November 2022

**Response to Call for Inputs from the 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”**

**About.** [Woodwell Climate Research Center](https://www.woodwellclimate.org/) is a non-profit organization based in Falmouth, Massachusetts that comprises research scientists and policy experts who work with partners worldwide to understand the impacts of and to address climate change on a global scale. Woodwell scientists helped to launch the United Nations Framework Convention on Climate Change in 1992 and shared the Nobel Prize awarded to the Intergovernmental Panel on Climate Change (IPCC) in 2007. The organization continues to have global impact, bringing together cutting-edge science and translating scientific advances into climate policy solutions.

Woodwell’s Arctic program examines the impacts of climate change in this region, and recognizes that, like the Arctic itself, our impact transcends geopolitical borders. Woodwell’s research, conducted through on-the-ground observations, satellite remote sensing, and computational modeling, is enabling us to measure and monitor changes across tundra and boreal landscapes. The cascading effects of these changes pose immediate threats to Alaskan communities, ecosystems, and infrastructure, but they also present severe risks to the long-term health, stability, and safety of our planet.

In April 2022, Woodwell launched [Permafrost Pathways](https://permafrost.woodwellclimate.org/), a new initiative funded through the Audacious Project. With partners at the [Arctic Initiative](https://www.belfercenter.org/project/arctic-initiative) at Harvard Kennedy School, the  [Alaska Institute for Justice](https://www.akijp.org/), and [Alaska Native Science Commission](http://www.nativescience.org/about/cochran.htm), Permafrost Pathways amplifies efforts to work with Arctic communities, scientists, and experts to collect the best data on Arctic carbon emissions from permafrost thaw, contextualize this information within global emissions budgets, and transform this science into actionable policy recommendations.

**Responses to select questions.** The following responses to select questions are intended to inform the Special Rapporteur on the promotion and protection of human rights in the context of climate change’s report on addressing the human rights implications of climate change displacement including legal protection of people displaced across international bordersto be presented to the 53rd Session of the HRC in 2023.

***Q1. What experiences and examples are you aware of, of individuals or communities, displaced by climate change?***

Arctic communities—often overlooked in the greater discussion on climate adaptation and mitigation—are among the most vulnerable to climate-forced displacement. The Arctic is home to nearly four million inhabitants, roughly ten percent of whom are Indigenous to the [Circumpolar North](https://www.arctic-council.org/explore/topics/arctic-peoples/). Yet a rapidly changing climate is permanently altering the Arctic landscape[[1]](#footnote-1) and creating insurmountable threats to survival. For many of these Arctic communities—particularly in the United States—protection-in-place measures, and efforts to invest in resilience and adaptation are simply insufficient to overcome the threats of climate change in their current locations. As a result, over the past few decades, there has emerged an apparent need for urgent community-led relocation.

One of the most documented cases is that of [Newtok, Alaska](https://www.nationalgeographic.com/science/article/climate-change-finally-caught-up-to-this-alaska-village), a Yupik village near the Bering Sea. Twenty years ago, residents of Newtok, [decided to relocate](https://relocatenewtok.org/) to higher ground in [Mertarvik](https://www.congress.gov/116/meeting/house/108887/witnesses/HHRG-116-II24-Wstate-JordanJ-20190212-SD001.pdf); due to major [political and funding barriers](https://www.ktoo.org/2017/01/18/obama-denies-newtoks-request-disaster-declaration/), however, only about 70 people have successfully relocated at the time of writing. But Newtok is not unique: [Kivalina](https://toolkit.climate.gov/case-studies/relocating-kivalina), an Inupiat village of about four hundred and fifty people located north of the Arctic Circle, has also gained [recent media attention](https://www.newyorker.com/magazine/2022/11/28/an-alaskan-town-is-losing-ground-and-a-way-of-life) for its low-lying location and repeated inundation from stormwaters which threatens the continued survival of residents should they remain in their current location. As in Newtok, those living in Kivalina have been implementing short-term adaptation solutions to avoid climate-forced displacement as they await the requisite support and funding for community-led relocation.

