

# ENHANCING PROTECTION AND EMPOWERMENT OF MIGRANTS AND COMMUNITIES AFFECTED BY CLIMATE CHANGE AND DISASTERS IN THE PACIFIC REGION



## PACIFIC CLIMATE CHANGE MIGRATION AND HUMAN SECURITY (PCCMHS) PROGRAMME

# REGIONAL POLICY DIALOGUE

### SUMMARY REPORT

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## EXECUTIVE SUMMARY

### 1. INTRODUCTION

This report summarises the key issues that emerged from the Regional Policy Dialogue, organized under the Pacific Climate Change Migration and Human Security (PCCM-HS) programme<sup>1</sup> over the period September to November 2020 and presents the potential scope of a regional approach to help address climate related mobility in the Pacific, and next steps for the further development of the approach.

#### 1.1 CONTEXT

Pacific communities are affected by a range of sudden-onset and slow-onset hazards that are either intensified or accelerated by climate change. Sudden-onset hazards affecting Pacific countries include tropical storms and related storm surges, king tides, heavy rains and winds. These are expected to increase in intensity due to climate change. In addition, Pacific countries are also exposed to drought, and over longer time frames, slow-onset processes. These include sea level rise, rising sea temperatures, ocean acidification, coastal erosion, temperature and changes to rainfall variability and the El Niño and La Niña climate patterns. These hazards and

#### Mother Earth

Mother Earth, why are you so angry?  
It makes us so fearful and weary.

The land is harsh and harder to bear fruit,  
We are hungry and in need of fruit.  
Salt water into our taro patches are often,  
Making our precious taro rotten.

The sea, heat, and wind are angry and whip us more often,  
We are hungry, thirsty and fearful more often.  
Mother Earth, your arms are harder to reach,  
You seem harsher and harder to reach.

The once peaceful sea is angry and more often,  
It rises higher and eats away our shores more often.  
Rising higher and strong, it causes fear more often,  
Sneakily it enters our gardens and homes more often,  
Causing damage, heartache and tears more often.

Mother Earth, how do we appease your anger,  
For we are filled with thirst and hunger.  
We are fearful of the rising sea, so angry,  
Making us often scared and so weary.  
Our wells are parched with thirst,  
We need to quench our increasing thirst.

Mother Earth, your arms have been our loving home,  
How can we up and leave our home.  
You are all we love and know.  
We don't want to be uprooted and displaced.  
What will become of us, we don't know.  
But fear, thirst and hunger we now know.



Lucille Apis-Overhoff

<sup>1</sup> The programme is implemented by the International Organization for Migration, United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), International Labour Organization (ILO) the Office for the High Commissioner for Human Rights (OHCHR) along with the Pacific Islands Forum Secretariat (PIFS), and the Platform on Disaster Displacement (PDD).

climatic changes have had far reaching impacts on human security in Pacific Islands, especially in atoll countries. Future projections of global warming indicate that such trends are likely to continue without significant global mitigation and adaptation efforts.

Climate change and disasters may interact with drivers that already shape mobility patterns in the region. This may lead to “climate mobility”, which may entail:

- Migration undertaken voluntarily, for example movement in search of employment or better access to services, internally or across borders;
- Displacement, or forced movement, where people are compelled to move, either within a country or across borders; and
- Planned relocation of communities or individuals, through a permanent transplanting of communities and their assets in another location.

The exact nature of the movement occurring in the context of climate change depends on numerous factors, including the type of hazard and existing vulnerabilities faced by individuals and communities. As such, while climate change and disasters have always influenced mobility trends, the exact influence of climate impacts on mobility patterns cannot usually be isolated. This decision may be understood as a voluntary choice, yet it is difficult - if not impossible - to establish the exact thresholds when mobility decisions become “forced”.

While some studies that model climate mobility trends in the Pacific exist, these suffer from limitations posed by a lack of robust data of climate projections, and challenges related to the multiple variables related to migration. In the worst possible scenario communities will face increased risks of displacement or will feel the pressure to migrate to higher areas in their own country or overseas, drawing greater attention to planned relocation as a viable – although last resort – response.<sup>2</sup> In such a context, despite the absence of clear projections, there is already ample evidence to indicate that cautious planning would be prudent.

Several global policy frameworks on climate change, disaster risk reduction and migration highlight the unique human rights challenges exacerbated by movement in the context of climate change and disasters and make recommendations for governments to pursue action at national and regional levels. Similarly, core policy

initiatives in the Pacific, such as the Framework for Resilient Development in the Pacific (FRDP) and the Boe Declaration on Regional Security, reiterate the need to protect individuals and communities most vulnerable to climate related displacement through targeted national and regional policies, including regional labour migration schemes. Despite these achievements, there remains an absence of an agreed upon framework or arrangements between Pacific Governments to address climate change related migration, displacement and planned relocation.

## 1.2 REGIONAL POLICY DIALOGUE

From September to November 2020, a Regional Policy Dialogue consisted of six webinars was organized under the PCCM-HS programme. Participants were nominated senior officials from relevant ministries (foreign affairs, climate change, lands, disaster management) from Pacific governments with support from key stakeholders.

The objectives of the Regional Policy Dialogue were as follows:

- i. To examine the challenges and opportunities to enhance protection of people migrating in relation to climate change
- ii. To discuss the relevant global, regional and national initiatives
- iii. To review the human security implications of climate change and migration
- iv. To examine different options that the region may take to ensure the protection of climate-related migrants.

