

**CROSS-BORDER DISPLACEMENT IN THE CONTEXT OF
DISASTERS AND CLIMATE CHANGE:
A PROTECTION AGENDA**

DRAFT FOR CONSULTATION

(8 April 2015)

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KEY MESSAGES

The present Protection Agenda consolidates the outcomes of broad consultations undertaken by the Nansen Initiative on disaster-induced cross-border displacement, a state-led, bottom-up consultative process intended to build consensus on the development of a Protection Agenda addressing the needs of people displaced across borders in the context of disasters and the effects of climate change. The following key messages present the main conclusions of the Nansen Initiative process.

1. *Present situation: Displacement related to disasters and the effects of climate change is a reality and one of the biggest challenges facing States and the international community in the 21st century. It is large-scale, has devastating impacts on people and their communities, raises multiple protection concerns and undermines the development of many States.*

Every year, millions of people are displaced by floods, windstorms, earthquakes, landslides, droughts, salt water intrusion, glacial melting, melting permafrost, and other natural hazards. Between 2008 and 2013 sudden-onset disasters displaced on average 27.5 million persons annually from their homes.¹ While for many return to their homes becomes possible after a short period of time, tens of millions of displaced persons displaced within their country or across borders need protection and assistance as well as support to find durable solutions to end their displacement. Least Developed Countries, small island developing States, African countries as well as middle-income countries face specific challenges and their populations are hardest hit. Disaster displacement is multi-causal with climate change being an important, but not the only factor. Population growth, underdevelopment, weak governance, armed conflict and violence, as well as poor urban planning in rapidly expanding cities, are expected to be important drivers of human mobility as they further weaken resilience and exacerbate the impacts of natural hazards and climate change.

2. *Outlook: The number of disaster displaced persons is likely to increase in the future. However, global quantitative projections can only provide rough estimates. In particular, there is no designated institution to collect data on cross-border displaced persons² necessary to inform current and future responses.*

There is high agreement among scientists that climate change is projected to increase displacement in the future, and migration will become an important response to both extreme weather events and longer-term climate variability and change.³ Due to the multi-causality of displacement, and uncertainty regarding the extent to which States will be successful in their attempts to mitigate and adapt to climate change, accurate global quantitative predictions are difficult to make. However, it is possible to identify areas particularly exposed to natural hazards and thus identify populations at risk of potential displacement.

Comprehensive and systematic data collection and analysis on displacement in the context of disasters is lacking, particularly with regard to cross-border displacement. Gathering this information is by nature complex due to the diverse drivers of displacement, scientific uncertainties, and unsystematic data collection and sharing. Existing information management tools on disasters and human mobility need be adapted to help inform the development of public policy and operational responses for disaster related displacement.

3. *Cross-border disaster-displacement: While most persons displaced in the context of disasters and effects of climate change remain within their own country, in some regions substantial numbers among the displaced seek protection and assistance abroad.*

Cross-border displacement in the context of disasters is evident in Africa and the Americas: In *Africa*, droughts, particularly in Eastern and Western Africa, regularly force hundreds of thousands of pastoralists and other rural populations to seek protection from famine in neighboring countries. Central and Southern Africa have seen displacement mainly due to flooding. In the *Americas*, earthquakes and hurricanes, and to a lesser extent flooding and volcanic eruptions have pushed hundreds of thousands of people to flee across international borders. While impacts of climate change already have started to prompt population movements in the *Pacific region*, cross-border displacement is not yet a reality. However, effects of rising sea levels such as submergence, coastal flooding, and coastal erosion will seriously affect the territorial integrity of small developing island States and States with extensive low-lying coastlines,⁴ and thus are likely to force substantial parts of their populations to move abroad. *Asia* is the continent with the highest number of persons internally displaced as a consequence of, in particular, cyclones, earthquakes and large-scale flooding. While instances of cross-border disaster-displacement have been rare, there is some evidence that the impacts of disasters and effects of climate change contribute to people migrating abroad. Although earthquakes and flooding have displaced substantial numbers of persons in *Europe*, there is little evidence of significant displacement or migration to other countries.

4. *Regional approaches: The dynamics of disaster displacement and other forms of human mobility vary from region to region and from country to country. This suggests that future responses need to be tailored to domestic and regional contexts. (Sub-) regional organizations can play a particularly important role to support member States in developing and harmonizing relevant strategies, policies and standards.*

(Sub-) regional organizations can play a catalyzing and coordinating role in a wide variety of areas relevant to disaster and climate change related displacement, including protection of internally displaced persons, disaster risk reduction, climate change adaptation, and resilience building, in order to facilitate tailor-made solutions responding to the particular challenges faced by countries in their region.

5. *Tools to reduce and avoid displacement: Natural hazards and related disaster displacement can to some extent be predicted, prevented and, where displacement occurs, managed. In this regard the Protection Agenda acknowledges and builds upon the rich experiences and approaches of States in many parts of the world. It presents a “toolbox” with a range of effective practices and tools that, depending on the specific context and circumstances, are suitable to protect people from being displaced or help them move in a regular and planned manner before a disaster strikes. In order to avoid displacement in disaster situations, human mobility aspects should be integrated into relevant strategies and plans, in particular regarding disaster risk reduction and climate change adaptation. Priority actions include:*

- Identifying people at risk of being displaced;
- Taking disaster risk reduction and resilience building measures that help people and communities better withstand the impacts of natural hazards;
- Undertaking, as appropriate, planned relocation in consultation and with the participation of affected persons and communities; or

- **Facilitating voluntary migration in dignity as a means to adapt to the effects of climate change or environmental degradation through the development of bilateral or regional agreements, or applying existing free movement of persons agreements in ways that facilitate the free movement of affected persons.**

The extent to which these tools are implemented in specific contexts is likely to have a significant impact on how many people are actually displaced or decide to migrate. Notably, the need to integrate human mobility aspects into disaster risk reduction and climate change adaptation has been recognized in the Sendai Framework for Disaster Risk Reduction 2015 – 2030 and the 2010 UNFCCC Cancun Adaptation Framework.

6. *IDP protection: Measures to better protect, assist and find durable solutions for internally displaced persons (IDPs) in disaster contexts are also important elements of addressing disaster displacement. Such measures include explicit and specific inclusion of disaster displacement in domestic or regional disaster management or IDP policies, strategies and laws; and specific steps to strengthen countries' capacity to implement such instruments.*

IDPs have specific needs not encountered by non-displaced disaster survivors: For instance, they need to be able to escape the danger zone, reach a safe location, and find a place where they can temporarily stay without discrimination. While displaced, they need property left behind to be protected against occupation or theft by others or have it restituted to them if it was taken over by others. Finally, IDPs need to be able to find a durable solution to their situation as displaced persons by rebuilding their lives at the place of origin (return), at the location where people are displaced (local integration), or in another part of their country (settlement elsewhere in the country).

7. *Tools to protect persons displaced across borders: States, (sub-) regional organizations and the international community need to be better prepared to address instances of cross-border disaster-displacement that are likely to occur in the future. Such preparedness may, in particular, include adequate legal, institutional and operational measures to temporarily receive and host people in need of international protection when their country of origin is affected by a disaster. Such measures include:*

- **Adopting clear criteria to identify disaster displaced persons in need of international protection. Such criteria would include risks to life and safety in the country of origin or extreme hardship because of an inability to access humanitarian protection and assistance there.**
- **Using regular migration categories to admit displaced persons, and in particular prioritizing their applications, waiving certain admission requirements for such categories.**
- **Using exceptional migration measures for admission and stay, such as by granting humanitarian visas or temporary protection status, suspending the return of foreigners already present when the disaster affected their country of origin, or relying on pastoralist transhumance arrangements.**
- **Using, in exceptional cases, refugee protection or similar protection under human rights law in accordance with relevant domestic, regional and international instruments and standards.**

A limited number of States in different parts of the world already have legal and policy instruments that allow the temporary admission of cross-border disaster-displaced persons or

the temporary non-return of foreigners already present at the time of a disaster in their country of origin. Such practices provide examples that can inspire responses by other States. However, further action at domestic (sub-) regional and international levels is required to improve the predictability and coherence of such measures where they do exist, and to review the need for new measures where they are absent.

Rather than calling for a new binding international convention on cross-border disaster-displacement, this Protection Agenda supports an approach that focuses on the integration of such effective practices by States and (sub-) regional organizations into their own normative frameworks in accordance with their specific situations and challenges.

- 8. *Primary responsibility of States:* States have the primarily responsibility to prevent disaster displacement, and to protect as well as find durable solutions for their internally displaced persons, respecting and taking into account the critical role of civil society and the affected communities themselves. States are also primarily responsible for managing and responding to cross-border movements of persons in the context of disasters and the effects of climate change. These responsibilities have to be carried out consistent with international human rights norms and principles, other international obligations, and in a spirit of international cooperation as well as cooperation with civil society and local communities.**

The primary responsibility of States for preventing and responding to disaster displacement derives from their territorial sovereignty. Such responsibility, however, can often be better exercised in cooperation with other States and the international community.

Opportunities for cooperative approaches are more likely in disaster contexts because, unlike conflict related displacement, disaster displacement is characterized by the absence of persecution and violence. This also creates better opportunities for finding durable solutions for the displaced.

- 9. *Technical assistance and funding:* Where needed, the international community should support States, in particular Least Developed Countries, small island developing States, African countries, as well as middle-income countries facing specific challenges, in carrying out these responsibilities, including through ensuring access to adequate funding mechanisms.**

Least Developed Countries, small island developing States, African countries, as well as middle-income countries facing specific challenges, will, *inter alia*, need technical assistance to develop relevant policies, strategies and legal frameworks, capacity building support, assistance by humanitarian and development partners during and in the aftermath of disasters as well as additional resources to carry out their responsibilities.

- 10. *Post-Nansen Initiative Institutional arrangement:* Once the Nansen Initiative ends, the international community needs to find an institutional arrangement for the issues of displacement and other forms of human mobility in disaster and climate change contexts to ensure concerted and sustained action. Such arrangement should institutionalize close cooperation and coordination under an overall strategic vision and objective between relevant actors as challenges associated with cross-border disaster-displacement cut across a diverse set of areas including humanitarian action, human rights protection, migration management, disaster risk reduction, climate change adaptation, refugee protection and development.**

At domestic levels, an effective response requires cooperation and coordination across government ministries, and with civil society and affected communities to ensure that legal frameworks, institutional arrangements, and operational responses are effective.