The United States government has been well-aware of these threats to Kivalina and Newtok—in 2003, the U.S. Government Accountability Office (GAO) (an agency of the legislative branch that provides auditing, evaluative, and investigative services for US Congress) reviewed [nine Alaskan villages](https://www.gao.gov/products/gao-04-142) and identified both villages as among those in “imminent danger” and in need of government assistance to facilitate relocation. But more than a decade after identifying [31 Alaskan villages](https://www.gao.gov/products/gao-09-551) facing destruction due to erosion, flooding, and thawing permafrost, the GAO released a [new report in 2022](https://www.gao.gov/assets/gao-22-104241.pdf) concluding that 73 of 200+ Alaska Native villages face such threats (and therefore may need to consider relocation in the coming years).

Permafrost thaw as an key driver of climate-forced displacement and community relocation

This alarming assessment from the GAO reflects the increased understanding of how permafrost thaw is destabilizing the built environment across the Arctic. Permafrost, *i.e.*, ground that has been continually frozen for at least two consecutive years and often for thousands of years, extends across the boreal and tundra biomes and in mountain regions across the globe, underlying roughly [15% of the exposed land surface](https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2021JF006123) area in the Northern Hemisphere and [38% of Alaska’s land area](https://www.scientificamerican.com/article/here-s-how-much-of-alaska-s-permafrost-could-melt/) in the United States. As global temperatures rise, this once-frozen ground is beginning to thaw, creating an increasingly unstable and dangerous environment. Among the most observable impacts is thaw-induced ground collapse, which can contribute to the destruction of infrastructure, homes, schools, medical facilities, roads, and public utilities that ensure access to electricity, clean water, and other necessities.

For Alaska Native communities living on the West Coast, including the [Native Village of Kwigillingok](https://www.newamerica.org/future-land-housing/blog/entire-alaskan-communities-are-sinking-into-the-oceanand-many-cant-move-inland/) and the [Native Village of Nunapitchuk](https://www.nytimes.com/2022/11/04/climate/native-americans-relocate-climate-change.html), [implications of permafrost thaw](https://www.cnn.com/2022/11/12/world/permafrost-climate-change-explainer-scn) and consequential losses are especially heightened. Loss of sea ice along the coastlines is increasing storm impacts, and permafrost thaw is exacerbating coastal and riverine erosion and flooding—prompting the State of Alaska Hazard Mitigation Plan and the statewide environmental threat assessment from the Denali Commission (an independent US federal agency) to include a new type of hazard: usteq (Yup’ik word meaning “surface caves in”), which is a catastrophic form of ground collapse that occurs from the combined effects of thawing permafrost, flooding, and erosion.

Unfortunately, explicit recognition of permafrost thaw and these compounding disasters does not prevent them from occurring; Alaska has continued to face environmental shocks and natural disasters, including Typhoon Merbok, which inundated western Alaska with storm surges, wind gusts, and inland flooding in September 2022, and prompted the governor to issue a state disaster declaration. The ongoing adaptation challenges provide both anecdotal and empirical evidence of the need for immediate relocation.

***Q3. 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?***

There is no legislation or formal policy that provides protection for Arctic communities that are facing displacement from climate change—instead, it is up to national governments to provide *ad hoc* support.

In the United States, such assistance further depends upon availability of funds and a set of criteria that has not yet been standardized nor legally defined. Nevertheless, the US has developed various programs and funding mechanisms that may be leveraged to finance protection-in-place (and more recently, for relocation) as described below: (Note that such assistance is likely insufficient and inaccessible for every community facing climate-forced displacement and do not extend legal protections to these communities.)