The Dialogue provided an opportunity for participating countries to initiate discussions on a regional process in support of responses to climate change-related migration, displacement and planned relocation. This report is based on country inputs from twelve participating Pacific Island Countries (Cook Islands, Fiji, Kiribati, Palau, Papua New Guinea, Republic of the Marshall Islands, Federated States of Micronesia, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu) and inputs from the Technical Advisory Group (TAG) and programme partners (IOM, ILO, OHCHR, ESCAP, PDD and PIFS). The Dialogue identified policy and legal gaps on climate change and disaster-related migration, displacement and planned relocation and identified potential next steps to address this through a regional approach.

2 IPCC, Special Report on the Ocean and Cryosphere in a Changing Climate chapter 4 (2016). Available from <https://ipcc.ch/srocc/> (For those unable to afford protection, accommodation or advance measures, or when such measures are no longer viable or effective, retreat becomes inevitable).

## 2. NATIONAL CHALLENGES

Climate change is recognized as the greatest threat to human security in the Pacific region, including peace and national security. In many cases these are irreversible and represent an existential threat, particularly to low-lying atolls where uncertain food and water security is already a harsh reality. Many Pacific island countries already face significant risk and exposure to disasters and slow onset hazards.

### 2.1 EVIDENT IMPACTS OF CLIMATE CHANGE

Climate change has multifaceted impacts that disrupts national priorities and development aspirations. These include:

- Climate variability including rainfall uncertainty, warmer temperatures, floods and droughts and more frequent and intense tropical cyclones
- Interaction with La Niña and El Niño events to create more extreme variability
- Sea level rise resulting in increased inundation and coastal erosion of low-lying coastal areas, exacerbating storm surges and king tides
- Water insecurity, including salinization of fresh water sources
- Loss of land area and receding coastlines due to coastal erosion
- Impact on infrastructure and sacred sites
- Impact on economic and livelihood security
- Implications for land security including loss of agricultural and habitable land
- Increased risk of water-borne diseases affecting health security
- Ocean acidification and impacts on food security
- Stress on reef ecosystems already threatened by coral bleaching, atoll damage and fishing pressure
- Slow on-set events and threats to economic, food and health security

### 2.2 INCREASING IMPLICATIONS FOR HUMAN MOBILITY

It is not easy to establish a clear link between climate change and mobility from the multiple drivers of

movement, and to distinguish voluntary and forced movement due to climate change. While there is evidence of displacement stemming from sudden-onset hazards, climate change is not yet considered to be a major factor influencing voluntary migration choices, though it is highly likely to become significant in the future. Migration, based on an individual's or family's choice, has been widely used to diversify livelihoods, access services and in risk management for decades or longer in the Pacific. The region also needs to be conscious of the impact on communities of origin and those with less access to migration opportunities. Different dimensions to this are as follows:

- Labour mobility and remittances are important across the Pacific, though with varied significance for each country
- Labour migration within countries as well as to destinations overseas has a long history and has been used as an adaptation strategy in the context of environmental challenges
- Migration to urban areas and inter-island migration are driven by employment and access to services such as education and health care
- Displacement (internal and mostly temporary) occurs in the context of extreme weather events and geo-hazards
- In some countries planned relocation is being undertaken in response to repeated flooding from coastal erosion and high tides, particularly during king tide seasons
- Social and economic disparities influence vulnerability and migration outcomes
- Coastal communities will be the most severely impacted
- More studies needed to be done to understand mobility due to climate change

## 3. NATIONAL PRIORITIES

### 3.1 ISSUES RELATED TO CLIMATE MOBILITY AT THE NATIONAL LEVEL

Recognising that further consultation is required across different parts of government as well as at the sub-national and local levels to develop a national response, the following issues were identified for the attention of national planning on climate related mobility:



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### i. Challenges for national policy frameworks

- Comprehensive policies on migration, displacement and relocation
- Identification of durable solutions for displaced communities
- Need for strong interlinkages at the national level and to foster dialogue across policy spaces
- Integration of human mobility and displacement strategies into national policies and planning related to climate change and disaster management, including targeted measures addressing the risks and barriers for the most vulnerable men, women, and youth
- Policy silos need to be addressed through a risk-informed approach in all development policies including land use planning, social protection, disaster response and climate change adaptation
- Lack of policies and legal frameworks on internal/international migration
- Safety nets considering different climatic scenarios need to be in place
- Need to align national policies related to sustainable development, environment, climate change and human rights, and harmonize implementation processes (including M&E and reporting)
- Development of management plans for public assets (infrastructure) to factor in climate change to ensure resilience in the long term

### ii. Capacity constraints

- Capacity, especially at the provincial level, to adequately plan for, or accommodate, climate

mobility into day to day development activities

- Need for guidance on linking climate change adaptation and mobility
- Including indigenous knowledge DRR/DRM and adaptation policies and frameworks

### iii. Land, land use and access

- Land issues related to land ownership, customary land tenure and land use
- Limited guidance is available from national and provincial governments about negotiating new land arrangements with customary land holders.
- Limited availability of land as an obstacle to relocation, including limited ownership of land by government
- Identification of vulnerable sites including coastal mapping and zoning
- Climate change is exacerbating existing urbanisation challenges