An international institutional arrangement will ideally build upon existing structures and mechanisms, rather than create new ones, to avoid duplication. Such arrangement should include relevant actors in the fields of humanitarian action, human rights protection, migration management, disaster risk reduction, climate change adaptation, refugee protection, and development.

Key functions of such an arrangement would include: (1) Providing institutional leadership and a focal point; (2) providing a forum for continued action, coordination and integration of the topic within relevant ongoing international and (sub-)regional processes; (3) further developing the Protection Agenda's examples of good practices to provide practical and operational guidance; (4) providing technical and training support to States, (sub-) regional and international organizations, and other key actors; (5) consolidating and supporting the generation of information, analysis and new tools; (6) collecting data on disaster-displacement and commissioning new research; (7) supporting emergency and post-disaster needs assessments; and (8) advocating for the need to strengthen, revise or expand existing financial mechanisms to support a comprehensive response.

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INTRODUCTION

I. The Nansen Initiative

[1] The Nansen Initiative is a state-led, bottom-up consultative process intended to build consensus on the development of a Protection Agenda addressing the needs of people displaced across international borders in the context of disasters, including the effects of climate change. It is led by the Governments of Norway and Switzerland and governed by a Steering Group.⁵ The Group of Friends chaired by the European Union and Morocco is comprised of States and regional organizations that have an active interest in the Initiative. The Consultative Committee informs the process through expertise. This Protection Agenda, discussed and validated by a global inter-governmental consultation on 12-13 October 2015 in Geneva, Switzerland, consolidates the outcomes of the Nansen Initiative Regional Consultations and Civil Society Meetings.

A. Context

[2] The Nansen Initiative was officially launched in October 2012. It builds on paragraph 14(f) of the 2010 UNFCCC Cancún Agreement⁶ on climate change adaptation that calls for “[m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation.” The issue of disasters and displacement was also addressed by the Nansen Principles which synthesize the outcomes of the 2011 Nansen Conference on Climate Change and Displacement.⁷ Later, the Governments of Norway and Switzerland pledged to cooperate with interested States and other relevant stakeholders to: 1) obtain a better understanding of such cross-border movements at relevant (sub-) regional levels, 2) identify best practices, and 3) develop a consensus on how best to assist and protect those affected.⁸ The pledge was welcomed by several States and forms the basis of the Nansen Initiative.

[3] The Nansen Initiative is situated in the context of regular and large-scale displacement related to disasters and the effects of climate change. Every year, millions of people are displaced by disasters caused by natural hazards. Between 2008 and 2013 disasters such as floods, windstorms and earthquakes displaced an estimated 166 million people, i.e. an average of 27.5 million people newly displaced each year.⁹ While most disaster displaced persons receive protection and assistance within their own country, some have to move abroad. The total number of such persons is not known. Gathering such information is by nature complex due to the diverse drivers of displacement, scientific uncertainties, and unsystematic data collection and sharing. At the international level, an institution to collect such data does not exist. Nevertheless there are notable examples of well documented cases. In the Americas disasters such as the 1998 Hurricane Mitch, the 1972 Nicaraguan earthquake, the 2010 Haiti earthquake, the 1996-97 Montserrat volcanic eruption, and flooding in Ecuador have pushed hundreds of thousands of people to flee across international borders. In Africa, the 2011-2012 droughts in Somalia, a 2002 volcanic eruption in the Democratic Republic of Congo, and regular flooding in Mozambique and Malawi have also led to cross-border disaster-displacement. In Asia, the 2008 floods in Nepal, the 2009 Cyclone Alia, and slow-onset disasters linked to drought have also prompted cross-border movement. In the Pacific, the 2003 Cyclone Heta in Niue led to an evacuation to New Zealand. While many of these displaced persons were able to return home quickly, hundreds of thousands remained displaced abroad for years pending a durable solution. For example, more than 200,000 drought victims from Somalia remain in refugee camps in Kenya,

Ethiopia and Somalia¹⁰ and some 300,000 persons affected by disasters continue to benefit from Temporary Protection Status (TPS) in the USA.

[4] The Nansen Initiative is also situated in the context of increased international recognition of the challenges of displacement and other forms of human mobility in the context of disasters and climate change. The 2010 Conference of the Parties to the UN Framework Convention on Climate Change (Cancun Agreement) recognized human mobility as an important challenge of climate change adaptation, and the 2011 Doha decision on loss and damage encouraged further work to enhance understanding of how impacts of climate change are affecting patterns of migration, displacement and human mobility.¹¹ The Sendai Framework for Disaster Risk Reduction 2015–2030 is particularly important as it calls for enhanced action to prevent and mitigate displacement and to address cross-border displacement risks.¹² In the Americas, the 2014 Brazil Declaration and Plan of Action recognizes “the challenges posed by climate change and natural disasters, as well as by the displacement of persons across borders that these phenomena may cause in the region” and the need to “give more attention to this matter.”¹³ In Africa, the 2009 Kampala Convention¹⁴ covers people displaced within their countries due to disasters and climate change.

B. Key Issues, Gaps and Challenges

[5] The Nansen Initiative addresses displacement in the context of disasters linked to natural hazards, including geophysical hazards such as earthquakes, tsunamis or volcanic eruptions, as well as hydro-meteorological hazards like flooding, tornadoes, cyclones, drought, salt water intrusion and glacial melting. Consequently, the Nansen Initiative considers the effects of both sudden-onset and slow-onset disasters, including the impacts of climate change. The relevant distinction is not the character of the disaster, but rather whether it triggers displacement, understood as the (primarily) forced movement of persons as opposed to (primarily) voluntary migration.

[6] Disaster displacement creates humanitarian challenges, affects human rights, undermines development and may in some situations affect security. An analysis of the law, relevant institutions and operational responses pertinent to the protection of persons displaced in the context of disasters and the effects of climate change reveals the following key gaps:

- *Knowledge gaps:* While understanding of the causes, dynamics and magnitude of disaster and climate change-related displacement has been growing in recent years, they are still not fully understood and better knowledge is needed to develop adequate policies.
- *Legal gaps:* Persons moving *across international borders* in disaster contexts are protected by human rights law, with refugee law applicable only in exceptional cases. However, human rights protection does not address critical issues such as admission, basic rights during temporary or permanent stay, and conditions for return. Consequently, a legal gap exists with respect to cross-border disaster-displacement at the international level and, in most States, the domestic level. With respect to *internal displacement*, international human rights law, the UN Guiding Principles on Internal Displacement, as well as relevant regional instruments (particularly the Kampala Convention) are fully applicable. However, many countries have not, or only partially, incorporated relevant international and regional standards into their domestic laws and policies regarding disaster related displacement. The challenge lies in implementing them in normative (national laws, policies and strategies) and operational terms.

- *Institutional and operational gaps:* No single operational agency or organization at the international level is explicitly mandated to assist and protect persons displaced in the context of disasters, nor are there established mechanisms for cross-border cooperation, particularly regarding the search for durable solutions for the displaced. In the past, this has often led to *ad hoc* and unsystematic responses.
- *Funding gaps:* While existing funding mechanisms respond to immediate humanitarian crises caused by disasters, there is a lack of clarity regarding funding for measures to both prevent and find durable solutions for displacement, whether it occurs internally or across borders. While large disasters usually attract substantial humanitarian funding, small-scale disasters often receive inadequate levels of funding at both domestic and international levels. Finally, it is unclear to what extent climate change adaptation funding will be available to address human mobility challenges.

C. Goal

[7] The overall goal of the Nansen Initiative is to build consensus on key principles and elements to address the protection and assistance needs of persons displaced across borders in the context of disasters. This Protection Agenda presents a comprehensive approach to disaster related displacement that helps to set the agenda for future action at domestic, (sub-) regional and international levels. A comprehensive approach means addressing the complete cycle of cross-border disaster displacement, from the prevention and preparedness phase before displacement occurs, to the response and search for durable solutions when displacement cannot be avoided.

[8] This Protection Agenda builds upon existing knowledge about cross-border disaster-displacement to present examples of effective principles and practices for protection standards, international cooperation, and operational responses. These practices may assist States and the international community in developing adequate responses to the challenge of disaster displacement. They do not aim to create new legal standards but may, where appropriate, inspire and facilitate the elaboration of such standards at, in particular, domestic and (sub-) regional levels.

[9] While this Protection Agenda is limited to human mobility in the context of disasters as a consequence of natural hazards and the effects of climate change, the identified effective practices may also apply *mutatis mutandis* to disasters triggered by human-made factors such as industrial accidents.

D. Process

[10] To inform the Nansen Initiative process with practical experiences, inter-governmental Regional Consultations and Civil Society Meetings were convened in the Pacific, Central America, the Horn of Africa, Southeast Asia, and South Asia over the course of 2013 - 2015. These consultations brought together representatives from States, international organizations, NGOs, civil society, think tanks and others key actors working on issues related to humanitarian action, human rights protection, migration management, disaster risk reduction, climate change adaptation, refugee protection, and development. Additional events were held to consult with States from other regions including Europe, South America, Southern Africa and West Africa. The results of the Nansen Initiative Regional Consultations and Civil Society Meetings, existing knowledge, as well as research conducted by the Nansen Initiative and its partners, were consolidated to inform this Protection Agenda.

E. Scope and Structure of the Protection Agenda

[11] The Protection Agenda is intended to address the protection and assistance needs of cross-border disaster-displaced persons by identifying effective practices. It acknowledges and builds upon the rich experiences and approaches of States in many parts of the world and presents a range of effective practices that, depending on the specific context and circumstances, are suitable to protect people from being displaced or help them move in a regular and planned manner before a disaster strikes and thus supports a comprehensive response to cross-border disaster-displacement. Consequently, the Protection Agenda includes other groups of people including, but not limited to, internally displaced persons, migrants and disaster-affected communities.

