

31 January 2024

## Submission to OHCHR on the human rights impacts of loss and damage from the adverse effects of climate change

Provided by [Climate Refugees](#) in response to the [call for input](#) issued by the Office of the High Commissioner for Human Rights in relation to Human Rights Council resolution 53/6 of 7 July 2023

**Q1: Please describe through concrete examples and stories the impacts of loss and damage from the adverse effects of climate change on the full enjoyment of human rights in your country. Please indicate whether the impact was exceptional or whether an example of many similarly situated cases. Please estimate the number of cases that may be similar in your country.**

Across the globe, in both developing and developed countries, climate change impacts are causing loss and damage. Our discussions with affected communities have highlighted these complex impacts in various geographic contexts, including the Sahel,<sup>1</sup> Kenya's Rift Valley,<sup>2</sup> and even South Florida, USA.<sup>3</sup> While the stories shared with us are all unique, they cover common themes and highlight that losses and damages stemming from climate change are having serious, negative impacts on the full enjoyment of human rights, especially for marginalized groups.

In the Lake Chad Basin, home to some 40 million people, climate impacts like reduced and erratic rainfall, coupled with high temperatures, are leading to high rates of lake evaporation.<sup>4</sup> The drought-like conditions and receding lake waters are having serious impacts on the people who depend upon the lake and surrounding environment for their livelihood. Lake Chad has receded to an extent where

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<sup>1</sup> Amali Tower, "Shrinking Options: Climate Change, Displacement and Security in the Lake Chad Basin," Climate Refugees, 2017,

<https://www.climate-refugees.org/reports/2017/9/18/shrinking-options-the-nexus-between-climate-change-displacement-and-security-in-the-lake-chad-basin>. See also: case study published in *Loss and damage case studies from the frontline: a resource to support practice and policy*, International Institute for Environment and Development, 2021,

<https://www.climate-refugees.org/reports/case-study-loss-and-damage>.

<sup>2</sup> Amali Tower and Ryan Plano, "'Climate Change Is Controlling Everything, Let Them Compensate Us': Stories Of Loss And Damage In Kenya," Climate Refugees, 2023,

<https://www.climate-refugees.org/reports/kenya-loss-and-damage>.

<sup>3</sup> Amali Tower and Ryan Plano, Climate Change Is Exacerbating Gentrification, Displacement And Inequality in Miami," Climate Refugees, 2023,

<https://www.climate-refugees.org/reports/2023/12/8/miami-climate-justice>.

<sup>4</sup> Tower, "Shrinking Options", p. 25.

livelihood loss is almost permanent. Combined with the severe underdevelopment of the region, people are unable to adapt to new vocations. They have adapted by moving, although not by choice. Even before the current conflict between Boko Haram and the surrounding Lake Chad Basin countries forced many residents to leave the region completely, including across borders,<sup>5</sup> many residents told us they had been forced to move internally every year in order to “chase the water” - also known as moving closer to the lake for livelihood and survival.<sup>6</sup> With the lake receding year upon year, residents have coped with the multiple climate-driven impacts from livelihood loss to loss of access to water by repeatedly moving closer to the lake’s shores in order to access water for farming, livestock, household use and fishing. And with each repeated move closer and closer to the lake’s shores, rights have been eroded. Some residents told us they have been forced to forgo schooling as facilities became inaccessible. Even safety and protection is at risk, as dry lake beds made it possible for Boko Haram to access villages by vehicle and more easily attack residents. Overall, cultural loss is significant and violates Indigenous, economic, social and cultural rights, while food security is endemic.<sup>7</sup> Indigenous ways of life that have been practiced for thousands of years are being lost as people have been displaced by both climate and conflict.<sup>8</sup>

In Kenya’s Rift Valley, both prolonged drought and flooding events - especially of the region’s lakes - have caused loss and damage and impacted human rights. Women and girls are bearing the brunt of these impacts, which exacerbate discrimination they already face.<sup>9</sup> For example, on Kokwa Island in Lake Baringo, one new mother’s story demonstrated how gender equality and climate change are intertwined.<sup>10</sup> The only hospital accessible to the community is on the mainland, which once was part of Kokwa but is now separated due to lake level rise that divided the island in three. When the woman went into labor, it happened in the middle of the night. Having only balsa wood boats that must be paddled with rudimentary hand paddles rather than oars, she and her helpers attempted to cross over to the mainland while she was in labor. They were unsuccessful, and the woman was forced to give birth on the boat. Elsewhere, in Lorengippi, a village in Turkana County, worsening water scarcity due to drought has forced girls to climb into deep, unstable holes to fetch water. One water hole is even named “Akinpipu,” or “girls,” because it is used by so many young girls, some of whom have died in the process.

