

Submission to the UN Special Rapporteur on the Promotion and Protection 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”

November 8, 2022

In October 2022, Climate Refugees conducted in-country research on climate-driven displacement, migration and human rights losses faced by communities in Kenya and Somalia, speaking to 110 impacted individuals. A return trip to Somalia and two country reports are forthcoming in 2023. **This submission highlights findings from Kenya and Somalia** from those interviews and focus group discussions with climate displaced people, impacted communities and expert stakeholders.

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

The Horn of Africa is experiencing an unprecedented drought, the worst to strike the region in 40 years. The present two-year drought has now exceeded the severity and durationⁱ of the 2016–2017 and 2011–2012 droughts. Nearly 40 million people are affected by dire food insecurity and near famine. Nine million livestock have died, destroying the livelihoods of the primary pastoralist communities and further contributing to malnutrition in 5 million children.

The IPCC Sixth Assessment Report has warned of the risk of high-water stress in Africa.ⁱⁱ Drylands occupy 90% of Kenyaⁱⁱⁱ, and the impact of the drought on arid and semi-arid lands (ASALs) has been acute^{iv}. The number of peoples forced to migrate in Kenya could be as high as 286,000, with over 8 million Kenyans affected by the drought in some way.^v

Over one million people in Somalia alone have now been displaced^{vi} both internally and across borders to Yemen, Ethiopia, Kenya and beyond. Humanitarian agencies are warning of strained resources, given that over the course of just two months, almost 60,000 Somali refugees fled climate change to Kenya’s Dadaab refugee camp.^{vii} Displacement in Somalia continues to be complex and multi-faceted, with more Somalis disclosing climate change as their primary driver of displacement.^{viii} In 2020, over 75% of new displacements were as a result of climate change.^{ix} In the semi-autonomous region of Somaliland, the National Disaster Preparedness and Food Reserve Authority (NADFOR) reports another 810,000 people are now internally displaced, purely due to drought.^x

With climate change comes cultural and economic loss. So too with displacement. Flooding and expanding waters have meant permanent displacement, no crops, no fishing and dependency on food aid for those who can get access to it. Not only are homes submerged, so too are the graves of loved ones. Historical livelihoods of fishing, farming and pastoralism are being forcibly abandoned due to the forces of climate change.

KENYA

- ***Kiwaja Ndege IDP Camp, Marigat, Baringo County*** – 1,000 ethnically-marginalized Indigenous Ilchamus people reside in an IDP camp that has limited access to humanitarian services and protection programming. The residents identify as 100% climate displaced. Formerly residents of 10 villages surrounding Lake Baringo, their homes were submerged in 2020 when Lake Baringo waters swelled past human habitability. These residents have received very little government and humanitarian services and live in fear of forced eviction. The needs amongst women and girls are acute, particularly in areas of gender-based violence and FGM. Although the camp has existed since 2020, residents say humanitarian agencies like the Kenyan Red Cross were last present two years ago. During our visit, no NGO or UN agency presence was seen.
- ***“Kokwa” Island, Lake Baringo*** - about 2,000 Indigenous Ilchamus residents are all that remain on this submerging island. These residents live at the very edge of an increasingly rising lake, where fishing livelihood are entirely dependent on the lake. Although many have been displaced multiple times, these same residents, and many more, now remain trapped with no economic means and transport to migrate.

With no access to health facilities or hospitals – the only dispensary is submerged and the only hospital is on the mainland - many women and girls have been forced to give birth on local wooden boats while enroute to the hospital. Similarly, the only secondary school on the island is constantly flooding. An increased challenge with mosquitoes and malaria was reported. Immediate needs for women and girls are acute.