[12] The Protection Agenda addresses a wide variety of situations that occur before, during and after a disaster triggered by natural hazards. Consequently, the effective practices refer to activities that take place within the operational phases of prevention, preparedness, response, recovery, and reconstruction.

[13] The Protection Agenda is primarily intended to address the roles and responsibilities of States as they seek to respond to the challenge of cross-border disaster-displacement. Such States may be disaster-affected countries, or be countries of origin, transit or destination for cross-border disaster-displaced persons. At the same time, the Protection Agenda also addresses the potential roles and responsibilities of (sub-) regional organizations, international organizations, civil society, and disaster-affected communities.

[14] **Part One** of the Protection Agenda presents a set of common understandings regarding general principles, key notions and concepts, and the overall scope of the Protection Agenda. **Part Two** presents a series of tools for managing population movements to avoid disaster displacement, specifically addressing how disaster risk reduction, climate change adaptation, migration measures, and planned relocation can contribute to strengthen resilience to natural hazards. **Part Three** sets out effective practices for protecting internally displaced persons in disaster contexts. **Part Four** describes considerations, challenges and effective practices related to cross-border disaster-displacement. **Part Five** discusses the specific challenges facing foreigners who are in a disaster-affected country and describes examples of effective practices used in response. **Part Six** describes potential next steps for future action following the conclusion of the Nansen Initiative.

PART ONE: COMMON UNDERSTANDINGS

I. General Principles

[15] This Protection Agenda is based upon the following common understandings:

- 1) Disaster related internal and cross-border disaster displacement is a reality that is likely to become even more prevalent in the future due to the negative impacts of climate change.
- 2) Natural hazards and related disaster displacement can to some extent be predicted, prevented and, where displacement occurs, managed. While many States already have developed rich and effective practices and norms, existing legal frameworks and operational responses are often insufficient in the face of this challenge. However, steps can be taken now and in the future to prevent and avoid cross-border disaster-displacement when possible, and to prepare for such displacement when it is unavoidable.
- 3) States have the primarily responsibility to prevent displacement on their territory, and to protect as well as find durable solutions for their displaced persons in disaster contexts. This responsibility includes recognition that an effective response requires cooperation and coordination across government ministries, and with civil society and affected communities.
- 4) Civil society organizations, local communities, and affected populations themselves play a crucial and indispensable role in disaster risk reduction, disaster response and recovery, including in finding durable solutions.
- 5) The primary responsibility for managing the cross-border movements of persons in the context of disasters and the effects of climate change lies with States, consistent with international human rights norms and principles, and other international obligations.
- 6) Displacement occurring in the contexts of disaster, unlike conflict related displacement, is characterized by the absence of persecution and violence. This creates often better opportunities for finding durable solutions for the displaced within the short to mid-term and, in the case of cross-border displacement, for policy approaches based on the principle of cooperation between countries of origin of the displaced on the one hand and receiving countries and the international community on the other hand.
- 7) Measures to respond to disaster displacement should build upon and strengthen existing laws and mechanisms at the national, (sub-) regional and international levels.
- 8) The ultimate goal of measures responding to cross-border disaster-displacement includes the essential objectives of finding durable solutions, and building the resilience of affected individuals, families and communities.
- 9) Measures should incorporate human rights standards and principles, including consultation, participation, and non-discrimination, for all disaster displacement affected communities.
- 10) Particular measures may be required to address the specific protection needs of communities with a special attachment to land to preserve their respective cultures and identities.

- 11) International cooperation and solidarity measures in support of disaster-affected States and people are essential components for adequately preparing for and responding to cross-border disaster-displacement. Such measures should be humanitarian and non-political.
- 12) Regional and (sub-) regional organizations in particular play a key role in addressing the challenge of cross-border disaster-displacement.
- 13) The multi-causal nature of disaster displacement requires developing, harmonizing, and coordinating diverse policy responses spanning the areas of humanitarian action, human rights protection, migration management, disaster risk reduction, climate change adaptation, refugee protection, and development. The related, although distinct, issue of migrants abroad who are caught up in disaster situations is also requiring further attention.
- 14) Because disasters exacerbate pre-existing social vulnerabilities and inequalities, children, women, older persons, persons with disabilities, impoverished communities, indigenous people, migrants and marginalized groups are more likely to have particular protection needs.

II. Key Notions and Concepts

[16] Human mobility can take different forms and occur at different stages depending on the nature of the natural hazards and other contributing factors. For the purposes of the Protection Agenda, and building upon paragraph 14(f) of the UN Framework Convention on Climate Change's (UNFCCC) Cancun Outcome Agreement, human mobility is discussed within three categories: (predominantly forced) displacement, (predominantly voluntary) migration, and (voluntary or forced) planned relocation.

[17] For the purposes of the Protection Agenda, the term “**disaster displacement**” refers to situations where people are forced or obliged to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of disasters triggered by natural hazards. Such displacement may take the form of spontaneous flight or an evacuation ordered or enforced by authorities. Such displacement can occur within a country, or across international borders.

[18] “**Disasters**” are defined as a “serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources.”¹⁵ For the purposes of the Protection Agenda, disasters refer to disruptions triggered by or linked to hydro-metrological and geo-physical natural hazards.

[19] By definition disasters are complex, multi-causal events. Consequently, disaster displacement is also multi-causal. The Protection Agenda thus recognizes that disaster displacement occurs *in the context* of disasters and the impacts of climate change rather than being exclusively caused by such events.

[20] The term “**cross-border disaster-displaced persons**” designates people displaced across international borders in the context of natural hazards that have led to a disaster. “**Internally displaced persons**” by definition include displacement in disaster contexts.¹⁶ The terms do not suggest that the environment or the climate necessarily force people to move. Rather, it is the

effects of natural hazards or climate change that may overwhelm the resilience or adaptive capacity of an affected community or society and thus cause a disaster that can lead to displacement.

[21] “**Human mobility**” is used as generic terms to cover the different forms of movements of persons addressed in this Agenda, in particular internal as well as cross-border displacement, (voluntary) migration and planned relocation.

[22] “**Protection**” is defined as “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law.”¹⁷ In this sense, protection can be understood as an *objective* to achieve full respect of a person’s rights, including not only physical security but also the full spectrum of human rights, as required by law. Protection also refers to the *legal responsibility* of States to protect the rights of their own citizens and habitual residence. Finally, protection is an *activity* to take proactive steps to ensure respect for such rights, which may mean preventing or stopping violations of rights, providing remedies when rights have been violated, and promoting an overall environment that respects such rights.¹⁸

[23] The Protection Agenda uses the term “**international protection**” to refer to activities carried out by countries other than their country of origin, in particular countries of transit and destination, that are intended to ensure full respect for the rights of cross-border disaster-displaced persons.

[24] The Protection Agenda uses terminology from the fields of disaster risk management and climate change. “**Risk**” is the “combination of the probability of an event and its negative consequences” and is determined by a combination of exposure to a natural hazard, the vulnerability of an individual or community, and the nature of the hazard itself. “**Exposure**” refers to “People, property, systems, or other elements present in hazard zones that are thereby subject to potential losses.” “**Resilience**” means the “ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions.”¹⁹ “**Adaptation**” refers to “the process of adjustment to actual or expected climate and its effects. In human systems, adaptation seeks to moderate or avoid harm or exploit beneficial opportunities.”²⁰

[25] The term “**migration**” commonly refers to a broad category of population movements.²¹ Likewise, the International Organization for Migration’s (IOM) working definition of an “environmental migrant” includes various groups of individuals moving within different contexts: voluntarily or involuntarily, temporarily or permanently, within their own country or abroad.²² For the purposes of the Protection Agenda, migration is used to refer to human movements that are *preponderantly* voluntary insofar as people, while not necessarily having the ability to decide in complete freedom, still possess the possibility to choose between different realistic options. Examples include working abroad in order to support families at home with remittances, or moving to another country to avoid a situation when moving ultimately becomes unavoidable.

[26] In the context of slow-onset environmental degradation and the long-term impacts of climate change, “**migration as adaptation**” refers to the primarily voluntary decision to “avoid or adjust to”²³ deteriorating environmental conditions that could otherwise result in a humanitarian crisis and displacement in the future.

[27] Permanent **planned relocation** is defined as, “The act of moving people to another location in the country and settling them there when they no longer can return to their homes or place of habitual residence.”²⁴ Such relocation may, in exceptional cases, also take place across State borders.

III. Situations and Dynamics of Disaster Related Human Mobility

A. Five Scenarios

[28] This section outlines five scenarios illustrating how natural hazards can combine with other social, political and economic factors as poverty or poor infrastructure to prompt human mobility (displacement, migration and planned relocation) in disaster contexts. Such situations can also result in “trapped populations” who lack the resources to move despite a desire to do so.²⁵

1. Sudden-onset disasters

[29] Sudden-onset disasters caused by natural hazards can be either geophysical (earthquakes, tsunamis and volcanic eruptions) or hydro-meteorological (hurricanes, typhoons and cyclones, flooding, tornadoes, landslides, lahars, etc.). While the present stage of science cannot conclusively attribute individual events to climate change, there is some evidence that weather-related disasters may become more frequent and intense in the future.²⁶ Return following displacement in the context of a sudden-onset disaster is often possible relatively quickly, although severe destruction may result in protracted displacement or the inability to return at all.

2. Slow-onset disasters and environmental degradation

[30] Slow-onset natural hazards and environmental degradation are characterized by a “creeping” loss of the benefits of ecosystems that impact human habitats and livelihoods.²⁷ Over time, drought, recurrent flooding, melting permafrost, and the salinization of ground water, can all contribute to slow-onset disasters. This category also encompasses the potential longer-term effects of climate change such as sea level rise, glacial melting, coastal erosion, coral bleaching, and ocean acidification.

[31] The relationship between slow-onset and sudden-onset disasters is complex but three situations can be distinguished: (1) Sudden-onset natural hazards may be exacerbated by slow-onset environmental changes. Thus, for instance, sea-level rise may be responsible for higher and more devastating storm tides. (2) Sudden-onset hazards can exacerbate pre-existing slow-onset degradation, resulting in disasters. Coastlines already eroding because of sea-level rise, for instance, are particularly prone to be destroyed by a tropical storm, and permafrost thawing is an important cause of landslides. (3) Slow-onset environmental degradation may weaken the resilience of communities to such an extent that a small degree of additional deterioration can lead to a disaster within a short period of time. For instance, food insecurity caused by prolonged drought or salt water intrusion may develop into famine within a few months or even weeks.

