

International Law Commission request for information relating to the study on the topic of “Sea-level rise in relation to international law,” including the subtopics of sea-level rise in relation to statehood, and the protection of persons affected by sea-level rise

Contribution of the United Nations Environment Programme, relating to regional and national legislation, policies and strategies, as applicable, regarding the protection of persons affected by sea-level rise.

Introduction

This document provides relevant examples of regional and national legislation, policies and strategies regarding the protection of persons affected by sea-level rise. The objective of many of these instruments is to strengthen resilience for people and communities in the face of sea-level rise, prevent displacement if possible, and, in some instruments, to set out a rights-based framework that seeks to respect, protect and ensure the rights of displaced persons in different stages of displacement and during the search for durable solutions.

I. Regional Instruments – The Pacific

In August 2010, the leaders of 23 Pacific Island Countries and Territories (PICTs) endorsed the **Framework for a Pacific Oceanscape**¹ at the 41st meeting of the Pacific Islands Forum.² The framework seeks to secure the livelihoods, culture and wellbeing of PICTS based on principles of sustainable development and good governance of marine environments. The framework calls for PICTs to formalise their maritime boundaries and secure rights held over ocean resources. Furthermore, the strategy aims for a “united regional effort that establishes baselines and maritime zones so that areas could not be challenged and reduced due to climate change and sea-level rise.”

The long-term vision of Pacific Oceanscape is reinforced by the ongoing development of the **2050 Strategy for the Blue Pacific Continent**, a member-driven process which was endorsed in 2019 at the 50th meeting of the Pacific Islands Forum.³ The Forum called for the 2050 Strategy to “protect and secure our Pacific people, place and prospects.”⁴ The development of the 2050 Strategy is welcomed by leaders as an opportunity for the region to develop long-term approaches to critical challenges, including the protection and security of persons affected by sea-level rise. The steps toward the development of the 2050 Strategy were outlined by the Forum Leaders, with a finalized strategy expected in 2022.

¹ The Framework for a Pacific Oceanscape is available at <https://www.forumsec.org/wp-content/uploads/2018/03/Framework-for-a-Pacific-Oceanscape-2010.pdf>

² Forty-first Pacific Islands Forum, Communique, August 2010, <https://www.forumsec.org/wp-content/uploads/2017/11/2010-Forum-Communique-Port-Vila-Vanuatu-4-5-Aug.pdf>

³ Fiftieth Pacific Islands Forum, Communique, August 2019, <https://www.forumsec.org/wp-content/uploads/2019/08/50th-Pacific-Islands-Forum-Communique.pdf>

⁴ Pacific Islands Forum, “The 2050 Strategy for the Blue Pacific Continent,” <https://www.forumsec.org/2050strategy/>

The March 2021 **Pacific Islands Forum Leaders Ocean Statement**⁵ demonstrates a regional commitment to international law and safeguarding the Pacific Ocean boundaries in the face of climate change. Leaders declared that, “Securing the limits of the Blue Pacific Continent against the threats of sea-level rise and climate change is the defining issue underpinning the full realisation of the Blue Pacific Continent.” The statement included commitments to concluding outstanding maritime boundaries claims and zones; implementing related treaties and legal frameworks to support the sustainable development and ensure the peace and security of the region from environmental threats and external geo-strategic interests; participating in collective effort to develop international law towards ensuring that maritime zones, once delineated in accordance with the 1982 UN Convention on the Law of the Sea, cannot be challenged or reduced as a result of sea-level rise and climate change.

The **Declaration on Preserving Maritime Zones in the Face of Climate Change Related Sea Level Rise**⁶ was endorsed by Pacific Island Forum Leaders in August 2021 at the 51st meeting of the Pacific Islands Forum.⁷ The Leaders’ declaration acknowledges the importance of the principles of legal stability, security, certainty and predictability over maritime boundaries. Leaders firmly declared that after the establishment of maritime zones in accordance with the United Nations Convention on the Law of the Sea, they “intend to maintain these zones without reduction, notwithstanding climate change-related sea-level rise,” assuring that the boundaries will not be reviewed or updated in the face of climate change impacts.

