

**Submission by the Asia-Pacific Academic Network on Disaster Displacement**

*in response to*

Call for inputs by 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

11 November 2022

The [Asia Pacific Academic Network on Disaster Displacement](#) brings together academics working across the region in a range of disciplines. The following submissions were discussed and further developed during a conference in Bangkok from 25-27 October 2022. We welcome the call for submissions and address each question in turn:

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

In 2021, members of the APANDD network published an edited volume entitled [Climate Change, Disasters and Internal Displacement in Asia and the Pacific: A Human Rights-Based Approach](#). This volume brings together 8 case studies examining (without rigid distinctions):

- *prevention of displacement*
  - flooding in Hat Yai municipality in Thailand
  - typhoons in Dulag municipality in the Philippines
- *protection during evacuation and throughout displacement*
  - cyclone displacement in Vanuatu with a focus on women forcibly evacuated from Mataso island
  - recurrent flood displacement in Prey Veng village in Cambodia (also focus on people who do not move)
  - recurrent flood displacement in Fulcharri upazila in Bangladesh with a focus on persons with disabilities
  - recurrent volcano related displacement in Karo district near Mt Sinabung in Indonesia with a focus on persons with disabilities
- *Durable solutions to displacement*
  - Protracted displacement from Haku village in the aftermath of the 2015 Nepal earthquakes, with a focus on indigenous Tamang community
  - Unsuccessful planned relocation in the Solomon Islands following 2014 flooding in Honiara

These examples highlight:

- How people are differentially exposed and vulnerable to displacement risk on grounds recognized under non-discrimination provisions in international human rights law
- How national law and policy relating to climate change adaptation and disaster risk reduction rarely expressly addresses displacement, and extremely rarely aligns with international standards such as the 1998 Guiding Principles on

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- How some measures to address hazard risks can have unexpected impacts relevant to displacement, including potentially increasing displacement risk downstream (Thailand example), and prolonging protracted displacement in the interests of ‘building back better’ (Nepal example).

In October 2022, during a 3-day Asia Pacific Conference on Climate Change, Human Mobility and Human Rights Nexus in Bangkok including APANDD members and other scholars from Asia Pacific, a wide range of case studies were presented and discussed. We identify these here and invite the Special Rapporteur to seek further details via the APANDD network.

- *State-level protection*
  - Regional and international frameworks for protecting IDPs in Indonesia
  - Rights-based approaches to climate displacement in Bangladesh
  - Exclusion of refugee children from free primary education in Indonesia
  - Gaps in empirical evidence and policy action on climate mobility in the Philippines
  - Implementation of National Strategic Project on waste to energy in Tangerang City, Indonesia
- *Slow-onset disasters and food security*
  - Variable agricultural productivity and rising household food costs in Bhutan
  - Lack of rights-based approaches to slow-onset disasters in Vietnam
  - Rising sea level in Eastern Visayas in the Philippines
  - Disaster knowledge and behaviors during tidal floods in Indonesia
- *Planned relocation and resettlement*
  - Using a state-managed trust fund to finance ongoing and future climate-related relocations in Fiji
  - The dangers of not instituting culturally informed relocation housing in the examples of Muwadora Uyana and Aranayake in Sri Lanka
  - Weak institutional and legal frameworks enforcing relocation programs in the Solomon Islands
  - Local level consultation between displaced and policymakers in climate hotspots in Bangladesh
  - Challenges to mirroring opportunities and assets during government planned relocation in Jakarta and Semarang
- *Gendered impacts of climate change*
  - Gendered differences in drought coping strategies and inclusive water resource management in Sri Lanka
  - Improving women’s formal participation in disaster relief and climate mitigation in Indonesia
  - Creating tools that better capture disaster impacts for women and LGBTQ+ individuals in coastal South Asia
  - Cooperative business management and mentorship at Babakan Carik and Cigadog relocation sites after the Garut flash floods in 2016
  - Improving livelihood of relocated Carteret Islanders with a focus on women and children in Tinputs, Arawa, in Papua New Guinea