3. Low lying small islands States and substantial loss of state territory

[32] Disasters caused by natural hazards pose particular challenges for low lying small island States. Slow-onset hazards, such as sea-level rise, may contribute to the erosion of vast coastal areas or even result in the complete inhabitability or submersion of state territory. In such situations, arable land and fresh water sources may diminish and over the longer term land may be submerged to an extent that populations may be forced to relocate abroad. Such permanent loss of population and territory would substantially undermine and jeopardize the very statehood of affected countries.

4. Government designation of areas as unfit for human habitation

[33] As a measure to reduce the potential loss of life and property, governments may designate areas as high risk zones for future disasters, and prohibit human settlements there. Such decisions may be made following a sudden-onset disaster, or in anticipation of future disasters. They may also be a consequence of climate change mitigation or adaptation measures, for instance when communities are prohibited to live in forest zones created to act as carbon sinks or have to move away from coastal areas where mangrove forest are planted to stabilize eroding coastlines. Such designations may lead to planned relocations or leave people without an alternative relocation site.

5. Unrest seriously disturbing public order, violence or armed conflict over diminished resources

[34] Although difficult to isolate from other factors, diminished access to resources, such as potable water, grazing lands, fishing grounds, or arable land, could be the primary or contributing catalyst of social unrest, violence, or even armed conflict. Such occurrences are more likely in poorer or marginalized areas that lack the necessary resources to adapt to environmental changes.

B. Dynamics

[35] Displacement is a typical consequence or outcome of *sudden-onset* disasters. While most displacement is internal, cross-border displacement occurs in a variety of situations: Persons living in border areas may evacuate or flee to neighboring countries to escape life-threatening natural hazards. Persons affected by disasters may also decide to seek protection and assistance abroad if they are unavailable or cannot be reached in their own country.²⁸ Others may try to join families or members of their community abroad. A prolonged humanitarian crisis in the aftermath of a disaster creating serious hardship for affected persons may also compel them to seek refuge abroad.²⁹

[36] In the context of *slow-onset* disasters, people may be forced to leave their country when environmental degradation has reached a level making life there no longer possible. This may happen in the future to citizens of small island developing States if their lands become inhabitable as a consequence of sea level rise. Pastoralists are another special group of people who are forced to move with their animals in times of drought, relying on their traditional rights to access water and grazing grounds that span international borders. The combination of slow-onset and sudden-onset hazards or the cumulative effect of a series of smaller, sudden-onset disasters can also lead to displacement.

[37] Migration is commonly used by individuals and families as a coping or adaptation strategy to environmental changes and disasters, particularly when such changes negatively impact livelihood opportunities. Migration in such contexts may be temporary, circular or permanent. Like those who are displaced, most migrants move to another part of their own country, with a smaller number of people traveling abroad. Migration can be a positive measure to avoid or adjust to changing environmental conditions, for instance by strengthening the resilience of individuals and families through improved economic opportunities.³⁰ However, if not properly supported, migration may further exacerbate the vulnerability and undermine the resilience of individuals and families by placing them in a more precarious situation than if they had stayed in their place of origin.³¹ For instance, when rural migrants move to urban areas due to environmental degradation, they sometimes find themselves living in informal, poorly planned settlements where they face additional risks, such as security threats, extortion, or discrimination. In certain situations, people in the most desperate circumstances may lack the resources to migrate, forcing them to remain in unsafe areas.³²

[38] The planned relocation of people within the country is a measure taken in different parts of the world to move people from areas where they would face a high risk of exposure to a serious natural hazard.³³ Relocations, even when forced, may be undertaken for justifiable reasons; for instance when an area is no longer safe for habitation due to the likely risk of future natural hazards. At the same time, proactive, pre-disaster relocations can be useful in helping to prevent cross-border disaster-displacement, or dangerous, undocumented migration that could arise in the context of hardships associated with a disaster.

[39] A combination of these different types of human mobility can be observed in many disaster situations. Thus, internal displacement may not only be followed by planned relocation as a durable solution for displaced persons but also by internal or cross-border migration if such solutions are not in sight and affected persons decide that migration to a location with better economic opportunities may be the best way to solve their problems. On the other hand, in many countries economic migrants with low economic and social status settle in areas that are particularly prone to disasters and thus run a heightened risk of being displaced by a natural hazard.

[40] In general, human mobility in the context of natural hazards and environmental degradation is multi-causal, and dependent on a wide variety of factors, including poverty or lack of resilience, that contribute to an individual, family or community's overall resilience to withstand the impact of natural hazards, which in turn determines whether or not mobility is a lifesaving, coping, or adaptation response.

PART TWO: PROTECTING PEOPLE TO AVOID DISASTER DISPLACEMENT

[41] State responsibility includes the obligation to prepare for foreseeable disasters and take reasonable measures to prevent threats to the lives and property of people, including avoiding displacement.³⁴ To some extent, disasters, whether or not linked to climate change, are predictable insofar as it is possible to identify particularly disaster prone areas and assess the expected impact of a natural hazard on affected populations, including displacement risks. This provides opportunities to develop interventions that can help people avoid being displaced in a disaster, even if under certain circumstances moving away from home is inevitable. In this regard, important tools include, in particular, disaster risk reduction and climate change adaptation measures specifically designed to prevent displacement, as well as planned relocation and voluntary migration as ways to move from hazardous areas to safer places or adapt to the effects of climate change or other environmental degradation.

[42] States currently use a wide range of policy options to build people's resilience to natural hazards. Disaster risk reduction activities, infrastructure improvements, urban planning, climate change adaptation measures, land reform, and other development measures to improve resiliency are all potential actions to help people remain safely in their homes when faced with natural hazards. At the same time, the success of disaster risk reduction, climate change adaptation, migration measures and planned relocation efforts are also closely linked to a community or country's level of development. Therefore, recognizing the critically important role of development, the Protection Agenda focuses on specific measures for disaster related human mobility that could also be incorporated within broader development strategies, such as National Development Plans, Post-Disaster Needs Assessment and Recovery Frameworks or UN Development Assistance Frameworks, which in turn contribute to building a comprehensive response to cross-border disaster-displacement.

I. Disaster Risk Reduction

[43] Disaster risk reduction (DRR) activities play a particularly important role in building the resilience of disaster-affected communities to avoid and reduce the risk for displacement in the first place, strengthening host communities' capacity to receive displaced persons when it cannot be avoided, and finding durable solutions to end displacement by reducing exposure and building resilience to future hazards. The majority of States have designated national authorities responsible for disaster risk reduction and disaster management, with most having national disaster management legislation.

[44] The Sendai Framework on Disaster Risk Reduction 2015 – 2030 acknowledges the large number of disaster displaced persons in recent years as one of the devastating effects of disasters. The Framework underlines, *inter alia*, the need to prepare for “ensuring rapid and effective response to disasters and related displacement, including access to safe shelter, essential food and non-food relief supplies” and encourages States to adopt, at national and local levels “policies and programmes addressing disaster-induced human mobility to strengthen the resilience of affected people and that of host communities as per national laws and circumstances.” It also calls for trans-boundary cooperation to address displacement risks in areas with common eco-systems such as river basins or coastlines. Incorporating these principles in regional and national disaster risk reduction

strategies will be an important step to use the potential of DRR to prevent displacement when possible, and mitigate it when it cannot be avoided.

A. Gaps to Be Addressed

[45] Displacement-related issues or the impact of disasters on human mobility in general have not been prominent within existing DRR strategies.³⁵ They normally neither acknowledge nor reflect the reality that very high numbers of people are displaced every year by disasters. Where bilateral or regional disaster risk management mechanisms exist, the potential for cross-border displacement is generally not recognized within contingency planning and response plans.

[46] Another persistent challenge in disaster risk reduction and resilience building measures is closing the gap between the humanitarian response phase and development initiatives. At the national level, this challenge illustrates the need for coordination between government departments, and increased integration of elements of disaster risk management plans into development policies and national climate change adaptation plans.

B. Effective Practices for Disaster Risk Reduction

[47] Effective practices to address displacement risks with disaster risk reduction measures include the following:

- *Reviewing national and regional disaster risk reduction strategies and frameworks to specifically incorporate risks and protection needs associated with internal and cross-border disaster displacement.*
- *Integrating climate change scenarios and projections, including related displacement risk, within national and regional disaster risk management plans, and development plans.*
- *Prioritizing infrastructure improvements such as sea-walls, dams, dykes, and earthquake resistant buildings in areas identified as being most at risk of displacement.*
- *Developing and institutionalizing community-based and traditional disaster risk mapping tools and methodologies to identify i) populations most exposed to natural hazards and at a high risk of displacement, and ii) potential areas suitable for short-term evacuation and, if necessary, long-term relocation.*
- *Enhancing local disaster risk reduction capacity, such as by encouraging local communities to make their own evacuation and response plans with the support of local and national authorities, civil society and the private sector.*
- *Establishing early warning information systems that clearly describe the hazard, populations most at risk of displacement, and evacuation corridors and sites, ensuring that information is distributed in ways that affected communities can easily understand.*
- *Developing bi-national and regional contingency plans that identify transboundary risk scenarios and formulate comprehensive disaster risk management actions to reduce vulnerability and strengthen capacity to respond to cross-border displacement.*

II. Climate Change Adaptation

[48] Climate change is expected to increase the frequency and intensity of disasters, raise sea levels, and increase rainfall variability, all of which pose threats to human settlements, infrastructure, natural resources and associated livelihoods. Consequently, climate change is also anticipated to contribute to higher levels of displacement worldwide.

[49] Recognizing the implications of climate change for human mobility, paragraph 14(f) of the 2010 UNFCCC Cancun Adaptation Framework calls for voluntary “measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels.” The Warsaw International Mechanism for Loss and Damage associated with climate change impacts also identifies displacement as a potential consequence of climate change.

