Jane McAdam
  + *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012)
  + ‘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)
* Ana Mosneaga, ‘[Unsustainable development, disasters and displacement: Revisiting the governance challenge](https://www.sciencedirect.com/science/article/pii/S2212420922003910?via%3Dihub)’ (2022) 79 *International Journal of Disaster Risk Reduction* 103172.
* New Zealand Immigration and Protection Tribunal (B Burson): *AF (Kiribati)* [2013] NZIPT 800413; *AC (Tuvalu)* [2014] NZIPT 800517-520; *MS (India)* [2022] NZIPT 802082; *AW (Kiribati)* [2022] NZIPT 802085. All decisions available at: [https://forms.justice.govt.nz/search/IPT/RefugeeProtection](https://forms.justice.govt.nz/search/IPT/RefugeeProtection/)
* Chiara Scissa, Francesca Biondi Dal Monte, Matthew Scott, Margit Ammer and Monika Mayrhofer, ‘[Legal and Judicial Responses to Disaster Displacement in Italy, Austria and Sweden](https://voelkerrechtsblog.org/legal-and-judicial-responses-to-disaster-displacement-in-italy-austria-and-sweden/)’ (*Völkerrechtsblog*, 19 October 2022)
* Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (Cambridge University Press 2020)
* Sanjula Weerasinghe, [*In Harm’s Way: International protection in the context of nexus dynamics between conflict or violence and disaster or climate change*](https://www.refworld.org/docid/5c2f54fe4.html) (UNHCR 2018)

1. Moreover, much of the literature on mobility is ‘top-down’, and fails to adequately engage, via appropriate methodologies, with traditional and local knowledge which makes it yet more difficult to ascertain the role of climate change in (im)mobility decision-making at the household or community level. [↑](#footnote-ref-1)
2. Moreover, in oceanic regions such as the Pacific or Caribbean, the ability to move internationally is highly dependent on immigration policy settings in destination States, even for people with the means to travel. [↑](#footnote-ref-2)
3. As occurred with cross-border flows from Somalia into Kenya and Ethiopia in 2011–2012, where refugee law frameworks played a primary role in the provision of international protection. [↑](#footnote-ref-3)
4. It is difficult to justify privileging climate-related hazards over other hazards with identical rights impacts. [↑](#footnote-ref-4)
5. See, for example, the Nansen Initiative Protection Agenda, the UNFCCC Task Force on Displacement work, relevant Global Compact on Migration provisions, Regional Conference on Migration (RCM) Guidelines on Protection for Persons Moving Across Borders in the Context of Disasters, South American Conference on Migration (SACM) Regional Guidelines on the protection and assistance of cross-border displaced persons and migrants in countries affected by disasters, and the Intergovernmental Authority on Development (IGAD) Free Movement Protocol provisions on disaster displacement. The Pacific, vis the Pacific islands Forum is currently taking steps to develop harmonized approaches. [↑](#footnote-ref-5)
6. See, for example, the International Law Association Sydney Declaration and the International Law Commission draft Articles on the Protection of Persons in the event of Disasters. [↑](#footnote-ref-6)