- *Communities At-Risk*
  - Statelessness assessment for success models: A case study of Lao immigrants in Ubon Ratchathani Province, Thailand
  - Sensitizing disaster relief operations to improve government interventions for persons with disabilities
  - Regulation of climate disinformation in Thailand and Singapore
  - Land infringement and exclusion of *Adat* and indigenous communities in Indonesia
  - Climate mobility of elderly persons during cyclones in coastal Bangladesh
  
- *Environmental justice*
  - Governance frameworks and legal instruments for a rights-based approach to climate mobility in Bangladesh
  - Incorporating climate migration under India's National Action Plan for Climate Change
  - Remedy for environmental losses in Indonesia under the UN's "Protect, Respect, Remedy" Framework for Business and Human Rights

These examples highlight that

- Clarifying state obligations and providing flexible climate financing, which develops state's capacity to fulfil obligations and effectively implement key policies, is critical to reducing climate vulnerability
- There is a need for better communication systems between vulnerable groups and policymakers and spaces for self-advocacy and rights education
- Strong coordination between diverse actors at the local, national, and regional, level prevents communities from falling through gaps in protection
- Slow onset climate events contribute to poverty and health impacts that increase vulnerability for women at the household level
- The transition of women's participation from informal to formal roles in climate mitigation, adaptation, and responses should be organized and strategic
- Relocation housing must be socially and culturally cohesive with economic opportunities and education on facility use to make housing more sustainable
- Improved legal frameworks are needed to prevent land infringement and support a rights-based approach to relocation
- Improved prevention and preparedness mechanisms are required for addressing displacement due to sudden and regular disaster
- Empowering/giving specific mandate to national human rights organization for ensuring climate justice

Further details on these case studies can be communicated at the request of the Special Rapporteur via the designated email address listed at the end of these submissions.

**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?**

Terminology is important and there is no single term to describe the varieties of contexts in which people move. The term human mobility, adopted by the Agenda for the Protection of Cross-Border

Displaced Persons in the Context of Disasters and Climate Change ([‘the Protection Agenda’](#)), encompasses migration, displacement and planned relocation. Decades of migration scholarship have recognized that there is no hard distinction between migration (which is to some extent voluntary) and displacement (which is necessarily forced). Critically, both “climate change migrants” and “people displaced by climate change” suggest direct causal relationships which exclude consideration of a wide range of political, social, economic and historical dimensions. This point is made most clearly in the [Foresight Report on Migration and Global Environmental Change](#) from 2011. Consequently, we adopt the notion of “human mobility in the context of disasters and climate change,” or, where the distinction makes sense, to various forms of mobility such as migration, displacement or planned relocation. We do not adopt a specific term to describe people who move in this context, given the lack of an internationally recognized legal definition, and in recognition of the multidimensionality of characteristics of individuals and groups.

### **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.**

Countries in Asia and the Pacific are at the forefront of developing legal and policy responses to climate-related human mobility.

The [Bangladesh National Policy on Internal Displacement](#), which was adopted in 2021, is the result of a far-reaching consultative process, and it expressly incorporates key international standards and guidelines, including in particular the 1998 Guiding Principles on Internal Displacement. The Policy is expressly human rights-based. An [Action Plan](#) was adopted in 2022, and is itself the result of consultations within Bangladesh and with an international advisory group.

Indonesia also prioritized settlement relocation as part of the [Climate Resilience Development Policy 2020-2045](#) for protecting coastal communities, and has also introduced [BNPB Regulation No. 3/2018 on the Handling of Displaced Person in Disaster Emergency](#).

In addition, Fiji has developed human rights-based [Planned Relocation Guidelines](#), [Displacement Guidelines: in the context of climate change and disasters](#), and [a trust fund for the planned relocation of communities in Fiji that are adversely affected by climate change](#). Fiji will also publish the important Standard Operating Procedures to accompany the Planned Relocation Guidelines in the coming weeks, to ensure clear guidance on how to implement these policies.

Vanuatu has also developed a [National Policy on Climate Change and Disaster-Induced Displacement](#) and the Solomon Islands is expected to launch its Planned Relocation Guidelines in the near future.