[50] Although continued, strong and effective climate change mitigation actions are essential, in some parts of the world climate change is already linked with displacement, migration and planned relocation. Therefore, both climate change mitigation and adaptation measures can play an important role in reducing the number of people who are displaced in disaster contexts. Measures to manage human mobility, such as through evacuation plans, facilitated voluntary migration, and planned relocation, can also contribute to overall adaptation to environmental change.

[51] Resilience is a key factor in determining whether and how individuals, families, communities and States can withstand the impacts of sudden-onset and slow-onset natural hazards and impacts of climate change. The potential for a natural hazard to develop into a disaster that leads to displacement is highly dependent upon a community’s level of development. Not only are poorer people more likely to be displaced in disasters, poorer communities as a whole are less likely to have sufficient levels of governance, infrastructure, urban planning, building codes, and disaster preparedness and response to withstand the impact of natural hazards. Those living in less developed or rural areas, notably farmers, fisherfolk, pastoralists or indigenous communities, are also less likely to have adequate food security or the capacity diversify their livelihoods in the face of environmental change or slow-onset natural hazards. Climate change adaptation and development programming that prioritizes building community resilience in disaster prone areas, for instance by supporting livelihood diversification and food security projects to help people adapt to environmental changes and avoid the need to migrate in search of alternative livelihood options, can help people withstand the impact of future natural hazards and also reduce the potential for temporary or permanent displacement.

[52] Effective climate change adaptation considerably overlaps with disaster risk reduction (above paras. 43-47). Some regions and countries therefore address the two areas in integrated strategies and plans.³⁶ Effective climate change adaptation does not only focus on building resilience that helps people to stay but looks, where appropriate, at facilitating migration as a way to adapt to negative impacts of climate change (below paras. 55-60) and planned relocation (below paras. 61-65).³⁷

A. Gaps to Be Addressed

[53] To date only a few national or regional climate change adaptation strategies and plans address human mobility considerations comprehensively. Where human mobility is included,

migration is generally viewed as something to be avoided, rather than recognized as a potentially positive adaptation strategy. Some States have requested specific guidance on how to appropriately include displacement, migration and planned relocation issues within national and regional climate change adaptation policies. In particular, the inclusion of human mobility issues within National Adaptation Plans now under preparation within the UNFCCC process would allow States to use climate change adaptation funding provided within the UNFCCC process to address disaster displacement issues.

B. Effective Practices for Climate Change Adaptation

[54] Effective practices to address displacement and other forms of human mobility include:

- *Integrating migration, displacement, and planned relocation considerations within national climate change laws and policies, such as National Adaptation Plans, Joint National Action Plans, and National Disaster Management Plans, and mainstreaming them into development plans.*
- *Drafting and implementing joint climate change and disaster risk management strategies at the national and regional level to identify people at risk of displacement in the immediate and long term, and develop appropriate responses.*
- *Investing in measures that increase the resilience of communities at risk of displacement, such as improving shelter, infrastructure, livelihood diversification, education, food security, and health care.*
- *Strengthening the resilience of communities that have to move or are already displaced, as well as the communities that host them.*
- *Developing National Adaptation Plans and relevant development programs in close consultation with communities at risk of displacement.*
- *Including human mobility considerations within ongoing regional climate change processes and frameworks.*
- *Ensuring that, where needed, countries have adequate access to climate change adaptation funding for human mobility related programs and activities.*

III. Facilitating Migration with Dignity

[55] Natural hazards, such as seasonal flooding, sea-level rise and drought or saltwater intrusion, can negatively impact livelihoods, health and physical security. When living conditions deteriorate, individuals and families commonly use migration as a way to seek alternative opportunities within their country or abroad rather than waiting until a crisis arrives. Pastoralists in particular have long used migration as a traditional coping method to access water and grazing land in times of environmental stress.

[56] Managed properly, migration has the potential to be a positive adaptation measure to the impacts of natural hazards or environmental deterioration. Circular or temporary migration can create new livelihood opportunities, support economic development, and build resilience to future hazards by allowing migrants to send back remittances and return with newly acquired knowledge

and skills to their areas of origin. Migration may also reduce population pressures that contribute to increased disaster and displacement risks.

[57] While migration can be highly beneficial, it also carries specific risks. Migrants might be economically exploited, exposed to dangerous conditions at their place of work, face discrimination or become victims of violence. This is particularly true for those using irregular way of migration and who are exposed to smuggling and trafficking in persons, but also regular migrants may face such protection risks. Research indicates that migration can also exacerbate the negative circumstances of impoverished, unskilled, or otherwise vulnerable individuals and families by placing them in a more precarious situation than if they had stayed in their place of origin.³⁸ Furthermore, in certain situations, people in the most desperate circumstances may lack the resources to move at all, forcing them to remain in unsafe areas.³⁹

[58] The possibility for permanent migration is particularly important for low-lying small island States and other countries confronting substantial loss of territory or experiencing environmental changes that increasingly make large tracts of land uninhabitable. Migration not only provides individuals and families with opportunities for the future, but can also help to ease population pressure on highly fragile areas, such as small low-lying islands, eroding coastlines, high mountain areas or areas exposed to desertification.

A. Gaps to Be Addressed

[59] With very few exceptions, planned and coherent approaches to recognizing, facilitating and managing migration as a means of adapting to the impacts of natural hazards and environmental degradation are absent in most regions and countries. There are no regional or bilateral treaties specifically addressing and regulating migration as adaptation to negative effects of climate change and other natural hazards.

B. Effective Practices for Facilitating Migration with Dignity

[60] Effective practices facilitating migration with dignity as way to adapt to negative effects of climate change and other natural hazards include the following:

- *Reviewing existing bilateral and (sub-) regional migration agreements to determine how they could facilitate migration as an adaptation measure, including issues such simplified travel and customs documents.*
- *Developing or adapting seasonal worker programs or residency permit quotas to prioritize people from countries or areas facing disaster impacts or environmental stress.*
- *Providing training and education, including through qualification and accreditation alignment, to enable people affected by environmental degradation or natural hazards to compete for skilled employment opportunities in a global labour market.*
- *Facilitating pastoralists' traditional practice of moving internally and across international borders to access water, pasture and regional markets as a method to adapt to environmental stress, such as drought. Development of transhumance agreements to facilitate the cross-border movement of livestock.*
- *Providing cultural adjustment and other pre-departure training for migrants to help them move in safety and dignity, with full respect of their rights.*

IV. Planning Relocation with Respect for People's Rights

[61] The impacts of natural hazards, climate change, and environmental degradation have led many governments around the world to relocate communities to safer areas as both anticipatory and reactive measures to prevent death, injury or displacement.⁴⁰ However, because of the many negative effects associated with past relocation processes, planned relocation is generally considered a last resort after all other options have failed and community resilience has significantly eroded.

[62] Planned relocation in the context of disasters and effects of climate change may be relevant:

- 1) As a preventative measure within the country of origin to reduce the risk of displacement in the future by moving people out of areas particularly at risk of sudden-onset disasters (such as flooding or land-slides) or becoming inhabitable due to environmental degradation or the impacts of climate change (rising sea levels, drought, coastal erosion, or melting permafrost).
- 2) As a durable solution within the country of origin to allow people displaced internally or across international borders rebuild their lives if the disaster rendered their place of origin as no longer fit for habitation.
- 3) As a durable solution in a receiving country in the extreme event that natural hazards or environmental degradation render large parts of or an entire country unfit for habitation (e.g., low-lying island States).

[63] Experience shows that relocations meet resistance or are not sustainable particularly if they are undertaken without consultation and participation of affected people, including host communities, and if livelihood issues are neglected.⁴¹

A. Gaps to Be Addressed

[64] While planned relocation has the potential to increase vulnerable communities' overall security and resilience to natural hazards, ensuring adequate livelihood opportunities, infrastructure and social support is a common challenge in relocation processes. Relocation processes often lack transparent, inclusive and participatory approaches that include consultation and engagement with affected communities throughout the planning and implementation process.

B. Effective Practices for Planned Relocation

[65] Effective practices for planned relocation include the following:

- *Identifying and setting aside land for temporary and permanent relocation as a disaster preparedness activity.*
- *Engaging both relocated and host communities in consultation, planning, implementation and evaluation of such measures, taking into account community ties, cultural values, traditions and psychological attachments to their original place of residence.*
- *Developing national and local level guidelines and public policies to support effective and sustainable planned relocation processes, adapted to the local context and building upon existing global guidance.*
- *Ensuring that planned relocation sites do not expose relocated people to greater disaster risks and provide for disaster risk management measures in the event of future disasters.*

- *Implementing planned relocation processes in full respect for the rights of affected people, including host communities, taking into account the potential of planned relocation to achieve development goals.*
- *Developing adequate mechanisms and safeguards to prevent and solve conflicts over land and other resources due to factors such as cultural diversity or population growth.*

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PART THREE: PROTECTING INTERNALLY DISPLACED PERSONS IN DISASTER CONTEXTS

I. Legal Frameworks and Operational Protection for Internally Displaced Persons

[66] Since most disaster related displacement takes place within countries, the protection of internally displaced persons (IDPs) is particularly important. IDPs have specific needs not encountered by non-displaced disaster survivors. They need to be able to escape the danger zone and reach a safe location. Upon arrival, IDPs have to find a place where they can temporarily stay and avoid discrimination because of their displacement. They might need to be reunited with family members separated during flight. While displaced, the property they left behind needs to be protected against occupation or theft by others or, when this happens, the property should be restituted to them. Finally IDPs need to be able to find a durable solution to their situation by rebuilding their lives at the place of origin (return), at the location where people are displaced (local integration), or in another part of their country (settlement elsewhere in the country).⁴² In many situations, internally displaced persons face higher risks than non-displaced persons of gender-based violence, particularly if they live in collective shelters or camps; being trafficked; experiencing difficulties replacing lost documents, or remaining in extreme poverty without access to adequate livelihoods.

[67] Internal displacement affects not only displaced persons but also the communities that host them. Without specifically addressing their particular needs, disaster management and response efforts for disaster-affected communities remain inadequate.

[68] Although more research is required to better understand the relationship, it has been observed that cross-border disaster displacement in search of assistance could potentially be avoided or reduced if IDPs received adequate protection and assistance following disasters. In particular, a lack of durable solutions is one reason why internally displaced persons may subsequently choose to move abroad.

