

# Dignity Beyond Borders and Waters: Navigating Climate Displacement & Protection System in the Asia-Pacific

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**Abstract:** Dignità oltre i confini e le acque: affrontare gli sfollamenti climatici e il sistema di protezione nell'Asia-Pacifico – This article examines how the Asia–Pacific region is developing a pluralistic, rights-based protection system for climate-displaced persons amid persistent gaps in international law. Through a comparative analysis of global, regional, and domestic frameworks, it assesses how recent climate advisory opinions, regional cooperation mechanisms, and national relocation policies interact with existing human rights and climate regimes. The paper identifies converging normative trends, particularly on due diligence, participation, and statehood continuity, while underscoring limitations (historic and present) in cross-border protection, finance, and implementation. It argues for a rights-based approach that is enforceable and equitable. It also argues that long-term community-centred mobility pathways are imperative to address accelerating displacement in the face of the growing climate crisis.

**Keywords:** Climate-induced displacement; Human mobility with dignity; International law; Statehood; Climate advisory opinions; Asia-Pacific

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## 1. Background and Introduction

Large-scale human displacement has become a defining challenge in most Global Majority countries, where countries are grappling with both slow-onset climate impacts, such as *inter alia*, sea-level rise, desertification, and sudden disasters like cyclones, floods, earthquakes, as well as ongoing conflicts leading to human rights crises. For example, in 2021, in northern Cameroon, hundreds of people were killed, and tens of thousands fled to neighbouring Chad following violence between herders and fishermen that was sparked by dwindling water resources linked to climate change<sup>1</sup>. The

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<sup>1</sup> UNHCR, *Climate change fuels clashes in Cameroon that force thousands to flee*, in UNHCR News, 2025, [www.unhcr.org/news/stories/climate-change-fuels-clashes-cameroon-force-thousands-flee](https://www.unhcr.org/news/stories/climate-change-fuels-clashes-cameroon-force-thousands-flee).

convergence of these factors means that millions are being uprooted from their homes, straining the legal and policy frameworks for protection. International forums such as the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Office of Disaster Risk Reduction are increasingly recognising that climate change is a critical driver of human displacement, causing forced migration within and across borders<sup>2</sup>. As per Myers' "Environmental Exodus", it is estimated that 200 million climate change migrants will exist by 2050, or one person in every 45% of Earth's population will be threatened with climate displacement<sup>3</sup>. The Intergovernmental Panel on Climate Change (IPCC) states this is the most significant human rights challenge in the modern era and warns that the effects of climate change will cause large-scale population movements and the massive loss of housing, land, property, and natural resources<sup>4</sup>.

The Asia–Pacific region, however, lies at the epicentre of this global crisis, hosting both the world's most vulnerable small island developing States (SIDS) and its most densely populated coastal deltas<sup>5</sup>. Rising sea levels, intensifying tropical cyclones, and saltwater intrusion threaten the habitability of atoll nations such as Tuvalu, Kiribati, and the Marshall Islands, while coastal mega-deltas in Bangladesh, Indonesia, and the Philippines face recurrent displacement from flooding and erosion<sup>6</sup>. These converging risks have compelled States and regional organisations to craft legal and policy responses that blend disaster-risk reduction, human-rights protection, and migration governance. In 2019, the International Organisation for Migration (IOM) estimated that disasters displaced 320,000 people between 2008 and 2017 in the Pacific region alone<sup>7</sup>. Under

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<sup>2</sup> Internal Displacement Monitoring Centre, *Human Displacement in the Context of Extreme Weather Events and Climate Change*, Geneva, 2025, [www.internal-displacement.org/events/human-displacement-in-the-context-of-extreme-weather-events-and-climate-change/](http://www.internal-displacement.org/events/human-displacement-in-the-context-of-extreme-weather-events-and-climate-change/); UNHCR, *Climate Change and Displacement*, 2025, [www.unhcr.org/uk/what-we-do/how-we-work/climate-change-and-displacement](http://www.unhcr.org/uk/what-we-do/how-we-work/climate-change-and-displacement); UNHCR, *Displaced on the Frontlines of Climate Emergency*, in UNHCR Visual Data, 2025, [storymaps.arcgis.com/stories/065d18218b654c798ae9f360a626d903](https://storymaps.arcgis.com/stories/065d18218b654c798ae9f360a626d903).

<sup>3</sup> H.D. Haas, *Climate Refugees? The Fabrication of a Migration Threat*, in *Migration Institute Blog*, 2025, [www.migrationinstitute.org/blog/climate-refugees-the-fabrication-of-a-migration-threat](http://www.migrationinstitute.org/blog/climate-refugees-the-fabrication-of-a-migration-threat).

<sup>4</sup> Intergovernmental Panel on Climate Change (IPCC), *AR6 Working Group II – Summary Volume*, Geneva, 2022, 11, [www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC\\_AR6\\_WGII\\_SummaryVolume.pdf](http://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryVolume.pdf); A.I. Almulhim, G.N. Alverio, A. Sharifi et al., *Climate-induced migration in the Global South: an in-depth analysis*, in *npj Climate Action* 3, 47 (2024); O. Brown, *Climate Change and Forced Migration: Observations, Projections and Implications*, International Institute for Environment and Development, London, 2007, [www.iisd.org/system/files/publications/climate\\_forced\\_migration.pdf](http://www.iisd.org/system/files/publications/climate_forced_migration.pdf).

<sup>5</sup> UN Economic and Social Commission for Asia and the Pacific (UNESCAP), *Disaster-Related Displacement in Asia and the Pacific: 2023 Report*, Bangkok, 2023, 5–8.

<sup>6</sup> World Bank, *Groundswell: Preparing for Internal Climate Migration*, Vol. II, East Asia and the Pacific, Washington D.C., 2021, x–xii; UN Economic and Social Commission for Asia and the Pacific (UNESCAP), *Disaster-Related Displacement in Asia and the Pacific: 2023 Report*, Bangkok, 2023, 5–8.

<sup>7</sup> International Organization of Migration (IOM), *Climate Change and Migration in Vulnerable Countries*, 2019,

the moderate climate change scenario (i.e., temperature rise of 2.7 Degrees Celsius by the end of this century), by 2055, 35% of Kiribati's population and 100% of Tuvalu's population will have to migrate due to loss of territory due to sea level rise<sup>8</sup>. Beyond the Pacific, countries such as Bangladesh, Myanmar, Papua New Guinea, the Philippines, and many others are already experiencing mass population movements, internally and across borders, because of climate-related factors<sup>9</sup>. Thus, there is a clear consensus that climate change has already begun to cause involuntary and forced mass displacement and will continue to lead to further forced displacement in the years and decades to come.

Against this background, this paper argues that the Asia-Pacific region is witnessing the emergence of a pluralistic protection system for climate-displaced persons, one that operates through overlapping global, regional, and national frameworks. It highlights a few imminent challenges and then goes on to provide an analysis of international legal norms that are being contextualised nationally and regionally for displaced populations in several climate-induced, high-risk contexts in the Asia-Pacific region. The paper focuses on the Pacific island countries, Bangladesh, Myanmar, Indonesia, and the Philippines<sup>10</sup>. Each of these countries faces acute vulnerabilities to climate change, evidenced by recurrent disasters, slow-onset climate change, and a layered socio-political context. These countries and territories also illustrate different legal and institutional approaches to climate displacement. By analysing these varied contexts, the study highlights both common themes, such as the emphasis on planned relocation as climate adaptation<sup>11</sup>, or the struggle to create binding legal status for

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[publications.iom.int/system/files/pdf/climate\\_change\\_and\\_migration\\_in\\_vulnerable\\_countries.pdf](https://publications.iom.int/system/files/pdf/climate_change_and_migration_in_vulnerable_countries.pdf).

<sup>8</sup> United Nations University – Institute for Environment and Human Security (UNU-EHS), *Pacific Climate Change and Migration: Research Findings on Climate-Induced Migration in the Pacific*, Bonn, 2017, [unfccc.int/files/science/workstreams/research/application/pdf/part2\\_unu-ehs\\_oakes\\_vandergeest\\_poster.pdf](https://unfccc.int/files/science/workstreams/research/application/pdf/part2_unu-ehs_oakes_vandergeest_poster.pdf); also see IPCC, *AR6 Synthesis Report*, Figure 3 “Summary for Policymakers”, 2023; also see Anthesis, *Five Future Scenarios: AR6 IPCC* [www.anthesisgroup.com/insights/five-future-scenarios-ar6-ipcc/](https://www.anthesisgroup.com/insights/five-future-scenarios-ar6-ipcc/).

<sup>9</sup> Displacement Solutions, *The Peninsula Principles on Climate Displacement within States*, [www.displacementsolutions.org/peninsula-principles](https://www.displacementsolutions.org/peninsula-principles).

<sup>10</sup> The Pacific Island countries include (but are not limited to) the Cook Islands, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. These countries are also often described as Small Islands Developing States. They are characterized by small but growing populations, limited resources, remoteness, vulnerability to climate change and other external shocks, and common sustainable development challenges; Asia-Pacific island countries also include the islands that are not fully sovereign and are associated with other countries such as Guam, American Samoa, Palau, Micronesia, Marshall Islands are associated to the US, French Polynesia and New Caledonia to France, Tokelau to Aotearoa New Zealand, among others; See ‘Navigating Injustice: Climate displacement from the Pacific islands of Tuvalu and Kiribati to Aotearoa New Zealand’, Amnesty International Report, 2025.

<sup>11</sup> Adaptation is the “process of adjustment to actual or expected climate change and its effects”. In human systems, adaptation seeks to moderate or avoid harm or exploit beneficial opportunities (see World Bank, *World Development Report 2018: Learning to Realize Education's Promise*, Washington D.C., 2018, vii); also, adaptation and adaptive

climate-displaced people, and unique challenges, such as some countries' exclusion from international frameworks, or the intersection of exploitation and conflict in "destination countries"<sup>12</sup>. It examines how these countries have approached planned relocation, based on the existing legal frameworks that address internal displacement, issues of climate migrants, and engagement in regional cooperation initiatives.

This article adopts a comparative methodology, juxtaposing legal and institutional responses to climate displacement across the most climate-vulnerable jurisdictions in the Asia-Pacific region: the Pacific island States of Tuvalu, Kiribati, and the Marshall Islands; and the South and Southeast Asian States of Bangladesh, Myanmar, Indonesia, and the Philippines. These jurisdictions were selected based on three criteria: the nature and intensity of climate vulnerability (ranging from existential territorial loss in atoll States to recurrent disaster-induced displacement in coastal mega-deltas); the diversity of domestic legal and institutional frameworks for addressing displacement; and the varying degrees of engagement with international and regional climate mobility regimes. By holding these variables in view simultaneously, the comparison is designed to reveal both convergences, such as the emerging norm of planned relocation as a rights-based adaptation strategy, and divergences, such as differential access to international frameworks, the role of geopolitical status in shaping policy autonomy, and the unevenness of financial and institutional capacity. The article does not seek to rank these responses but to identify the conditions under which international legal obligations on climate displacement are translated, or fail to be translated, into effective protection at the national and regional level.

In doing so, it sheds particular light on the climate change advisory opinions (AO) issued by the International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court on Human Rights (IACtHR), and the International Court of Justice (ICJ)<sup>13</sup>. It finds that while international frameworks acknowledge climate displacement, the framework lacked binding enforcement and compliance mechanisms before the AOs consolidated legal obligations of states related to human rights and climate change, and how clarification of international law helps in addressing this issue<sup>14</sup>. Regional and national policies, such as the Tuvalu-Australia Migration Agreement and Fiji's Climate Relocation Framework, offer emerging pathways for planned relocation, yet have shortfalls in

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capacity are not only technical issues, but also political and social dimensions; V. Boege, U. Rakova, *Climate Change-Induced Relocation: Problems and Achievements – The Carterets Case*, Toda Peace Institute, Policy Brief No. 33, 2019; see also T. Petzold, B. Ratter, *Climate change adaptation under a social-ecological resilience framework: A multi-level approach*, in 10 *Sustainability Sci.* 36 (2015).

<sup>12</sup> A. Vogler, *Barking up the tree wrongly? How national security strategies frame climate and other environmental change as security issues*, in 105 *Pol. Geography* (2023), [www.sciencedirect.com/science/article/pii/S0962629823000719?via%3Dihub](http://www.sciencedirect.com/science/article/pii/S0962629823000719?via%3Dihub).

<sup>13</sup> ICJ, *Advisory Opinion on Climate Change*, 2025; IACtHR, *Advisory Opinion OC-32/25: Climate Emergency and Human Rights*, 2025; ITLOS, *Advisory Opinion in the Request submitted by the Commission of Small Island States on Climate Change and International Law*, 21 May 2024 (hereafter ICJ AO, IACtHR AO, ITLOS AO).

<sup>14</sup> International Law Commission, *Sea-level rise in relation to international law: Final report of the Study Group*, UN Doc. A/80/10, 2025.

implementation that range from relocation with dignity, where to be relocated, a shortfall of funds, exclusion of women, children, indigenous peoples, and other marginalised groups, and taking a participatory approach, among others<sup>15</sup>. Judicial and quasi-judicial interventions have signalled a growing recognition of climate-related displacement within human rights law, but again, highlight the absence of (urgent) binding legal protections<sup>16</sup>. Overall, despite the ever-growing concern and research specifically addressing climate displacement, there is a consensus among academics, policy makers, and international forums (listed in section 3) that underscores the urgent need for enforceable, justiciable, and equitable rights-based protections.

## 2. Challenges (non-exhaustive)

At the outset, it is important to note that despite this reality, the current international norms, especially the provisions under the climate change and migration regimes, are inadequate to address these issues, which pose significant legal challenges for cross-border climate-displaced persons in accessing legal protection under international law<sup>17</sup>. For example, within the climate change regime, the Conference of the Parties 28 & 29 (COP) outcomes<sup>18</sup> only reference displacement, emphasising it through the Loss

<sup>15</sup> L. Moore, *Putting principles into practice: Lessons from Fiji on planned relocations*, in 69 *Forced Migration Rev.* (2024), [www.fmreview.org/climate-crisis/moore/](http://www.fmreview.org/climate-crisis/moore/); also see J. Barnett, C. McMichael, *The effects of climate change on the geography and timing of human mobility*, in 39(4) *Population and Env't* (2018), [link.springer.com/article/10.1007/s11111-018-0295-5](https://link.springer.com/article/10.1007/s11111-018-0295-5); J. McAdam, *Historical cross-border relocations in the Pacific: Lessons for planned relocations in the context of climate change*, in 49(3) *J. Pac. Hist.* (2014), [www.tandfonline.com/doi/abs/10.1080/00223344.2014.953317](http://www.tandfonline.com/doi/abs/10.1080/00223344.2014.953317); C. Tronquet, *From Funidogoloa to Kenani: An insight into successful relocation*, in *The State of Environmental Migration 2015* (2015), [labos.ulg.ac.be/hugo/wp-content/uploads/sites/38/2017/11/The-State-of-Environmental-Migration-2015-121-142.pdf](http://labos.ulg.ac.be/hugo/wp-content/uploads/sites/38/2017/11/The-State-of-Environmental-Migration-2015-121-142.pdf); K. McNamara, H.J. des Combes, *Planning for community relocations due to climate change in Fiji*, in 6(3) *Int'l J. Disaster Risk Sci.* (2015), [link.springer.com/article/10.1007/s13753-015-0065-2](https://link.springer.com/article/10.1007/s13753-015-0065-2).

<sup>16</sup> For example, see cases such as New Zealand Immigration and Protection Tribunal, *AF (Kiribati)*, [2013] NZIPT 800413, 25 June 2013; *Billy and Others v. Australia* (Torres Strait Islanders Petition), UN Human Rights Committee, Communication No. 3624/2019, Views adopted 18 October 2022; *M.A. (Bangladesh) v. France*, Cour administrative d'appel de Bordeaux, No. 17BX03498, 18 December 2018 (published January 2021); UN Special Procedures, Briefing Note on Displacement in Papua, 2022; Agenzia Fides, *Militarization in West Papua...*, January 2025, [awpaadelaide.com/](http://awpaadelaide.com/).

<sup>17</sup> Center for International Environmental Law (CIEL), *Human Rights and the Right to a Healthy Environment: A Synthesis Report*, 2018, 2–3; J. McAdam, *Swimming against the tide: Why a climate change displacement treaty is not the answer*, in 23(1) *Int'l J. Refugee L.* 2–27 (2011).

<sup>18</sup> UNFCCC, *First Global Stocktake*, [unfccc.int/sites/default/files/resource/cma2023\\_L17\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf); UNFCCC, *New Collective Quantified Goal on Climate Finance (NCQG)*, [unfccc.int/sites/default/files/resource/CMA\\_11%28a%29\\_NCQG.pdf](https://unfccc.int/sites/default/files/resource/CMA_11%28a%29_NCQG.pdf); UNFCCC, *COP28 decisions relating to the NCQG*, [unfccc.int/NCQG#-Stock-takes-and-guidance-by-the-CMA](https://unfccc.int/NCQG#-Stock-takes-and-guidance-by-the-CMA); Carbon Brief, *Why the COP29 climate finance goal is not enough*,

and Damage Mechanisms and workstreams; however, the fund responding to loss and damage remains voluntary and thus largely empty<sup>19</sup>. Although this indicates an emerging architecture for migration policies related to climate change, at present, against the tipping point of the climate crisis, the framework remains inadequate for dealing with forced displacement due to its adverse impacts<sup>20</sup>. Within the migration regime, the 1951 Refugee Convention provides some pathways for individuals facing persecution, but it does not directly address climate-related displacement, thus leaving a substantial legal gap for those fleeing environmental hazards and deterioration<sup>21</sup>. While there is global traction and sensationalisation of “climate refugees”, the law still falls short. It limits the debate to defining “climate refugees” under a particular stream of international legal discipline<sup>22</sup>.