### iv. Challenges for public financing

- Cost of adaptation measures to protect the coastline
- Financial constraints for adaptation, relocation and resettlement
- Funds and coordination with service providers are challenges in the implementation of relocation guidelines
- Lack of adequate national policy or framework specifically for relocation, hence lack of dedicated budget from the government
- Vertical funds such as the GCF and GEF do not

support planned relocation activities

- Countries will need predictable support from climate financing mechanisms in the event of climate-induced disasters

#### v. 'Evidence-based' policy

- Limited information and data on how climate change influences mobility trends.
- Challenges in predicting and quantifying data to assess the impact of climate change on mobility, due to a lack of resources to track and establish a sound database
- Further assessments, data and information to identify priority communities for relocation due to climate change
- Need for data showing historical displaced numbers and those most at risk of migration due to climate change for planning and budgetary purposes
- Monitoring and evaluation frameworks are still lacking and need to be scaled up to measure the impact of climate change on community performance and livelihoods, such as social cohesion, housing, community structure, education and health
- Demographic and health surveys only reference climate change with regards to peoples' knowledge on its impact

#### vi. Addressing the needs of vulnerable and potentially 'trapped' populations

- Inter-island and external migration resulting in smaller population (including women, children and the elderly) left behind in outer islands and remote areas.
- Increasing incidence of non-communicable diseases (NCDs) such as diabetes, heart attacks, etc. due to increasing dependence on processed food which is more convenient and faster to prepare
- Need to address negative population growth especially on the remote low-lying islands
- Livelihood change (e.g. from fisher to gardener) and changes to social and daily norms

#### vii. Creating safe migration pathways and managing migration

- Lack of support services for migrant workers

- Addressing 'brain drain' and loss of technical expertise
- Minimizing economic and social costs of migration
- Minimising potential conflict between host community and migrants
- Lack of social protection of migrant workers
- h. Maintenance of culture and identity
- Cultural and traditional ties, loss of culture and tradition (identity and religious practices)
- Connection to land
- Burial sites and practices

#### viii. Service provision

- Existing pressure on social and physical infrastructures including education and health services, housing
- Provision of emergency response services including essential life-saving services and post-emergency and recovery support including education, health care, food, access to employment, housing etc
- Need for safeguards for Internally displaced persons lacking documentation (National ID etc)

### 3.2 EXISTING NATIONAL APPROACHES

While no country has an overall policy or strategy that specifically address all dimensions of climate related mobility, there are specific and multi-sectoral policies, strategies and approaches that have dimensions and/or impacts on climate-related mobility. Examples include the following:

#### i. National development plans

- National development strategic plans; medium term development and national development master plans.

#### ii. Climate change (including integrated climate change and DRR approaches)

- National Adaptation Plans
- National Climate Change Development Management Plans
- National Climate Change Policy
- Joint National Climate Change Adaptation and Disaster Risk Management Plans (JNAP and JSNAP)

#### iii. Disaster risk reduction and management

- National DRR and DRM Frameworks

#### iv. Migration and urbanisation

- National Labour Migration Policies (including issues such as governance, promotion, protection, development)
- Migration and Sustainable Development Policy (MSDP)
- National Urbanisation Policies

#### v. Relocation and displacement guidelines

- Relocation guidelines with standard operating procedure (SOP) and comprehensive risk and vulnerability assessment (CRVA)
- Mainstreaming biodiversity conservation into land and seascape governance, planning, and management
- Displacement guidelines

#### vi. Community resilience

- Community Integrated Management (CIM) Plans
- Integrated vulnerability assessments
- Atolls Integrated Development Policy

#### vii. Water and sanitation

- National Water Policy

#### viii. National security strategy

- National security policy identifying issues such as climate change, health security and gender-based violence as key risks to national security

#### ix. Human Rights Reporting and Obligations

- Addressing climate change and human rights, such as rights to life, food, health and shelter

## 4. REGIONAL POLICY CONTEXT

A number of regional agreements in the Pacific point to the need to protect individuals and communities most vulnerable to climate change impacts, related displacement, migration and planned relocation, through targeted national and regional policies. Any regional response would need to build on these existing agreements. The following relevant Pacific regional policy approaches have been presented and discussed in the Regional Policy Dialogue:

#### i. Framework for Pacific Regionalism

- Reinforces the commitment of Forum Leaders to work together through regional approaches to ensure the security, harmony and prosperity of our Pacific region

#### ii. 2050 Strategy for the Blue Pacific Continent

- Recognizes the impact of escalating climate change and geo-strategic competition on exacerbating vulnerabilities and called for strong regionalism and collective commitment
- Will develop a long-term vision for the region and outline the steps to achieve this vision
- Currently identifying the Pacific region's drivers of change through consultations

#### iii. Framework for Resilient Development in the Pacific 2017-2030

- Serves as an overarching framework for climate change and disaster risk management and offers high-level voluntary strategic guidance on resilience from stakeholder groups
- Recognizes that human mobility needs to be integrated through targeted national policies and actions as a means to prepare for future displacement, which will be brought on by rapid and slow on-set events
- Climate change is aligned with 2030 Agenda and international commitments, noting the region's commitment to human mobility and migration

#### iv. Pacific Resilience Partnership

- Complementary mechanism for the implementation of the Framework for Resilient Development in the Pacific that recognizes climate change induced internal displacement
- The 2019 Pacific Resilience Meeting dedicated a session on climate-induced displacement and recommended coordinated and targeted actions informed by community needs and experiences, underpinned by whole-of-society approach
- Contains technical working groups, including one on human mobility co-chaired by IOM and GIZ

#### v. Boe Declaration on Regional Security and Action Plan

- Positively and proactively shapes regional security environment by prioritizing human security and assistance with a broad concept of security and targeted actions
- Strategic Focus Areas 1 and 2 (i.e., climate security and human security and humanitarian assistance) also recognizes the importance of a regional response to climate change and human security.