### **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.**

Displacement is inextricable from wider processes of disaster risk reduction, climate change adaptation and sustainable development. We encourage states at national and sub-national level to systematically integrate displacement considerations into national and sub-national law, policy and practice in a manner that reflects international standards and guidelines. [The Framework for Integrating Human](#)

[Rights and Gender Equality \(FIRE\)](#)<sup>1</sup> provides a strong basis for this kind of work as it reflects the systematic consideration of operational and doctrinal standards and guidelines produced by UN Treaty Monitoring bodies and agencies such as Sphere and the Inter-Agency Standing Committee. Civil society, national human rights institutions, and academia can also use FIRE to evaluate law, policy and practice, to make recommendations and to hold duty bearers accountable.

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

At the international level, international refugee law and international human rights law have relevance in ways that are only beginning to be recognized by UNHCR, human rights treaty monitoring bodies and domestic judicial authorities. There is a need for more empirical research to catalogue how authorities are responding to cross-border mobilities. The Protection Agenda provides extensive examples of effective practices adopted around the world. The [Global Compact Safe, Orderly and Regular Migration](#) also reflects (non-binding) commitments of states to promote safe and legal pathways for people affected by disasters and climate change.<sup>2</sup> It therefore falls to regional bodies, coalitions of states, and individual states to lead on implementation.

Although we already seeing substantial developments in law and policy at the regional and sub-regional level, focus is almost exclusively on movement within these geographies. There is a need to further engage with questions around how states individually and working together at regional and sub-regional levels, can address cross-border mobilities from other parts of the world. The relationship between the deterrence paradigm and the protection agenda warrants substantial further consideration.

National and sub-national actors should take steps to integrate displacement considerations either into relevant disaster risk reduction, climate change adaptation and sustainable development law and policy, or develop bespoke legal and policy frameworks similar to those identified in response to question 3 above.

Finally, cities are increasingly taking the lead on issues relating to climate change and human mobility, as reflected in the [Global Mayors Action Agenda on Climate and Migration](#). Although immigration status is typically determined at national level, other aspects of human mobility, which are directly relevant to rights to shelter, food, education, health, work, social security and other economic and social rights, are often governed primarily at local level. Supporting cities through finance and technical cooperation is an important dimension of international, regional and national work to address climate-related human mobility.

Also at the international level, the role of finance, including for both adaptation and loss and damage, requires considerable further attention. Countries and communities most affected by climate change are innovating, but substantial resources are required to even begin to implement some of the measures required. Domestic budgets need to be complemented by substantial resources from the international community and individual states in the global North. Here we note the importance of campaigns for stronger loss and damage finance mechanisms. These are crucial to allow states who are less developed and most exposed to the effects of climate change to adapt and prevent forced mobilities where possible and most effectively manage mobility where it is unavoidable. In addition, there should be a

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<sup>1</sup> See also Matthew Scott, Ha Nguyen, Michael Boyland, Claudia Ituarte-Lima, Natalia Biskupska, Pannawadee Somboon and Lena Fransson (2022) "[FIRE: A Framework for Integrating Human Rights and Gender Equality into Disaster Risk Reduction and Climate Change Adaption](#)" *Climate and Development*

<sup>2</sup> See evaluation by Walter Kälin in the International Journal of Refugee Law [here](#)

commitment period by the state parties to implement the provisions of Paris Agreement. Climate vulnerable developing countries should receive financial support as grant instead of loan under loss and damage principle.

From a multilevel legal perspective, laws and policies concerning the right to a healthy environment can contribute to addressing the root causes of displacement as well as generating an enabling environment for durable solutions thereby benefiting not only present but also future generations. Healthy ecosystems are more resilient to the effects of both slow onset and sudden unexpected impacts of climate change, enabling societies to continue to develop after these impacts, thereby preventing displacement. Nature contributions to people derived from healthy ecosystems such as mangroves range from regulating services such as flood regulation and water purification, and provisioning healthy and nutritious food and clean water. Therefore, safeguarding healthy ecosystems is important not only for preventing displacement but also durable solutions because whether or not people will move again largely depend on whether they have continued and long-term access to nature contributions to people. The right to a clean, healthy and sustainable environment was recognized by the UN General Assembly in 2022 building on a UN Human Rights Council Resolution in 2021 and advances at regional and national levels in the last five decades. In Asia and the Pacific, like in other regions, a significant number of countries have recognised this right in their Constitutions and secondary regulation (Boyd, D. (2019/ A/HRC/43/53/Annex V). For examples in Southeast Asia, see [Prosperous and green in the Anthropocene: The human right to a healthy environment in Southeast Asia](#).