However, the 2016 New York Declaration for Refugees and Migrants confirms that multiple, overlapping factors such as armed conflict, persecution, poverty, food insecurity, terrorism, and human rights violations, as well as the adverse effects of climate change and environmental degradation, drive human mobility across borders<sup>23</sup>. It acknowledges that the boundaries between refugee, conflict, and climate-induced movements are often blurred. States reaffirmed that international refugee law provides the legal framework to strengthen refugee protection and committed to ensuring protection for “all who need it”, while also noting the complementary value of regional refugee instruments, such as the 1969 OAU Convention and the 1984 Cartagena Declaration<sup>24</sup>. As Weerasinghe observes, the refugee definition in the Refugee Convention, when interpreted alongside regional frameworks, already accommodates complex protection contexts where conflict, violence, and disasters interact with climate change, demonstrating that climate-related displacement is not beyond the reach of existing refugee and protection law, but rather requires

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[www.carbonbrief.org/analysis-why-the-300bn-climate-finance-goal-is-even-less-ambitious-than-it-seems/](http://www.carbonbrief.org/analysis-why-the-300bn-climate-finance-goal-is-even-less-ambitious-than-it-seems/).

<sup>19</sup> L. Vandamme, C. Pollera, E. Lennon, *Promoting Human Rights in Climate Action: Report from the Baku Climate Conference COP29*, CIEL, 2024, [www.ciel.org/reports/promoting-human-rights-in-climate-action-cop29/](http://www.ciel.org/reports/promoting-human-rights-in-climate-action-cop29/).

<sup>20</sup> *Loss and Damage and Human Mobility at COP28: An Emerging Architecture to Avert, Minimise and Address Displacement*, in *RLI Blog*, 19 December 2023, [rli.blogs.sas.ac.uk/2023/12/19/loss-and-damage-and-human-mobility-at-cop-28-an-emerging-architecture-to-avert-minimize-and-address-displacement/](http://rli.blogs.sas.ac.uk/2023/12/19/loss-and-damage-and-human-mobility-at-cop-28-an-emerging-architecture-to-avert-minimize-and-address-displacement/); *Loss and Damage and Human Mobility: A Roadmap to Address Climate Displacement*, Researching Internal Displacement, 2023, 9–11. [researchinginternaldisplacement.org/wp-content/uploads/2023/09/LDCRI-FINAL\\_DISPLACEMENT\\_MESSAGES.pdf](http://researchinginternaldisplacement.org/wp-content/uploads/2023/09/LDCRI-FINAL_DISPLACEMENT_MESSAGES.pdf).

<sup>21</sup> UNHCR, *Climate change and displacement: the myths and the facts*, 1 August 2023, [www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts](http://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts); H. Dempster, K. Ober, *New Zealand’s “climate refugee” visas: Lessons for the rest of the world*, Center for Global Development, 10 January 2020, [reliefweb.int/report/world/new-zealands-climate-refugee-visas-lessons-rest-world](http://reliefweb.int/report/world/new-zealands-climate-refugee-visas-lessons-rest-world).

<sup>22</sup> Global Forum on Migration and Development, *Background Paper, Roundtable 3.1*, 11 November 2016, 16–17.

<sup>23</sup> UN General Assembly, *New York Declaration for Refugees and Migrants*, 19 September 2016, UN Doc. A/RES/71/1, para. 1.

<sup>24</sup> *Ibid.*, Annexe I, paras. 3–5; see also *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1969 (OAU Convention); *Cartagena Declaration on Refugees*, 1984.

context-sensitive interpretation and complementary protection mechanisms<sup>25</sup>. In 2018, the UN Human Rights Council adopted an outcome document that pointed out that many people who are forced to migrate long distances and cross borders due to climate impacts do not fit the definition of “refugees” and that the legal system to protect their human rights is inadequate<sup>26</sup>. The outcome document made recommendations to states to integrate human rights protections into climate policies, including measures to prevent displacement by ensuring liveable conditions and facilitating planned, rights-based relocation as an adaptation strategy<sup>27</sup>. Despite this, the New York Declaration remains voluntary, and recommendations made by international forums such as the UN Human Rights Council are not enforceable.

While climate-vulnerable countries such as Papua New Guinea, Bangladesh, and other countries in the region have made attempts to adapt *in situ*, for example, planting or restoring mangroves to buffer coastal erosion, constructing seawalls against storm surges and king tides, or installing rainwater catchment systems to supplement freshwater supplies, these measures frequently reach practical or economic limits<sup>28</sup>. Such measures can be technically infeasible, prohibitively expensive, or effective only as short-term stopgaps rather than long-term solutions<sup>29</sup>. Under such constraints, migration or resettlement to less exposed locations may emerge as the most sustainable adaptation pathway, or in certain extreme scenarios, the only viable option<sup>30</sup>. Thus, when the “life-support systems” of a territory, namely land security, livelihood security, or habitat stability, break down, migration becomes forced, and relocations may involve whole or large portions of communities<sup>31</sup>. In effect, the adaptation thresholds are limited and can be crossed, once critical functions of a locale no longer support habitability, relocation is no longer optional but inevitable.

Another distinct challenge faced by some frontline communities is at the intersection of national security and climate-induced mass

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<sup>25</sup> S. Weerasinghe, *Refugee law in a time of climate change, disaster and conflict: A working legal analysis of the refugee definition in the 1951 Convention and the regional refugee criteria*, UNHCR Legal and Protection Policy Research Series, PPLA/2020/01, January 2020, 4–6.

<sup>26</sup> T. Ida, *Climate refugees – the world’s forgotten victims*, UNFCCC, 21 June 2021, [www.climatechampions.net/news/climate-refugees-the-world-s-forgotten-victims/](http://www.climatechampions.net/news/climate-refugees-the-world-s-forgotten-victims/).

<sup>27</sup> *Ibidem*.

<sup>28</sup> V. Boege, U. Rakova, *Climate Change-Induced Relocation: Problems and Achievements – The Carterets Case*, Toda Peace Institute, Policy Brief No. 33, 2019, [toda.org/policy-briefs-and-resources/policy-briefs/climate-change-induced-relocation-problems-and-achievements-the-carterets-case.html](http://toda.org/policy-briefs-and-resources/policy-briefs/climate-change-induced-relocation-problems-and-achievements-the-carterets-case.html); *Loss and Damage and Human Mobility at COP28: An Emerging Architecture to Avert, Minimize and Address Displacement*, RLI Blog, 19 December 2023, [rli.blogs.sas.ac.uk/2023/12/19/loss-and-damage-and-human-mobility-at-cop-28-an-emerging-architecture-to-avert-minimize-and-address-displacement/](http://rli.blogs.sas.ac.uk/2023/12/19/loss-and-damage-and-human-mobility-at-cop-28-an-emerging-architecture-to-avert-minimize-and-address-displacement/); *Loss and Damage and Human Mobility: A Roadmap to Address Climate Displacement*, Researching Internal Displacement, 2023, 9–11, [researchinginternaldisplacement.org/wp-content/uploads/2023/09/LDCRI-FINAL\\_DISPLACEMENT\\_MESSAGES.pdf](http://researchinginternaldisplacement.org/wp-content/uploads/2023/09/LDCRI-FINAL_DISPLACEMENT_MESSAGES.pdf).

<sup>29</sup> J.R. Campbell, *Climate-change migration in the Pacific*, in 26(1) *Contemp. Pac.* 1–28 (2014).

<sup>30</sup> *Ibidem*.

<sup>31</sup> *Ibidem*.

displacement<sup>32</sup>. A study analysing the National Security Strategy Documents (NSSD) of 93 countries between 2000 and 2020 showed that climate change is increasingly framed as a security issue, but in ways that often misrepresent its implications for displacement<sup>33</sup>. It highlighted how potential destination countries, particularly in Western Europe, North America, and Australasia, frame climate migration as a security threat, warning of “waves of migration” and “destabilising mass movements” rather than addressing the root causes of displacement or offering legal protections. For example, the Czech Republic’s 2015 NSSD refers to “mass migrations” as a challenge requiring security responses, rather than viewing climate migrants as individuals in need of protection. This securitisation shifts focus away from the direct impacts of climate change, such as loss of livelihoods and habitable land, to concerns about border control and national stability. In contrast, countries more vulnerable to climate displacement, such as those in Central America and Sub-Saharan Africa, rarely frame migration as a security risk, instead linking it to resource scarcity and human survival. In the Blue Pacific Continent, Guam and Vanuatu typically face similar adverse impacts of climate change with similar issues on adaptation and mitigation. However, their political status and governance structure, which shape their adaptation and displacement policies, are extremely different. As such, Guam, despite access to U.S. federal aid, lacks local policy autonomy and relies on reactive disaster relief, leaving communities vulnerable to repeated displacement after extreme weather events like Super Typhoon Mawar. In contrast, Vanuatu pursues proactive, community-led adaptation strategies but faces financial constraints, demonstrating how limited resources, rather than direct environmental threats, often dictate forced migration; highlighting the urgent need for stronger legal protections for climate-displaced populations<sup>34</sup>.

Such varied perspectives on national security, lack of consensus on the definition of “refugees” in the climate context, and governance structures based on the geopolitical status of highly vulnerable and frontline communities add to the overarching challenges of climate displacement. This dynamic illustrates the need to prioritise human rights-based protections, addressing both the root causes of climate displacement and the legal void faced by affected populations.

The third section gives an overview of the overarching international and regional policies and programmes on climate mobility that have influenced the Asia-Pacific region. The fourth section attempts to give an overview of how these policies and programmes are adopted in the regional context and how Pacific SIDs, Southeast Asian, and South Asian countries have responded to climate displacement. In doing so, it highlights the relevant domestic legal frameworks for protecting displaced persons, including cross-border climate migrants and internally displaced people (IDPs), and analyses how the climate change AOs could be used to build a

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<sup>32</sup> TODA, *Human Insecurity from Climate Change on Vanuatu and Guam*, 2025, [toda.org/global-outlook/2025/human-insecurity-from-climate-change-on-vanuatu-and-guam.html](https://toda.org/global-outlook/2025/human-insecurity-from-climate-change-on-vanuatu-and-guam.html).

<sup>33</sup> A. Vogler, *Barking up the tree wrongly? How national security strategies frame climate and other environmental change as security issues*, *op. cit.*

<sup>34</sup> *Ibidem*.

resilient legal framework with the help of the climate change regime.

### 3. International and Regional Legal Frameworks Shaping Climate Mobility in the Asia-Pacific

At the outset, the first subsection discusses the existing multilateral human-rights-centred instruments and bodies that address climate displacement. In doing so, it also elucidates the relevant findings of the three AOs on climate change by the ICJ, ITLOS and the IACtHR, that strengthen the existing climate mobility frameworks, which are now justiciable and enforceable under international law. It sheds light on the main climate-related frameworks, such as the Paris Agreement's Taskforce on Displacement, the Global Compact for Migration, and the Peninsula Principles, which are widely recognised within international law and policy discussions to address human rights issues arising out of climate displacement. The second subsection discusses regional norm-setting through regional programmes based on their relevance to climate migration governance, legal significance, and practical impact on affected populations. It sheds light on the *inter alia*, Pacific Regional Framework on Climate Mobility, Pacific Climate Change Migration and Human Security Programme, due to their influence on national policies and their role in shaping state-led responses to climate mobility. It also discusses the cross-cutting issues of security that climate displacement poses to the Pacific Blue continent and the steps taken to address it. These instruments have exclusively and directly engaged with climate displacement, contributed to emerging national laws and policies, and have the potential to influence future national, regional, and international agreements and legal frameworks in the Asia-Pacific region.

Before examining the specific instruments and mechanisms that shape climate mobility governance in the Asia-Pacific, it is necessary to clarify the legal character of the obligations discussed throughout this article. International law operates through a plurality of sources, such as treaty law, customary international law (CIL), and soft-law instruments; each of which carries out a distinct normative weight. This article proceeds from the position that the core obligations relevant to climate-induced displacement do not need to be created anew; rather, they already exist, and are embedded in binding human rights treaties and in rules of customary international law, including the duty of prevention, the duty of cooperation, and due diligence obligations towards persons at risk of forced displacement due to climate change. What is transforming, and what this article traces, is the interpretation of those existing obligations in response to the climate and migration context (especially when there is a lack of a legally state-ratified concept of climate refugees), a process being driven primarily by the emerging jurisprudence of international and regional courts and tribunals. The advisory opinions of the ICJ, ITLOS, and the IACtHR are thus understood here not as the source of new obligations, but as authoritative interpretive acts that clarify and consolidate the obligations that are *erga omnes* in pre-existing treaty and customary obligations to the specific conditions of climate-induced displacement. Moreover, soft-law instruments, including the Global Compact for Migration, the Nansen

Protection Agenda, and the Peninsula Principles, play a complementary but distinct role as they do not generate binding obligations independently, rather they function as interpretive guides that inform the content and implementation of those binding norms, and increasingly, as the basis on which CIL may be said to be crystallising. Cerrina Feroni and Cardone have observed this and argue that instruments such as the GCM, as authoritative expressions of an *opinio iuris ac necessitatis*, contribute to the development of customary international law when combined with consistent and uniform State behaviour; a process which is already visible in the domestic legislative responses the GCM has generated across the Asia-Pacific region<sup>35</sup>

### 3.1 Multilateral Human-Rights-Centred Instruments

#### 3.1.1 United Nations Special Rapporteurs' (UNSR) Contribution to Addressing Climate Displacement

The UNSRs on Human Rights of Internally Displaced Persons have addressed climate displacement by investigating human rights violations linked to climate change and forced migration. Their mandates enable them to highlight legal gaps, advocate for rights-based protection frameworks, and guide states in fulfilling their obligations under international law<sup>36</sup>.

The UNSR on the Promotion and Protection of Human Rights in the Context of Climate Change, established under HRC Resolution 48/14 (2021), recognises climate displacement as a human rights issue and aims to assess its impact, recommend policy measures, and evaluate state responses to forced migration triggered by environmental disasters. This role includes ensuring that planned relocations respect fundamental human rights, particularly for marginalised groups such as Indigenous Peoples and low-lying coastal communities<sup>37</sup>. The UNSR on the Human Rights of IDPs has focused on the heightened vulnerabilities of IDPs affected by climate change. Internally displaced populations often face loss of land, restricted access to services, and legal insecurity. The 2024 report on planned relocations emphasises the necessity of human rights-based relocation strategies that guarantee free, prior, and informed consent, adequate housing, and secure land tenure for displaced individuals<sup>38</sup>. The UNSR on the Rights of Indigenous Peoples has addressed the impact of climate-induced displacement on Indigenous communities, particularly in the Pacific Islands, the Arctic, and the Amazon. The United Nations Declaration on the Rights

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<sup>35</sup> G. Cerrina Feroni, A. Cardone, *The Global Compact for Safe, Orderly and Regular Migration (GCM) and its implications for constitutional law*, in *DPCE Online*, 45(4), 2021, doi.org/10.57660/dpceonline.2020.1206.

<sup>36</sup> Special Rapporteur on the Human Rights of Internally Displaced Persons, *Planned Relocations of People in the Context of Climate Change*, 1 July 2024, [www.ohchr.org/en/calls-for-input/2024/call-input-hrc56-thematic-report-climate-change-and-internal-displacement](http://www.ohchr.org/en/calls-for-input/2024/call-input-hrc56-thematic-report-climate-change-and-internal-displacement).

<sup>37</sup> UN Human Rights Council, *Climate Change, Displacement and Human Rights*, March 2022, [documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement](https://www.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement).

<sup>38</sup> *Ibidem*.

of Indigenous Peoples (UNDRIP) and the Indigenous and Tribal Peoples Convention (ILO Convention No. 169) establish legal protections against forced relocation, requiring the consent of Indigenous peoples and the payment of adequate compensation<sup>39</sup>. A key case illustrating these issues was the UN complaint filed by five Indigenous Tribes from Louisiana and Alaska against the U.S. government, arguing that inadequate climate adaptation measures violated their rights to land, culture, and self-determination<sup>40</sup>. The U.S. government has not responded to the complaint to date, and this underscores that non-recognition of Indigenous land and relocation rights exacerbates climate displacement by leaving affected populations without legal protection or remedy.

### 3.1.2 Judicially Consolidated Obligations of States under International Law

The recent advisory opinions from the International Tribunal on the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and the Inter-American Court of Human Rights (IACtHR) have together laid down a pathway to address the issues of fragmentation of law that currently prevails in protecting frontline communities and marginalised persons from climate displacement. The ICJ, in its AO, clarified that climate change engages multiple, overlapping bodies of international law and affirmed that treaty law, customary international law, human rights law, and the law of the sea (among others) form “a single set of compatible obligations”, thus, imposing on States a high standard of due diligence to prevent and remedy climate-related harm to human rights<sup>41</sup>. The ICJ held that instruments such as the UN Charter, UNFCCC–Kyoto–Paris climate treaties, UNCLOS, and other environmental treaties operate simultaneously and not in isolation; thus, human rights and the law of the sea continue to shape the content of State climate obligations<sup>42</sup>. The ITLOS AO, requested by the Commission of Small Island States (COSIS), complements this reasoning by interpreting UNCLOS Articles 192 and 194 as imposing positive obligations of due diligence on all States to protect the marine environment against climate-related harm<sup>43</sup>. The ITLOS confirmed that such duties include adopting and enforcing laws to regulate greenhouse-gas emissions, conducting environmental impact assessments, and ensuring cooperation through

<sup>39</sup> Special Rapporteur on the Human Rights of Internally Displaced Persons, *Planned Relocations of People in the Context of Climate Change*, 1 July 2024, [www.ohchr.org/en/calls-for-input/2024/call-input-hrc56-thematic-report-climate-change-and-internal-displacement](http://www.ohchr.org/en/calls-for-input/2024/call-input-hrc56-thematic-report-climate-change-and-internal-displacement); see also ILO, *Convention No. 169*, [normlex.ilo.org/dyn/nrmlx\\_en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).