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<sup>5</sup> Ibid., p. 2.

<sup>6</sup> Ibid., p. 13.

<sup>7</sup> Ibid., p. 29.

<sup>8</sup> Ibid., p. 27.

<sup>9</sup> Tower and Plano, “Climate Change is Controlling Everything”, p. 7.

<sup>10</sup> Ibid., p. 67.

In Miami, Florida's most populous metro area, marginalized communities are being disproportionately impacted by extreme heat, tropical storms, and sea level rise, all of which are worsening due to climate change. As temperatures rise, and with an ongoing housing and cost of living crisis, low-income and immigrant households are struggling to afford life-saving air conditioning during heat waves. And in a city with high humidity year round, lack of access to A/C can leave residents dealing with dangerous mold in their homes, impacting health outcomes. In the city's Little Haiti neighborhood, gentrification is being exacerbated and accelerated by climate change, which is making inland areas more desirable and driving up flood insurance premiums even on low-income residents. The result has been an exodus of Haitian immigrants from the neighborhood because they can no longer afford to live in the neighborhood they helped build. When we asked one resident where she would go if she were to sell her modest home to the developers who regularly knock on her door, she told us she could not imagine any other place where she would want to or could afford to live. Climate change is worsening dynamics that are threatening residents' most basic needs, and in a wealthy, developed country.

**Q2: Please describe any relevant quantitative and qualitative data as well as mechanisms and tools to measure, monitor, report on, and evaluate the impacts of loss and damage, including from extreme weather and slow-onset events, on the full enjoyment of human rights. Please take into account, inter alia, the disproportionate effects on women and girls, children, youth, older persons, persons with disabilities, Indigenous Peoples, migrants, persons living in poverty and others in vulnerable situations.**

Measuring the losses and damages from climate impacts is a complicated process that requires flexibility in methods used, and a recognition that some losses will never be quantifiable nor recoverable. This complexity is manifested in the ongoing discussions, within and outside of the UNFCCC process, around economic and non-economic loss and damage.

Some losses and damages can be quantified relatively easily, offering policymakers clear figures they can bring to governments, donors, and international organizations. For example, Kenya's Lake Baringo is Baringo County's most popular tourist attraction due to its many hot springs and active geysers. With the biodiversity, habitats and nature reserves surrounding both Lakes Baringo and Bogoria, tourism has traditionally been a huge source of revenue for Baringo, a county with a poverty rate of 52.2%. With the impacts of floods and the Covid-19 pandemic, Baringo County

has lost an estimated 95 million shillings (nearly 700,000 USD) in tourism and infrastructure in 2021.<sup>11</sup>

Similarly, in Pakistan, devastating floods in 2022 that left over one-third of the country underwater resulted in estimated damages of 14.9 billion USD, totalling 15.2 billion USD in GDP loss, and costing 16.3 billion USD in rehabilitation.<sup>12</sup> The floods affected 33 million people, killed 1,730, mostly in the poorest and most vulnerable regions, and displaced over eight million people left to face a health, housing and livelihood crisis. Women are noted to have suffered livelihood losses in agriculture and livestock. A government assessment warned that national poverty could increase from 3.7 to 4.0, pushing between 8.4 and 9.1 million more people below the poverty line. Multidimensional poverty was at risk of increasing 5.9 percentage points, resulting in a further 1.9 million households pushed into non-monetary poverty. The loss in GDP as a direct impact of the floods was projected to be around 2.2 percent of FY22 GDP. The agricultural sector was the worst affected, contracting the most at 0.9 percent of GDP, and with spillover effects on the industry, external trade and service sectors.<sup>13</sup>

While more high quality data is always desirable, loss and damage - and resultant human rights harms - felt at the community or household level are generally not well captured by country-level surveys and modeling conducted from afar, which tends to be the data most visible during international climate negotiations. This is especially true for marginalized communities. In one internally displaced persons camp in Baringo County, Kenya, residents told us the last time the Kenyan Red Cross was present was two years prior, and no NGO or UN agency presence was seen during our visit.<sup>14</sup> This is despite the fact that climate change-driven floods were the reason for their displacement. Elsewhere in the region, flooding and prolonged drought is reducing livelihood options, leaving women widowed in a patriarchal society, and forcing children to forego schooling in order to search for increasingly scarce potable water. Many of the communities we visited in Kenya were Indigenous and minority ethnicities, and were regularly neglected by officials. It is therefore likely that their stories and experiences are not reaching the ears of policymakers.