II. National Legislation, Policies, and Strategies

A. **Belize National Climate Change Policy, Strategy and Action Plan to Address Climate Change (2014)**

In 2014, Belize adopted the **National Climate Change Policy**.⁸ The objective of the Policy is to provide policy guidance for the development of administrative and legislative framework toward low-carbon sustainable development in Belize, in alignment with other sectoral policies.

Measures under the Policy include legislative development in coherence with land use and human settlement policies. The Policy provides that the government must develop, “an integrated land tenure and land classification policy and [...] implementing programmes which discourage the establishment of human settlements in areas prone to natural hazards (flooding, land slippages, high winds and storm surges).” Furthermore, the Government at the national and sub-national level must develop strategies for housing and settlement patterns and practices that enhance Climate Change adaptation and are resilient to Climate Change.

⁵ Pacific Islands Forum Leaders Ocean Statement 2021 is available at https://www.forumsec.org/wp-content/uploads/2021/03/Oceans-Statement_v8.pdf

⁶ Declaration on Preserving Maritime Zones in the Face of Climate Change Related Sea Level Rise, 2021, <https://www.forumsec.org/wp-content/uploads/2021/08/Declaration-on-Preserving-Maritime.pdf>

⁷ Fifty-first Pacific Islands Forum, Communique, August 2021, <https://www.forumsec.org/2021/08/11/communique/>

⁸ National Climate Change Policy, Strategy and Action Plan to Address Climate Change in Belize, 2014, <http://extwprlegs1.fao.org/docs/pdf/blz169290.pdf>

Recommendations under the Policy for ensuring settlements and housing are resilient to the effects of climate change, including sea-level rise, include promoting good building practices to meet the threat of sea-level rise; creating wetlands and marshlands to act as a buffer against sea-level rise and flooding; and undertaking a comprehensive assessment of human settlements to evaluate the feasibility of relocating vulnerable communities. The Policy notes that if the establishment of communities in areas prone to natural hazards cannot be discouraged, or if the homes and infrastructures that such communities rely on daily face too great a risk, resettling will inevitably become the only option. Modalities on when resettlement is warranted, or how it will be enacted, are not provided in the Policy.

B. The British Virgin Islands National Physical Development Plan (2019)

In 2019 the British Virgin Islands adopted the **National Physical Development Plan**,⁹ which sets forth a policy on the planning and development for a 20-year period through standards for the implementation and design of areas affected by sea-level rise. It includes requirements for government actions when it is necessary to setback communities and buildings due to sea-level rise, as well as objectives ensuring the avoidance of approving and building new infrastructure in vulnerable areas.

The first approved project under the National Physical Development Plan was the **OECS iLAND Resilience Project**¹⁰ which was implemented in the British Virgin Islands in 2019 with the creation of the Cane Garden Bay Revetment. The revetment is a boulder structure engineered to protect the coastal road of Cane Garden Bay, and the houses along it, from storm surges and sea-level rise.

C. The Federated States of Micronesia Nationwide Climate Change and Disaster Risk Management Policy (2013)

In 2013, the Federated States of Micronesia (FSM) endorsed and adopted the Federated States of Micronesia's Nationwide Integrated Disaster Risk Management and Climate Change Policy¹¹ with the objectives to address the risks of climate change and disasters while safeguarding the development of FSM's present and future people, resources and economy.

The Nationwide Policy includes strategic objectives to prevent environmental migration through adaptation strategies, while addressing human mobility associated with natural disasters and climate change through durable solutions, calling on states to enact subnational legislation and policies. The Policy seeks to ensure environmental migration is managed to the extent possible in a humane and orderly manner, including the protection of displaced populations.