<sup>40</sup> Special Rapporteur on the Human Rights of Internally Displaced Persons, *Planned Relocations of People in the Context of Climate Change*, 1 July 2024, [www.ohchr.org/en/calls-for-input/2024/call-input-hrc56-thematic-report-climate-change-and-internal-displacement](http://www.ohchr.org/en/calls-for-input/2024/call-input-hrc56-thematic-report-climate-change-and-internal-displacement); see also *Rights of Indigenous People in Addressing Climate-Forced Displacement*, UN Special Procedures (Communication from Indigenous Tribes), 15 September 2020, [www.climatecasechart.com/document/rights-of-indigenous-people-in-addressing-climate-forced-displacement\\_b449](http://www.climatecasechart.com/document/rights-of-indigenous-people-in-addressing-climate-forced-displacement_b449).

<sup>41</sup> ICJ AO paras 113–173, 170–172; 174–270; 131–142; IACtHR AO paras 1–100.

<sup>42</sup> ICJ AO paras 113–142, 170–172.

<sup>43</sup> ITLOS AO paras 240–245, 265–278, 384–400.

information sharing and capacity-building, especially toward vulnerable developing States<sup>44</sup>. It also held that the obligation of “best possible efforts” applies regardless of a State’s individual contribution to global emissions, creating a universal minimum standard of compliance under the law of the sea<sup>45</sup>. The IACtHR echoed this reasoning, confirming that human rights obligations remain fully operative during the climate emergency, and must be implemented through substantive rights, procedural rights (information, participation, access to justice), and special protection for vulnerable groups<sup>46</sup>.

Importantly, the ICJ’s opinion addressed sea-level rise and statehood directly. Read together with the ICJ’s findings on self-determination and cooperation, affirms a presumption of continuity of both statehood and maritime entitlements. It concluded that there is no legal duty under UNCLOS to revise or “update” maritime baselines once they are lawfully established, and that statehood persists even where physical territory is lost<sup>47</sup>. This reasoning, aligned with the International Law Commission’s 2025 final report on sea-level rise, confirms that climate obligations extend to oceans, thus supporting the position advanced by many Pacific island States that sovereignty, statehood, and maritime rights endure despite territorial loss<sup>48</sup>. These judicial findings “constitutionalise” the relationship between the climate regime and the law of the sea, providing a coherent legal foundation for the stability of maritime zones and the protection of ocean-dependent communities<sup>49</sup>.

On displacement, the IACtHR explicitly acknowledged that even robust adaptation measures may not prevent involuntary mobility and required States to establish legal, policy, institutional, and budgetary frameworks to govern such movement, consistent with rights-based, participatory relocation and Free, Prior, and Informed Consent (FPIC) of affected communities<sup>50</sup>. It further established that States must guarantee not only protection and relocation but also remedy, reparation, and access to justice for displaced persons<sup>51</sup>.<sup>11</sup> It confirmed that the right to remain and the right to move must both be realised through voluntary, culturally appropriate, and participatory processes that respect FPIC, gender equality, and the preservation of collective identity. This interpretation extends the Court’s procedural-rights framework to include duties of international assistance and financial cooperation: developed States, in particular, are

<sup>44</sup> ITLOS AO paras 243–245, 265–270.

<sup>45</sup> ITLOS AO paras 291–310.

<sup>46</sup> IACtHR AO paras 367–372, 468–489.

<sup>47</sup> ICJ AO paras 355–363, 364–365 (continuity of statehood and co-operation).

<sup>48</sup> International Law Commission, *Sea-level rise in relation to international law: Final report of the Study Group* (adopted 26 May 2025), UN Doc. A/80/10, Ch. IV and Annexe I (consolidated final report); see also International Law Commission, “Sea-level rise in relation to international law” (web notice of adoption, 26 May 2025); ICJ AO para. 361.

<sup>49</sup> WYCI, CIEL, *Legal Memorandum: Relevance of the ITLOS Climate Advisory Opinion for the ICJ Advisory Opinion*, July 2024, 3–6.

<sup>50</sup> IACtHR AO paras 611–613, 6612–6616 (involuntary mobility; FPIC and consultation duties).

<sup>51</sup> CIEL, AIDA et al. (Eds.), *Climate Justice and Human Rights: Legal Standards and Tools from the Inter-American Court’s Advisory Opinion OC-32/25*, October 2025, Part III, Ch. 10, 117–121.

required to contribute resources for adaptation and relocation consistent with their obligations of good-faith cooperation under general international law. The ICJ, while less operational on displacement, recognised that sea-level rise and climate impacts heighten displacement risks, and that States' customary duties of prevention and co-operation extend to protecting people at risk of displacement through anticipatory and rights-consistent measures<sup>52</sup>.

From a point of view of synthesising and applying these judicial precedents for climate displacement issues at the regional and national level, they should be used to catalyse the evolution of a Pacific-centred jurisprudence of climate mobility, not only within the region, but also in high-risk climate vulnerable countries in Southeast Asia and South Asia. For example, formulating and aligning with the Pacific Regional Framework on Climate Mobility with hard-law principles relevant and applicable in local contexts. Moreover, the ICJ's confirmation of statehood continuity and the IACtHR's focus on institutional readiness for involuntary mobility together establish a coherent normative basis for the Pacific's dual strategy of (i) preserving sovereignty while (ii) protecting human mobility, which can be translated to other regions as well that face similar issues<sup>53</sup>. IDPs in the Pacific island countries, Pacific island territories, and coastal countries like Bangladesh or the Philippines can draw guidance from these AOs, and especially from the IACtHR AO at the domestic level, which can provide a template for national courts and policymakers to align their relocation and disaster-risk-reduction frameworks with international procedural standards<sup>54</sup>. The Court's articulation of FPIC and participatory obligations also reinforces the argument that state-led relocation or adaptation projects, for instance, PNG's relocation of the Carteret Islanders, Indonesia's new capital project in Borneo, or Bangladesh's planned resettlements under the Delta Plan must integrate consultation, cultural appropriateness, and long-term monitoring as a matter of legal compliance, not mere policy choice<sup>55</sup>. Thus, from their cumulative interpretation, these advisory opinions provide binding interpretive authority confirming that State obligations under the Paris Agreement and other soft law principles, such as those under the Global Compact, and Peninsular Principles, must be read in harmony with human-rights duties of prevention, co-operation, and due diligence, particularly regarding sea-level rise and planned relocation in small island developing States and high-risk climate coastal States.

Taken together, these opinions strengthen the justiciability of claims by climate-displaced persons, both internally and across borders, by embedding their protection within binding international norms. For example, in cases like *Teitiota v New Zealand*, which previously turned on narrow thresholds of imminent harm, these opinions could shift

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<sup>52</sup> ICJ AO paras 131–142, 357.

<sup>53</sup> Pacific Islands Forum Secretariat, *Pacific Regional Framework on Climate Mobility*, 2024.

<sup>54</sup> IACtHR AO paras 611–613; ICJ AO para 365.

<sup>55</sup> J. Connell, *Last days in the Carteret Islands? Climate change, livelihoods and migration on the atolls of Papua New Guinea*, in 57(1) *Asia Pac. Viewpoint* 3 (2016); AP News, *Why is Indonesia moving its capital from Jakarta to Borneo?*, 13 August 2023; Government of Bangladesh, *Bangladesh Delta Plan 2100*, 2018.

interpretation toward recognising state duties of prevention and co-operation before life-threatening conditions arise<sup>56</sup>. Similarly, the *Torres Strait Islanders*' complaint before the Human Rights Committee gains further normative reinforcement from the ICJ's findings on self-determination, territorial integrity, and equitable co-operation, making it harder for future respondents to dismiss climate inaction as purely policy-based<sup>57</sup>. Most importantly, the ICJ in its AO also clarified that, in case States violate these obligations, then they can be held responsible under the Law of State Responsibility. This grounds the future of litigation that brings human rights issues arising out of climate displacement justiciable at an international, regional and domestic level, and in effect, materialises soft law principles (such as the Nansen Protection Agenda, and the Platform on Disaster Displacement) under these clarified State obligations. This has laid a pathway for domestic courts to interpret constitutional rights to life, environment, and culture in light of the IACtHR's procedural standards, while regional and international bodies could cite the ICJ's and ITLOS' findings to assess whether States have met their due diligence and co-operation duties in preventing foreseeable displacement. The practical result is that what were once aspirational climate-justice claims are now anchored in binding principles of international human rights and customary law.

### 3.1.3 Paris Agreement's (COP21) Taskforce on Displacement under the Warsaw Mechanism

The Paris Agreement (PA) is a legally binding international climate governance treaty adopted in 2015 with the highest ratification from States. The agreement's goals include limiting the rise in temperature to "well below" 2°C, reducing greenhouse gas emissions globally, building resilience to climate change impacts, and providing financing to developing countries<sup>58</sup>. The Agreement's framework within the COPs remains a cornerstone in addressing climate change impacts, including displacement<sup>59</sup>. Specifically, Article 8 of the agreement recognises "averting, minimising, and addressing" loss and damage, which includes climate-related

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<sup>56</sup> UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 24-10-2019.

<sup>57</sup> UN Human Rights Committee, *Billy Jed Mosby et al. (Torres Strait Islanders) v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022.

<sup>58</sup> UN, *Paris Agreement*, [www.un.org/en/climatechange/paris-agreement](http://www.un.org/en/climatechange/paris-agreement); see also UNFCCC, *Paris Agreement* (official text), [unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](http://unfccc.int/sites/default/files/english_paris_agreement.pdf).

<sup>59</sup> *Loss and Damage and Human Mobility at COP28: An Emerging Architecture to Avert, Minimize and Address Displacement*, in *RLI Blog*, 19 December 2023, [rli.blogs.sas.ac.uk/2023/12/19/loss-and-damage-and-human-mobility-at-cop-28-an-emerging-architecture-to-avert-minimize-and-address-displacement/](http://rli.blogs.sas.ac.uk/2023/12/19/loss-and-damage-and-human-mobility-at-cop-28-an-emerging-architecture-to-avert-minimize-and-address-displacement/); see also *Loss and Damage and Human Mobility: A Roadmap to Address Climate Displacement*, *Researching Internal Displacement*, 2023, 9–11, [researchinginternaldisplacement.org/wp-content/uploads/2023/09/LDCRI-FINAL\\_DISPLACEMENT\\_MESSAGES.pdf](http://researchinginternaldisplacement.org/wp-content/uploads/2023/09/LDCRI-FINAL_DISPLACEMENT_MESSAGES.pdf).

displacement<sup>60</sup>. Following this, the Taskforce on Displacement<sup>61</sup> was established under the Warsaw International Mechanism<sup>62</sup> to develop recommendations and assist states in managing climate-induced migration. However, it is noted that this task force has largely focused on adaptation and resilience, not offering direct legal protection for displaced individuals, as well as a lack of development of a framework under the task force's mandate<sup>63</sup>. The Taskforce's recommendations have directly informed national implementation in the region, such as Fiji's Climate Relocation and Displaced Peoples Trust Fund operationalising its guidance on planned relocation, while Bangladesh's National Adaptation Plan (2023–2050) incorporates displacement governance as a key adaptation measure<sup>64</sup>. While there remain gaps in accessing the framework<sup>65</sup>, it has already served as a blueprint for climate-vulnerable countries that face imminent and forced displacement.

### 3.1.4 Global Compact for Safe, Orderly, and Regular Migration

The Global Compact for Safe, Orderly, and Regular Migration (GCM) is the first intergovernmental agreement, prepared under the auspices of the United Nations (UN), to cover all dimensions of international migration comprehensively<sup>66</sup>. The GCM builds on the commitments agreed in the New

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<sup>60</sup>UNFCCC, *Decision X/CP.21* (Loss and Damage), [unfccc.int/files/adaptation/groups\\_committees/loss\\_and\\_damage\\_executive\\_committee/application/pdf/ref\\_8\\_decision\\_xcp.21.pdf](https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/ref_8_decision_xcp.21.pdf).

<sup>61</sup> UNFCCC, *Task Force on Displacement (TFD) under the WIM ExCom, Phase 2 (April 2019–September 2022)*, [unfccc.int/process/bodies/constituted-bodies/WIMExCom/TFD#Phase-2-April-2019–September-2022](https://unfccc.int/process/bodies/constituted-bodies/WIMExCom/TFD#Phase-2-April-2019–September-2022).

<sup>62</sup> The Warsaw International Mechanism was established at COP19 to address loss and damage associated with the impacts of climate change, including extreme events and slow-onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change. The Loss and Damage Mechanism fulfils the role under the Convention of promoting the implementation of approaches to address loss and damage associated with the adverse effects of climate change, pursuant to *decision 3/CP.18* and further elaborated in *decision 2/CP.19*.

<sup>63</sup> A. Kent, S. Behrman, *Climate refugees: Is litigation an effective strategy?*, in 2(2) *Hong Kong J.L. Pub. Affs.* 26–32 (2020).

<sup>64</sup> Republic of Fiji, *Climate Relocation and Displaced Peoples Trust Fund for Communities and Infrastructure Regulations*, 2021; Ministry of Environment, Forest and Climate Change (Bangladesh), *National Adaptation Plan 2023–2050*, 2023, [unfccc.int/documents/637588](https://unfccc.int/documents/637588).

<sup>65</sup> L. Vandamme, C. Pollera, E. Lennon, *Promoting Human Rights in Climate Action: Report from the Baku Climate Conference COP29*, *op. cit.*; see also *Loss and Damage and Human Mobility at COP28: An Emerging Architecture to Avert, Minimize and Address Displacement*, in *RLI Blog*, 19 December 2023, [rli.blogs.sas.ac.uk/2023/12/19/loss-and-damage-and-human-mobility-at-cop-28-an-emerging-architecture-to-avert-minimize-and-address-displacement/](https://rli.blogs.sas.ac.uk/2023/12/19/loss-and-damage-and-human-mobility-at-cop-28-an-emerging-architecture-to-avert-minimize-and-address-displacement/); see also *Loss and Damage and Human Mobility: A Roadmap to Address Climate Displacement*, *Researching Internal Displacement*, 2023, 9–11, [researchinginternaldisplacement.org/wp-content/uploads/2023/09/LDCRI-FINAL\\_DISPLACEMENT\\_MESSAGES.pdf](https://researchinginternaldisplacement.org/wp-content/uploads/2023/09/LDCRI-FINAL_DISPLACEMENT_MESSAGES.pdf).

<sup>66</sup> UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration*, Resolution A/RES/73/195, adopted 2019.

York Declaration for Refugees and Migrants<sup>67</sup>. It was adopted at an intergovernmental conference on migration in December 2018<sup>68</sup>. Member States agreed to review the progress made at the local, national, regional, and global levels in implementing the Global Compact at an International Migration Review Forum (IMRF) through a State-led approach and with the participation of all relevant stakeholders at the UN General Assembly<sup>69</sup>. GCM's objective 2 (h-1) explicitly addresses minimising the adverse drivers and structural factors that compel people to leave their country of origin due to natural disasters, adverse effects of climate change, and environmental degradation<sup>70</sup>. Although “non-legally binding”<sup>71</sup>; it includes provisions encouraging states to address the root causes of climate-induced displacement by fostering resilience and adaptation measures in vulnerable regions. The GCM's objectives include creating legal migration pathways for individuals affected by climate events, reflecting a growing acknowledgement of environmental migration within the global governance framework<sup>72</sup>. While the GCM represents a significant step towards recognising climate-induced displacement within international migration governance, its non-binding nature underscores the gap between policy aspirations and the legal obligations necessary to ensure tangible protection for climate-displaced persons.

It has influenced the Association of Southeast Asian Nations' (ASEAN) policy dialogues with only an acknowledgement of climate mobility, influencing regional consultation processes and the inclusion of environmental drivers in migration governance frameworks<sup>73</sup>. In the adoption of the GCM, Indonesia was a key voice in the Asia-Pacific Consultation, ensuring that language on natural disasters and climate change as drivers of migration was included. Since then, it has provided a blueprint that countries can refer to when developing policies<sup>74</sup>. This diffusion of the GCM into domestic legal orders is consistent with the analysis that the GCM's most significant legal dimension lies precisely in its indirect effect and that the domestic legislative and administrative measures States adopt to honour the political commitment undertaken in an international forum<sup>75</sup>. One of the GCM-inspired ideas in the region was New Zealand's pilot of a Climate Change Migration visa for Pacific Islanders (though that was not implemented as planned). Importantly, GCM has

<sup>67</sup> UN, *Global Compact for Migration – Official Text*, Preamble, para. 7, [documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf](https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf).

<sup>68</sup> UN, *Global Compact for Migration*, [www.un.org/en/conf/migration/](http://www.un.org/en/conf/migration/).

<sup>69</sup> OHCHR, *International Migration Review Forum (IMRF)*, [www.ohchr.org/en/migration/international-migration-review-forum-imrf](http://www.ohchr.org/en/migration/international-migration-review-forum-imrf).