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<sup>11</sup> Ibid., p. 20.

<sup>12</sup> "Pakistan Floods 2022 Impact Assessment," (Annexure - III), Government of Pakistan Finance Division, 2022, [https://www.finance.gov.pk/survey/chapters\\_23/Annex\\_III\\_Pakistan\\_Floods\\_2022.pdf](https://www.finance.gov.pk/survey/chapters_23/Annex_III_Pakistan_Floods_2022.pdf).

<sup>13</sup> "Pakistan: Flood Damages and Economic Losses Over USD 30 billion and Reconstruction Needs Over 16 billion - New Assessment," World Bank, 2022, <https://www.worldbank.org/en/news/press-release/2022/10/28/pakistan-flood-damages-and-economic-losses-over-usd-30-billion-and-reconstruction-needs-over-usd-16-billion-new-assessment>.

<sup>14</sup> Tower and Plano, "Climate Change is Controlling Everything", p. 23.

These disparities demonstrate the critical need for holistic, community-level, and human-centered data - including qualitative data and storytelling - to fill in gaps and produce a more complete picture of how climate change is causing loss and damage and impacting the enjoyment of human rights. There is also a need for governments at all levels to recommit to serving all of their constituents in a way that addresses historical inequalities and allows communities to build resilience in a way that is right for them. Funds and technical assistance is key, but it must respect the customs and knowledge that all communities possess.

**Q4: Please identify and share examples of promising practices and critical challenges in the promotion, protection, and fulfilment of the full enjoyment of human rights in the context of loss and damage, including examples that highlight multilateral cooperation and approaches, at global and regional levels, including equity-based approaches and solutions.**

In addition to international frameworks pertaining to loss and damage, such as the fund and funding arrangements operationalized during COP28, there are various national and regional instruments that have relevance even if they do not explicitly cover loss and damage. Given our work is focused on the nexus of climate change and migration, the following examples - some of which are also discussed in our recent report<sup>15</sup> - are from this area. Displacement can be an example of loss and damage itself, or the result of a string of losses and damages. Importantly, climate immobility - such as when an already impoverished household cannot afford to relocate even as climate change makes it increasingly difficult to remain - is an example of loss and damage, and one that is likely to increase in frequency as the climate crisis worsens.

One regional instrument that seeks to address displacement linked to climate change, and therefore has implications for minimizing loss and damage and upholding human rights, is the Intergovernmental Authority on Development (IGAD) Protocol on Free Movement of Persons, developed in 2020 and agreed in 2021 by states in Eastern and the Horn of Africa.<sup>16</sup> The protocol ensures the free movement of people across borders in temporary and circular migration patterns, and it recognizes

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<sup>15</sup> Ibid., p. 84.

<sup>16</sup> *Protocol on Free Movement of Persons in the IGAD Region*, Intergovernmental Authority on Development, agreed in 2020, available from IOM at <https://environmentalmigration.iom.int/sites/g/files/tmzbdl1411/files/event/file/Final%20IGAD%20PROTOCOL%20ENDORSED%20BY%20IGAD%20Ambassadors%20and%20Ministers%20of%20Interior%20and%20Labour%20Khartoum%2026%20Feb%202020.pdf>.

the positive effects migration can have in mitigating poverty, conflict, unemployment and underemployment, but also to address drought, disasters, and environmental degradation. A similar treaty exists under the auspices of the African Union, though ratification progress has stalled. Free movement protocols that include several neighboring states can provide avenues for migrants to move within a region when climate change impacts affect livelihoods, food security, and other key needs for upholding human rights.

Another regional initiative that can help bolster protections and rights for climate-impacted migrants is the recently launched African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers<sup>17</sup> and a companion Study on African Responses to Migration and the Protection of Migrant Rights,<sup>18</sup> adopted by the African Commission on Human and Peoples' Rights. These documents include a broad definition of migrant, as well as the first global definition of a climate migrant and climate refugee.<sup>19</sup>

Regarding the protection of internally displaced persons, the Kampala Convention is the world's only legally binding regional instrument. It seeks to uphold the 1998 Guiding Principles on Internal Displacement across all African states, noting that "States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change."<sup>20</sup> At least 33 African Union member states have become Parties to the Convention so far, a promising sign on a continent where climate change impacts are already causing loss and damage, displacement, and human rights violations.<sup>21</sup>

Elsewhere, several Latin American and some Caribbean states have adopted the broader refugee definition developed in the 1984 Cartagena Declaration, which defines refugees as people "who have fled their country because their lives, safety or freedom have been threatened by...", among others, "massive violations of human

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<sup>17</sup> *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers*, African Commission on Human and Peoples' Rights, 2023, <https://achpr.au.int/en/soft-law/african-guiding-principles-human-rights-all-migrants-refugees>.