- **Rugus location, Baringo County** - the agro-pastoralist and fishing Indigenous Ilchamus community in Rugus are facing intersecting insecurity from both climate and conflict. First displaced multiple times by conflict between the Ilchamus community and neighboring West Pokot County cattle raiders, multiple levels of insecurity have been exacerbated due to frequent lake encroachment and submersion, trapping these populations between the expanding lake and the increasing conflict. Women lack economic opportunities now that farming land and pastoral grazing land have all but disappeared due to drought, and fish are being depleted, causing their portion of the daily catch sale to dwindle. Women are unable to make a livelihood here, due to the forces of climate change, and girls are forced to travel further and wider in search of water, foregoing school, and exposing them to gender-based violence along the way. Many more women are widowed by the conflict and loss due to capsized boats and death by increased wildlife contact in the rising waters, leaving them to fend for themselves and their families.
- **Lake Bogoria, Bogoria County** - the Indigenous Endorois community was first displaced by land conservation when they were forcibly dispossessed of their land in the 1970s.^{xi} Despite a favorable judgement in the African Commission, justice is yet to be realized. Today, the community living within the periphery of Lake Bogoria has been progressively displaced yet again by rising waters. The interviewed community members highlighted challenges of failed compensation for loss of homes, increased human-wildlife contact and social ills such as prostitution driven by high poverty levels. Here, too, urgent humanitarian needs exist among the whole community with food insecurity and malnutrition rising.
- **Lake Turkana, Turkana County** - the El Molo minority community living by the shores of Lake Turkana are not only an indigenous fishing community but also the smallest community in Kenya. Having borne the brunt of historical injustices, the rise of Lake Turkana water levels has caused a further challenge to school going children who would previously walk to school but now have to use boats to cross the lake, an expense that is not only financially difficult for this community but also dangerous. Hundreds of homesteads have been submerged including family graves. The extreme marginalization of this community is evident as no hospital is built on either Komote island or in Laiyeni village. The community reported high cases of water borne diseases and malnutrition among children. It is extremely challenging to access services on the mainland, a financial burden for the residents. About 2,500 residents record high food insecurity.
- **Loya Village, Turkana** – Almost all livestock are dead in this Turkana village, destroying livelihoods, contributing to malnutrition and impacting even children’s education as communities sold livestock in the past to afford school fees. Instead, children forage for berries and travel further distances to fetch water.
- **Lokirama, Turkana** – Nomadic Turkana pastoralists who live here, just 45 km from the Uganda border spoke of domino impacts of locusts, Covid-19 and drought, from which they cannot recover. One man described the twin locust infestations that devastated crops in East Africa in 2019-2022 as “*missiles sent from the skies.*” Many here have left in preceding years to Uganda in search of higher plains, water and grazing land. Internal migration to neighboring counties is increasingly met with resistance from Pokot cattle raiders who object to the shared use of grazing land and water. These migrations are leading to increased conflict and insecurity. Food insecurity in particular is rampant. Many disclosed not eating for days and suffering from hunger.
- **Loringapa, Lorima sub-county** – Echoing many of the same challenges as other Turkana pastoralists, residents here shared additional alarming details of several community members who have died in recent

years at community water holes. With increasing water scarcity, residents have had to dig new and deeper water holes, requiring several people to create an assembly line of water collection. During these collections, several water holes have collapsed, killing multiple people.

- **Kibera, Nairobi** – Africa’s largest informal settlement is prone to frequent flash flooding due to poor drainage, and a lack of infrastructure and garbage collection.^{xii} Here residents are frequently displaced multiple times, while new rural to urban migrants arrive every day, largely driven by climate impacts. We spoke with resident-leaders of a weather forecast project, now defunct due to lack of funding, who say the compounding impacts of repeat floods, the Covid pandemic and present drought have been devastating for residents who suffer from repeat displacements, lack of basic services, high rates of malnutrition, skyrocketing inflation and urban poverty. Protection needs in Kibera are acute.

SOMALILAND, SOMALIA

- **Various IDP Camps, Hargeisa** – Although formerly part of the State of Somalia, Somaliland is a relatively stable, conflict-free, semi-autonomous state unrecognized by most international governments. The main takeaway here from speaking to displaced persons and multiple experts about the drivers that have now displaced 810,000 people in Somaliland: *“we do not have conflict in Somaliland, only climate change.”*

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?

The global South, among the most vulnerable countries to climate change and its compounding and intersecting impacts, host the bulk of the world’s forcibly displaced - over 83%.^{xiii} UNHCR also tells us that that 90% of refugees and 70% of internally displaced persons come from countries on the *“frontlines of the climate emergency.”*^{xiv} Despite this, reservations abound whether granting refugee status to climate displaced persons would weaken the 1951 Refugee Convention, while excluding others who do not meet sufficient criteria.