<sup>70</sup> UN, *Global Compact for Migration – Official Text*, [documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf](https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf).

<sup>71</sup> UN, *Global Compact for Migration – Official Text*, Preamble, para. 7, [documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf](https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf).

<sup>72</sup> UN, *Global Compact for Migration – Official Text*, Objective 1-2 [documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf](https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf).

<sup>73</sup> ASEAN Secretariat, *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*, 2007.

<sup>74</sup> UN Economic and Social Commission for Asia and the Pacific (ESCAP), *Asia-Pacific Migration Report 2024: Assessing Implementation of the Global Compact for Migration*, 2024.

<sup>75</sup> *Supra*, n. 36.

influenced the national and regional policies in Europe, and along with the ICJ observations, which establish “a single set of compatible obligations” on states, European states are now obliged to improve migrant protection and integration<sup>76</sup>. While the European Economic and Social Committee (EESC) has aligned its migration policies with the GCM’s objectives, it needs to go further to ensure they comply with heightened obligations of due diligence in cases of climate-induced migration as well<sup>77</sup>.

### 3.1.5 Peninsula Principles on Climate Displacement Within States

The Peninsula Principles offer a set of guidelines explicitly focused on internal displacement due to climate change<sup>78</sup>. They provide a comprehensive normative framework, based on principles of international law, human rights obligations, and good practice, within which the rights of climate-displaced persons within States can be addressed. The Principles set out protection and assistance provisions, consistent with the UN Guiding Principles on Internal Displacement (upon which they build and contextualise), to be applied to climate-displaced persons. They advocate for states to uphold the human rights of displaced persons by providing adequate housing, access to water, and other essential resources<sup>79</sup>. These principles have proven to be vital for establishing normative standards, despite the non-binding nature of the States that have signed these principles<sup>80</sup>. They highlight a fundamental regulatory gap, as there is no clear international legal mechanism to enforce protection for climate-displaced persons across borders.

Their importance to high-level policies shows their growing global influence and relevance. They have served as a normative blueprint for domestic relocation policies, such as Fiji’s and Vanuatu, which draw explicitly on their standards of participation, protection, and monitoring. For example, in Fiji, the government has identified 676 villages that are under serious threat from climate change and that will eventually need to be moved. In 2018, the government of Fiji adopted a framework to undertake

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<sup>76</sup> ICJ AO paras 113–173, 170–172.

<sup>77</sup> European Economic and Social Committee (EESC), *The costs of non-immigration (and non-integration) (own-initiative opinion)*, [www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/costs-non-immigration-and-non-integration-own-initiative-opinion](http://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/costs-non-immigration-and-non-integration-own-initiative-opinion).

<sup>78</sup> *Peninsula Principles on Climate Displacement within States*, [unfccc.int/files/adaptation/groups\\_committees/loss\\_and\\_damage\\_executive\\_committee/application/pdf/peninsula\\_principles.pdf](http://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/peninsula_principles.pdf).

<sup>79</sup> *Ibidem*, 8.

<sup>80</sup> *Peninsula Principles on Climate Displacement within States*, PreventionWeb, [www.preventionweb.net/publication/peninsula-principles-climate-displacement-within-states](http://www.preventionweb.net/publication/peninsula-principles-climate-displacement-within-states) «Representatives from Australia, New Zealand, Alaska, Bangladesh, Netherlands, Switzerland, UK, Germany, Egypt, Tunisia and the US came together in Red Hill, Victoria and shared their backgrounds and expertise in International Law, migration, forced migration, environmental change and UN policy creation to strengthen and stand behind the Peninsula principles as the first formal policy of its kind in the world».

climate change-related relocation<sup>81</sup>. Since then, Fiji has adopted the (i) Planned Relocation Guidelines (2018) to guide the relocation of communities affected by climate change, ensuring a human rights-based approach to resettlement<sup>82</sup>. It reflects the principles by ensuring that relocations are voluntary, participatory, and uphold human rights. (ii) The 2019 Climate Relocation of Communities Trust Fund Act establishes a trust fund for the planned relocation of Fijian communities adversely affected by climate change. The purposes of the Fund are to receive and disburse financing for planned relocation activities and related matters<sup>83</sup>. (iii) The 2021 Climate Change Act formally recognises climate-induced displacement and establishes legal mechanisms for planned relocation and land security for displaced communities<sup>84</sup>. In Vanuatu, the Vanuatu National Policy on Climate Change and Disaster-Induced Displacement was adopted in 2018<sup>85</sup>. Similarly, in Bangladesh, they have been instrumental in defining the scope and direction of Bangladesh's National Strategy for Disaster and Climate-Induced Internal Displacement. By 2080, 13% of Bangladesh's coast will likely have been swallowed by rising sea levels<sup>86</sup>.

### 3.1.6 Nansen Initiative and Platform on Disaster Displacement (PDD)

The Nansen Initiative on Disaster-Induced Cross-Border Displacement was launched in 2012 as a state-led consultative process, spearheaded by Switzerland and Norway<sup>87</sup>. It aimed to build consensus on key principles and effective practices for addressing the protection and assistance needs of persons displaced across borders due to disasters, including those driven by climate change. The initiative was guided by a Steering Group comprising nine Member States - Australia, Bangladesh, Costa Rica, Germany, Kenya, Mexico, Norway, the Philippines, and Switzerland- with additional support from the IOM and the UNHCR as standing invitees<sup>88</sup>. Furthermore, the European Union and Morocco participated as co-chairs of the Group of Friends, broadening the initiative's diplomatic reach<sup>89</sup>.

A significant outcome of the initiative was the development of the Nansen Protection Agenda, which provides a framework for regulating climate-induced migration<sup>90</sup>. This agenda offers guidelines for identifying

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<sup>81</sup> *Vanuatu National Policy on Climate Change and Disaster-Induced Displacement (2018)*, Refworld, [www.refworld.org/legal/decrees/natlegbod/2018/en/122437](http://www.refworld.org/legal/decrees/natlegbod/2018/en/122437).

<sup>82</sup> Climate Laws Database, *Fiji – migration*, [climate-laws.org/search?l=fiji&q=migration&o=20](http://climate-laws.org/search?l=fiji&q=migration&o=20).

<sup>83</sup> *Supra*, n. 83.

<sup>84</sup> *Supra*, n. 83.

<sup>85</sup> Government of Vanuatu, *National Policy on Climate Change and Disaster-Induced Displacement*, 2018, [ndmo.gov.vu/images/download/Vanuatu-National-Policy-on-Climate-Change-and-Disaster-Induced-Displacement-2018-published.pdf](http://ndmo.gov.vu/images/download/Vanuatu-National-Policy-on-Climate-Change-and-Disaster-Induced-Displacement-2018-published.pdf).

<sup>86</sup> *Ibidem*, 2.

<sup>87</sup> The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, 2015, [disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf](http://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf).

<sup>88</sup> *Ibidem*, 52.

<sup>89</sup> *Ibidem*.

<sup>90</sup> The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, 2015, 7–9.

cross-border disaster-displaced persons, best practices for host states concerning their admission and stay, and measures ensuring the protection of human rights, particularly regarding non-refoulement. It also includes recommendations for cases requiring long-term stays due to prolonged environmental degradation<sup>91</sup>. Another significant outcome was that it laid out a foundation for the Platform on Disaster Displacement (PDD), which was established to operationalise protection measures for individuals displaced by climate-related events<sup>92</sup>. The PDD is now an international institution that positions itself at the forefront of global efforts to address climate-induced migration<sup>93</sup>. While these efforts provide essential frameworks, their recommendations remain largely non-binding, limiting enforceable protection for cross-border climate migrants. The Nansen Initiative and the PDD have fostered international cooperation, setting a discourse on climate displacement. However, without enforceable mechanisms, individuals displaced by climate-related disasters continue to face legal uncertainties, and the challenges continue to prevail in securing legally binding protections for cross-border climate migrants. This has the potential to change in light of climate change AOs that the PDDs' voluntary guidelines new normative legitimacy, situating them within a composite matrix of hard-law duties under international law. As such, IACtHR partially remedies this normative weakness by establishing that States must guarantee participation and consultation in all relocation processes, effectively codifying principles that the PDD had previously advanced as policy guidance<sup>94</sup>. Likewise, the ITLOS, confirming greenhouse-gas emissions qualify as marine pollution, imposes stringent due diligence and cooperation duties under UNCLOS Articles 192 and 194, providing an environmental-law anchor for displacement-related obligations<sup>95</sup>. One such example is the Pacific Blue's own programmatic response to these norms has taken shape through the PCCMHS, which embeds participatory and rights-based principles into regional policy practice.

### 3.2 Regional Co-operation in the Pacific based on Norm-Setting Principles

This sub-section discusses the Pacific's regional cooperation programmes based on the internationally recognised principles highlighted above. These programmes have tailored the climate mobility architecture from a rights-based perspective. Importantly, the programmes align closely with the legal standards of adaptation and mitigation articulated in the climate change advisory opinions. The ICJ's confirmation of statehood continuity and maritime entitlement stability reinforces the rationale behind the Pacific Islands Forum's 2021 Declaration on Preserving Maritime Zones and the

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<sup>91</sup> The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, cit., 26–29.

<sup>92</sup> IOM, *Platform on Disaster Displacement*, [environmentalmigration.iom.int/platform-disaster-displacement](https://environmentalmigration.iom.int/platform-disaster-displacement).

<sup>93</sup> Platform on Disaster Displacement, [disasterdisplacement.org/](https://disasterdisplacement.org/).

<sup>94</sup> IACtHR AO paras 367–372, 611–613.

<sup>95</sup> ITLOS AO paras 128–137, 240–245, 265–278, 384–400.

sovereignty provisions of the Australia–Tuvalu Falepili Union Treaty<sup>96</sup>. Similarly, the ITLOS, while not directly addressing the issues of displacement, adds critical clarity to the law of the sea dimension, notably by confirming norms on marine environmental protection, stability of baselines, and the duty to co-operate, thus buttressing regional claims to stable maritime zones under climate stress<sup>97</sup>. This gives more legal weight to policies such as the Pacific Regional Framework on Climate Mobility and the Boe Declaration Action Plan. At the same time, the IACtHR's emphasis on FPIC, participatory decision-making, and culturally appropriate consultation gives legal weight to rights-based relocation instruments such as Fiji's Planned Relocation Guidelines (2018) and Vanuatu's National Policy on Climate Change-Induced Displacement (2018), which already require community-led planning, tenure security, and monitoring<sup>98</sup>. Together, these developments transform what were formerly voluntary policy standards into legally expected practice under international human-rights law.

### 3.2.1 The Pacific Climate Change Migration and Human Security Programme

The Pacific Climate Change Migration and Human Security (PCCMHS) programme was a joint initiative led by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), the International Labour Organization (ILO), and the IOM, aimed at addressing climate-induced migration in the Pacific by enhancing labour mobility pathways, strengthening policy frameworks, and improving regional cooperation; while the initial phase (2019–2022) has concluded, it has influenced regional cooperation agreements as the Falepili Agreement between Australia and Tuvalu (discussed below). The programme also contributed to the development of the Pacific Regional Framework on Climate Mobility (see section 3.2.iii), which guides Pacific Island Forum (PIF) member states on managing migration, displacement, and planned relocation in response to climate change from a rights-based approach<sup>99</sup>. At a higher policy level, the 2050 Strategy for the Blue Pacific has been developed with an explicit focus on climate-induced migration<sup>100</sup>. This long-term vision for Pacific development ensures that migration and human mobility are incorporated into national resilience planning in addressing climate displacement<sup>101</sup>.

These efforts demonstrate a shift in regional governance, where climate mobility is no longer a peripheral issue but a central consideration

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<sup>96</sup> Pacific Islands Forum, *Declaration on Preserving Maritime Zones in the Face of Climate Change Impacts*, 2021.

<sup>97</sup> ITLOS AO.

<sup>98</sup> Republic of Fiji, *Planned Relocation Guidelines: A Framework to Undertake Climate Change Related Relocation*, 2018; Government of Vanuatu, *National Policy on Climate Change-Induced Displacement*, 2018.

<sup>99</sup> Pacific Islands Forum Secretariat, *Pacific Regional Framework on Climate Mobility*, 2024.

<sup>100</sup> Pacific Islands Forum, *2050 Strategy for the Blue Pacific Continent*, [forumsec.org/2050](https://forumsec.org/2050).

<sup>101</sup> ESCAP, ILO, IOM, *Pacific Climate Change Migration and Human Security (PCCMHS) Programme: Phase I Report 2019–2022*, Bangkok, United Nations ESCAP, 2023, 12–18.

in national and regional policies. Significantly, the PCCMHS programme has helped link climate resilience with labour migration. Several seasonal and temporary migration schemes in Australia, Aotearoa New Zealand, and the United States provide critical avenues for Pacific Islanders to seek employment and build financial resilience in the face of environmental threats<sup>102</sup>. The Programme has advocated for reforms in labour mobility agreements, calling for the inclusion of climate-vulnerable states in migration pathways, stronger protections for migrant workers, and improved social security provisions<sup>103</sup>. Through these efforts, the PCCMHS has played a key role in strengthening labour mobility as a climate adaptation strategy, ensuring that migration pathways are accessible, equitable, and aligned with broader regional efforts to address climate displacement<sup>104</sup>.

Despite these opportunities, challenges remain in ensuring equal and dignified access to labour mobility schemes for all Pacific nations. Countries such as Kiribati and Tuvalu, which face some of the greatest migration pressures due to climate change, often have fewer migration opportunities due to remoteness, lack of diasporic networks in destination countries, and limited government resources<sup>105</sup>.

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<sup>102</sup> ILO, *Enhancing Labour Mobility to Support Climate Resilience in the Pacific Islands*, ILO Office for Pacific Island Countries, 2021, 3–6; see also Government of Australia, *Pacific Australia Labour Mobility (PALM) Scheme*, Department of Foreign Affairs and Trade, 2023, [www.palmscheme.gov.au](http://www.palmscheme.gov.au); Government of New Zealand, *Recognised Seasonal Employer (RSE) Scheme: Policy Statement*, Ministry of Business, Innovation and Employment, 2023, [www.immigration.govt.nz/employ-migrants/explore-your-options/recognised-seasonal-employer-scheme](http://www.immigration.govt.nz/employ-migrants/explore-your-options/recognised-seasonal-employer-scheme); Government of the United States, *Compacts of Free Association with the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau*, 2023, [www.state.gov/u-s-relations-with-the-freely-associated-states/](http://www.state.gov/u-s-relations-with-the-freely-associated-states/); ILO, *Pacific Labour Mobility, Skills and Climate Adaptation: Policy Brief*, Suva, 2022, 4–6.

<sup>103</sup> *Navigating Injustice: Climate Displacement from the Pacific Islands of Tuvalu and Kiribati to Aotearoa New Zealand*, Amnesty International Report, 2025; see also ESCAP, ILO, IOM, Pacific Climate Change Migration and Human Security (PCCMHS) Programme: Phase I Report 2019–2022, Bangkok, United Nations ESCAP, 2023, 18–22, [www.unescap.org/kp/2023/pacific-climate-change-migration-and-human-security-pccmhs-programme-phase-i-report](http://www.unescap.org/kp/2023/pacific-climate-change-migration-and-human-security-pccmhs-programme-phase-i-report); ILO, Pacific Labour Mobility, Skills and Climate Adaptation: Policy Brief, Suva, 2022, 6–9, [www.ilo.org/suva/information-resources/publications/WCMS\\_854582/lang--en/index.htm](http://www.ilo.org/suva/information-resources/publications/WCMS_854582/lang--en/index.htm).

<sup>104</sup> IOM, *Labour Mobility in the Pacific: A Regional Perspective*, Bangkok, 2022, 8–12, [publications.iom.int/books/labour-mobility-pacific-regional-perspective](http://publications.iom.int/books/labour-mobility-pacific-regional-perspective); ESCAP, *Harnessing Labour Mobility to Strengthen Climate Resilience in the Pacific Islands* (ESCAP Policy Paper), 2021, 4–7, [policycommons.net/artifacts/1796506/harnessing-labour-mobility-to-strengthen-climate-resilience-in-the-pacific-islands/2526663/](http://policycommons.net/artifacts/1796506/harnessing-labour-mobility-to-strengthen-climate-resilience-in-the-pacific-islands/2526663/); G. Finin, M. Vogl, *Mobility, remittances and resilience: Labour migration as a climate adaptation strategy in the Pacific Islands*, in 9(1) *Asia Pac. Pol. Stud.* 117–131 (2022), [onlinelibrary.wiley.com/doi/full/10.1002/app5.350](http://onlinelibrary.wiley.com/doi/full/10.1002/app5.350); World Bank, *Pacific Possible: Labour Mobility*, Washington D.C., 2017, 23–26, [documents.worldbank.org/en/publication/documentsreports/documentdetail/168341492545864197/pacific-possible-labour-mobility](http://documents.worldbank.org/en/publication/documentsreports/documentdetail/168341492545864197/pacific-possible-labour-mobility).

<sup>105</sup> *Ibidem*.

### 3.2.2 Pacific Regional Framework on Climate Mobility

Adopted by the Pacific Island Forum (PIF), the Pacific Regional Framework on Climate Mobility (PRFCM) is to guide PIF “governments, communities, non-state actors and partners in ensuring rights-based and people-centred movement in the context of climate change, including staying in place, planned relocation, migration, and displacement through a proactive, inclusive and collaborative regional approach that reflects common Pacific interests in a culturally appropriate manner while respecting national sovereignty and diversity”<sup>106</sup>. These include community relocation strategies as well as disaster management policies in Vanuatu, Fiji, the Marshall Islands, Tuvalu, the Solomon Islands, and other members of the PIF. The Framework draws explicitly on earlier regional initiatives, including the Framework for Resilient Development in the Pacific (FRDP, 2016) and the Boe Declaration on Regional Security (2018), both of which recognise climate change as a core security threat<sup>107</sup>. It also references the Peninsula Principles as a soft-law benchmark for human-rights-consistent relocation<sup>108</sup>.