<sup>18</sup> *Study on African Responses to Migration and the Protection of Migrant Rights*, African Commission on Human and Peoples' Rights, 2023, <https://achpr.au.int/en/soft-law/study-african-responses-migration-and-protection-migrant-rights>.

<sup>19</sup> See: Bustos et al., "Climate Migration and Displacement" submission to the Senate of Canada Standing Committee on Human Rights, 2023, pp. 9-10, <https://www.climate-refugees.org/advocacy/canada/senate/witness>.

<sup>20</sup> *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention), African Union, entered into force 2012, art. V(4), [https://au.int/sites/default/files/treaties/36846-treaty-kampala\\_convention.pdf](https://au.int/sites/default/files/treaties/36846-treaty-kampala_convention.pdf).

<sup>21</sup> See: Bustos et al., "Climate Migration and Displacement".

rights” or “other circumstances which have seriously disturbed the public order.”<sup>22</sup> This definition has been used in the past to offer protection to individuals displaced by environmental disasters,<sup>23</sup> and so provides an interesting model as climate change continues to drive displacement, especially through sudden onset events like tropical storms.

While regional initiatives have the distinct benefit of distributing obligations around protection and addressing harms from climate impacts across a number of states, some countries have opted to pursue protection mechanisms through bilateral agreements. In late 2023 Australia and Tuvalu signed the Falepili Union treaty, which sets a precedent by explicitly identifying climate change as an existential threat to the Pacific island nation of Tuvalu and its citizens.<sup>24</sup> The treaty recognizes that “climate change is Tuvalu’s greatest national security concern” and seeks to provide the citizens of Tuvalu with a special human mobility pathway to access Australia underpinned by a shared understanding and commitment to ensuring human mobility with dignity.<sup>25</sup> The agreement is novel for a number of reasons. It is explicitly dedicated to human mobility linked to climate change without deeming this the ultimate solution to such a nuanced challenge. The treaty recognizes both introducing a safe and legal route to movement, and preservation of the right to stay in response to a changing climate. Most importantly, it is the first legally binding bilateral instrument at the intersection of climate change and migration.<sup>26</sup> It is unfortunate however that Australia made the mobility offer contingent on Tuvalu allowing Australia veto power over its security concerns with other countries. In addition, the treaty does not specify full citizenship rights nor pathways for resettled Tuvaluans.

At the national level, Colombia is considering legislation that could soon provide legal recognition to Colombians who are internally displaced by climate change events. The landmark bill, if passed, would recognize forced displacement due to

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<sup>22</sup> “Table No. 1, Definition of refugees (Cartagena) Latin American countries that have incorporated it into their national legislation,” United Nations High Commissioner for Refugees (UNHCR), 2017, <https://www.refworld.org/es/docid/59c29a094.html>.

<sup>23</sup> See: Bustos et al., “Climate Migration and Displacement”.

<sup>24</sup> Yumna Kamel, “What Does the World’s First Bilateral Climate Mobility Treaty Mean for Tuvalu?,” Earth Refuge, 2023, <https://earthrefuge.org/what-does-the-worlds-first-bilateral-climate-mobility-treaty-mean-for-tuvalu/>.

<sup>25</sup> *Australia-Tuvalu Falepili Union treaty*, art. 1, para. b, 2023, available from the Australian Government Department of Foreign Affairs and Trade at <https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty>.

<sup>26</sup> See: Bustos et al., “Climate Migration and Displacement”.



both environmental degradation and events associated with climate change.<sup>27</sup> In 2022 Argentina introduced a special humanitarian visa for people from Mexico, Central America, and the Caribbean who are displaced by natural disasters. The status allows affected people to stay in Argentina for three years.<sup>28</sup> Initiatives like these can help broaden the social services available to people displaced by climate change, offering at least some protection from human rights violations.

