

OHCHR's Key Messages on Human Rights, Climate Change and Migration

The Office of the United Nations High Commissioner for Human Rights (OHCHR) highlights the obligations and responsibilities of States and other duty-bearers to address the human mobility challenges created by climate change. States must ensure that any measure or legislation that governs or affects migration is consistent with their human rights law obligations and does not adversely affect the full enjoyment of the human rights of migrants. The policies and negotiations on climate change and migration, including the Global Compact on Safe, Orderly and Regular Migration and work within the Task Force on Displacement of the Warsaw International Mechanism on Loss and Damage under the United Nations Framework Convention on Climate Change (UNFCCC), should:

- 1. Ensure the dignity, safety, and human rights of migrants in the context of climate change:** International human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights, obligate States to respect, protect, and fulfil all human rights for all people without discrimination, including all migrants under their jurisdiction or effective control. States have affirmative obligations to take preventative and remedial actions to uphold the rights of migrants and address violations and abuse at all stages of migration. To meet their obligations, States should facilitate migration with dignity and address the specific human rights protection needs of migrants. This includes the provision of food and clean water; access to adequate housing, health care and social security, education, and decent work opportunities; and safeguarding the principles of non-refoulement and the prohibition of collective expulsion, as well as the rights to liberty, personal integrity and family unity.
- 2. Reduce the risk of forced migration through climate change mitigation:** States are obligated to protect against arbitrary or forced migration, which threatens the effective enjoyment of a broad array of rights protected under the ICESCR and the ICCPR. To satisfy this obligation, States must address the underlying causes that force people to move in response to climate change and environmental factors. The Intergovernmental Panel on Climate Change has predicted that increasing risks of floods, droughts, storms, and other slow and sudden-onset events will undermine existing livelihoods, increase human suffering and risks to the rights of people in impacted areas. Around 22.5 million people move each year within and across borders because of climate and weather-related disasters. States must take effective measures to limit these ongoing and future harms by pursuing ambitious climate change mitigation in line with their commitments under the Paris Agreement under the UNFCCC.
- 3. Reduce climate change risks through adaptation:** To limit the need for climate-related migration, States must plan and prepare for natural disasters, extreme weather events and slow-onset processes. Article 11 of the ICESCR, for example, requires States to take appropriate steps to ensure for all people the right to an adequate standard of living. People are more likely to leave their homes if they are not provided adequate protection and assistance to adapt to climate harms. Efforts to address the causes of forced migration in the context of climate change should seek to protect rights, strengthen social protection systems, reduce disaster risk and exposure, and increase adaptive capacity. Labour market and employment strategies should be developed to enhance resource efficiency and support lower-carbon sustainable societies. States have duties to protect and assist migrants, whether internal or international, in accordance with their human rights obligations. This requires taking steps to reduce existing vulnerabilities and build resilience.