The FRDP has reinforced the need for climate mobility considerations in national policies, thus ensuring that affected communities receive support through coordinated regional action<sup>109</sup>. It promotes proactive climate adaptation strategies that include migration as a tool for resilience, thereby recognising mobility not as a failure of adaptation but as a legitimate response to environmental threats. Similarly, the Boe Declaration on Regional Security (2018) formally identified climate change as the greatest security threat in the Pacific, highlighting the urgent need for policies that address displacement and migration as climate adaptation measures<sup>110</sup>. Another regional programme is the Pacific Response to Disaster Displacement (PRDD) is a project that works in collaboration with the International Displacement Monitoring Centre (IDMC), IOM, and the PDD to generate new evidence to help governments better understand, plan for, prevent, and respond to disaster displacement in the Pacific<sup>111</sup>. This project is specifically designed to address sea-level rise and disaster preparedness. The PIF and other regional bodies promote cooperation to manage migration within the region, yet face challenges due to limited financial and

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<sup>106</sup> Pacific Islands Forum Secretariat, *Pacific Regional Framework on Climate Mobility*, 2, [forumsec.org/sites/default/files/2024-02/Pacific%20Regional%20Framework%20on%20Climate%20Mobility.pdf](https://forumsec.org/sites/default/files/2024-02/Pacific%20Regional%20Framework%20on%20Climate%20Mobility.pdf).

<sup>107</sup> Pacific Islands Forum, *Framework for Resilient Development in the Pacific*, 2016; Pacific Islands Forum, *Boe Declaration on Regional Security*, 2018.

<sup>108</sup> Displacement Solutions, *The Peninsula Principles on Climate Displacement within States* (2013).

<sup>109</sup> Pacific Disability Forum, *FRDP 2016: Resilient Development in the Pacific*, 2024, [pacificdisability.org/wp-content/uploads/2024/04/FRDP\\_2016\\_Resilient\\_Dev\\_pacific.pdf](https://pacificdisability.org/wp-content/uploads/2024/04/FRDP_2016_Resilient_Dev_pacific.pdf).

<sup>110</sup> Pacific Islands Forum Secretariat, *BOE Action Plan*, 2024, [forumsec.org/sites/default/files/2024-03/BOE-document-Action-Plan.pdf](https://forumsec.org/sites/default/files/2024-03/BOE-document-Action-Plan.pdf).

<sup>111</sup> *The Pacific Response to Disaster Displacement (PRDD)*, [api.internal-displacement.org/sites/default/files/brochure\\_prdd\\_final\\_260520\\_min\\_v2.pdf](https://api.internal-displacement.org/sites/default/files/brochure_prdd_final_260520_min_v2.pdf); see also UN Migration Network, *Pacific Response to Disaster Displacement (PRDD)*, [migrationnetwork.un.org/projects/pacific-response-disaster-displacement-prdd](https://migrationnetwork.un.org/projects/pacific-response-disaster-displacement-prdd).

institutional capacities. As such, localised initiatives remain vital, as they can tailor responses to the unique cultural and environmental conditions of each island nation.

Legally, the Framework's rights-based language and its emphasis on community participation, cultural appropriateness, and gender inclusivity mirror the IACtHR's procedural-rights jurisprudence and the ITLOS's requirement of ongoing cooperation and scientific monitoring<sup>112</sup>. The Framework thus constitutes a regional manifestation of the global legal principles articulated in these opinions. By establishing relocation standards that require FPIC, tenure security, and safeguards for Indigenous communities, the PRFCM aligns with national instruments such as Fiji's Planned Relocation Guidelines (2018) and Vanuatu's National Policy on Climate Change-Induced Displacement (2018), which already embody these principles domestically<sup>113</sup>. The ICJ's finding on the obligation to cooperate and prevent significant transboundary harm, and the ITLOS's interpretation of Article 192 of UNCLOS as imposing a comprehensive duty to protect and preserve the marine environment, jointly reinforce the legal foundations of these regional policies<sup>114</sup>. Using the PRFM and the AOs, other climate-vulnerable countries, especially in Southeast Asia and South Asia, could draw inspiration to address their regional issues related to climate displacement from a cooperative, rights-based perspective.

### 3.2.3 The Pacific Climate Change and Migration Project

Building upon the normative and programmatic foundations of the PCCMHS and the PRFCM, the Pacific Climate Change and Migration Project (PCCMP)<sup>115</sup> was a project led by the United Nations Economic & Social Commission on the Asia Pacific (ESCAP), ILO, and UNDP<sup>116</sup>. The project focused on integrating migration into adaptation policy and building technical capacity for rights-based mobility across all Small Island Developing States (SIDS). The key objectives include building a knowledge base on migration flows, policies, and practices in the region, and the projected impacts of climate change on migration, including labour migration to enhance national capacities<sup>117</sup>.

The project includes the Federated States of Micronesia, Kiribati, Nauru, the Republic of Marshall Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. This plan, in consideration of the GCM and the PRDD, and the Nansen Initiative has highlighted the

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<sup>112</sup> IACtHR AO paras 367–372; ITLOS AO paras 265–278.

<sup>113</sup> Government of Fiji, *Planned Relocation Guidelines: A Framework to Assist in the Relocation of Communities Due to Climate Change*, 2018; Government of Vanuatu, *National Policy on Climate Change-Induced Displacement*, 2018.

<sup>114</sup> ICJ AO paras 131–142; ITLOS AO paras 192, 384–400.

<sup>115</sup> UNESCAP, *Pacific Climate Change and Migration Project (PCCMP)*, [www.unescap.org/subregional-office/pacific/pacific-climate-change-and-migration-project](http://www.unescap.org/subregional-office/pacific/pacific-climate-change-and-migration-project).

<sup>116</sup> UNESCAP, ILO, UNDP, *Pacific Climate Change and Migration Project (Project Overview)*, 2022, [sdgs.un.org/partnerships/pacific-climate-change-and-migration](http://sdgs.un.org/partnerships/pacific-climate-change-and-migration).

<sup>117</sup> *Ibidem*.

importance of labour migration on climate adaptation<sup>118</sup>. In addition to the existing labour mobility schemes such as the Compacts of Free Association<sup>119</sup>, Recognised Seasonal Employer (RSE) scheme<sup>120</sup>, Pacific Access Category (PAC)<sup>121</sup>, Seasonal Worker Programme (SWP)<sup>122</sup>, and Australia's Pacific Labour Scheme (PLS)<sup>123</sup>, this project made policy recommendations based on the rate of rising issues of climate mobility affecting livelihoods and living conditions in the SIDS. These recommendations *inter alia* include granting humanitarian visas<sup>124</sup>, identifying new markets and supporting training to facilitate entry into industries, social protection, and worker welfare, improving the use of remittances, and others<sup>125</sup>.

The project's advocacy for humanitarian visas, worker training, social protection, and improved remittance systems echoes the GCM's objectives while grounding them in regional realities. However, as the programme notes, access remains uneven, particularly for remote or smaller atoll States such as Kiribati and Tuvalu<sup>126</sup>. The consolidation of these programmatic instruments culminates in the Boe Declaration and the 2050 Strategy, which frame climate change as a regional security imperative and affirm the Pacific's shared commitment to sovereignty and resilience.

### 3.2.4 Boe Declaration and 2050 Strategy for the Blue Pacific: Climate as Security and Sovereignty

In 2018, the Pacific Island Forum, including Australia, adopted the Boe Declaration on Regional Security. The declaration recognises an expanded concept of security, including human, cyber, and environmental security,

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<sup>118</sup> ILO, *Pacific Climate Change and Migration – Presentation*, [www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-suva/documents/presentation/wcms\\_863530.pdf](http://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-suva/documents/presentation/wcms_863530.pdf).

<sup>119</sup> UNESCAP, *Pacific Climate Change and Migration Project (PCCMP)*, cit., states that citizens of the Marshall Islands, the Federated States of Micronesia, and Palau may live and work in the United States under the Compacts of Free Association, subject to specified restrictions.

<sup>120</sup> New Zealand offers employment opportunities in horticulture and viticulture industries through the Recognised Seasonal Employer (RSE) scheme; see Government of New Zealand, *Recognised Seasonal Employer (RSE) Scheme*, Ministry of Business, Innovation and Employment, [www.immigration.govt.nz/employ-migrants/explore-your-options/recognised-seasonal-employer-scheme](http://www.immigration.govt.nz/employ-migrants/explore-your-options/recognised-seasonal-employer-scheme).

<sup>121</sup> PAC grants residence to a certain number of citizens (rolling ballot) from Fiji, Kiribati, Tonga, and Tuvalu indefinitely to live, work and study. See New Zealand, *Pacific Access Category Resident Visa*, [www.immigration.govt.nz/new-zealand-visas/visas/visa/pacific-access-category-resident-visa](http://www.immigration.govt.nz/new-zealand-visas/visas/visa/pacific-access-category-resident-visa).

<sup>122</sup> Australia provides seasonal employment opportunities in agriculture as well as in select locations in accommodation and tourism.

<sup>123</sup> SWPs are designed to meet business demand across all sectors in rural and regional Australia.

<sup>124</sup> Australia's PLS developed new visa options for those who cannot remain in, or return to, their areas of origin due to climate change.

<sup>125</sup> ILO, *Pacific Climate Change and Migration – Presentation*, cit.

<sup>126</sup> *Navigating Injustice: Climate Displacement from the Pacific Islands of Tuvalu and Kiribati to Aotearoa New Zealand*, Amnesty International Report, 2025.

and frames regional responses to emerging security issues<sup>127</sup>. The declaration includes a range of topics, which also ‘expands the concept of security’ that provides for nontraditional challenges that are ubiquitous to the Blue Pacific, such as human security, transnational crime, cybersecurity, maritime security, environmental security, and climate security<sup>128</sup>. The Member States commit to developing national security strategies, and that process is ongoing. The strategies adopted so far, in Samoa, Vanuatu, Solomon Islands, and PNG’s 2013 National Security Policy, echo and build on the priorities of the Boe Declaration, but each has different emphases to reflect their individual priorities<sup>129</sup>. Given resource and capacity constraints, there is likely to be a gap between the contents of these strategies and how they are implemented, which will provide further signals of individual states’ security priorities<sup>130</sup>. These strategies and their implementation will also reflect the differing security challenges faced across the region.

To surmise, the Pacific regional order now rests on a legally reinforced foundation. This alignment consolidates a regional legal identity grounded in justice, solidarity, and cooperation. Read together, these regional and international frameworks now form a coherent link between environmental protection, human rights, and mobility governance across the Pacific region. Similarly, the Peninsular Principles, GCM, the Paris Agreement’s Taskforce on Displacement, and the ICJ, ITLOS, and IACtHR advisory opinions form a normative legal continuum, from soft-law policy guidance to binding customary obligations, upon which Asian states outside the Pacific could shape their relocation and protection frameworks providing a clearer legal foundation for the design of national protection systems, with heightened obligations falling Annex I States under the Paris Agreement.

#### 4. Enforceable Relocation Strategies as Adaptation: Bilateral Agreements, Regional Practices

The SIDS have had to pioneer unique legal and operational mechanisms in response to existential climate risks. This section analyses the salient mechanisms, such as bilateral relocation agreements in the Pacific, use of National Adaptation Plans (NAPs), and localised climate mobility programmes outside the Pacific in the absence of enforceable laws and treaties by drawing regional comparisons between the Pacific, Southeast Asia, and South Asia. In doing so, it contextualises the varied legal status of the SIDS, the Philippines, Indonesia, Bangladesh, and Myanmar, and how regional geopolitics affects the capacity of these countries to adaptation to displacement risks. While discussing the Southeast Asian and South Asian architecture, it also analyses how the three climate change AOs could be

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<sup>127</sup> Pacific Islands Forum, *Boe Declaration on Regional Security*, 2018, [forumsec.org/publications/boe-declaration-regional-security](http://forumsec.org/publications/boe-declaration-regional-security).

<sup>128</sup> *Ibidem*; also see A. Naupa et al., *Boe Declaration: navigating an uncertain Pacific*, Lowy Institute, 2018, [www.lowyinstitute.org/the-interpretor/boe-declaration-navigating-uncertain-pacific](http://www.lowyinstitute.org/the-interpretor/boe-declaration-navigating-uncertain-pacific).

<sup>129</sup> J. Wallis et al., *Security co-operation in the Asia-Pacific Islands: architecture, complex, community, or something else?*, in 23 *Int’l Rel. Asia-Pac.* 263–296 (2023).

<sup>130</sup> *Ibidem*.

used within the region to fill in the existing gaps and establish equitable, rights-based policies for climate displacements.

#### 4.1 Tuvalu-Australia Migration Agreement

In 2023, Tuvalu and Australia entered into a bilateral migration agreement, also known as the “*Australia-Tuvalu Falepili Union Treaty*,” that recognises the need for managed migration pathways for Tuvaluans at risk of displacement due to rising sea levels<sup>131</sup>. Australia already has a “Pacific Engagement Visa (PEV)” as a pathway for migration through a random ballot (lottery) process leading to permanent residency, which is arguably not adequate to address the climate-induced mobility issues faced by the people in the region<sup>132</sup>. It is inspired by the PCCMHS programme, specifically providing a ‘special human mobility pathway’ as climate change is the ‘greatest national security threat’ to Tuvalu and its citizens. It sets a precedent by explicitly identifying climate change as a nuanced and existential threat to Tuvalu and its citizens<sup>133</sup>. The *Falepili Union* treaty allows for “migration with dignity”<sup>134</sup>; as it includes all the safeguards that are embodied under the PEV. While it allows Tuvaluans to migrate to Australia, it does not brand itself as a ‘resettlement scheme’ nor has it developed a policy for giving citizenship to the migrants eventually<sup>135</sup>. One of the other important facets of the treaty is ‘the open-ended commitment to Tuvalu’s existential resilience in Article 2(b) represents the first binding rejection by any State of the view that inhabitable land is necessary for State continuity. At the very least, if Tuvalu becomes entirely uninhabitable, its statehood would be secured relative to Australia, forming what Nicholson has called a ‘state-in-context’<sup>136</sup>. Significantly, this casts doubt on experts who claim that States in Australia’s position would likely refuse to accept

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<sup>131</sup> J. Barnett et al., *Migration as adaptation? The Falepili Union between Australia and Tuvalu*, 3 November 2024, [wires.onlinelibrary.wiley.com/doi/10.1002/wcc.924](https://wires.onlinelibrary.wiley.com/doi/10.1002/wcc.924); see also Government of Australia, *Australia-Tuvalu Falepili Union Treaty*, [www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty](https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty).

<sup>132</sup> N. Turia et al., *Bracing for 3000 Pacific Engagement Visas*, Lowy Institute, 23 June 2023, [www.lowyinstitute.org/the-interpreter/bracing-3000-pacific-engagement-visas](https://www.lowyinstitute.org/the-interpreter/bracing-3000-pacific-engagement-visas); see also ABC News, *Pacific Engagement Visa ballot launches as diaspora grows*, 7 June 2024, [www.abc.net.au/news/2024-06-07/pacific-engagement-visa-ballot-diaspora-migration/103936844](https://www.abc.net.au/news/2024-06-07/pacific-engagement-visa-ballot-diaspora-migration/103936844); also see Government of Australia, *Pacific Engagement Visa (PEV) Overview*, [www.pev.gov.au/pacific-engagement-visa-overview](https://www.pev.gov.au/pacific-engagement-visa-overview) – the PEV has already been in place with 10 other Pacific countries and Timor Leste.

<sup>133</sup> Earth Refuge, *What does the world’s first bilateral climate mobility treaty mean for Tuvalu?*, [earthrefuge.org/what-does-the-worlds-first-bilateral-climate-mobility-treaty-mean-for-tuvalu/](https://earthrefuge.org/what-does-the-worlds-first-bilateral-climate-mobility-treaty-mean-for-tuvalu/).

<sup>134</sup> Government of Australia, *Explanatory Memorandum: Falepili Union between Tuvalu and Australia*, [www.dfat.gov.au/sites/default/files/explanatory-memorandum-falepili-union-between-tuvalu-australia.pdf](https://www.dfat.gov.au/sites/default/files/explanatory-memorandum-falepili-union-between-tuvalu-australia.pdf).

<sup>135</sup> EJIL: Talk!, *The Australia-Tuvalu Falepili Union Treaty: Security in the face of climate change and China*, [www.ejiltalk.org/the-australia-tuvalu-falepili-union-treaty-security-in-the-face-of-climate-change-and-china/](https://www.ejiltalk.org/the-australia-tuvalu-falepili-union-treaty-security-in-the-face-of-climate-change-and-china/).

<sup>136</sup> R. Nicholson, *Statehood and the state-like in international law*, in *Statehood in International Law*, Oxford, 2019, [academic.oup.com/book/35117/chapter-abstract/299222991](https://academic.oup.com/book/35117/chapter-abstract/299222991).

climate refugees where State continuity is legally assured, notwithstanding sea level rise<sup>137</sup>. Thus, this agreement informs the international laws and governance on the formal recognition of climate migration as a rights-based issue and could serve as a model for other nations facing similar existential threats. This is also now backed with the explicit pronouncement by the ICJ, in its AO, regarding the continuity of statehood in case of loss of sovereign territory.