A recent program from the United States is another interesting initiative. From June through October 2023, the US government opened 'Safe Mobility Offices' (SMOs) in Guatemala, Costa Rica, Colombia, and Ecuador.<sup>29</sup> While not offices in the physical sense, through partnerships with staff from UNHCR and IOM they allow certain migrants to benefit from expedited processing for lawful entry to the US (or to Canada or Spain in limited cases, such as when criteria for US refugee admissions are not met). This program, which applies to Guatemalans, Venezuelans, Nicaraguans, Cubans, Haitians, and/or Colombians depending on the office in question, is a small but important step in the right direction to ensure that migrants from key Latin American countries of origin are not forced to make the dangerous trek north to the US border, exposing them to trafficking and human rights abuses.

While there are clearly promising strategies being deployed at various levels, an overarching challenge is to ensure measures are advancing climate justice in addition to protecting human rights. In order to do this, states and their implementing partners must consider history and context. At the heart of this discussion is a sobering reality: the countries least responsible for the climate crisis are bearing the brunt of its impacts, all while in many cases hosting the majority of people displaced by such impacts. Even in developed countries, governments must understand that addressing harms caused by climate change require an understanding of historic injustices, such as the legacy of redlining and segregation that continue to make Black and immigrant communities in Miami more vulnerable to climate impacts and resultant human rights violations. This is why the

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<sup>27</sup> María Mónica Monsalve S., "Colombia considers first law on climate refugees in Latin America," *El País*, 2023,

<https://english.elpais.com/international/2023-04-07/colombia-considers-first-law-on-climate-refugees-in-latin-america.html>.

<sup>28</sup> Julie Watson, "Climate migration growing but not fully recognized by world," *Associated Press*, 2022, <https://apnews.com/article/mexico-droughts-immigration-united-nations-natural-disasters-175988903af187bf08fa89f8f13ac8e2>.

<sup>29</sup> "What We Know about the Biden Administration's Safe Mobility Initiative," International Refugee Assistance Project, 2024, <https://refugeerights.org/news-resources/safe-mobility-offices-smos-101-what-we-know-about-the-biden-administrations-smo-initiative>.



re-introduction of the Climate Displaced Persons Act in the US Congress, to establish a system of allocating 100,000 visas annually for people displaced by climate-induced disasters, is a welcome step.<sup>30</sup>

**Q5: Please provide specific recommendations, if possible, on how to address the critical challenges that have been identified, including actions to be taken at country, regional, and global levels, as well as by different groups of stakeholders, Governments, development agencies, financing institutions, and others**

It is clear that households, communities, and even local governments have critically important knowledge that can inform solutions to the issues highlighted above. But this knowledge can only truly be useful if the following is true: (1) it is clearly identified through inclusive, community-level information gathering and amplified to the proper levels of policymaking, and (2) it is paired with adequate climate finance and technical assistance so that solutions can be implemented at scale without being extractive.

Greater direct engagement with communities is vital, and it must be context-specific. In Kenya, the constitution that was adopted in 2010 gave new powers to the county governments,<sup>31</sup> but each county is further subdivided into sub-counties, constituencies, and wards. In this case, officials at the national and county level must regularly and meaningfully consult with leaders and constituents all the way down to the ward level. Relatedly, external finance and other assistance must not stop at the county level, but be accessible by local authorities and community groups.

This latter point is particularly important as the new so-called 'loss and damage fund' takes shape and begins to consider requests for assistance over the course of 2024. The fund's board - as well as its host, the World Bank - should develop clear standard operating procedures in this area so that the hardest hit communities - which are already suffering losses and damages and human rights harms - are able to access assistance in a timely manner and without burdensome paperwork. In short,

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<sup>30</sup> "Ahead of COP28, Senator Markey, Congresswoman Velázquez announce legislation to create pathway for people displaced by climate change," Office of US Senator Ed Markey, 2023, <https://www.markey.senate.gov/news/press-releases/ahead-of-cop28-senator-markey-congresswoman-velazquez-announce-legislation-to-create-pathway-for-people-displaced-by-climate-change#:~:text=%E2%80%9CThe%20Climate%20Displaced%20Persons%20Act%20is%20a%20critical%20piece%20of%20commitment%20to%20global%20climate%20resilience.>

<sup>31</sup> Tower and Plano, "Climate Change is Controlling Everything", p. 100.

## CLIMATE REFUGEES

ensuring local needs, challenges, and knowledge is heard all the way up to the international level is key to ensuring climate finance and other assistance is designed and delivered effectively and in a way that protects human rights.

Further recommendations related to loss and damage, human rights losses, and other harms as a result of climate change impacts can be found in our recent [report](#) based on field visits in Kenya.<sup>32</sup>

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<sup>32</sup> Tower and Plano, “Climate Change is Controlling Everything”.