- 4. Protect the human rights of people who are in particularly vulnerable situations:** States must account for the different needs, capacities, and vulnerabilities of individuals in accordance with the principles of equality and non-discrimination. Non-discrimination and equality are core human rights principles reflected in the ICESCR and the ICCPR and elaborated upon in several other instruments including the Convention on the Elimination of all forms of Discrimination Against Women and the Convention on the Elimination of all Forms of Racial Discrimination. By disproportionately affecting already marginalized groups including children, older persons, persons with disabilities, women at risk, migrant workers, indigenous peoples, minorities and the poor, climate change threatens State commitments relate to non-discrimination and equality. Its impacts can increase the likelihood of forced migration, which exposes migrants to greater risks of human rights harms. Migrants who move out of necessity are less likely to be able to make choices about when and how they move or to formulate alternative options when their migration does not go to plan, and they are therefore more likely to migrate in conditions that do not respect the dignity of the human being. The Paris Agreement under the UNFCCC also explicitly acknowledges the rights of all persons in vulnerable situations, including migrants, calling for States to respect, promote and consider human rights when taking climate action. Accordingly, State measures to address climate change must protect the rights of those most vulnerable to its impacts. This includes those whose vulnerabilities may render them unable to move.
- 5. Ensure liberty and freedom of movement for all persons:** Movement away from areas affected by climate change is a fundamental right and may provide individuals and communities the opportunity to avoid climate impacts and improve resilience. Yet it can also generate new risks and result in exploitation, discrimination, or exacerbate existing vulnerabilities, especially when safe and legal avenues for migration are lacking. States should prioritize the safety of migrants and take measures to facilitate migration with dignity. The ICCPR guarantees the right of all persons to leave any country, including one's own, and to move freely and choose one's place of residence within a country once lawfully present. These rights may only be limited if necessary to safeguard a State's national security, public order, public health or morals, or the rights or freedom of others. Any such restrictions must be accomplished by the least intrusive means to safeguard the protected interest, and must not be discriminatory or violate other internationally guaranteed rights. Similarly, all people enjoy the rights to liberty and security of person and can never be subjected to arbitrary arrest or detention. This includes in the context of immigration control. The prohibition on arbitrary detention is a non-derogable norm of customary international law.
- 6. Ensure durable legal status for all those forced to move and to ensure safeguards in the context of returns:** Border governance measures that cause or risk human rights violations are not permissible. States are bound by their non-refoulement duties to ensure protection for any migrants at their borders, within their territory, or over whom they have extraterritorially exercised jurisdiction. Articles 6 and 7 of the ICCPR guarantee the rights to life and to be free from cruel, inhuman or degrading treatment or punishment. Therefore, States must not return a migrant whose life is at risk, or who may face torture or other cruel, inhuman or degrading treatment or punishment. States should consider measures to admit migrants from and/or refrain from returning migrants to countries that are adversely affected by a natural disaster or extreme weather event. States should further put in place effective mechanisms to grant a durable legal status to those who are unable to return. According to the ICCPR, however, any migrant seeking to return must not be arbitrarily deprived of the right to enter his or her own country. States should further ensure that any return of a migrant is carried out in conditions of safety and dignity that provide full respect for human rights and appropriate procedural guarantees. When children are involved, whether accompanied, unaccompanied, or separated, the

Convention on the Rights of the Child requires that any return decision must prioritize the child's best interests. In general, States should refrain from returning persons to an area experiencing repeated extreme weather or slow onset events.

- 7. Ensure meaningful and informed participation:** The International Covenant on Civil and Political Rights and other human rights instruments guarantee all persons the right to information and participation in public affairs. State actions and decisions related to migration should involve the informed participation of affected persons, including migrants. Decision-making should be transparent and empower affected persons through meaningful, informed and effective participation. Due-diligence in decision-making or the adoption of new policies or legislation must include consultation with migrants and other affected persons. For decisions or actions that impact indigenous peoples' rights, States must obtain their free, prior and informed consent in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.
- 8. Guarantee human rights in relocation:** Relocation can take advantage of opportunities to plan for the predicted impacts of climate change and move individuals and communities away from unsafe areas. Planned relocation should generally be a measure of last resort. In order to respect, protect and fulfil the right to housing contained in Article 11 of the ICESCR, States must refrain from, and protect against, forced evictions. States must also ensure the meaningful and informed participation of all affected persons, including migrants and receiving communities. At a minimum, relocation must provide for the restoration and maintenance of social protection, employment and previous living standards for both relocated persons and receiving communities. States must employ human rights-based approaches that afford affected individuals their full enjoyment of human rights, including rights to self-determination, culture, family unity, and freedom of movement. To accomplish this, States should adopt clear guidance and a legal and policy framework that ensures relocation is grounded in human rights. This includes the establishment of mechanisms to monitor human rights and ensure accountability of State and private stakeholders.
- 9. Ensure access to justice for those affected by climate change:** States are required to provide effective mechanisms to prevent and redress human rights harms resulting from the adverse effects of climate change, and from climate change mitigation and adaptation. The Universal Declaration of Human Rights, the ICCPR, and other human rights instruments require access to justice including effective remedies. This is critical for migrants who are often unable to access justice due to the irregular and precarious conditions they face during migration. Judicial and other redress mechanisms are particularly important for migrants and those relocated to address grievances and be adequately compensated for their losses. States must be accountable for their contribution to human rights harm regardless of where they occur. Accountability should also include businesses and actors that have contributed to the causes of climate change or violated human rights in their mitigation and adaptation actions.
- 10. Cooperate internationally in order to protect the rights of migrants:** The challenges created by climate change require a global response. Efforts to address its impacts will only be effective if they incorporate international cooperation and assistance. States have obligations to cooperate under the UNFCCC, the Charter of the United Nations, the ICESCR, other human rights instruments and international labour standards. These create a duty of international cooperation to achieve universal protection and full realization of all human rights. In light of these obligations, States should engage in cooperative efforts to ensure the safety and dignity of all those moving in the context of climate change.