Overall, the agreement marks a significant milestone in climate migration governance, setting a legal and political precedent for recognising climate-induced displacement as a rights-based issue, and offering a potential model for future international agreements addressing the existential threats faced by vulnerable nations.

#### 4.2 Aotearoa New Zealand's Relocation Visas for the Pacific Islanders

In 2017, Aotearoa New Zealand (NZ) adopted “an experimental humanitarian visa” category for Pacific Islanders displaced by the effects of climate change<sup>138</sup>. The new scheme would aim to bring around 100 people a year to Aotearoa NZ<sup>139</sup>. However, the policy faced challenges based on its nature and the status it would give to the Pacific and was ultimately not implemented. One of the main issues that is important to note here is that the Pacific Islanders rejected this visa category by stating that “[refugee is] a negative term that connotes victimhood and people in need of protection by the international community”<sup>140</sup>. Instead, they wanted the Aotearoa NZ government to institute a stepwise approach to reduce emissions, support adaptation efforts, provide legal migration pathways, and finally, if all fails, grant refugee status<sup>141</sup>.

Another significant pathway is the Pacific Access Category (PAC) scheme in Aotearoa NZ, which provides a limited number of permanent residency spots for citizens of Fiji, Kiribati, Tonga, and Tuvalu. This initiative has been particularly important for climate-vulnerable atoll nations such as Kiribati and Tuvalu, which have few other migration options. While this is a viable alternative, it does not explicitly account for climate-induced displacement. This underscores the difficulty in balancing humanitarian needs with national policy interests while ensuring legal frameworks of ‘migration with dignity’.

Aotearoa NZ also provides for the Samoan Quota Resident Visa

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<sup>137</sup> EJIL: Talk!, *The Australia–Tuvalu Falepili Union Treaty: Security in the face of climate change and... China?*, [www.ejiltalk.org/the-australia-tuvalu-falepili-union-treaty-security-in-the-face-of-climate-change-and-china/](http://www.ejiltalk.org/the-australia-tuvalu-falepili-union-treaty-security-in-the-face-of-climate-change-and-china/); see also O. Sharon, *To be or not to be*, in 51(4) *Env'l L.* 1041–1083 (2021), [www.jstor.org/stable/48647569](http://www.jstor.org/stable/48647569).

<sup>138</sup> H. Dempster, K. Ober, *New Zealand's “climate refugee” visas: Lessons for the rest of the world*, Center for Global Development, 10 January 2020, [www.cgdev.org/blog/new-zealands-climate-refugee-visas-lessons-rest-world](http://www.cgdev.org/blog/new-zealands-climate-refugee-visas-lessons-rest-world).

<sup>139</sup> ReliefWeb, *New Zealand's “climate refugee” visas: Lessons for the rest of the world*, [reliefweb.int/report/world/new-zealands-climate-refugee-visas-lessons-rest-world](http://reliefweb.int/report/world/new-zealands-climate-refugee-visas-lessons-rest-world).

<sup>140</sup> ABC News, *Pacific Islanders reject calls for ‘climate refugee’ status*, 5 September 2014, [www.abc.net.au/news/2014-09-05/pacific-islanders-reject-calls-for-27climate-refugee27-status/5723078](http://www.abc.net.au/news/2014-09-05/pacific-islanders-reject-calls-for-27climate-refugee27-status/5723078).

<sup>141</sup> ReliefWeb, *New Zealand's “climate refugee” visas: Lessons for the rest of the world*, cit.

(SQRV), which allocates 1,100 residency places for Samoan citizens annually<sup>142</sup>. This migration route has the largest Pacific migration quota compared to the PAC (650 migrants from Fiji, Tonga, Tuvalu, and Kiribati in total), yet it remains an indirect and inadequate pathway for climate-displaced Samoans<sup>143</sup>. While former Aotearoa NZ Prime Minister acknowledged that Pacific migration quotas already serve as de facto climate migration pathways, the SQRV was not originally designed for climate-induced migrants and lacks formal recognition as a climate mobility solution<sup>144</sup>. The challenges lie in the strict eligibility criteria, including age restrictions (18-45 years), language (English) proficiency, and a pre-arranged job offer, which pose significant barriers for those, particularly from rural areas that lack the necessary resources to meet these requirements. Furthermore, the SQRV quota is allocated based on historical diplomatic ties rather than climate vulnerability, meaning more at-risk nations like Tuvalu and Kiribati receive far fewer migration opportunities under the PAC despite their higher climate displacement risks<sup>145</sup>. Without legal recognition or prioritisation for climate-affected applicants, the SQRV functions as an economic migration scheme rather than a climate resilience tool. To enhance its role in climate migration, reforms such as easing entry barriers and explicitly recognising climate-affected applicants could make the SQRV a more effective and accessible mobility pathway for those facing existential climate threats<sup>146</sup>.

#### 4.3 The Republic of the Marshall Islands and the U.S.-Affiliated Pacific Islands

The Republic of Marshall Islands and U.S.-affiliated Pacific Islands, such as the Federated States of Micronesia (FSM), Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa and Palau, have unique climate mobility policies compared to the rest of the Pacific due to their Compacts of Free Association (COFA) with the United States<sup>147</sup>. These agreements provide COFA citizens the right to live, work, and study in the U.S. without a visa, making economic and social migration a key adaptation strategy to climate change and giving them a structural advantage over the independent Pacific Island States<sup>148</sup>. While COFA facilitates movement, it has only recently started providing some federal benefits, such as Medicaid, to the COFA citizens<sup>149</sup>.

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<sup>142</sup> E. Higuchi, *Climate change policies and migration issues of New Zealand and Australia*, *OPRI Perspectives*, No. 2, 2019, [www.spf.org/opri-intl/global-data/report/perspectives/20200526071205772.pdf](http://www.spf.org/opri-intl/global-data/report/perspectives/20200526071205772.pdf); see also New Zealand, *Samoan Quota Scheme Resident Visa*, [www.immigration.govt.nz/new-zealand-visas/visas/visa/samoan-quota-scheme-resident-visa](http://www.immigration.govt.nz/new-zealand-visas/visas/visa/samoan-quota-scheme-resident-visa).

<sup>143</sup> *Ibidem*.

<sup>144</sup> *Ibidem*, 2–3.

<sup>145</sup> *Ibidem*.

<sup>146</sup> *Ibidem*.

<sup>147</sup> US Department of the Interior, *Compacts of Free Association*, [www.doi.gov/oia/compacts-of-free-association](http://www.doi.gov/oia/compacts-of-free-association).

<sup>148</sup> Asia Matters for America, *Compacts of Free Association*, [asiamattersforamerica.org/the-pacific/compacts-of-free-association](http://asiamattersforamerica.org/the-pacific/compacts-of-free-association).

<sup>149</sup> Association of Asian Pacific Community Health Organisation (AAPCHO), *Congress restores federal benefits eligibility for COFA citizens in the U.S. 2024*; see also USCIS, *Status*

This legal pathway for migration does not formally recognise climate displacement in COFA agreements, distinguishing these nations from other Pacific states, which rely on labour migration programs or ad-hoc visas such as the PEV, PAC, the Falepili Agreement with Aotearoa NZ and Australia respectively<sup>150</sup>. As a result, COFA migrants displaced by climate change do not receive the same level of support as recognised persons affected by climate-induced displacement. This differs from Fiji's Climate Relocation of Communities Trust Fund, which proactively supports planned relocation efforts. Other regional climate mobility initiatives, such as the PCCMHS Programme, do not expand to the Marshall Islands and other U.S.-affiliated Pacific islands due to the COFA agreement with the U.S. This means that migration from RMI and FSM is typically driven by economic factors rather than being framed as a climate adaptation strategy. The Pacific Response to Disaster Displacement (PRDD) includes the Marshall Islands in its broader framework for disaster preparedness yet lacks a specific mechanism for long-term climate resettlement<sup>151</sup>. Moreover, Countries such as Fiji and Tuvalu have pursued domestic climate relocation policies, including dedicated adaptation funds and legal frameworks. The Marshall Islands and FSM are entirely dependent on the U.S. for disaster response and suffer due to the lack of a structured resettlement framework within their national policies. The 2022 U.S.-Pacific Partnership Strategy aims to enhance economic support and climate resilience programs, but it does not establish new legal protections for COFA migrants displaced by climate change<sup>152</sup>. Another critical issue facing Guam specifically is land dispossession due to U.S. military expansion. The increasing military presence on the island has led to internal displacement, reducing the availability of land for local communities and restricting potential climate adaptation strategies<sup>153</sup>.

This contrasts with sovereign nations such as Vanuatu, which, despite financial limitations, implement community-led adaptation policies<sup>154</sup>. This imbalance in governance structures means that while independent Pacific nations can seek international funding and policy solutions, U.S. territories remain dependent on federal responses that do not prioritise climate-induced migration.

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*of citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands*, [www.uscis.gov/working-in-the-united-states/status-of-citizens-of-the-freely-associated-states-of-the-federated-states-of-micronesia-and-the](http://www.uscis.gov/working-in-the-united-states/status-of-citizens-of-the-freely-associated-states-of-the-federated-states-of-micronesia-and-the).

<sup>150</sup> Marshall Islands Climate and Migration Project, *COFA Policy Brief*, University of Hawai'i at Mānoa, 2019, [static1.squarespace.com/static/596d5a162e69cf240a0f043b/t/5e3cfc7fb5004465df14d6c9/1581055113094/MICMP2019\\_COFAPolicyBrief.pdf](https://static1.squarespace.com/static/596d5a162e69cf240a0f043b/t/5e3cfc7fb5004465df14d6c9/1581055113094/MICMP2019_COFAPolicyBrief.pdf).

<sup>151</sup> UN Migration Network, *Pacific Response to Disaster Displacement (PRDD)*, [migrationnetwork.un.org/projects/pacific-response-disaster-displacement-prdd](http://migrationnetwork.un.org/projects/pacific-response-disaster-displacement-prdd).

<sup>152</sup> United States Institute of Peace, *Six Months On: Where Does the U.S.–Pacific Islands Strategy Stand?*, 18 April 2023, [www.usip.org/publications/2023/04/six-months-where-does-us-pacific-islands-strategy-stand](http://www.usip.org/publications/2023/04/six-months-where-does-us-pacific-islands-strategy-stand).

<sup>153</sup> TODA, *Human Insecurity from Climate Change on Vanuatu and Guam*, 2025, [toda.org/global-outlook/2025/human-insecurity-from-climate-change-on-vanuatu-and-guam.html](http://toda.org/global-outlook/2025/human-insecurity-from-climate-change-on-vanuatu-and-guam.html).

<sup>154</sup> TODA, *Human Insecurity from Climate Change on Vanuatu and Guam*, 2025, [toda.org/global-outlook/2025/human-insecurity-from-climate-change-on-vanuatu-and-guam.html](http://toda.org/global-outlook/2025/human-insecurity-from-climate-change-on-vanuatu-and-guam.html).

Thus, this contrast between independent Pacific States and U.S.-affiliated territories thus illustrates a broader comparative finding: the capacity to develop proactive, rights-based climate mobility frameworks is shaped not only by the severity of climate vulnerability but critically by the degree of political autonomy and access to international legal and financial regimes; a variable that recurs, in different forms, across Southeast and South Asia.

#### 4.4 National Adaptation Plans (NAPs) and Localised Climate Mobility Programmes (other than the Pacific)

National Adaptation Plans (NAPs) are strategic frameworks developed by countries to identify and address their medium-and long-term adaptation needs in response to climate change<sup>155</sup>. Within the United Nations Framework Convention on Climate Change (UNFCCC), NAPs operate under the adaptation and resilience workstream. The process to formulate and implement NAPs was established by the Conference of the Parties (COP) at its sixteenth session, specifically through decision 1/CP.16, paragraphs 15-18<sup>156</sup>. The integration of human mobility into countries' NAPs is crucial to ensure that climate-related mobility can be addressed, managed, prevented, or facilitated as part of a holistic policy framework that connects the local, national, and global levels and includes data collection, implementation, localisation, monitoring, evaluation, and reporting<sup>157</sup>. Around 85% of NAPs submitted to the UNFCCC (as of February 2024) reference one or more forms of human mobility<sup>158</sup>. 58% of NAPs that reference migration also include concrete provisions to address it, as compared to 51% of NAPs that reference displacement, and 83% of NAPs that reference relocation<sup>159</sup>.; For instance, countries like Bangladesh have developed National Adaptation Plans focused on building resilience within vulnerable communities and, where necessary, facilitating internal migration. Bangladesh's Climate Change Strategy and Action Plan (BCCSAP)<sup>160</sup> incorporates internal relocation policies to support communities affected by rising sea levels and frequent flooding. The plan includes long-term strategies ranging from adaptive agricultural practices such as floating agriculture, rehabilitation plans for IDPs due to climate disasters, disaster management, and climate financing, among other

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<sup>155</sup> UNFCCC, *Adaptation and Resilience Workstream*, [unfccc.int/national-adaptation-plans](https://unfccc.int/national-adaptation-plans); see also Grantham Institute Database, [climate-laws.org/search?q=National+Adaptation+Plans](https://climate-laws.org/search?q=National+Adaptation+Plans).

<sup>156</sup> *Ibidem*.

<sup>157</sup> *Briefing Note – Human Mobility in National Adaptation Plans* (updated version), [disasterdisplacement.org/wp-content/uploads/2024/04/UPDATED-Briefing-Note-Human-Mobility-in-NAPs-1\\_compressed.pdf](https://disasterdisplacement.org/wp-content/uploads/2024/04/UPDATED-Briefing-Note-Human-Mobility-in-NAPs-1_compressed.pdf).

<sup>158</sup> *Briefing Note – Human Mobility in National Adaptation Plans* (updated version), cit., 2.

<sup>159</sup> *Briefing Note – Human Mobility in National Adaptation Plans* (updated version), cit., 2-6.

<sup>160</sup> Government of Bangladesh, *National Adaptation Plan* (PDF), [doe.portal.gov.bd/sites/default/files/files/doe.portal.gov.bd/npfblock/2022-11-02-08-08-ade27c3a48eeeedbf1394e5fa527edd2.pdf](https://doe.portal.gov.bd/sites/default/files/files/doe.portal.gov.bd/npfblock/2022-11-02-08-08-ade27c3a48eeeedbf1394e5fa527edd2.pdf).

initiatives<sup>161</sup>.

In addition to NAPs, localised climate adaptation efforts, such as local organisations raising awareness of relocation due to sea level rise and documenting the effects on human mobility, have proven effective in empowering communities to respond to displacement risks. Local and community organisations are faster to respond to community needs; therefore, information provided by local actors on context-specific needs and conditions is essential to the design of climate mobility interventions<sup>162</sup>. Local actors' strong community networks and understanding of how things work on the ground are crucial to anchoring climate mobility projects within existing community dynamics and ensuring activities are sustainable in the long term. Local actors are the ones who remain after project funding ends, so it is important they feel invested in continuing to implement and monitor initiatives over the long term. According to the Migration Policy Institute (MPI), community-led programmes in countries like Mexico, Bangladesh, and Belize have engaged local leaders to implement climate-resilient practices. For example, in Bangladesh, the *Ovibashi Karmi Unnayan* Program, a community-based migrant organisation, found that as sea level rise degraded fishery-based livelihoods, men in the community attempted to adapt by seeking work abroad, leaving women behind. One unforeseen consequence was that women who replaced men in fisheries suffered adverse health consequences, as increased exposure to salinisation harmed their fertility. This knock-on effect had been overlooked by other international and national entities active in the area, which often focus on the number of people who move rather than their characteristics<sup>163</sup>. These localised strategies help sustain adaptation projects by building capacity within the community, thus ensuring that responses are context-specific and sustainable. Compared to the Pacific, where dedicated bilateral treaties and regional frameworks have begun to formalise mobility as a rights-based entitlement, the NAP-based approach prevalent in South and Southeast Asia reflects a more fragmented architecture; one in which displacement governance remains embedded in adaptation planning rather than constituted as a discrete legal protection regime. Such programmes are instrumental in bolstering resilience and reducing the necessity for displacement, especially in areas where centralised national policies may be limited.

#### 4.5 Southeast Asia's Humanitarian Relief to Rights-based Governance in the Philippines and Indonesia

Within Southeast Asia, ASEAN (Association of Southeast Asian Nations) might seem the natural regional venue to address displacement, but it

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<sup>161</sup> *Ibidem*.

<sup>162</sup> Migration Policy Institute, *Engaging Local Communities for More Effective Climate Mobility Programming*, [www.migrationpolicy.org/research/local-communities-climate-mobility](http://www.migrationpolicy.org/research/local-communities-climate-mobility).