[69] States have the primary duty and responsibility to protect and assist IDPs on their territory. The scope of this responsibility is set out in the Guiding Principles on Internal Displacement, which define IDPs as “persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence” for reasons including “natural or human-made disasters” and who have not crossed an international border.⁴³ Under existing international obligations, State responsibility also includes undertaking measures to “prevent and avoid conditions that might lead to the displacement of persons.”⁴⁴

[70] The rights of IDPs are protected under national law and international human rights law. In addition, and building upon the Guiding Principles on Internal Displacement, a number of States have developed national and regional IDP laws and policies that specifically apply to disaster contexts.

A. Gaps to Be Addressed

[71] Despite widespread recognition of the Guiding Principles on International Displacement, most States neither have laws and policies specifically addressing internal displacement nor do they address displacement in their legal frameworks on disaster management and response. Where States

have adopted IDP specific instruments, they are often limited to persons displaced by armed conflict and violence.

[72] Institutional accountability for IDP protection at the international level also may not be clear. For example, international leadership to support national authorities with protection activities during a disaster response is not predictable, if such support is even activated at all.⁴⁵ At the operational level, disaster responders and humanitarian organizations and agencies are often unaware of or insufficiently trained on available tools and how to base their actions on a rights-based approach.⁴⁶

[73] In the post-emergency phase, particularly in severe disaster situations, IDPs may not be able to return home pending reconstruction and remain in temporary or transitional shelter for years at a time. Even upon return, IDPs may lack sufficient livelihood opportunities or access to essential services. Again, leadership for finding durable solutions is also not always clear or predictable amongst government institutions or international organizations, particularly regarding the respective roles and responsibilities of humanitarian and development actors and their funding mechanisms.

B. Effective Practices for IDP Protection

[74] Effective practices to protect and assist IDPs affected by disasters include the following:

- *Ratifying and implementing existing international and (sub-) regional legal instruments relevant to internal displacement.*
- *Reviewing domestic legislation to identify whether it contains specific and adequate provisions addressing disaster related internal displacement and, if not, incorporating the Guiding Principles on Internal Displacement within domestic and (sub-) regional law and policy in a way that covers people displaced by disasters.*
- *Specifically incorporating, in line with a human rights-based approach, IDP protection considerations, roles and responsibilities within disaster risk reduction and response plans, as well as relevant development plans.*
- *Strengthening the institutional capacity and resources of national and local authorities to enhance protection and support for IDPs, using a rights-based approach.*
- *Designating institutional leadership for IDP protection in disaster contexts in both the emergency and reconstruction/recovery phase.*
- *Ensuring that projects and programs regarding humanitarian assistance, early recovery and durable solutions provide meaningful information and opportunities for consultation and participation by displacement-affected communities, or communities at risk of internal displacement, in relevant decision making processes.*

II. Durable Solutions for Internally Displaced Persons in Disaster Contexts

[75] States have the primary responsibility to find durable solutions for their internally displaced citizens or habitual residents. Durable solutions include (a) voluntary return with sustainable re-integration at the place where displaced persons lived before the disaster; (b) local integration at the location where people were displaced, or (c) settlement elsewhere within their country.

[76] The use of thematic clusters led by government entities to coordinate relevant development actors, building upon the use of thematic clusters in the humanitarian phase, can help avoid a gap in assistance to displaced persons during the recovery phase. However, inadequate consultation with displaced persons and ineffectively mobilizing them to participate in rehabilitation, recovery and reconstruction activities may significantly curtail or undermine the ability to find durable solutions.

A. Gaps to Be Addressed

[77] Absent improved resilience to future disasters and environmental stress, returnees may continue to be at a high risk of repeated crises and recurrent displacement. Slow or inefficient recovery and reconstruction efforts, often hindered by the challenge of finding alternative relocation sites, resolving land tenure issues, or financing construction with higher building standards to withstand future disasters, can delay return for months or years. It is also often difficult to successfully restart and provide support for the development of diversified livelihood opportunities as quickly as possible to support self-reliance. International support for recovery and reconstruction to support durable solutions for IDPs is often insufficient or ineffective due to a lack of coordination between humanitarian and development actors and their respective donors.

B. Effective Practices for the Transition to Durable Solutions

[78] Effective practices for the transition to durable solutions for IDPs in disaster contexts include the following:

- *Consistently establishing links between the emergency and reconstruction phase to ensure that IDPs find durable solutions, such as by addressing internal displacement within recovery, reconstruction and post-disaster development plans.*
- *Ensuring a smooth transition from the emergency phase by using thematic clusters in the rehabilitation, recovery and reconstruction phase.*
- *Ensuring information of, consultation with and participation by affected individuals and communities in finding durable solutions.*
- *Emphasizing the reestablishment of livelihoods and basic services, in addition to housing and infrastructure reconstruction within durable solutions strategies.*
- *Incorporating the needs of IDPs within long-term development planning to support durable solutions, particularly in return areas, by enabling such communities to better withstand future natural hazards and environmental degradation.*

PART FOUR: PROTECTING CROSS-BORDER DISASTER-DISPLACED PERSONS

I. Protection of Cross-Border Disaster-Displaced Persons

[79] International law does not explicitly address whether and under which circumstances disaster displaced persons shall be admitted to another country, what rights they have during their stay, and under what conditions they may be returned or find another durable solution. However, a number of States have admitted disaster displaced persons relying upon national legislation or the discretionary authority of migration officials. The following discussion and examples of effective practices are drawn from this experience.

A. Identifying the displaced

[80] There are no universally recognized criteria to determine, in the context of disasters, when a movement could be characterized as forced across international borders for the purposes of international law. Due to the multi-causal nature of human mobility generally, the difference between displacement and migration can be difficult to pinpoint. Although complex, it is important to make a distinction between voluntary and forced movement. This is not only because international law requires such precision, but also because the vulnerability that underlies the movement influences a person's ability to successfully cope during displacement and settle at his or her destination,⁴⁷ which may in turn determine the need for additional assistance and future plans, such as any desire to return.

1. Situations and criteria

[81] In certain situations, moving across borders is the only reasonable option to seek safety, and protection or assistance. In border regions, for instance, the closest path to safety may be in a neighboring country. In other situations, protection and lifesaving assistance may not be available in-country as a result of widespread destruction of infrastructure and basic services, such as medical facilities. A disaster may also simply overwhelm the response capacities of authorities, international humanitarian actors and civil society alike. Particularly in mixed disaster-conflict scenarios, the delivery of humanitarian assistance may be severely hindered by insecurity, a lack of trust of authorities, or discrimination toward certain sub-sets of the population, which could again prompt disaster-affected people to seek assistance and protection abroad.

[82] Slow-onset natural hazards are more challenging, in that movements occurring as a consequence of the gradual erosion of resilience or as an adaptation measure to environmental stress usually have some element of choice and thus can be qualified as migration. However, when slow-onset hazards that may have been building over many years reach an emergency phase within a short period of time, for example when drought "suddenly" contributes to a famine, people may have no other option than to seek food and assistance abroad. Slow-onset hazards, or the cumulative effect of a series of smaller, sudden-onset hazards, may also compound a community's capacity to withstand what would normally be insignificant sudden-onset hazards. Such disaster scenarios are particularly relevant for low-lying island States, where inhabitants may be forced to leave their homes and seek assistance and protection abroad on a temporary or, in extreme cases of the land becoming uninhabitable, permanent basis.

[83] In all these scenarios, moving across an international border allows affected persons to escape immediate threats to their life and health in disaster situations, or access essential humanitarian protection and assistance not available in the country of origin. Thus, displaced persons are in need of international protection. While in such cases the individual situation of affected persons is in the foreground, States sometimes are also ready to admit or refrain from returning citizens of disaster-affected countries as an act of solidarity, for example when a disaster-affected country's authorities are so overwhelmed by the disaster that they cannot properly receive their nationals upon return.

2. Immigration discretion and its limits

[84] International law is silent as to whether and when a displaced person must be admitted by another State in the context of a sudden-onset or slow-onset disaster, and it does not specify what legal status they should have once admitted. Although international human rights law arguably protects disaster displaced persons against removal in situations when it would constitute inhuman treatment,⁴⁸ this principle does not address all displacement situations.⁴⁹ Similarly, human rights guarantees providing some protection for migrants do not include right to admission or continual stay in a foreign country.

[85] The power to regulate the travel, admission and stay of foreigners on their territory is an inherent right of every country and an attribute of its sovereignty. States can exercise this power with a broad degree of discretion. As such, it may be used negatively to block the entry of foreigners, or to deny or terminate their permission to stay. It may also be used positively to allow foreigners to enter or stay in the country. However, this discretion is not unlimited and must be exercised with respect for rules of international and national law that may constrain its use in particular circumstances.

[86] The flexibility inherent in immigration discretion allows governments to grant permission for disaster-affected foreigners to travel to, be admitted to and temporarily stay in the country. Positive use of immigration discretion in exceptional and compelling humanitarian cases thus forms an effective practice for resolving many of the challenges related to cross-border disaster displacement.

[87] Positive use of immigration discretion in favor of cross-border disaster-displaced persons may be exercised by legislators when they enact legal provisions specifically addressing the travel, admission and stay of such people. It may be exercised by immigration officials when the law allows, but does not oblige them to take positive decisions in individual cases, for instance on the basis of open-ended clauses referring to "humanitarian" reasons or "exceptional" cases or circumstances. In the absence of such provisions, an inherent discretionary power of immigration officials may be recognized by courts. Finally, authorities at the highest levels, such as presidents, prime ministers or ministers, may have the power to allow the admission and stay of such persons on an *ad hoc* basis.

[88] While decisions to admit disaster displaced persons are usually taken on an individual basis, under certain circumstances States may find it desirable to deal with affected persons on a *prima facie* 'class' or group basis rather than examining each individual application in detail. For instance, this may be the case when a mass influx of persons takes place and the disaster is particularly serious and large-scale.