D. Fiji National Climate Change Policy (2018-2030) and Climate Change Act of 2021 (2021)

⁹British Virgin Islands National Physical Development Plan, 2019, https://bvi.gov.vg/sites/default/files/resources/bvi_npdp_-_2019-04-04.pdf

¹⁰BVI Leads in Implementation of OECS Climate Change Project, Press Release, <http://www.bvi.gov.vg/media-centre/bvi-leads-implementation-oecs-climate-change-project>

¹¹ Federated States of Micronesia (FSM) Nationwide Climate Change and Disaster Risk Management Policy, 2013, <https://fsm-data.sprep.org/resource/fsm-nation-wide-integrated-disaster-risk-management-and-climate-change-policy-2013>

In 2018, Fiji adopted the **National Climate Change Policy (2018-2030)**,¹² calling for the development and implementation of legal frameworks, policies and strategies to manage climate and disaster-induced displacement. The Policy notes that when necessary, planned relocation can be supported through national policies and strategies as a form of adaptation.

To implement the 2018 Policy, in 2021 Fiji enacted the **Climate Change Bill of 2021**,¹³ with the objective to provide a framework to develop and implement clear and long term climate change measures and policies that will safeguard the future of Fiji and its people, ecosystems and biodiversity in the face of the climate emergency.¹⁴ The Act recognizes that “climate change, and actions to address climate change, may have adverse effects on the workforce and people’s livelihoods, and Fiji will take steps to avoid or mitigate any such loss of income or livelihood [...]” To address this, the Act establishes a Taskforce on the Relocation and Displacement of Communities Vulnerable to the Impacts of Climate Change and provides a procedure for relocating and supporting at-risk communities. Under the Policy, relocating at-risk communities must only be considered an option when all other adaptation measures have been exhausted and the affected communities are consulted.

E. Jamaica Climate Change Policy Framework (2015)

In 2015, Jamaica adopted the **Climate Change Policy Framework of 2015**,¹⁵ to create a sustainable institutional mechanism to facilitate the development, coordination and implementation of policies, sectoral plans, programmes, strategies, and legislation to address the impacts of climate change, including the effects of sea-level rise to communities and industries.

The Policy calls for continued adaptation measures to address sea-level rise and displaced persons. The government had previously developed an Evacuation Plan for Portmore, one of the low-lying areas most vulnerable to displacement due to sea-level rise. The Policy noted that the plan will be expanded under the 2015 Framework, and that other evacuation plans will be developed to enhance state-wide preparedness for the evacuation of other low-lying rural and urban areas of Jamaica. In addition to evacuation plans, the Policy includes guidelines for reviewing and enforcing building codes, setting setback limits, establishing “no-build” zones, and identifying and mapping vulnerable areas to prevent more people from settling in areas vulnerable to rising sea levels.

F. Kiribati Climate Change Policy (2018) and the National Framework for Climate Change and Climate Change Adaptation (2013)

The Republic of Kiribati adopted the **Climate Change Policy** in 2018.¹⁶ The Policy was developed to safeguard the present and future existence of Kiribati as a sovereign nation, and to ensure the

¹² Republic of Fiji National Climate Change Policy, 2018-2030, <http://extwprlegs1.fao.org/docs/pdf/fij199267.pdf>

¹³ Climate Change Bill 2021, No. 31., Fij, <http://www.parliament.gov.fj/wp-content/uploads/2021/08/Bill-31-Climate-Change-Bill-2021.pdf>

¹⁴ Id. At section 5.

¹⁵ Climate Change Policy Framework for Jamaica, 2015, <http://extwprlegs1.fao.org/docs/pdf/jam185317.pdf>

¹⁶ Kiribati Climate Change Policy, 2018 <http://extwprlegs1.fao.org/docs/pdf/kir193352.pdf>

progress of Kiribati's people, culture, environment, and development when facing the impacts of climate change and related disaster risks.