<sup>163</sup> Migration Policy Institute, *Engaging Local Communities for More Effective Climate Mobility Programming*, 6, [www.migrationpolicy.org/research/local-communities-climate-mobility](http://www.migrationpolicy.org/research/local-communities-climate-mobility).

operates on strict principles of non-interference<sup>164</sup>. ASEAN has no regional treaty-based asylum system and no binding convention on internal displacement (contrast with the African Union's Kampala Convention for IDPs)<sup>165</sup>. However, given the increased impacts of climate displacement, ASEAN has shown some concern for disaster management at the regional level through the adoption of the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) since 2009. This remains the central regional instrument for disaster cooperation. It obliges Member States to enhance early-warning systems, share information, and facilitate mutual assistance in disaster situations<sup>166</sup>. Under AADMER, countries agree to share information and help each other respond to catastrophes. Although AADMER does not expressly address displacement or confer individual rights, its framework of regional solidarity is based on the ICJ's reaffirmation of States' duty to co-operate and prevent significant harm as rules of customary international law. To implement AADMER, ASEAN established the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) in 2011<sup>167</sup>. The Centre has coordinated major disaster responses, including Typhoon Haiyan (Philippines, 2013) and the Sulawesi earthquake (Indonesia, 2018), facilitating deployment of regional relief teams and resources<sup>168</sup>. While these interventions provide only short-term humanitarian relief and fall short of recognising the rights of displaced persons, or refrain from addressing cross-border displacement and migration due to climate change or even a humanitarian crisis<sup>169</sup>, they demonstrate ASEAN's growing capacity for collective action. As such, given the new legal standards set by the IACtHR on participatory and inclusive relocation duties of States, and the ICJ's clarity on the duty to co-operate, the ASEAN member-states have an imperative to utilise this mechanism to address cross-border displacement issues. They have legal ground on which they could replicate their response, like during the 2015 Rohingya crisis, where they adopted divergent responses, revealing persistent reluctance to host displaced foreigners<sup>170</sup>. By this standard, ASEAN's existing mechanisms remain necessary but insufficient for long-term protection guarantees. Together with the ITLOS AO, this framework's interpretation can now reinforce the collective dimension of environmental protection, interpreting Articles 192 and 194 of UNCLOS as imposing continuing duties of due diligence and cooperation to mitigate marine and coastal degradation. In this sense, AADMER's

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<sup>164</sup> *ASEAN Charter*, 2008, art. 2(e); ASEAN, *Treaty of Amity and Cooperation in Southeast Asia*, 1976.

<sup>165</sup> African Union, *Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*, 2009 (in force 2012).

<sup>166</sup> *ASEAN Agreement on Disaster Management and Emergency Response (AADMER)* (26 July 2005, in force 24 December 2009), arts 3–6.

<sup>167</sup> ASEAN Secretariat, *AADMER Work Programme 2021–2025*, 2021.

<sup>168</sup> ASEAN Coordinating Centre for Humanitarian Assistance (AHA Centre), *Operational Report 2013–2023*, 2023.

<sup>169</sup> ASEAN members remain sensitive about migration; for instance, see the 2015 Rohingya boat crisis (refugees from Myanmar) saw mixed responses from ASEAN states, underscoring reluctance to accept displaced foreigners.

<sup>170</sup> UNHCR, *Mixed Maritime Movements in South-East Asia 2015: Situation and Response*, 2016.

operational mechanisms, though humanitarian in nature, now stand on firmer normative ground and should be operationalised by States to address issues specifically related to long-term cross-border climate-related forced displacement.

Despite institutional limits, ASEAN has begun to acknowledge climate change as a regional security and human-rights issue. The ASEAN Climate Change and Human Security Outlook (2021), the first regional policy document to link migration and displacement to climate impacts, frames mobility as a cross-sectoral challenge affecting livelihoods, sovereignty, and regional stability<sup>171</sup>. Although declaratory, it signals an important normative shift. Additionally, Indonesia, in 2023 as ASEAN Chair, has highlighted “downstream” cooperation on environmental issues, possibly setting the stage for more conversation on disaster-displacement assistance if not outright protection<sup>172</sup>.

Beyond ASEAN, countries like the Philippines and Indonesia engage in other regional processes. Both are participants in the Bali Process People Smuggling, Trafficking in Persons and Related Transnational Crime, which primarily focuses on people smuggling and trafficking involving Asia-Pacific countries<sup>173</sup>. In the recent 2023 Bali Process meetings, environmental displacement has been mentioned as a compounding factor of irregular migration<sup>174</sup>. Yet again, the Bali Process is non-binding and consensus-based and has yielded only soft commitments while it has incorporated GCM language on climate mobility into its regional dialogues, demonstrating vertical policy coherence between global and regional levels<sup>175</sup>. However, this further offers a potential platform for regional coordination, echoing the ICJ’s and ITLOS’s insistence that States act in good faith to prevent foreseeable humanitarian harm<sup>176</sup>. Such recognition, while modest, reinforces the incremental diffusion of international legal norms into regional fora and shows how international jurisprudence not only influences State conduct directly but also elevates the legal relevance of soft-law frameworks, transforming them from political commitments into interpretive guides for compliance with binding international norms.

At the domestic level, the Philippines continues to be the most proactive ASEAN member in integrating rights-based standards into disaster-risk governance. Its Climate Change Act (2009) and the Disaster Risk Reduction and Management Act (2010) institutionalise participatory planning and community consultation, operationalising principles on FPIC<sup>177</sup>. Following Typhoon Haiyan, relocation initiatives in Tacloban and

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<sup>171</sup> ASEAN Secretariat, *ASEAN State of Climate Change Report*, 2021, [asean.org/wp-content/uploads/2021/10/ASCCR-e-publication-Correction\\_8-June.pdf](https://asean.org/wp-content/uploads/2021/10/ASCCR-e-publication-Correction_8-June.pdf).

<sup>172</sup> ASEAN, Chairman’s Statement of the 43rd ASEAN Summit, Jakarta, 5–7 September 2023, [asean.org/wp-content/uploads/2023/09/CHAIRMAN-STATEMENT-OF-THE-43RD-ASEAN-SUMMIT-FIN.pdf](https://asean.org/wp-content/uploads/2023/09/CHAIRMAN-STATEMENT-OF-THE-43RD-ASEAN-SUMMIT-FIN.pdf).

<sup>173</sup> Bali Process Co-Chairs, Eighth Ministerial Conference Co-Chairs’ Statement (Adelaide, 10 February 2023), [www.foreignminister.gov.au/minister/penny-wong/media-release/bali-process-eighth-ministerial-conference-co-chairs-statement](https://www.foreignminister.gov.au/minister/penny-wong/media-release/bali-process-eighth-ministerial-conference-co-chairs-statement).

<sup>174</sup> *Ibidem*.

<sup>175</sup> *Ibidem*.

<sup>176</sup> ICJ AO paras 131–142; ITLOS AO paras 265–278.

<sup>177</sup> Republic of the Philippines, *Climate Change Act 2009* (RA 9729), [www.officialgazette.gov.ph/2009/10/23/republic-act-no-9729/](https://www.officialgazette.gov.ph/2009/10/23/republic-act-no-9729/); *Disaster Risk*

Samar incorporated livelihood-restoration programmes and gender-inclusive consultation, reflecting the participatory relocation ethos<sup>178</sup>. The Philippine Commission on Human Rights' National Inquiry on Climate Change (2019) applied due diligence reasoning, recognising and holding that corporate and State actors share responsibility for preventing climate-related harm<sup>179</sup>. Although this legal corpus does not directly address issues of climate-displaced persons (internally and across borders), it collectively illustrates domestic appetite for high standards of prevention and participation that are essential to address displacement. Similarly, Indonesia demonstrates incremental convergence through its National Action Plan on Climate Change Adaptation (RAN-API, 2014) and Presidential Regulation No 60/2021 on the Climate Resilience Development Framework incorporates community participation, relocation planning, and social-protection mechanisms<sup>180</sup>. This reflects the interplay of how domestic policies have been guided by soft-law principles (in the case of Indonesia), such as the Peninsula Principles (2013) and the Platform on Disaster Displacement (PDD) or vice versa<sup>181</sup>.

Collectively, these national policies evidence a regional evolution of humanitarian relief mechanisms and are giving way to procedural-rights and prevention-based governance, aligning with emerging international legal expectations. In summary, ASEAN's role remains limited and cautious. It helps with disaster response logistics but not with legal protection or even long-term adaptation. Countries like the Philippines and Indonesia, while they have a foundational basis for addressing climate-displacement issues, lean more on global frameworks (UN agreements, Sendai Framework, etc.) and bilateral ties for support. ASEAN's approach is reactive rather than proactive. It is necessary for immediate relief and solidarity, but insufficient for long-term protection guarantees. This needs to evolve, especially because climate impacts are only going to worsen; ASEAN should establish rights-based, equitable protocols for evacuations or temporary hosting between countries before it is too late.

To that end, the AOs give a foundational legal ground on which the

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*Reduction and Management Act 2010* (RA 10121), [www.officialgazette.gov.ph/2010/05/27/republic-act-no-10121/](http://www.officialgazette.gov.ph/2010/05/27/republic-act-no-10121/).

<sup>178</sup> IOM/Brookings Institution, *Resolving Post-Disaster Displacement: Insights from the Philippines after Typhoon Haiyan (Yolanda)*, 2015, [publications.iom.int/books/resolving-post-disaster-displacement-insights-philippines-after-typhoon-haiyan-yolanda-0](http://publications.iom.int/books/resolving-post-disaster-displacement-insights-philippines-after-typhoon-haiyan-yolanda-0).

<sup>179</sup> Philippine Commission on Human Rights, *National Inquiry on Climate Change* (2022), [chr.gov.ph/nicc-2/](http://chr.gov.ph/nicc-2/).

<sup>180</sup> Republic of Indonesia, *National Action Plan on Climate Change Adaptation (RAN-API)*, 2014, [www.preventionweb.net/publication/policies-and-plans/republic-indonesia-national-action-plan-climate-change-adaptation](http://www.preventionweb.net/publication/policies-and-plans/republic-indonesia-national-action-plan-climate-change-adaptation); Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Pricing to Achieve the Nationally Determined Contribution Target and Control over Greenhouse Gas Emissions in National Development, [jdih.menlhk.go.id/new/uploads/files/2021Perpres098\\_menlhk\\_11162021103908.pdf](http://jdih.menlhk.go.id/new/uploads/files/2021Perpres098_menlhk_11162021103908.pdf).

<sup>181</sup> Displacement Solutions, *Peninsula Principles on Climate Displacement within States* (2013), [www.displacementsolutions.org/peninsula-principles](http://www.displacementsolutions.org/peninsula-principles); Platform on Disaster Displacement, *The Nansen Protection Agenda*, vol. I (2015), [disasterdisplacement.org/wp-content/uploads/2014/08/EN\\_Protection\\_Agenda\\_Volume\\_I\\_-low\\_res.pdf](http://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_-low_res.pdf).

Southeast Asian States could amend and add to their existing frameworks and have regional co-operation pathways that would not leave climate migrants and climate-displaced persons stranded without any legal recourse. These opinions collectively transform regional programmes from exercises in voluntarism into expressions of legal obligation. They clarify that States, particularly developed States, bear enforceable duties of co-operation, good-faith assistance, and technology transfer under customary international law and treaty regimes<sup>182</sup>. While Pacific regional initiatives have set the tone for equitable and rights-based climate mobility, their sustainability depends on fulfillment of international commitments through multilateral processes, such as providing finance, technology, and capacity support, especially through the Fund Responding to Loss and Damage established under the Paris Agreement<sup>183</sup>. Only when these global obligations are met can frontline States equitably manage the inevitable displacement caused by climate change.

Set against the Pacific model, Southeast Asia's experience reveals a distinct pattern, which is the domestic legal innovation at the national level, particularly in the Philippines and Indonesia, that has outpaced regional institutional development, producing a governance gap in which rights-based standards exist in national frameworks but lack the regional enforcement architecture needed to make them operative for cross-border displacement.

#### 4.6 South Asian Bangladesh and Myanmar's Norm Entrepreneurship to Hard-Law Grounding amid Regional Gaps

Bangladesh, as one of the leaders in climate vulnerability advocacy, has actively engaged in international discourse on climate-induced migration. It was a member of the Steering Group of the Nansen Initiative on Disaster-Induced Cross-Border Displacement (2012–2015), which culminated in the development of the Nansen Protection Agenda<sup>184</sup>. This agenda, while non-binding, provided important principles such as recognising “cross-border disaster-displaced persons” and recommending that host states consider humanitarian admission or temporary protection for people fleeing disasters<sup>185</sup>. Bangladesh's involvement ensured that the perspectives of climate-affected developing countries were included. After Nansen, Bangladesh also supported the launch of the PDD, which seeks to implement the Nansen Agenda recommendations. For example, Bangladesh has advocated within PDD for regional protocols that might allow, say, citizens

<sup>182</sup> ICJ AO paras 131–142, 355–365; UN Charter Art. 56; UN FCCC Art. 4(3)–(5).

<sup>183</sup> UNFCCC, *Decision 2/CMA.5: Operationalisation of the Loss and Damage Fund*, Dubai COP28, 13 December 2023.

<sup>184</sup> UN DESA, *Nansen Initiative*, 2015, [sdgs.un.org/partnerships/nansen-initiative](https://sdgs.un.org/partnerships/nansen-initiative) (listing Australia, Bangladesh, Costa Rica, Germany, Kenya, Mexico, Norway, the Philippines, Switzerland); see also W. Kälin, *The Nansen Initiative: building consensus on displacement in disaster contexts*, in 49 *Forced Migration Rev.* (2015), [www.fmreview.org/climatechange-disasters/kaelin-2/](http://www.fmreview.org/climatechange-disasters/kaelin-2/); The Nansen Initiative, *The Nansen Protection Agenda*, vol. I, 2015, chs. I–III.

<sup>185</sup> The Nansen Initiative, *The Nansen Protection Agenda*, cit.; also see W. Kälin, *The Nansen Initiative: building consensus on displacement in disaster contexts*, cit.

of submerged small islands to migrate with dignity to larger countries<sup>186</sup>. Moreover, while this framework largely remains non-binding within the region, its procedural and protection logic is increasingly reinforced by the advisory opinions on climate change<sup>187</sup>. Read together, these opinions give South Asian advocacy a firmer legal basis, and that states must prevent foreseeable displacement, guarantee procedural rights in relocation, and cooperate, including through finance and technology transfer, to protect affected populations<sup>188</sup>. Moreover, Bangladesh's diplomatic trajectory bears this out. It co-hosted the South Asia regional consultation under the Nansen Initiative (Khulna, 2015), arguing for humanitarian admission, temporary protection, and regional protocols fit for disaster- and climate-related movement<sup>189</sup>. The Nansen Protection Agenda, which helped shape, articulates concrete tools (e.g., humanitarian visas, temporary protection, suspension of return, facilitated family reunification) to regularise cross-border movement where life and health are at risk or slow-onset harms persist<sup>190</sup>. The PDD's mandate to implement and disseminate the Protection Agenda has repeatedly highlighted South Asia's exposure and the need for predictable measures<sup>191</sup>.

Domestically, Bangladesh has paired policy innovation with international advocacy. It has used the Climate Vulnerable Forum (CVF) to centre human mobility within "victim-centred" climate action and to demand dedicated funding for loss and damage (L&D), an effort that culminated in COP27's decision to establish a fund "for responding to loss and damage" (FRLD) to assist particularly vulnerable developing countries<sup>192</sup>. The Sharm

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<sup>186</sup> Platform on Disaster Displacement (PDD), *Bangladesh becomes the new Chair of the Platform on Disaster Displacement*, 22 January 2018; see also IOM, *Platform on Disaster Displacement*.

<sup>187</sup> IACtHR AO paras 131–142, 365 (enhanced due diligence; co-operation; rights of vulnerable groups), 611–613 (procedural guarantees); see ITLOS AO; also see ASIL Insight, *The ITLOS Advisory Opinion on Climate Change*, 11 April 2025 (UNCLOS arts. 192, 194, 207, 212, 213, 222; due diligence; best science); ICJ AO (simultaneity of UN Charter, UNFCCC–Kyoto–Paris, UNCLOS, and human rights; duty to co-operate; due diligence). For synopses, see ASIL Insight, *Advisory Opinion 32/25...*, 9 October 2025 (cross-regime standards); see also D. Hunter, J. Salzman, D. Zaelke, *Chapter on the Climate Change Advisory Opinions*, SSRN, 16 September 2025.

<sup>188</sup> WYCY, CIEL, ClientEarth, PISFCC, *Legal Memorandum: Relevance of the ITLOS Climate Advisory Opinion for the ICJ Climate Advisory Proceedings*, July 2024, [www.ciel.org/wp-content/uploads/2024/07/Final\\_-Legal-Memorandum\\_-Relevance-of-ITLOS-climate-AO-for-the-ICJ-AO\\_CIEL\\_July-2024.pdf](http://www.ciel.org/wp-content/uploads/2024/07/Final_-Legal-Memorandum_-Relevance-of-ITLOS-climate-AO-for-the-ICJ-AO_CIEL_July-2024.pdf); see also Nansen Initiative, *South Asia and the Indian Ocean Regional Consultation – Outcome Report*, Khulna, 3–5 April 2015, 1–3.

<sup>189</sup> Nansen Initiative, *South Asia and the Indian Ocean Regional Consultation – Outcome Report*, Khulna, 3–5 April 2015, 1–3.

<sup>190</sup> Nansen Initiative, *The Nansen Protection Agenda*, vol. I, 40–58; vol. II, 16–32 (humanitarian visas, temporary protection, suspension of return, longer-term solutions); see also UN Network on Migration/RCM, *Protection for Persons Moving Across Borders in the Context of Disasters*, 2017, 9–13.

<sup>191</sup> IOM, Platform on Disaster Displacement, [www.iom.int/platform-disaster-displacement](http://www.iom.int/platform-disaster-displacement).