## 5. GLOBAL POLICY AND LEGAL CONTEXT

### 5.1 NON-BINDING AGREEMENTS AND GLOBAL POLICY MECHANISMS

Global policy frameworks on climate change, disaster risk reduction and migration highlight the unique human rights challenges exacerbated by movement in the context of climate change and disasters and make recommendations for governments to pursue action at national and regional levels. These include:

#### i. **United Nations Framework Convention on Climate Change (UNFCCC) Decisions and Agreements**

- Several Conference of Parties decisions reference climate mobility (covering migration, displacement and planned relocation). This has been included in the Cancun Adaptation Framework and linked to the Warsaw International Mechanism on Loss and Damage associated with climate change impacts (WIM).
- The Task Force on Displacement, established by the Paris Agreement on Climate Change, under the Executive Committee of the WIM, is mandated to produce recommendations to avert, minimize and address displacement. First phase outcomes include taking an inventory of existing policies, synthesizing the state of knowledge, coordinating processes within the United Nations System, mapping data sources and methodologies, increasing awareness, identifying gaps, and delivering recommendations.

#### ii. **Guiding Principles on Internal Displacement, 1998**

- Important framework for identifying internally displaced persons, and describes people moving due to disasters as being internally displaced
- Non-binding but draws on principles of human rights, humanitarian and refugee laws

#### iii. **Global Compact for Safe, Orderly and Regular Migration**

- Endorsed in December 2018, the first inter-governmentally negotiated agreement covering all dimensions of international migration in a holistic and comprehensive manner
- Recognizes that climate change and environmental degradation may lead to migration, and reaffirms states' commitment to address challenges of climate mobility
- A sister compact, Global Compact on Refugees, while less directly relevant, also recognizes the link between climate change and cross-border movement and calls for assistance and protection in voluntary and forced movement

#### iv. **Sendai Framework for Disaster Risk Reduction 2015-2030**

- Developed, negotiated and adopted by states in 2015 as a tool to manage disaster risks
- Recognizes displacement as an immediate consequence of disasters and provides policy instruments and approaches to manage disaster risks, such as planned relocation from disaster-prone areas and identification of areas safe for human settlement

## v. Nansen Initiative, Protection Agenda, and Platform for Disaster Displacement

- The Nansen Initiative was a bottom-up, state-led consultative process between 2012-2015 with multi-stakeholder involvement to build consensus among States on key principles and elements to protect people displaced across borders in the context of disasters caused by natural hazards, including those linked to climate change. A Pacific Regional Consultation was organized in 2013 in Rarotonga, Cook Islands.
- The outcome – the ‘Agenda for the protection of cross-border displaced persons in the context of climate change and disasters’ – was endorsed by 109 states in October 2015
  - Part I of the Nansen Initiative: Protecting Cross-Border Disaster-Displaced Persons
  - Part II of the Nansen Initiative: Managing Disaster Displacement Risk in Country of Origin
- Platform on Disaster Displacement (PDD): State-led initiative working towards better protection for people displaced across borders in the context of disasters and climate change, building on the Nansen Initiative and the Protection Agenda

## vi. Other Mechanisms

- Agenda for Humanity: Commitment to halve internal displacement by 2030
- Sustainable Development Goals, including Target 10.7: Safe, orderly and responsible migration

## 5.2 INTERNATIONAL LAW

Under international human rights law, States have human rights obligations to ensure the safety and dignity of all people within their jurisdiction, including those on the move. However, there are some protection gaps under international human rights law and refugee law. International conventions and frameworks do not adequately address the legal, cultural and social consequences of displacement as a result of climate change. There are important questions which remain unanswered in relation to cross border displacement. Many countries also face challenges to implement international legal instruments at the national level. The following areas of international law have been highlighted in the Regional Policy Dialogue (a more complete list of legal sources raised in discussions are listed in the Annex I).

### 5.2.1 HUMAN RIGHTS

Human rights are inherent to all human beings and are expressed in a range of international legal instruments, such as declarations, treaties and agreements. Human rights are core and fundamental expression of human dignity and agreed norms. States must uphold their obligations to respect, protect and ensure accountability to migrants under the Universal Declaration of Human Rights and instruments by regulating private and third-party actors, providing avenues for remedies and redress and promoting resourcing for practices that are inclusive and in line with human rights standards and guidelines. Every Pacific country has ratified at least one core covenant or human rights instrument and committed to duty obligations. The following issues have been highlighted in the Regional Policy Dialogue:

- Human Rights Committee judgment and treaty body experts provide support on how treaties should be implemented
- Although treaties are made to be narrowly interpreted, human rights principles need to be embedded in actions involving people moving in the context of climate change, such as planned relocation, evictions and resource allocation
- Differential treatment between non-citizens and citizens must be universally lawful, proportionate, legitimate and non-discriminatory, despite individual interpretations of legal systems
- The principle of non-return, or non-refoulement, prevents people from being sent back to situations that pose a threat of persecution, irreparable harm or rights violations
- Convention on the Rights of the Child (CRC), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Persons with Disabilities (CRPD) have been ratified by most countries and are highly relevant in the context of climate mobility. For example, the CRPD includes the non-refoulement principle
- Seven Pacific Member States have ratified the International Convention on the Elimination of All Forms of Racial Discrimination
- States have the obligation to protect migrants, regardless of their immigration status, due to principles inherent in other human rights treaties that states have already ratified

- The broad scope of human rights allows for a rights-based approach to migration governance
- Human rights law provides protection to those who may not qualify for other categories of protection.