[89] While States as a matter of sovereignty also have the right to exercise their discretion negatively and not allow the travel, admission and stay of disaster-affected persons, their

discretionary power is not without limits. Even though disaster displaced persons are not refugees as defined by international refugee law, save in very exceptional circumstances (see below paras. 114-117), States under certain circumstances would not be allowed to deny admission or forcibly return people to disaster-affected countries.

[90] International and regional human rights law prohibits any action resulting in the forcible return of a person to a disaster-affected country:

- 1) Where the effect would be to expose someone to an imminent and foreseeable disaster in that country that would pose a real risk to his/her life or safety; or
- 2) Where the effect would be to expose someone to living conditions that would pose a real risk to his/her life or safety as the result of a disaster in the disaster-affected country; or
- 3) Where the effect would be to put the life or safety of someone at a real risk because he/she is in need of urgent medical treatment for serious injuries or illness but adequate medical attention in the disaster-affected country is not available due to a disaster.

[91] When taking decisions on the travel, admission and stay of children, States must ensure that such decisions are consistent with the best interests of the child principle as provided for by Article 3 of the International Convention on the Rights of the Child by taking into account all relevant factors impacting on the situation of the child.⁵⁰ In particular, a child cannot be returned to a country if it is not in the child's best interest; and it is prohibited to send a child to a country where this involves a real risk of violating the fundamental rights of the child as set out in international law.⁵¹ In this regard, particular care must be exercised in the case of separated or unaccompanied children.⁵²

[92] Experience shows that disaster displaced persons are particularly at risk of being trafficked or exploited by organizations engaged in people-smuggling. Persons affected by disasters still benefit from any relevant protection under international or national laws relating to victims of these crimes.⁵³ While the law on trafficking and smuggling of persons does not establish far-reaching obligations relating to non-removal and stay, the fact that someone is a victim of such crimes may provide an additional 'humanitarian reason' justifying positive decisions regarding travel, admission and stay of disaster displaced persons.

[93] The fact that people arrive from a disaster-affected country does not exclude the possibility that they are a refugee as defined by relevant norms of international and domestic law, or entitled to "complementary" and similar protection under applicable law (below paras. 114-117). In such cases, any decision relating to them must be consistent with the *non-refoulement* protection afforded to such persons as a matter of legal obligation.⁵⁴ Ordinarily, such a person should be granted refugee status or complementary protection and also given stay on this basis for the period provided for by relevant national law.

3. Gaps

[94] While some countries possess legal provisions explicitly addressing humanitarian protection for disaster displaced persons, many States still lack laws and policies that would provide guidance if such persons arrived at their borders. Even in regions where relevant legal provisions are quite common, such approaches could benefit from a certain degree of harmonization to better facilitate regional cooperation in addressing disaster displacement.

4. Effective practices with regard to identifying the displaced

[95] Effective practices in establishing criteria to identify cross-border disaster-displaced persons in need of international protection include recognition of the following principles:

- *The direct and serious impact of the disaster on the individual is a key consideration. Someone may be considered a cross-border disaster-displaced person where he or she is seriously and personally affected by the disaster, particularly because*
 - i. *An imminent and foreseeable or on-going disaster in the country of origin pose a real risk to his/her life or safety;*
 - ii. *as a direct result of the disaster, the person has been wounded, lost family members, and/or lost his/her (means of) livelihood; and/or*
 - iii. *in the aftermath and as a direct result of the disaster, the person faces a real risk to his/her life or safety or very serious hardship in his/her country, in particular due to the fact that he/she cannot access needed humanitarian protection and assistance in that country,*
 - a) *because such protection and assistance is not available due to the fact that government capacity to respond is temporarily overwhelmed, and humanitarian access for international actors is not possible or seriously undermined, or*
 - b) *because factual or legal obstacles make it impossible for him/her to reach available protection and assistance.*
- *Assessing the seriousness of the disaster's impact depends not only on objective factors, such as the overall degree of destruction, but also on pre-existing individual vulnerabilities exacerbated by the disaster. For example, sick and wounded persons, children, particularly when orphaned or unaccompanied, women headed households, people with disabilities, older persons and members of indigenous communities are often among the most seriously affected survivors of disasters.*
- *Additional factors that may be relevant include other humanitarian elements, such as strong ties with family members in the country of destination, or considerations of solidarity with an affected country that is temporarily unable to adequately protect and assist all of its citizens due to the disaster.*
- *Strong contrary factors, including national security risks posed by the individual or his/her serious criminal character, may justify denying disaster displaced persons travel, admission and stay. However, such decisions require a careful balancing of the positive humanitarian reasons with the particular negative factors to determine which will prevail in the individual case.*

[96] Effective practices in ensuring that disaster displaced persons can receive permission to travel, be admitted and stay in the country of destination include the following:

- *Enshrining the criteria identified in paragraph 95 in domestic laws and policies.*
- *Explicitly designating and authorizing competent authorities to permit travel, admission and stay for disaster displaced persons in line with such criteria.*

- *Training competent authorities in responding to disaster displaced persons.*

[97] Effective practices in ensuring that immigration discretion is exercised in ways that are compatible with obligations under international law include the following:

- *Enshrining the guarantees and principles of international law on human rights, the rights of the child, trafficked and smuggled persons, and refugees outlined in paragraphs 89-95 above in domestic laws and policies.*
- *Training relevant authorities in applying these guarantees and principles.*

B. Preparedness

[98] State responsibility requires preparing for potential disaster displacement in circumstances when it cannot be avoided. Preparedness may take different forms, such as developing a policy on responding to cross-border disaster displacement, training border and immigration officials, or integrating cross-border displacement scenarios within national and regional disaster contingency planning exercises.

1. Gaps to Be Addressed

[99] Very few national and regional disaster contingency planning and response mechanisms acknowledge the potential for cross-border disaster displacement. Similarly, border and immigration countries in many countries are neither instructed nor trained on how to handle the arrival of people fleeing a disaster from a neighboring country or one further afield.

2. Effective practices with regard to preparedness

[100] Effective practices with regard to preparedness include the following:

- *Mapping historical cross-border movements in disaster contexts, and identifying areas or communities at risk of potential displacement in the future.*
- *Including cross-border displacement scenarios within bilateral or regional disaster contingency planning exercises.*
- *Reviewing existing legal frameworks at the regional and national level and, if relevant, harmonizing them, to receive people displaced across international borders in disaster contexts.*
- *To the extent that they do not exist or are inadequate, developing new normative frameworks or amending existing ones with clear criteria and procedures to identify people displaced as a consequence of a disaster (above paragraph 95) and permit their travel, admission and stay.*
- *Building the capacity of competent authorities to apply relevant normative frameworks properly.*

C. Travel

[101] Attempting to flee a country affected by a disaster can place people at risk. Even under normal circumstances, poor or irregular migrants in particular may be extremely vulnerable to violence, exploitation, abuse and other types of protection risks from traffickers, smugglers or criminal networks. By joining the overall migration flows, displaced persons are exposed to many of the same risks as other migrants. However, disasters can further exacerbate protection challenges if

disaster displaced persons find themselves forced to take additional risks to leave a dangerous situation.

1. Gaps to Be Addressed

[102] Travel visas for disaster-affected people are exceptional. Migration management tools and mechanisms could also potentially be adapted to differentiate disaster displaced persons from other migrants that, in turn, could help facilitate their movement.

2. Effective practices with regard to travel

[103] Effective practices with regard to travel include the following:

- *Granting visas that authorize travel and entry upon arrival for people from disaster-affected countries or temporarily suspending visa requirements.*
- *Activating way stations and other travel assistance in the event of mass displacement in disaster contexts.*

D. Admission and Stay

1. A multitude of possible tools⁵⁵

[104] In the absence of clear provisions in international law, some States, particularly in the Americas, selected regions in Africa and a few States in Europe, have developed a multitude of tools that allow them to admit disaster displaced persons on their territory. These tools are based on regular immigration law, exceptional immigration categories, or provisions related to the protection of refugees.

a. Regular migration categories

[105] A first tool consists of admitting disaster displaced persons on the basis of regular migration categories, for instance by allowing individuals from disaster-affected countries to request that the State prioritize or expedite the processing of their existing or new immigration applications; by waiving certain requirements or application fees; by using criteria on “humanitarian and compassionate” grounds; by granting a visa waiver for non-national residents to sponsor relatives from disaster-affected countries; or by expanding the use of pre-existing temporary work quotas to target people from disaster-affected areas. The use of regular migration categories to resolve appropriate cases is particularly advantageous since these categories usually provide foreigners affected by a disaster with a more stable humanitarian protection status than the often more temporary and precarious ‘exceptional’ migration categories.⁵⁶

b) Free movement of persons

[106] In some regions of the world, disaster displaced persons may be automatically admitted on the basis of pre-existing (sub-) regional or bilateral agreements on the free movement of persons. Because these movements do not require a specific authorization, they are often not officially recognized as facilitating the cross-border movement of displaced persons. However, disaster-affected persons have relied upon these agreements in the context of both sudden-onset and slow-onset disasters and environmental stress. In particular, pastoralists have used formal and informal arrangements that permit the cross-border movement of pastoralists during time of drought. However, even where they exist, free movement agreements do not always guarantee the entry of

disaster displaced persons. For example, some free movement agreements have documentation requirements that disaster displaced persons may not be able to meet, or agreements may contain suspension clauses in the case of a mass influx of people.

c. Exceptional migration measures

[107] A third tool to admit disaster displaced persons is granting them temporary entry and stay on an exceptional basis through humanitarian protection measures, the issuance of humanitarian visas or other exceptional migration measures.

[108] A small number of States⁵⁷ have developed specific legal measures to temporarily admit individual foreigners who cannot safely return to their home country or country of habitual residence because of the effects of an “environmental catastrophe,” “natural disaster” or “natural or man-made environmental disasters.”⁵⁸ Some of these laws grant national immigration authorities the discretionary authority to determine whether the measures will be activated, and are limited to certain categories of individuals.⁵⁹ Laws that are based on concepts of international protection for disaster-affected persons are non-discretionary, and are applied if an individual meets the criteria and there is not an internal flight option in the country of origin⁶⁰ or another ground for exclusion. Once admitted, some permit the ability to sponsor family members.