<sup>192</sup> UNFCCC, Sharm el-Sheikh Implementation Plan (Decision 1/CP.27), 2022, para. 12, [unfccc.int/documents/624444](http://unfccc.int/documents/624444); UNFCCC, Decision 2/CP.27: Funding

el-Sheikh COP27 decision finally set up the new FRLD, which is meant to address both economic and non-economic losses due to adverse impacts of climate change, including displacement; however, filling it up largely remains voluntary<sup>193</sup>. These finance commitments dovetail with longstanding UNFCCC obligations on developed States to provide finance and promote technology transfer to developing countries (UNFCCC Article 4(3)–(5))<sup>194</sup>. The ICJ and ITLOS opinions reinforce that such co-operation is a state obligation arising under the law of the sea and general international law (duty to co-operate; best-available-science due diligence; differentiated capabilities) — and not charity<sup>195</sup>. And this is crucial because for countries like Bangladesh, their fiscal headroom to address climate mobility is constrained. IMF notes both the scale of climate risk and the role of the Resilience and Sustainability Facility (RSF)/Extended Credit Facility-Extended Fund Facility (ECF-EFF) packages in creating space for climate credit-investment, while acknowledging sizeable financing gaps for disaster response<sup>196</sup>. Analyses by UNDP show how debt burdens in developing countries, especially climate-vulnerable countries, crowd out resilience spending, making concessional support and, where appropriate, debt relief complementary to L&D finance<sup>197</sup>. In practical terms, filling the FRLD and operationalising technology transfer (e.g., resilient housing, early-warning, delta management) are what “co-operation in good faith” looks like for frontline States such as Bangladesh, that are consistent with ICJ and ITLOS AO standards.

Looking at it from a regional perspective and in comparison to the Pacific, hard-law migration protections remain thin within the SAARC (South Asian Association for Regional Cooperation). Similar to ASEAN, it has no climate-displacement instrument, and political frictions hamper regional norm-making. Bangladesh has therefore had to leverage global

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arrangements for responding to loss and damage, 20 November 2022, para. 3, [unfccc.int/documents/624444](https://unfccc.int/documents/624444).

<sup>193</sup> UNFCCC, *Fund for Responding to Loss and Damage*, [unfccc.int/fund-for-responding-to-loss-and-damage](https://unfccc.int/fund-for-responding-to-loss-and-damage); see also S. McDonnell, *Addressing vulnerability and non-economic loss and damage*, 2023 (referencing displacement as loss and damage); see also L. Vandamme, C. Pollera, E. Lennon, *Promoting Human Rights in Climate Action: Report from the Baku Climate Conference COP29*, *op. cit.*

<sup>194</sup> UNFCCC, art. 4(3)–(5); see also UNEP, *What you need to know about the COP27 Loss and Damage Fund*, 29 November 2022, [www.unep.org/news-and-stories/story/what-you-need-know-about-cop27-loss-and-damage-fund](https://www.unep.org/news-and-stories/story/what-you-need-know-about-cop27-loss-and-damage-fund).

<sup>195</sup> WYCJ, CIEL *et al.*, *Legal Memorandum: Relevance of the ITLOS Climate AO for the ICJ AO*, July 2024.

<sup>196</sup> IMF, *Bangladesh — Second Review under the Extended Credit Facility/Extended Fund Facility and RSF* (Press Release 24/234), 24 June 2024, [www.imf.org/en/News/Articles/2024/06/24/pr24234-bangladesh-imf-exec-board-concludes-2nd-review-ecf-eff-rsf](https://www.imf.org/en/News/Articles/2024/06/24/pr24234-bangladesh-imf-exec-board-concludes-2nd-review-ecf-eff-rsf); see also IMF, *Technical Assistance Report — Disaster Risk Financing*, 4 April 2025, [www.imf.org/en/Publications/technical-assistance-reports/Issues/2025/04/04/Bangladesh-Technical-Assistance-Report-Disaster-Risk-Financing-565678](https://www.imf.org/en/Publications/technical-assistance-reports/Issues/2025/04/04/Bangladesh-Technical-Assistance-Report-Disaster-Risk-Financing-565678).

<sup>197</sup> UNDP, *Debt crisis hits new highs... relief deal needed*, Reuters summary, 25 February 2025, [www.reuters.com/world/debt-crisis-hits-new-highs-developing-nations-relief-deal-needed-says-un-2025-02-25/](https://www.reuters.com/world/debt-crisis-hits-new-highs-developing-nations-relief-deal-needed-says-un-2025-02-25/); see also L. Jensen, UNDP, *Development Futures Series: Development gives way to debt*, February 2025, [www.undp.org/publications/dfs-undp-debt-update-development-gives-way-debt](https://www.undp.org/publications/dfs-undp-debt-update-development-gives-way-debt).

compacts and frameworks. It strongly supported the Global Compact for Safe, Orderly and Regular Migration (GCM) in 2018, which dedicates a thematic focus to disasters, climate change, and environmental degradation<sup>198</sup>. India endorsed the Compact as “aspirational,” underscoring sovereignty concerns, which translates in practice into caution on cross-border protection design<sup>199</sup>. In this context, the IACTHR’s FPIC/participation requirements and the ICJ and ITLOS AOs’ co-operation duties can reorient regional dialogue from discretion to obligation and preparedness to prevent displacement, lawful and participatory planned relocation, and targeted admission or temporary protection in exceptional situations. As such, the Bangladesh–India corridor illustrates both need and constraint. While climate impacts are shaping internal migration in Bangladesh and onward movement to India, there is no bilateral climate-mobility protocol<sup>200</sup>. Moreover, India’s Citizenship (Amendment) Act 2019 (CAA) selectively expedites naturalisation for certain non-Muslim minorities from Bangladesh, Pakistan, and Afghanistan, while the proposed expansions of the National Register of Citizens (NRC) heighten documentation anxieties. This has raised concerns about the treatment of Muslim communities who are left without recourse when displaced due to climate drivers<sup>201</sup>. The CAA/NRC framework risks chilling effects and legal uncertainty for climate-impacted Bangladeshis who do not meet the CAA’s religion-based criteria<sup>202</sup>. From a protection perspective, this underscores why co-operative, non-discriminatory, time-bound humanitarian admission or temporary protection for disaster-displaced persons (as envisaged in the Nansen Agenda/PDD) remains crucial in South Asia, and why regional co-operation and the FRLD are imperative to reduce forced movements at source.

Similarly, Myanmar exemplifies climate–conflict concurrence. The Rohingya refugee crisis cannot be isolated from climate stressors such as heatwaves, flooding, cyclones, erosion, etc., that amplify livelihood fragility

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<sup>198</sup> IOM, *Global Compact for Migration (overview)*, [www.iom.int/global-compact-migration](http://www.iom.int/global-compact-migration); A. Yildiz, *The follow-up and review mechanisms of the Global Compact for Migration*, in 11(3) *Laws* 46 (2022).

<sup>199</sup> India, *Statement at the Intergovernmental Conference to Adopt the Global Compact for Migration*, Marrakesh, 11 December 2018 (characterising the GCM as “aspirational”); see also UNGA Press, *General Assembly endorses GCM*, 19 December 2018, [press.un.org/en/2018/ga12113.doc.htm](http://press.un.org/en/2018/ga12113.doc.htm).

<sup>200</sup> Migration Policy Institute (MPI), *Climate change in Bangladesh shapes internal migration and movement to India*, 4 September 2024, [www.migrationpolicy.org/article/bangladesh-india-climate-migration](http://www.migrationpolicy.org/article/bangladesh-india-climate-migration); see also S. Miron, *Climate adaptation, maladaptation and (im)mobility in Bangladesh*, RID Working Paper 34, 2023, [researchinginternaldisplacement.org/working-papers/climate-adaptation-maladaptation-and-immobility-dynamics-and-outcomes-in-bangladesh/](http://researchinginternaldisplacement.org/working-papers/climate-adaptation-maladaptation-and-immobility-dynamics-and-outcomes-in-bangladesh/).

<sup>201</sup> Citizenship (Amendment) Act 2019, Gazette Notification (Act 47 of 2019); Ministry of Home Affairs (India), *Citizenship (Amendment) Rules, 2024* (Public Notice, 11 March 2024); see also Amnesty International, *COP27 Outcome Summary*, 6 December 2022, [www.amnesty.org/en/wp-content/uploads/2022/12/IOR4062762022ENGLISH.pdf](http://www.amnesty.org/en/wp-content/uploads/2022/12/IOR4062762022ENGLISH.pdf); for NRC context see MPI, N. Kaushal, *A proxy war on minorities? India crafts citizenship and refugee policies through the lens of religion*, 16 April 2020, [www.migrationpolicy.org/article/india-controversial-citizenship-amendment-act-register-citizens](http://www.migrationpolicy.org/article/india-controversial-citizenship-amendment-act-register-citizens).

<sup>202</sup> *Supra*, nn. 201–202.

both in Rakhine State and in displacement settings, interacting with violence to drive mobility<sup>203</sup>. Broader assessments find that extreme weather events and slow-onset changes are compounding humanitarian risks and economic precarity country-wide, sometimes prompting temporary or irregular movements to neighbouring States for safety and work<sup>204</sup>. While analytical work has flagged land-use and climate-risk governance weaknesses (e.g., proposals for a “national climate land bank”), operational protection frameworks for climate-related mobility, especially cross-border, are absent and constrained due to limited capacity and the humanitarian crisis<sup>205</sup>.

Against this background of geopolitical and socio-economic constraints, the three advisory opinions sharpen normative expectations in such a governance vacuum. These countries, being party to the UNCLOS and UNFCCC, in the context of the AOs, could include regional legislation, enforcement, impact assessment, monitoring, and co-operation, in line with best available science and differentiated capabilities<sup>206</sup>. Second, drawing from the IACtHR AO relocation/adaptation measures respect procedural rights, participation/consultation, and FPIC, and integrate Indigenous/local knowledge, standards that should inform any planned relocations of climate-exposed communities within Myanmar and Bangladesh, or from Myanmar and Bangladesh to neighbouring States<sup>207</sup>. These converging norms imply that neighbouring States should co-ordinate on anticipatory measures such as early-warning, evacuation protocols, and temporary admission in disaster contexts and ensure that any relocations are participatory, non-discriminatory, and rights-consistent. This normative law, underscored by the AOs, can be materialised through existing frameworks under the regional and multilateral climate-related co-operation. For both Bangladesh and Myanmar, predictable finance, in the form of grants and not loans, is the hinge between obligation and outcome. Just as it is important in the Pacific, the FRLD provides the institutional vehicle to underwrite relocation where necessary, harden in-place adaptation to minimise displacement, and support host-community services<sup>208</sup>. Given the constrained geo-political relations of the region, the

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<sup>203</sup> Mixed Migration Centre, *Briefing Paper: Climate Change and the Rohingya*, May 2024, [mixedmigration.org/resource/climate-change-rohingya/](https://mixedmigration.org/resource/climate-change-rohingya/); see also NUPI, *Climate, Peace and Security Fact Sheet: Myanmar, 2024/2025*, [www.nupi.no/nyheter/climate-peace-and-security-fact-sheet-myanmar](https://www.nupi.no/nyheter/climate-peace-and-security-fact-sheet-myanmar).

<sup>204</sup> K. Kim, *Concurrent challenges of conflict and climate change in Myanmar*, in *Geo. J. Int'l Affs.*, 9 June 2024, [gjia.georgetown.edu/2024/06/09/concurrent-challenges-of-conflict-and-climate-change-in-myanmar/](https://gjia.georgetown.edu/2024/06/09/concurrent-challenges-of-conflict-and-climate-change-in-myanmar/); also see NUPI, *Climate, Peace and Security Fact Sheet: Myanmar, 2024/2025*, [www.nupi.no/nyheter/climate-peace-and-security-fact-sheet-myanmar](https://www.nupi.no/nyheter/climate-peace-and-security-fact-sheet-myanmar).

<sup>205</sup> Adelphi / Climate Diplomacy, *Myanmar National Climate Land Bank Report*, 2020, [climate-diplomacy.org/magazine/environment/urgent-need-prepare-climate-displacement-myanmar-establishing-myanmar-national](https://climate-diplomacy.org/magazine/environment/urgent-need-prepare-climate-displacement-myanmar-establishing-myanmar-national); also see Displacement Solutions & ECODEV, *The Urgent Need to Prepare for Climate Displacement in Myanmar: Establishing a Myanmar National Climate Land Bank* (May 2018).

<sup>206</sup> ITLOS AO; also see COSIS Briefing Note (2024) (summary of obligations).

<sup>207</sup> IACtHR AO paras 367–372, 611–613.

<sup>208</sup> UNFCCC, Decision 2/CP.27; see also UNFCCC, Fund for Responding to Loss and Damage, [unfccc.int/fund-for-responding-to-loss-and-damage](https://unfccc.int/fund-for-responding-to-loss-and-damage); see also S. McDonnell, *Addressing vulnerability and non-economic loss and damage*, cit.; see also L. Vandamme, C.

fiscal space, disaster-response, and financing gaps documented for Bangladesh and Myanmar are complementary to debt-relief or restructuring, which would help align macro-stability with rights-consistent climate mobility planning<sup>209</sup>.

Across the three sub-regions examined, a common structural tension emerges. The States most exposed to climate displacement are, in most cases, those least equipped, financially, institutionally, and geopolitically, to translate existing international obligations into enforceable domestic and regional protection. The Pacific, Southeast Asian, and South Asian contexts differ significantly in their legal architectures and political constraints, but they converge on this central finding, which the conclusion addresses directly.

## 5. Conclusion

To summarise, the Asia-Pacific region sits at a vital crossroads in the evolution of climate-related protection, where vulnerability, regulatory innovation, and persistent legal gaps converge. Pacific island states, at the existential frontlines, have pioneered more comprehensive, rights-based and participatory mechanisms for climate mobility, blending international legal developments with bespoke regional frameworks such as the Pacific Regional Framework on Climate Mobility and targeted national instruments like Fiji's Planned Relocation Guidelines and Tuvalu's migration treaty with Australia. These approaches foreground the principles of FPIC, cultural appropriateness, and the continuity of statehood and maritime rights even amid severe land loss. By integrating international soft law and converting policy aspirations into practice, Pacific nations illuminate what a robust, people-centred protection regime can look like, even though practical and financial constraints remain acute.

In contrast, Southeast Asian and South Asian states, while experiencing similarly acute displacement pressures, often rely on more fragmented, reactive, or voluntary responses. National protection systems in Bangladesh, Indonesia, and Myanmar, for example, are heavily shaped by domestic capacity limitations, security framings, and less consistent incorporation of rights-based standards. Regional coordination for disaster responses, as evidenced by ASEAN's policies, remains necessary for humanitarian relief but is insufficient for adaptive long-term, legally

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Pollera, E. Lennon, *Promoting Human Rights in Climate Action: Report from the Baku Climate Conference COP29*, cit.

<sup>209</sup> IMF, *Bangladesh — Second Review under the Extended Credit Facility/Extended Fund Facility and RSF* (Press Release 24/234), 24 June 2024, [www.imf.org/en/News/Articles/2024/06/24/pr24234-bangladesh-imf-exec-board-concludes-2nd-review-ecf-eff-rsf](http://www.imf.org/en/News/Articles/2024/06/24/pr24234-bangladesh-imf-exec-board-concludes-2nd-review-ecf-eff-rsf); see also IMF, *Technical Assistance Report — Disaster Risk Financing*, 4 April 2025, [www.imf.org/en/Publications/technical-assistance-reports/Issues/2025/04/04/Bangladesh-Technical-Assistance-Report-Disaster-Risk-Financing-565678](http://www.imf.org/en/Publications/technical-assistance-reports/Issues/2025/04/04/Bangladesh-Technical-Assistance-Report-Disaster-Risk-Financing-565678); see also UNDP, *Debt crisis hits new highs... relief deal needed*, Reuters summary, 25 February 2025, [www.reuters.com/world/debt-crisis-hits-new-highs-developing-nations-relief-deal-needed-says-un-2025-02-25/](http://www.reuters.com/world/debt-crisis-hits-new-highs-developing-nations-relief-deal-needed-says-un-2025-02-25/); see also L. Jensen, UNDP, *Development Futures Series: Development gives way to debt*, February 2025, [www.undp.org/publications/dfs-undp-debt-update-development-gives-way-debt](http://www.undp.org/publications/dfs-undp-debt-update-development-gives-way-debt).

enforceable protection. Where innovative instruments do exist, such as Bangladesh's incorporation of climate mobility into its National Adaptation Plan or fledgling ASEAN policy dialogues, implementation is hampered by resourcing and political will, which leaves the affected persons without any legal recourse.

Comparative assessment reveals that while the Pacific leads in norm-setting and operationalisation of rights-consistent mobility pathways, its sustainability depends on grant-based finance and technology transfer actually being delivered. The new legal clarity afforded by the advisory opinions can and should be used to ground regional and national policy reforms across all subregions in enforceable obligations, shifting protection from voluntary, 'best effort' practices to justiciable, rights-based mandates. Lessons from the Pacific model should be adapted and scaled regionally, with special attention to the diverse vulnerabilities and social contexts of other high-risk coastal areas.

Looking ahead, three main priorities emerge for Asia and the Blue Pacific. First, broader enforceability of international obligations, especially under the Paris Agreement's Fund for Responding to Loss and Damage, must be filled by the Annexe I States. Second, national and regional frameworks in other high-risk coastal areas must invest in participatory, equity-based planning, drawing on Pacific successes while adapting models to local realities. Finally, the evolution of local, community-led adaptations and legal advocacy suggests a future where protection depends as much on grassroots capacity-building as on transnational legal innovation backed by grant-based finance. Thus, the Asia-Pacific region offers both lessons in creativity and warnings about fragmented protections. Consolidating the gains of innovative Pacific mechanisms, ensuring genuine regional cooperation, and embedding rights-based adaptation and mobility provisions into binding law remains the unfinished work for creating a fair, future-facing protection system for all climate-displaced persons in the region, and around the world.

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