### 5.2.2 REFUGEE LAW

While the 1951 Refugee Convention is of limited use for protecting people displaced across the border due to climate change, a more nuanced understanding is emerging. In the context of climate change, it is difficult to establish a well-founded fear of persecution for reasons of race, religion, nationality, and membership of a particular social group or political opinion as required by the Convention. Key issues include:

- Refugee-claimed links to climate change should not be immediately dismissed and need to be understood in a nuanced way, with a careful assessment on the impact of disasters on existing marginalization
- Disasters and climate impacts are deeply social in nature. In Oct 2020, the United Nations Office of the High Commissioner for Refugees (UNHCR) emphasized the importance of focusing on social and political characteristics of the effects of the climate change and disasters in its legal guidance on displacement and climate change

### 5.2.3 MIGRANT LABOUR CONVENTIONS

Labour migration within countries as well as voluntary migration to destinations overseas has a long history and has been used as a means to diversify livelihoods and skills. There is a need to focus not only on the legal status and visa, but on working conditions and labour rights of migrant workers, peoples' vulnerabilities, including of families and communities of migrant workers, which will bring in a new dimension on the debates on temporary migration. Labour rights of temporary migrant workers should be fully respected in the labour migration schemes. Migrant workers should have access to social protection and relief measures similarly to national workers, including unemployment insurance and income support. Workers should not pay recruitment fees and bear other additional, including as a result of the pandemic, as per the ILO Fair Recruitment General Principles and Operational Guidelines. Barriers to equal participation and access to seasonal labour mobility opportunities for women and people with disabilities should be removed.

A detailed list of migrant labour standards is contained in Annex I. These include ILO standards, including fundamental principles and rights at work and international labour instruments on migrant workers (ILO C97, C143 and other relevant instruments, including C181, C188, C189, C190 and other).

### 5.3 KEY MESSAGES

The following key messages were highlighted in the Dialogue in relation to legal and policy frameworks:

- There is a need to develop legal and policy frameworks to equally protect people who are staying, moving in anticipation of harm, and are displaced
- At all time, people's dignity must be prioritized
- Human rights can be a part of toolkit of prevention options, such as implementing a human rights-based approach in planned relocation strategies and standard operating procedures
- There is a need to put in place appropriate pathways and facilitate safe and regular migration
- Regional framework can fill the gaps, as they do not need to be binding, but can ensure rights-based approaches and serve as a guide
- Pacific Island Countries should plan ahead as challenges posed by climate change affect development paths and hastily devised policies exacerbate poverty and have political consequences in democratic governance
- The Pacific can be an example to the world as such a regional response to guarantee protection of people on the move as a result of climate change would be the first of its kind
- Pacific countries reaffirm the right to make decisions for our own people, facilitated by development partners through technical support.

## 6. TOWARD A REGIONAL RESPONSE

Recognizing the diversity of the Pacific, the current challenges facing countries due to the COVID 19 epidemic and ensuring that a regional approach does not undermine national positions, general support was expressed for addressing common challenges associated with climate mobility through a Pacific regional approach.



## 6.1 PRINCIPLES FOR THE DEVELOPMENT OF A REGIONAL RESPONSE

The Dialogue emphasized the following principles to guide the development of a regional response or approach:

- Must respect national policies, strategies and narratives
- Must be contextualized and allows Pacific Island Countries to define climate mobility in their own terms
- Must be accompanied by consultations at both the national and sub-national level (Government, Island councils, Communities, vulnerable groups) that take the time to understand respective needs
- Must be evidence-based and focused on addressing gaps in existing policy and legal instruments. Needs to link existing national, regional and global processes (e.g., Human rights Conventions and United Nations Framework Convention on Climate Change processes) while not undermining existing national approaches
- Must promote recognition and legal protection of migrants and displaced persons particularly in the context of climate change.
- Must be informed by climate science
- Needs to prioritize the most at-risk groups, such as persons with disabilities and children, and ensure that displaced people have access to all the basic services at the country of destination through flexible and inclusive immigration policies

- Needs to be aware of and integrate diverse national challenges, as the urgency and impact of climate change may differ, and countries may wish to respond in a variety of ways
- Should articulate the magnitude of issues for the whole region, which may not be as evident on a bilateral basis
- Can facilitate sustainable financing, capacity building opportunities and commit members to mainstream responses at the national level, including through relevant laws and policies.