UNHCR has provided guidance in its October 2020 legal considerations paper on how existing international refugee law, the 1951 Refugee Convention as well as regional agreements could be applicable for claims of international protection in the context of climate displacement. State parties to the Convention can strengthen their national legal frameworks without having to revisit the Convention definition. However, refugee and migrant protections are under attack in many countries, with externalization of borders, pushbacks of those seeking protection and asylum, and even non-refoulement an increasingly common occurrence.

Yet, it is evident that certain regions, mostly the global South, are struggling to recover from climate events, and overlapping structural problems, causing setbacks to development gains in many countries, and disrupting any hope of return for many displaced people.

Explore ‘social group’ as a category of climate displaced persons – As demonstrated in our numerous examples from Kenya, pastoralists, fisherfolk and agro-pastoralists are at disproportionate displacement risk due to the adverse effects of climate change. A ‘particular social group’ normally comprises persons of similar background or social status, and refugee claims under this category frequently overlap with claims of persecution on other convention grounds like race, religion or nationality.^{xv} Climate Refugees encourages the Special Rapporteur to explore options for ensuring protection of persons who share distinguishing features that comprise a similar group, and who face undue harm or persecution because of their social group as a possible framework for protection.

Specific considerations for indigenous peoples

Indigenous people comprise 6% of the global population yet safeguard 80% of the world’s resources.^{xvi} In Kenya, all of the climate displaced communities we spoke to were Indigenous, marginalized populations. Coping mechanisms in pastoral communities include resource sharing during dry spells and lean periods. As described to us, *“our practice is that during hard times, wealthier families share with poorer families, but not anymore. Now with climate change,*

our entire community is affected all at the same time. Therefore, everyone is poor at the same time, and none of us have anything to share with another.” Other groups provided examples of their sustained cultural losses, *“We have our own conflict resolution systems that arise from resource sharing, but our rules and systems are being eroded by climate change.”* Speaking of their historic marginalization, one community told us, *“like other Kenyans, like other human beings, we deserve basic services.”*

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

Climate change knows no state borders. While more people are internally displaced due to climate change than across borders, their humanitarian needs and protections concerns remain largely similar. The IPCC Sixth Assessment Report warned of the extreme vulnerability of refugees and IDPs to climate change, pushing them into a cycle of multidimensional poverty deemed a “climate trap.”^{xvii}

Climate change impacts are disproportionately impacting developing countries who are increasingly overwhelmed in their capacities to respond to the needs of displaced persons. This is particularly acute amongst already marginalized people who report a lack of government support when displaced by desertification in Bounou, Morocco^{xviii} or pastoralists in Baringo and Turkana counties in Kenya, all of whom reported a lack of government support, even when death and displacement due to climate impacts were reported to government ministries. In some instances, spontaneous IDP camps have sprung up, such as the aforementioned Kiwaja Ndege in Baringo county, where displaced persons have been mostly fending for themselves for over two years.

Because of the disproportionate climate impacts borne by frontline countries, international support, cooperation and protection will be vital for both internally and cross-border displaced persons.

Examples of policies and practices of how States and businesses can protect people displaced by climate change.

Policies and practices to better protect climate displaced persons, migrants and refugees must be formally adopted at the UN climate talks. Up to now, not only has climate displacement been a peripheral issue, but displaced persons have been **shut out even from representation**. While this should be a formal agenda topic on its own, in the short-term, one of the strongest ways in which this **can be incorporated into the UN climate agenda is through the loss and damage** agenda, formally adopted at COP27.

With [100 million](#) now forcibly displaced globally, and in some years climate change driving internal displacement [more than three times](#) as much as conflict or violence, climate displacement is a **prime example of loss and damage**.