Supported by an integrated vulnerability assessment undertaken by the Government, the Policy acknowledges sea-level rise as a critical risk factor for the people of Kiribati and their livelihoods, but there is no long-term opportunity for relocation within Kiribati due to limited existing land mass. The Policy includes strategic objectives towards building resilience and the country's ability to support the livelihoods of its population as sea-levels rise. Strategic objectives include establishing coastal security measures and long-term development plans; undertaking rehabilitation and restoration of coastal areas; constructing protected structures; and others. Failing other measures, the Policy encourages setbacks and internal migrations within Kiribati rather than international migrations, including undertaking measures to raise ground levels and expanding inhabitable areas of land to avoid international migration.

While the Climate Change Policy does not consider relocation and migration due to sea-level rise a long-term solution the **National Framework for Climate Change and Climate Change Adaptation**, adopted by Kiribati in 2013,¹⁷ includes permanent migration as a form of climate change adaptation. Under the Framework, Kiribati will enter into agreements with host countries to provide for education and employment opportunities in preparation for the "inevitable migration" of the Kiribati population.

G. Maldives Climate Change Policy Framework (2015)

In 2015, the Republic of the Maldives adopted the **Climate Change Policy Framework for 2015-2025**.¹⁸ The Policy was developed as a set of principles to guide related activities that take into account national laws national development plans, strategies, action plans, policies and relevant documents. The Policy identifies extensive erosion and the impacts of sea-level rise as critical areas of vulnerability.

Policy Objective 3, "Strengthen adaptation actions and build climate resilient infrastructure and communities to address current and future vulnerabilities," sets forth strategies to make the inhabited islands and people of the Maldives resilient against the threats of climate change, including sea-level rise. Strategies identified include incorporating climate change scenarios and projections into the urban rural planning sector; preparing adaptation vulnerability assessments, and if needed, detailed island risk assessments plans, tools and guides; analyzing and evaluating poverty, health and food security issues to determine vulnerability of communities, and considering these evaluations in future policies and initiatives; developing a mechanism to sustain the supply and management of fresh water to communities most vulnerable; and others.

H. Palau Climate Change Policy for Climate and Disaster Resilient Low Emissions Development (2015)

¹⁷ National Framework for Climate Change and Climate Change Adaptation, 2013
<https://www.president.gov.ki/presidentgovki/wp-content/uploads/2019/04/National-Framework-for-Climate-Change-Climate-Change-Adaptation.pdf>

¹⁸Maldives: Climate Change Policy Framework, 2015, <http://extwprlegs1.fao.org/docs/pdf/mdv172920.pdf>

In 2015, Palau adopted the **Palau Climate Change Policy for Climate and Disaster Resilient Low Emissions Development**¹⁹ with the objectives to enhance adaptation and resilience, manage disasters and minimize disaster risk, and mitigate global climate change by working towards low emission development.

The Policy identifies sea-level rise to critically impact the Palau population in different sectors, including: Agriculture and Fisheries, Health, and Critical Infrastructure. The impacts of sea-level rise and potential displacements are addressed in the Policy under the “High-level government visions, objectives, and priority initiatives for adaptation,” which includes the need to conserve and protect the island and its communities from climate change and disaster impacts. Some priority interventions include establishing a relocation/displacement or emergency support program for vulnerable members of society and undertaking a study on historical settlement sites to assess possible relocation sites; and establishing multi-purpose emergency shelters in strategic locations that can accommodate persons relocated, displaced or otherwise affected.

I. Saint Vincent and the Grenadines National Climate Change Policy (2019)

In 2019 Saint Vincent and the Grenadines adopted the **National Climate Change Policy of Saint Vincent and the Grenadines**²⁰ with the objective to achieve low carbon, resilient development through an integrated, cross-sectoral and inclusive approach to climate change adaptation and mitigation.