* The [Bipartisan Infrastructure Law](https://www.doi.gov/priorities/investing-americas-infrastructure/tribal-investments) adopted in 2021 provides a total of US $466 million to the Department of the Interior’s[[2]](#footnote-2) Bureau of Indian Affairs over five years, including US$216 million for climate resilience programs.[[3]](#footnote-3) Of that funding, US$130 million is provided for community relocation. At least 11 tribes applied for this funding, and in November 2022, [it was revealed that](https://www.nytimes.com/2022/11/04/climate/native-americans-relocate-climate-change.html) three tribes in Alaska--Nunapitchuk, Akiak, and Chefornak—would receive funds from this historic program. While this program demonstrates a shift of the US government away from “protection to place” towards “managed retreat” —the monetary awards themselves are likely insufficient to cover full community relocation.
* The Bipartisan Infrastructure Law (2021) also dedicated USD$4.28 billion to USDA, of which USD$633 million will be invested to reduce impacts of climate change on rural communities. The [Inflation Reduction Act](https://www.whitehouse.gov/omb/briefing-room/2022/08/23/new-omb-analysis-the-inflation-reduction-act-will-significantly-cut-the-social-costs-of-climate-change/) (IRA) directly appropriates an additional USD$46 billion to USDA, of which $121 million will be invested in critical infrastructure to combat climate change across rural US. The *Community Facilities Disaster Grants* is one of the key recipient programs under both laws. These investments are intended to help state and local government entities, nonprofit organizations, and federally recognized Tribes construct, renovate, or purchase and install equipment for essential community facilities for public use. NRCS has been involved in previous efforts to relocate Alaska communities including [Shishmaref](https://www.commerce.alaska.gov/web/portals/4/pub/shishmaref_relocation_site_reconnaissance_nrcs.pdf) and [Husilia](https://www.nrcs.usda.gov/sites/default/files/2022-10/Huslia%20EWP%20Success%20Story%20Dec2021.pdf). In March 2022, USDA announced that it would fund relocation of buildings and infrastructure for 6 Alaska communities: Kotlik, Alakanuk, Kwigillingok, Golovin, Tuntutuliak, and Tununak.
* The United States Army Corps of Engineers also provides technical assistance to communities that have experienced infrastructural destruction due to climate change. As the United States’ first environmental engineering body, the Army Corps provides on the ground ecosystem restoration, waterway protection, and resource management services. The agency delivers personnel and resource support in the form of disaster response and recovery, generally due to flooding and hurricanes. Under the National Response Framework (NRF) and the1988 Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”), USACE works under FEMA as a to support state and local governments in the aftermath of a disaster. USACE also has its own authority to directly respond to State and Local needs related to flooding or coastal emergencies.
* Additional funding support may be available through the Dept. of Housing and Urban Development. The Indian Community Development Block Grant (ICDBG) program, for example, provides eligible grantees with grants to develop viable American Indian and Alaska Native communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low- and moderate- income persons. The program provides funding for housing, community facilities, and economic development. The Secretary of HUD may set aside up to US$4 million of each year’s allocation for a noncompetitive, first come-first served, funding of grants to eliminate or alleviate risks that pose an imminent threat to public health or safety of tribal residents (known as Imminent Threat grants).

***Q5. What international, regional and national policies and legal approaches are necessary to protect people and communities displaced by climate change.***

The recent availability of new funds specifically designed to support community relocation in the United States may be leveraged to support Alaska communities displaced by climate change. However, there is ultimately a need for comprehensive legal protections for Arctic communities seeking relocation as the necessary means of survival. The following two approaches are critical in delivering such protections in Arctic States, especially the United States:

Reformation of national disaster response laws, policies and programs to account for slow-onset climate change. National emergency response and disaster relief programs in the United States, including those under the 1988 Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”), often do not consider slow-onset impacts of permafrost thaw, and state, local, and tribal governments are simply not equipped to the hazards of permafrost thaw without federal support. The US government has [recognized the limitations](https://crsreports.congress.gov/product/pdf/IN/IN11696) of its national laws and policies in adequately responding to slow-onset disasters, and such limitations have been apparent in the context of Alaska relocation efforts ([as evidenced by](https://www.ktoo.org/2017/01/18/obama-denies-newtoks-request-disaster-declaration/#:~:text=President%20Barack%20Obama%20has%20turned,Newtok%20for%20a%20disaster%20declaration.&text=Newtok%20applied%20for%20relief%20based,the%20village%20within%20three%20years.) President Obama’s denial of Newtok’s request for a disaster declaration in response to compounding and slow-onset climate change processes).