Although a [Task Force on Displacement](#), housed within the Warsaw International Mechanism for Loss and Damage was developed in 2015, progress on loss and damage has been stymied by high-emitting developed nations. Developing countries are disproportionately bearing the brunt of both economic and non-economic losses and damage. The projected economic costs^{xix} of loss and damage by 2030 in developing countries range from 290 to 580 billion USD annually. Despite this warning, developed countries have not only stalled on providing the promised 100 billion USD in annual climate adaptation funding, they have also stalled any discussions on creating a loss and damage funding facility to help developing countries recover from irreversible climate losses.^{xx}

But this lack of progress is demonstrative of developed countries prioritizing border security over human security, as the richest countries most responsible for the climate crisis are spending 30 times more on their militaries than they are on climate finance for the world’s most vulnerable countries.^{xxi}

As the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance noted in her October 2022 report to the UN General Assembly, *“with climate change being framed as a security issue, security corporations and other actors are contributing to border militarization that further prevents many displaced by climate conditions from finding safety.”*^{xxii}

As we recently [wrote](#) in this article on climate displacement, “*for the world’s richest and most powerful countries, border militarization has become a climate-adaptation strategy.*” But what if rich, polluting countries were to not only uphold their promises, but also prioritize human security over border security? We must ensure robust protection measures for people displaced by climate change, not only in their own countries, but also any place in which they may find themselves.

What legislation, policies and practices are you aware of that are in place to give protection to the rights of individuals and communities displaced by climate change?

Regional agreements that facilitate free movement across borders - The IGAD Free Movement Protocol in East Africa^{xxiii} ensures the movement of people across borders in temporary and circular migration patterns. The Kampala Convention^{xxiv} on the protection of internally displaced persons in Africa and the recent Kampala Ministerial Declaration on Migration, Environment and Climate Change^{xxv} serve as examples of subsidiary protection pathways, and the reality of States who more readily understand effective regional cooperation mechanisms in the face of growing climate-induced migration. Migrants and displaced persons interviewed told us they had successfully **received a right of admission to stay and pathways to citizenship** in IGAD countries, which should be the goal we must pursue for all climate displaced persons at the global level.

Many pastoral communities told us about their temporary and permanent movement from Kenya to the Ugandan highlands, where water and grazing land are more available, noting that historic circular movements were becoming increasingly permanent due to sustained climate change impacts. However, just as many spoke of limitations that prevent them from moving due to lack of water and food to make the 45 kilometer 10-day journey on foot to the border. Others suffer from lack of mobility amongst the elderly and disabled, while others simply were reticent to leave their homes, citing that migration was no longer a temporary measure. Additionally, during times of heightened security or perceived weapons proliferation, border closures or migrant entry denials are utilized.

The Nilotic Turkana people, native to the semi-arid region of Turkana county in northwestern Kenya, are hard hit by climate change. The Turkana are Indigenous to this region, with significant experience in dealing with periods of rain and dry spells, but all the people we spoke to say they have never experienced nor heard of a dry period like this.

Internally, Turkana borders the four Kenyan counties of Pokot, Baringo, Marsabit and West Pokot, all composed of pastoralist communities. Across borders, Turkana county borders Uganda to the west, and South Sudan and Ethiopia to the north. This entire region in Kenya and across borders is composed of the same ethnic people who are nomadic and semi-nomadic pastoralists and agro-pastoralists. All of these communities are moving within and across borders as a coping mechanism against climate change impacts. As they move, however, many are coming into contact with other pastoralist groups, setting off conflicts arising from natural resource sharing, water scarcity, land access and ownership.

Although inter-state cooperation exists to combat arms proliferation, weapons from Sudan and South Sudan are reportedly flowing through the porous borders of the IGAD countries, where pastoral communities in this region are now heavily armed in response to new and renewed climate-conflicts. The region is a place where underdevelopment, marginalization and climate change merge. Insecurity has returned with cattle raiding resuming and many increasingly armed with AK-47’s, due in large part to conflicts resuming over mobility and sharing of overstretched resources.^{xxvi} Internal migration in Kenya and across borders has increasingly become a coping mechanism for those who can manage the travel, but this has led to new and renewed problems as well. Particularly acute are historic conflicts of cattle rustling in Turkana and between the peoples of Pokot and Baringo counties.^{xxvii}