The Policy considers migration and resettlement due to climate change and sea-level rise through a national security perspective, identifying sea-level rise as a significant risk to the island’s main communication, transport and emergency response structures. To minimize the risk, the Policy includes an objective to “promote sustainable physical development and green infrastructure to build resilience.” The strategies to achieve this objective include adopting more robust processes, including through the effective use of environmental and social impact assessments, to revise and enforce building codes toward the reduction of the impact of sea-level rise and other climate change associated risks; to conduct hazard and risk assessments in highly vulnerable locations to determine priorities for action to inform early warning systems, local adaptation, and disaster plans; and to enable relocation of settlements inland from vulnerable coastal areas, where deemed necessary, with the active involvement of the affected communities in planning and decision-making.

J. Saint Lucia’s National Adaptation Plan (2018)

In 2018 Saint Lucia adopted a **National Adaptation Plan (NAP) for 2018-2028**,²¹ which outlines actions to minimize, avert and address loss and damage due to climate change. Under the NAP, this includes the migration and displacement of coastal communities, which notes the impact of sea-level rise to infrastructure and spatial planning and links it to the “inundation of low-lying areas with possible loss of communities.”

¹⁹ Palau Climate Change Policy for Climate and Disaster Resilient Low Emissions Development, 2015
<http://extwprlegs1.fao.org/docs/pdf/pau179373.pdf>

²⁰ National Climate Change Policy of Saint Vincent and the Grenadines, 2019,
http://www.gov.vc/images/PoliciesActsAndBills/SVG_National_Climate_Change_Policy.pdf

²¹ Saint Lucia’s National Action Plan for 2018 – 2028, <http://extwprlegs1.fao.org/docs/pdf/stl179850.pdf>

Due to the significant risk of displacement posed to the peoples of Saint Lucia, the NAP encourages the government to take “proactive consideration” of collaboration with other governments and organizations to firstly minimize, and then address, displacement and migration of vulnerable communities due to sea-level rise. The consideration Saint Lucia may take in this matter includes developing and implementing policies that reduce the need for human mobility and/or effectively manage mobility to promote empowered migration; providing support and protection for internally displaced persons, persons displaced across borders and host communities; and providing support for the preservation or re- establishment of non- economic values that may be impaired during human mobility.

K. Tonga Climate Change Policy (2016) and Joint National Action Plan (2010)

In 2016, Tonga adopted the **Tonga Climate Change Policy: A Resilient Tonga by 2035 (2016)**²² with the objective to issue a unifying Policy on direct responses to climate change and disaster risk reduction, while supporting, and not superseding, other national legislation, policies and plans. One objective of the Policy includes protecting the populations, resources and assets of vulnerable areas at risk from climate change impacts including sea-level rise. Strategies to achieve this objective include identifying vulnerable areas and adaptation options; extensive consultation and cooperation between government ministries, relevant stakeholders, and local communities; and investigating alternative sites for possible relocations.

In 2015, Tonga developed and adopted the **Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management 2010-2015**.²³ The Plan is comprised of priority goals toward the enhanced preparedness and resiliency of Tonga in the face of climate change and associated disasters. The Plan included findings from community consultations on sea-level rise and its associated impacts on vulnerable sectors. Under the Plan, relocating persons and communities from coastal areas inland is an adaptation option to protect from coastal erosion, damage to houses near the sea and, eventually, loss of residential houses. In addition to relocation, the Plan includes implementing options such as appropriate coastal protection systems; strengthening community-based capacity in vulnerability and analysis; and strengthening the capacity for implementing and enforcing impact assessments, and others.

L. Tuvalu Climate Change Policy (2012) and the Future is Now: Preparing Today and Securing Tomorrow Initiative (2021)

In 2012 Tuvalu adopted a ten-year **Climate Change Policy**²⁴ which prescribes the Government and the people of Tuvalu’s strategic policies for responding to climate change impacts and related disaster risks, with particular attention paid to sea-level rise.