## 6.2 FOCUS OF A REGIONAL APPROACH

The Dialogue identified the advantages of a regional approach as follows:

- Protecting vulnerable groups and ensuring safe migration pathways**
  - Regional approach can develop the legal and political framework for human mobility
  - Developing safety nets for time-bound scenarios
  - Help explore options within the region to help states that might be forced to relocate outside and address any cross-boundary issues (EEZs, land rights, identity).
  - Promote recognition and legal protection of migrants and displaced persons particularly in the context of climate change.
  - Regional instruments (such as guiding principles) provide a means for strengthening coordination of humanitarian assistance, developing displacement-

related adaptation schemes and allocating climate change adaptation funding)

- Provide a framework for countries to utilize in strengthening their own national policies and legislation on climate mobility
- Provide contextualised guiding principles on internally displaced persons for the Pacific arising out from climate related mobility that ought to obligate state parties to incorporate the guiding principles into their national legislations/National frameworks (from planning to implementation)

## ii. Dialogue and sharing experiences

- Regional approach to encourage intra-Pacific dialogue on climate mobility; capacity building through sharing experiences, lessons learned and good practices medium whereby experiences and lessons learnt pertaining to climate mobility can be shared

## iii. Strengthened regional and global advocacy

- A regional response can support enhanced political will to address internal and cross-border challenges in the context of climate mobility; joint-advocacy on key issues for the Pacific islands, including access to finance; developing and promoting international law
- Small Island Developing States have a better chance of being heard and to influence the global political consensus through collective action and advocacy

## iv. Alignment and policy coherence

- Regional plans and frameworks provide a strategic focus and structures for policies at the national level and is useful in identifying the action plan to achieve the SDGs
- Promotion of flexible regional labour migration policies; especially for seasonal workers
- Clear linkage between regional climate mobility framework to relevant national policies/strategies
- Integration of climate-induced migration into DRM and adaptation policies
- Strengthened connection among existing regional, sub-regional platforms
- May link global platforms that have structured linkages down to the national level (e.g. Implementation of the Paris Agreement, Sustainable Development Goals, Global Compact on Refugees, human rights obligations)

## v. Building the evidence base and guiding support

- Support for regional interventions such as risk mapping initiatives to identify vulnerable communities
- Regional initiatives can increase understanding of the issue through research: distinguishing types of mobility in the region, impacts linked to losses and damages, generating statistics, finding synergies where the greatest impacts can be achieved through regional actions
- Enhanced information flow and capacities will raise the profile of vital implementation actions that is required at the national level
- Support in terms of mitigating, preparing for, and managing displacement
- Promotion of regional inter-agency cooperation necessary because the topic of migration, environment and climate change traverses' borders
- Streamlined funding for large scale local, regional and environmental adaptation initiatives

## 6.3 POTENTIAL MODALITIES OF A REGIONAL RESPONSE

The Dialogue recognized that existing regional frameworks and mechanisms need to be utilized when necessary and that any new approach proposed through the Pacific Islands Forum would require the endorsement of leaders. Regional process could be anchored in FRDP, Boe Declaration Action Plan and Pacific Resilience Partnership Technical Working Group (TWG) on human mobility. Another potential pathway proposed was the 2050 Strategy and integrating this issue into the 'drivers of change'. While the Dialogue did not attempt to establish consensus on the modality for the regional approach, the following observations were made on the potential options available to Pacific island countries:

- A regional declaration developed through a dialogue, with a Preamble highlighting the principles enumerated in Section 6.1 'principles for the development of a regional response' of the summary report, with a specific focus on the respect for national policy, strategies and narratives
- A non-binding legal and policy framework that encompasses key messages. A flexible approach would be preferred over formal mechanisms.

- A combination of regional approach and non-binding framework
  - Any approach would need to include an implementation plan and considerations on financial support in order to enable countries to address climate-related mobility and implement related policies
  - Combination of approaches can be explored whereby regional declaration can address vulnerabilities and non-binding framework can provide guidance to countries. There is a need to clarify the linkages between regional frameworks to avoid unintended bottlenecks, especially at the national level
  - There is a collective need to address accountability within the regional framework
  - Binding provisions could be explored for labour mobility
  - It could represent a Joint statement or Communiqué however a regional declaration would carry more weight, if commitment to initiatives is strong, which will depend on the financial support available.
  - The Dialogue recognized the related ongoing work on sea-level rise and legal implications under the United Nations Convention on the Law of the Sea, including the ongoing work of the sub-committee of FOC.
3. Structured stakeholder consultations on climate mobility and regional collaboration, amongst civil society, worker and employer organizations, to ensure the perspectives of climate change advocates, NGOs, women, youth, LGBTQ, people with disability, traditional leaders, faith based leaders, employers and workers, diaspora communities and academics are incorporated;
  4. Relevant working groups or sub-regional consultations to be established within the existing regional architecture to ensure synergies and alignment with regional policy processes and forums;
  5. Development of relevant key messages or recommendations, based on meetings of the PCCMHS Technical Advisory Group (TAG) on climate mobility, a comprehensive review of existing global, regional and national policy and legal frameworks, structures, systems and processes relevant to climate mobility in the Pacific, drafting of relevant issue briefs and knowledge products;
  6. Following the consultation process, a regional meeting of Pacific Island Governments and other relevant stakeholders to take stock of the inputs received and to analyse the key recommendations;
  7. Based on consultations and knowledge products developed, the preparation of a 'zero' draft of framework for regional collaboration on climate change-related displacement, migration and planned relocation for consideration by states;
  8. Further regional level consultations at the end of 2021 which brings together participating governments and responds to queries and concerns