Development of national relocation governance frameworks to support community-led climate migration. Arctic communities that have made the difficult decision to leave behind homes and relocate are nevertheless facing insurmountable obstacles in actually implementing this process. Evidence suggests that a lack of governance framework, dedicated funding, and government support to facilitate relocation efforts are hindering this process. There is a need for a [national governance framework that ultimately supports the rights, resilience, and relocation](https://socialchangenyu.com/wp-content/uploads/2021/04/Robin-Bronen_RLSC-The-Harbinger_45.pdf) of Arctic communities and others that are displaced due to climate change. Such framework would also help to create policy coherence and reconcile issues around land access and ownership, and enjoyment of other fundamental rights including water, food, health, self-determination, and decent employment.

***Q6. Please provide separate considerations for people or communities internally displaced and those displaced across international borders***

Woodwell recalls the previous [report of the Special Rapporteur of human rights of internally displaced persons](https://daccess-ods.un.org/tmp/1965606.06360435.html) on the internal displacement in the context of the slow-onset adverse effects of climate change, and which incorporated information from the [comprehensive submission from the Alaska Institute of Justice](https://www.ohchr.org/sites/default/files/Documents/Issues/IDPs/NGOs-and-other-organizations/alaska-institute-justice-idp-cli.pdf) on the internal displacement of Alaska communities.

***Q8. Should separate and particular considerations be given to indigenous peoples with respect to climate change displacement? What are these particular considerations?***

Absolutely; Indigenous communities are necessarily afforded special protections under international human rights law and such rights must be at the forefront of responses to climate-forced displacement—including internal displacement that is occurring within the Arctic region of the United States. Considerations should include those pertaining to uncompensated loss and damage from climate-forced displacement, including both economic and non-economic. International climate negotiations have shown a dedicated commitment to address this loss and damage from slow-onset events, such as permafrost thaw, but discussions often focus on developing countries that are particularly vulnerable to the adverse effects of climate change. The parallels between the loss and damage experienced in developing countries, especially Small Island Developing States, and the loss and damage experienced in the Arctic are striking. Yet, Indigenous Peoples living within national borders of developed Arctic States are not readily included within the Warsaw International Mechanism’s mandate or visible in loss and damage dialogues.

Human rights, particularly the right to self-determination, and human rights principles, such as participation and transparency are also required to ensure that Indigenous peoples are involved in the decision-making process that informs community relocation—such as site selection. Indigenous peoples must be afforded access and land rights to ensure continuation of traditional hunting and fishing practices – consistent with the right to food— and to ensure uninterrupted access to burial grounds and other sites of cultural significance.

Better understanding climate forced displacement must also center on Indigenous knowledge and the co-production of knowledge. Alaska Native villages, for example, are increasingly receiving training to monitor permafrost thaw and support climate adaptation planning in a manner that respects the human rights of impacted communities.

1. The latest data confirm that the Arctic has warmed three to four times greater than the global average temperature increase of 1.1°C above pre-industrial levels, a trend that is projected to continue in the coming years. These rising temperatures are exacerbating a host of climate hazards, including wildfires across Arctic tundra and boreal forests, sea ice melt, coastal erosion, altered abundance and distributions of key Arctic species, and notably, permafrost thaw—which may render much of the Arctic uninhabitable. [↑](#footnote-ref-1)
2. DOI manages public lands and minerals, national parks, wildlife refuges, and upholds Federal trust responsibilities to Indian Tribes and Native Alaskans. [↑](#footnote-ref-2)
3. US$86 million is provided for Tribal climate resilience and adaptation projects, and US$43.2 million will be available to spend annually for five years.  On November 3, 2022, DOI also announced a US$45 million\* investment in Tribal communities to address the disproportionate impacts of climate change. These [Tribal Climate Resilience projects](https://www.bia.gov/sites/default/files/dup/inline-files/award_summary_0.pdf) will support Tribes and Tribal organizations in adaptation planning, climate implementation actions, ocean and coastal management planning, capacity building, relocation, managed retreat, and protect-in-place planning for climate risks. These 124 awards will support 76 Tribes and 8 Tribal organizations. *\**US$20 million from the Bipartisan Infrastructure Law and $25 million from fiscal year 2022 annual appropriations [↑](#footnote-ref-3)