²² Tonga Climate Change Policy: A Resilient Tonga by 2035, 2016, <http://extwprlegs1.fao.org/docs/pdf/ton168233.pdf>

²³ Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management: 2010-2015, <https://sustainabledevelopment.un.org/content/documents/1335tongaDisaster%20Management%20Strategy.pdf>

²⁴ Tuvalu Climate Change Policy: Charting Tuvalu Through the Challenges of Climate Change, 2012 <http://extwprlegs1.fao.org/docs/pdf/tuv143764.pdf>.

The Policy is structured through seven goals, with strategies and expected outcomes detailed to achieve the goals, including strategies to maintain Tuvalu's maritime boundaries and the recognition of Tuvalu as a sovereign country notwithstanding a potential disappearance due to sea-level rise. Goal 7 of the Policy, "Guaranteeing the Security of the People of Tuvalu from the Impacts of Climate Change and the Maintenance of National Security," prioritizes actions to ensure Tuvalu's sovereignty and the safety of citizens, notwithstanding a potential land disappearance due to sea-level rise. Strategies 7.2, 7.3 and 7.4 prioritize building resilience to ensure that current and future generations may continue to live in Tuvalu despite the impacts of climate change, including: securing the EEZ of Tuvalu as belonging to the government of Tuvalu,²⁵ despite future loss of coastal areas or land mass; building the capacity for Tuvalu to remain a nation culturally and to retain state sovereignty amidst the impacts of sea-level rise; developing a climate migrant recognition process; and, if the safety of the People of Tuvalu can no longer be assured, displacing and/or resettling the population in part or in whole as a final option.

The **Future Now Project: Preparing Today to Secure Tomorrow**,²⁶ launched by Tuvalu in November 2021, builds on the principles expressed in the Policy through three initiatives. Initiative 2 outlines efforts the Tuvaluan government will undertake to secure international recognition of Tuvalu's statehood as permanent and its existing maritime boundaries as fixed despite the effects of sea level rise and climate change on Tuvalu's land territory. The efforts contained in Initiative 2 include an effect on Tuvalu's future bilateral relations becoming dependent on the recognition of Tuvalu's statehood and existing maritime boundaries; amending Tuvalu's domestic law to recognize statehood sovereignty and maritime boundaries as permanent; seeking customary international law recognition relating to sovereignty and sea-level rise; and supporting the Declaration on Preserving Maritime Zones in the Face of Climate Change Related Sea Level Rise (2021).

M. Vanuatu National Policy on Climate Change and Disaster-Induced Displacement (2018)

In 2018 Vanuatu adopted its **National Policy on Climate Change and Disaster-Induced Displacement**²⁷ to guide government actors and emergency and development planners in effectively addressing the needs of all communities affected by displacement, including displacement due to slow-onset disasters, such as sea-level rise.

The Policy sets forth guidelines and strategic priority areas in both system-wide and sectoral-level intervention for the protection of persons at risk of the effects of climate change and displacement. Potential actions under these areas include the sustainable return of displaced persons to the place of origin; local integration in areas where displaced persons have taken refuge; or integration of displaced persons in another part of the country. One of the guiding principles of the Policy is to

²⁵ The Pacific Project, "Tuvalu seeks to retain statehood if it sinks completely as sea levels rise," *The Guardian*, <https://www.theguardian.com/world/2021/nov/11/tuvalu-seeks-to-retain-statehood-if-it-sinks-completely-as-sea-levels-rise>, Nov. 2021.

²⁶ The Future Now Project: Preparing Today to Secure Tomorrow, Policy Brief, Nov. 2021, <https://drive.google.com/file/d/1F8Ksc99AsokFJRChQS7lluCiciC-ftny/view>.

²⁷ Vanuatu National Policy on Climate Change and Disaster-Induced Displacement <http://extwprlegs1.fao.org/docs/pdf/van182464.pdf>

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respect the human rights and dignity of those who have been displaced, including internal migrants and host communities.