## 6.4 NEXT STEPS AND TIMELINE FOR THE DEVELOPMENT OF THE REGIONAL RESPONSE

Recognising the importance of the involvement of all stakeholders in the process, and the priority accorded by governments to taking the time to ensure a thorough process, the following steps are proposed to build on the Regional Policy Dialogue:

1. Preparation of a Brief for discussion with PIFS senior management to propose clear next steps for the consideration of focal points and ultimately Pacific leaders for endorsement;
  2. Inclusive national consultations (facilitated by implementing partners under the PCCMHS programme) organized with governments to ensure that inputs from all stakeholders, including different government ministries, local government, civil society, communities, employers and workers organizations are taken into account and in support of an enabling environment towards greater regional collaboration;
- Proposed timeframe:**
- Preparation of Brief and meeting of PCCM-HS with PIFS senior management – January 2021
  - Civil Society Consultations – Quarter 1 of 2021
  - National Consultations - First half of 2021
  - Regional Consultations– Second half of 2021 and early 2022
  - Technical Advisory Group Meetings – As required

# ANNEX I

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## INTERNATIONAL LAW

### THE 1951 REFUGEE CONVENTION

- Limited use for protecting people displaced across the border due to climate change
- Difficult to display and establish a well-founded fear of persecution for reasons of race, religion, nationality, and membership of a particular social group or political opinion
- Refugee-claimed links to climate change should not be immediately dismissed and need to be understood in a nuanced way, with a careful assessment on the impact of disasters of existing marginalization
- Disasters and climate impacts are deeply social in nature
- Refugee-claimed links to climate change should not be immediately dismissed and need to be understood in a nuanced way, with a careful assessment on the impact of disasters of existing marginalization
- In Oct 2020, the United Nations Office of the High Commissioner for Refugees (UNHCR) emphasized the importance of focusing on social and political characteristics of the effects of the climate change and disasters in its legal guidance on displacement and climate change<sup>3</sup>

### HUMAN RIGHTS LAW

- The principle of non-return, or non-refoulement, prevents people from being sent back to situations that pose a threat of persecution, irreparable harm or rights violations

- UN Human Rights Committee considered a climate change asylum claim from a citizen of Kiribati in 2019 in the *Ioane Teitiota v. New Zealand* case (CCPR/C/127/D/2728/2016)
- The Committee ruled that New Zealand's courts did not violate the claimant's rights, due to insufficient evidence on the risks to the right to life and noting sufficient protection measures, such as the availability of fresh crops
- The statement stipulated that climate change-induced conditions may violate the right to life, which triggers non-refoulement obligations of countries
- The Committee acknowledged that as conditions of life may be incompatible with the right to life with dignity before the climate-induced risk is fully realized, countries should provide protection and refrain from violating the responsibility to protect
- While similar claims will likely be determined on a case-by-case basis, this case demonstrates that proactive migration opportunities can be constructed in advance

### REGIONAL AND NATIONAL PROCESSES

- New Zealand Human Rights Review Tribunal and Australia Human Rights Commission consider cases from Tuvalu and Kiribati and acknowledge the need for protection
- The Government of New Zealand has the discretion to provide compassionate and humanitarian protection, but this may not be the case for Australia

<sup>3</sup> Further information can be founds here: 'Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters' (2020): <https://www.refworld.org/docid/5f75f2734.html>  
<https://www.unhcr.org/protection/environment/562f798d9/planned-relocation-guidance-october-2015.html>

## RIGHT TO LIFE

- Enabling evacuation and policies like Fiji's planned relocation can protect the right to life
- Planned relocation has a propensity to further the vulnerabilities, if not executed well
- Important to ensure the protection life and property, and sustaining life with dignity

## MEASURES IN PRACTICE

- At least 50 countries have taken people in or refrained from moving people by providing temporary protection, humanitarian visas and labour mobility schemes as an adaptation measure to provide additional pathways
- New Zealand provides Samoan Quota Resident Visa scheme for permanent residency

## STATELESSNESS

- Capacity of the treaties that protect diverse people has limited utility in the context of climate change and disasters as they do not cover de facto stateless persons, or those who have nationalities but cannot exercise rights
- Treaties specifically apply to de jure stateless persons, or those who do not have nationalities and are not recognized as citizens
- Livening the treaties would require legal gymnastics, as they are not universally ratified, and some countries do not have the process to determine who is stateless

## INTERNATIONAL LABOUR ORGANIZATION (ILO)

### ILO MANDATE ON INTERNATIONAL LABOUR STANDARDS (ILS)

- ILS cover all workers irrespective of nationality and immigration status, unless otherwise stated, noting that a lack of protection for migrant workers undermines protection for all workers
- States have the prerogative to regulate access to territory and labour market

## ILO DECLARATION ON SOCIAL JUSTICE FOR A FAIR GLOBALIZATION, ILO DECENT WORK AGENDA, 2008

- Promotes decent work through achieving four strategic objectives: social protection, employment, social dialogue and FPRW, with gender equality as a cross-cutting goal

## ILO FUNDAMENTAL & GOVERNANCE CONVENTIONS

- ILO 8 "Fundamental" Conventions:
- C087 and C098: Freedom of association and recognition of the right to collective bargaining
- C029 and C105: The elimination of all forms of forced or compulsory labour
- C138 and C182: The effective abolition of child labour
- C100 and C111: The elimination of discrimination in respect of employment and occupation
- Level of ratification in the Pacific is low, due to the lack of technical capacities on labour legislation
- Six countries ratified eight Fundamental Conventions
- Five island states ratified all conventions