A human rights-based approach to displacement requires addressing women's particular challenges on inequalities on land and resource tenure rights which get amplified in a displacement context but also recognizing that they are vital agents of positive change, enhancing the resilience of households and communities, and reducing vulnerability.

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

See response to q 5 above.

**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?**

This question has been extensively discussed in the literature for more than 10 years. The UNHCR's [Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters](#) now recognizes that individuals can establish eligibility for recognition of refugee status under the Refugee Convention in circumstances that extend beyond the risk of direct and intentional infliction of harm by a state actor on account of a person's race, religion, nationality, membership of a particular social group or political opinion. International human rights law is developing, with the most comprehensive articulation of the scope of the right to life under Article 6 ICCPR found in the Human Rights Committee's decision in [Teitiota v New Zealand](#). McAdam [identifies](#) how this decision might lead to further legal developments in later cases. [Ammer et. al](#) point to some judicial flexibility in Austria in relation to claims for international protection relating to drought in Somalia, whilst [Scott and Garner](#) observe a lack of judicial engagement with specific 'non-harmonized' international protection categories in Sweden and Finland, even in cases where the provision was expressly relied upon. [Scissa](#) describes a range of innovations in the Italian

context.

There is further scope for policy-level initiatives to facilitate the mobility of people adversely affected by climate change under existing domestic immigration law provisions, as detailed by [Cantor](#). This is more a question of political will than legal doctrine, and the path has been laid by the aforementioned Global Compact on Migration.

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

Yes, there is a distinct climate justice component considering long-standing indigenous reliance and protection of sacred natural resources essential to their community identity. For example, in Indonesia, there are “forbidden forests” that are considered sacred, and elders have the responsibility to prohibit activities in the forest. The principles and worldviews of indigenous communities can play an essential role in climate change issues:

1. The environment in which they live has a spiritual value; it is a living being or even a creature higher than humans because the environment provides various benefits and resources and protects the community.
2. Their way of life is part of traditional conservation that is sustainable through generations.
3. Indigenous knowledge is a comprehensive source of information in various fields, such as agroforestry, traditional medicine, biodiversity conservation, customary resource management, impact assessment, and natural disaster preparedness and response.

Climate displacement threatens to take these key roles away from indigenous communities and obscure their claim to their land; therefore, there must be legal mechanisms that minimize loss of livelihood and better uphold their rights. Recent cases brought before the UN Human Rights Council<sup>3</sup> and to UN Special Procedures mandate holders<sup>4</sup> highlight the distinctive experience of indigenous peoples in the context of climate-related human mobility.

Climate adaptation efforts need to include comprehensive land rights that reduce risks for indigenous peoples and foster the resilience of the socio-ecological systems they depend on. Strengthening the legal basis for registration will ensure that land negotiations better uphold indigenous rights and prevent outside actors, such as the state, from infringing on their land. There are also cultural considerations related to livelihood that need to be taken into account in the event of displacement—for example, the Sedulur Sikep community in Indonesia use traditional farming methods and all people work as farmers to protect the environment. Additionally, in Rendu communities, land and resources are considered ancestral possessions that are to be protected and used in sustainable ways (e.g., using natural materials for constructing homes). It is essential that frameworks for addressing displacement are culturally informed and appropriate. Strengthening land rights for indigenous communities then is fundamental to maintain their values and integrate their understanding about the environment to limit negative harms resulting from displacement. Thus, States should commit to meaningful engagement of indigenous communities in climate change issues.

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<sup>3</sup> See [CCPR/C/135/D/3624/2019](#) (22 September 2022)

<sup>4</sup> See the complaint [Rights of indigenous people in addressing climate-forced displacement](#) (pending)

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