- ⁱ Horn of Africa Drought: Regional Humanitarian Overview & Call to Action. 21 September 2022. <https://reliefweb.int/report/ethiopia/horn-of-africa-drought-regional-humanitarian-overview-call-action-revised-21-september-2022>
- ⁱⁱ IPCC Sixth Assessment Report, Climate Change 2022: Impacts, Adaptation and Vulnerability, Chapter 9, Africa: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter09.pdf
- ⁱⁱⁱ Drylands, Development, Pastoralism and Biodiversity Conservation in East Africa. ASARECA. https://www.asareca.org/sites/default/files/publications/policy_brief_drylands_development_pastoralism_and_biodiversity_conservation_in_east_pb1.pdf
- ^{iv} "Desperate for Water, Communities in Kenya's Rural Areas Forced to Move," IOM, 20 March 2022, <https://eastandhornofafrica.iom.int/stories/desperate-water-communities-kenyas-rural-areas-forced-move>
- ^v [Climate Vulnerable Forum](#)
- ^{vi} "One Million Displaced by Drought in Somalia," UNHCR and NRC. 11 August 2022, <https://www.unhcr.org/en-us/news/press/2022/8/62f4c3894/million-people-displaced-drought-somalia.html>
- ^{vii} "Humanitarian Needs Mount as Almost 60,000 Refugees From Somalia Arrive in Dadaab Refugee Camp Due to Impact of Climate Change, Warns IRC." Reliefweb, 8 November 2022, <https://reliefweb.int/report/kenya/humanitarian-needs-mount-almost-60000-refugees-somalia-arrive-dadaab-camp-due-impact-climate-change-warns-irc>
- ^{viii} "Climate Change Driving Displacement as Somalia Faces Famine: An Interview with the UN's Christophe Hodder," Climate Refugees, 8 June 2022. <https://www.climate-refugees.org/perspectives/2022/6/8/somalia>
- ^{ix} Ibid
- ^x Climate Refugees interview with Shomake Abdi Musse, Director of Planning and Research, NADFOR, Hargeisa, Somaliland, 24 October 2022.
- ^{xi} Carson Kiburo, "Impacts of Climate Change Among the Endorois Peoples in Kenya," Cultural Survival, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/impacts-climate-change-among-endorois-peoples-kenya>
- ^{xii} Nita Bhalla, "We Need Cash to Adapt, Kenyan Slum Dwellers Tell COP26 President," Reuters, 26 March 2021, <https://www.reuters.com/article/us-climate-change-kenya-trfn/we-need-cash-to-adapt-kenyan-slum-dwellers-tell-cop26-president-idUSKBN2BI2QU>
- ^{xiii} UNHCR Figures at a Glance. <https://www.unhcr.org/en-us/figures-at-a-glance.html>
- ^{xiv} "Climate Change is an Emergency for Everyone, Everywhere," UNHCR, 9 November 2021, <https://www.unhcr.org/en-us/news/stories/2021/11/618a301d5/climate-change-emergency-everywhere.html>
- ^{xv} T. Alexander Aleinikoff, "Membership in a Particular Social Group: Analysis and Proposed Conclusions.," "Pg. 5, Georgetown University Law Center, <https://www.unhcr.org/en-ie/3b83b1c54.pdf>
- ^{xvi} Indigenous Peoples. World Bank, <https://www.worldbank.org/en/topic/indigenouspeoples#:~:text=There%20are%20an%20estimated%20476,of%20non%2Dindigenous%20people%20worldwide>.
- ^{xvii} Matt Raulerson, "IPCC Warns of Climate Traps Among Refugees and Displaced Person," Climate Refugees, 17 March 2022, <https://www.climate-refugees.org/spotlight/2022/3/17/ipcc-refugees-idps>
- ^{xviii} Climate Refugees interview with displaced communities in Bounou, M'Hamid, Morocco, 15 May 2022.
- ^{xix} Unpacking Finance for Loss and Damage. Heinrich Boll Stiftung, <https://us.boell.org/en/unpacking-finance-loss-and-damage>
- ^{xx} Amali Tower & Todd Miller, "Finding a Solution to Climate Displacement: Time to Divert Border Enforcement Billions into Loss and Damage Finance," The Border Chronicle, 3 November 2022, <https://www.theborderchronicle.com/p/finding-a-solution-to-climate-displacement?fbclid=IwAR13tiHVPCkVlqf3IcMgIVDZcntzMXCVGpSIWXobdNkaqS5OjFz9DYTWrs>
- ^{xxi} Climate Collateral. Transnational Institute, 14 November 2022, <https://www.tni.org/en/publication/climate-collateral>
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