## ILO 4 "GOVERNANCE" CONVENTIONS:

Standards for labour market institutions

- C122: Employment policy
- C081 and C129: Labour inspection
- C144: Tripartite consultation

Table 1. Ratifications of Fundamental and Governance Conventions in the Pacific

ILO MS Pacific	ILO MS since	Freedom of Association		Forced Labour		Discrimination		Child Labour		Governance Conventions				Technical	Total
		C087	C098	C029	C105	C100	C111	C138	C182	C081	C122	C129	C144		
CI	2015		2015	2015	2015			2018					2018	4	8
Fiji	1974	2002	1974	1974	1874	2002	2002	2003	2008	2008	2010	2010	1998	27	39
Kiritbati	2000	2000	2000	2000	2000	2009	2009	2009					2019	2	11
MI	2007							2019						2	3
Palau	2012							2019						1	2
PNG	1976	2000	1976	1976	1976	2000	2000	2000		1976				17	26
Samoa	2005	2008	2008	2008	2008	2008	2008	2008					2018	1	10
SI	1984	2012	2012	1985	2012	2012	2013	2012	1985					13	22
Tonga	2016							2020						0	1
Tuvalu	2008							2019						1	2
Vanuatu	2003	2006	2006	2006	2006	2006	2019	2006						1	9

**Applicable International Labour Standards: general**

- Of the ILO instruments with expressed provisions on migrant workers, few Pacific countries ratified conventions, with some exceptions, such as Fiji, that ratified the Violence and Harassment Convention (C190) this year
- C181: Private Employment Agencies Convention, 1997
- C019: Equality of Treatment (Accident Compensation Convention) Convention, 1925
- C102: Social Security (Minimum Standards) Convention, 1952
- C118: Equality of Treatment (Social Security) Convention, 1962
- C121: Employment Injury Benefits Convention, 1964
- C157: Maintenance of Social Security Rights Convention, 1982
- R200: HIV and AIDS Recommendation, 2010
- C189: Domestic Workers Convention, 2011
- R201: Domestic Workers Recommendation, 2011
- C190: Violence and Harassment Convention, 2019
- R206: Violence and Harassment Recommendation, 2019
- P29: Protocol to the Forced Labour Convention, 2014
- R203: Forced Labour (Supplementary Measures) Recommendation, 2014
- R204: Transition from the Informal to the Formal Economy Recommendation, 2015

- R205: Employment and Decent Work for Peace and Resilience Recommendation, 2017

**General and Special ILS**

- ILO instruments of general application
- C095: Protection of Wages Convention, 1949
- C131: Minimum Wage Fixing, 1970
- C183: Maternity Protection Convention, 2000
- Need for specific protection and policies to prevent and counter the violations of migrant workers’ rights in employment and labour relations
- Non-citizens rarely benefit from full equal treatment
- Migrant workers are often in low-skilled precarious employment, working in agriculture, construction, domestic work and manufacturing
- Migrant workers in elementary occupations are at greater risk of abusive recruitment practices and exploitation in an irregular situation and face multiple discrimination, especially women

**ILO Migrant specific instruments**

- Two conventions and two recommendations
- C097: Migration for Employment Convention (Revised), 1949
- Adopted the Migration for Employment Recommendation in the same year (R086)
- C143: Migrant Workers (Supplementary Provisions) Convention, 1975
- Provide requirements for regulation of labour migration by Member States
- Adopted the Migrant Workers Recommendation in the same year (R151)

## Committee of Experts on the Application of Conventions and Recommendations (CEACR)

- Assesses government reports on the implementation measures for the Conventions

## Migration for Employment Convention (Revised), 1949 (No. 97)

- Ratified by 50 countries, including New Zealand, excluding Pacific countries and Australia
- Requires ratifying states to facilitate international migration employment by establishing and maintaining free assistance and information service for migrant workers and taking measures against misleading propaganda on emigration and immigration
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Ratified by 25 countries, but not from the Pacific Islands and New Zealand
- Sets out measures to combat clandestine and illegal migration, while simultaneously establishes general obligations to respect the fundamental rights of all migrant workers

## ILO Multilateral Framework on Labour Migration, 2006

- A global framework of non-binding principles, guidelines and good practices on a rights-based approach to labour migration
- Anchored on ILO conventions and standards and promotes best practices
- Based on tripartite negotiations and consensus of countries of origin and destination

- Adopted in November 2005 at a tripartite meeting of experts
- The framework contains nine areas consisting of 15 principles and corresponding guidelines

## ILO General Principles and Operational Guidelines for Fair Recruitment, 2016

- Aim to “inform the current and future work of the ILO and of other organizations, national legislatures and the social partners on promoting and ensuring fair recruitment”
- Compilation of international best practices spanning 13 principles and 31 operational guidelines that identify responsibilities of key actors in the recruitment process
- Key actors: governments, public employment services and enterprises, including labour recruiters and employers
- No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers (General Principle 7)
- The principles and guidelines are derived from international human rights and labour standards and draw on existing tools
- Based on tripartite negotiations and consensus of countries of origin and destination
- Adopted in September 2016 at a tripartite meeting of experts.

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