[109] Many States have used discretionary powers, which either explicitly or indirectly rely upon “humanitarian” grounds, to grant temporary entry and stay for individuals who are personally and seriously affected by a disaster. The wide variety of measures include: granting one-year multiple entry “humanitarian visas” issuing longer-term temporary residence permits for “humanitarian reasons” and waiving normal visa requirements for disaster-affected people with connections to the hosting country.

[110] In limited cases, people have been evacuated across international borders in the context of sudden-onset disasters,⁶¹ a measure largely used for people who needed urgent medical assistance and their accompanying caregivers.

[111] While exceptional migration measures are often granted on an individual basis, a number of States have developed exceptional measures to respond to a group or “mass influx” of people who have been displaced for a variety of reasons and cannot return to their country of origin.⁶² In other disaster situations, migration officials have exercised their discretionary authority to exceptionally permit groups of displaced persons fleeing disasters based upon humanitarian and solidarity principles.⁶³

[112] Regional and national measures for a mass influx of individuals grant different forms of “temporary protection” that authorizes the entry of the group of foreigners for a limited period of time.⁶⁴

d. Pastoralist Transhumance Arrangements

[113] Recognizing the need for pastoralists to move in times of drought and environmental stress to access water and grazing lands for the survival of their livestock, some African States have developed bilateral, multilateral or (sub-) regional agreements that permit or facilitate movement along traditional routes across international borders (ECOWAS, CEMAC⁶⁵). Such arrangements may

include the provision of certificates or other supplemental documentation to ensure that those crossing a border are able to bring property, such as vehicles and animals.

e. Refugee law and similar protection under human rights law

[114] In general, international refugee law does not apply to displaced persons seeking to cross an international border to flee a disaster caused by natural hazards. However, in exceptional cases, it might be appropriate or even mandatory to use concepts of refugee law and similar protection under human rights law as enshrined in regional or domestic law.

[115] Even if a disaster does not in itself constitute a ground for refugee status, its effects may create international protection concerns by generating violence and persecution, for instance where a collapse of governmental authority triggered by the disaster leads to violence and unrest,⁶⁶ or where a government uses a disaster as pretext to persecute its opponents.⁶⁷ This makes it necessary for competent authorities to carefully scrutinize cases from an affected country with a view to assessing if refugee status or similar protection under human rights law is required due to any such negative consequences of the disaster.

[116] Wider notions of who is a refugee as enshrined in regional instruments may also justify the application of refugee law. In the case of the 2011-2012 droughts in the Horn of Africa, States in the region applied the 1969 AU Refugee Convention's expanded definition of a refugee for people fleeing Somalia. This determination was based upon recognition that the famine threatened their lives, domestic authorities able to help them did not exist, and the ongoing conflict and violence greatly hindered international organizations' capacity to protect and assist Somalis during the famine. Consequently the situation was considered an event "seriously disturbing public order in either part or the whole" of the country that "compelled" people to seek refuge abroad.⁶⁸

[117] Measures potentially available under the framework of "complementary protection" or other protection under human rights law could also prohibit return for individuals likely to face harm upon return to their country of origin in the context of a disaster. Such measures were generally developed to address "refugee-like" situations of people fleeing violence or civil unrest that did not fall within the 1951 Refugee Convention,⁶⁹ with some temporary protection measures administered by national refugee authorities.⁷⁰ However while many of these measures potentially apply in other unforeseen scenarios, including disaster situations, to date they have not explicitly been used in practice for this purpose.

2. Gaps to Be Addressed

[118] Existing mechanisms at the national level are largely unpredictable, because they generally rely upon the discretionary power of migration officials as opposed to a legal obligation to admit or permit the stay of disaster displaced persons. There is also little if any coordination or harmonization of such measures at the regional level. It remains unclear to what extent regional instruments such as the 1969 African Refugee Convention or the 2001 EU Temporary Protection Directive are applicable for cross-border disaster-displacement. The unpredictable nature of existing measures results in uncertainty about when disaster displaced persons will be admitted, and potentially creates a pull factor to States with the most generous protection measures.

[119] Ensuring that displaced persons can access protection in another country in the context of disasters demands international collaboration and cooperation, since national authorities cannot

always find solutions on their own. Because most cross-border disaster displacement occurs within regions, there is an interest for States to harmonize their use of national migration mechanisms to permit the entry and stay of displaced persons in disaster contexts.

3. Effective practices with regard to admission and stay

[120] Effective practices with regard to admission and stay include the following:

- *Prioritizing and expediting the processing of regular migration categories for foreigners from affected countries following a disaster o, waiving certain admission requirements for such categories.*
- *Using regular (sub-) regional or bilateral free movement schemes to permit the temporary entry and stay of displaced persons in disaster contexts and ensuring that persons who do not possess the required documentation, are temporarily allowed to cross borders in disaster situations.*
- *Granting temporary entry and stay for displaced persons in the context of disasters, such as through humanitarian protection measures, the issuance of humanitarian visas or other exceptional migration measures.*
- *Granting temporary entry and stay for a group or “mass influx” of displaced persons in the context of disasters, such as through temporary protection measures.*
- *Developing transhumance agreements to facilitate the cross-border movement of pastoralists and their livestock in the event of disasters such as drought that endanger the health and lives of humans and animals alike.*
- *Carefully scrutinizing asylum applications of persons displaced from a disaster-affected country to assess if refugee status or similar protection under human rights law is required due to the negative consequences of the disaster. Granting refugee status to displaced persons in disaster contexts who meet the relevant criteria under international, regional, or national refugee law.*
- *Reviewing and harmonizing existing temporary protection measures at sub-regional and regional levels.*
- *Clarifying at sub-regional and regional levels, where relevant, whether regional instruments on refugee and similar protection under human rights law can and should be interpreted as applying to disaster related cross-border displacement.*

E. Status during Stay

[121] When disaster displaced persons receive the right to enter a new country, on either a temporary or longer-term basis, it is important to clarify their rights and responsibilities for the duration of their stay, taking into account the capacity of receiving States and host communities. Clarifying and setting out the rights of people benefiting from a temporary residency status not only ensures respect for their rights and basic needs, but also helps avert the risk of secondary movements and the potential that people will be forced to move again.

1. Gaps to Be Addressed

[122] State responsibility requires States to ensure respect for the human rights of persons who have been permitted entry to their territory. For disaster displaced persons, key protection concerns

include: the right to personal integrity, family unity, food, health, shelter or adequate housing, access to livelihood opportunities, education and respect for their culture and language. Measures should also guard against trafficking and exploitation, particularly of women and children, and potential *de facto* statelessness. Ideally, protection measures should account for the fact that people's needs may change over time, particularly if the displacement lasts an extended period of time. Finally, the specific needs of host communities should also be recognized and addressed.

[123] Temporary admission measures that rely on *ad hoc* discretionary powers may lack details regarding the rights that accompany the status. State cooperation to delineate and agree upon such rights in advance of a cross-border movement would be ideal. Consulates of disaster-affected countries could also offer support services for their nationals abroad, such as providing information on cultural integration, or assistance with filling out identity card and permit applications for the hosting country.

2. Effective practices with regard to status during stay

[124] Effective practices regarding the status of admitted disaster displaced persons during their stay include the following:

- *Ensuring that those admitted on a temporary basis enjoy full respect of their human rights and have access to assistance that meets their basic needs, including: shelter, food, medical care, education, livelihoods, security, family unity, and respect for social and cultural rights.*
- *Ensuring that information about rights and responsibilities associated with humanitarian protection measures is provided to the displaced person in a language and manner they are likely to understand.*

II. Protection from Return of Foreigners Abroad at the Time of a Disaster

[125] Citizens of a disaster-affected country may be abroad when the disaster hits. Return of these foreigners in the post-disaster phase could be problematic for a number of reasons. First, it may place their lives and health at risk. Second, government authorities in the disaster-affected country may temporarily lack the capacity to receive their own citizens due to the impacts of the disaster. Consequently, under certain circumstances such persons may be considered cross-border disaster-displaced persons *sur place*.⁷¹ Even if these reasons do not apply, migrants abroad may be able to effectively support the relief and recovery efforts by sending back remittances to support family members in disaster-affected areas.

[126] Temporary measures for foreigners already abroad not only protect affected persons from premature return but are also a measure of solidarity with a disaster-affected State.

A. Gaps to Be Addressed

[127] While many countries refrain from returning foreigners to their countries of origin when their country has been gravely affected by a disaster, such measures are often neither foreseen in law nor used in a consistent manner.

B. Effective Practices with Regard to Non-return of Foreigners

[128] Effective practices with regard to the non-return of foreigners abroad at the time of a disaster in their country of origin include:

- *Providing such persons with humanitarian protection measures such as extending or changing their existing status on humanitarian grounds, suspending their deportation, or granting them a temporary protection status if:*
 - *they would experience extreme hardship as a consequence of the disaster in case of return to the country of origin; or*
 - *their country of origin has declared a disaster and is temporarily unable to cope with the return of its citizens for reasons related to the disaster.*
- *Providing eligible persons with information accessible to them on the possibility to receive such temporary humanitarian protection.*

III. Transition to Durable Solutions for Cross-Border Disaster-Displaced Persons

[129] States have the primary responsibility to find a durable solution for their displaced citizens or habitual residents. A comprehensive approach to finding solutions to displacement that allows displaced persons to rebuild their lives in sustainable ways requires accurate information about their needs, and mechanisms to ensure effective consultation and participation by the displaced. A comprehensive approach must also include measures for adequate housing, access to basic services and education, and the restoration of livelihoods.⁷²

[130] The preferred solution to end cross-border disaster-displacement is voluntary return with sustainable re-integration at the place where displaced persons lived before the disaster. When return is not possible, in particular when the area concerned is no longer habitable or too exposed to the risk of recurrent disasters, an alternative way to end cross-border disaster-displacement includes return to the country of origin followed by planned relocation to a new place of residence within the country. As a last resort in exceptional circumstances when other alternatives are not available, finding a durable solution may mean facilitating permanent admission in the country of refuge.

A. Gaps to Be Adressed

[131] Absent improved resilience to future disasters and environmental stress, returnees may continue to be at a high risk of repeated crises and recurrent displacement. Slow or inefficient recovery and reconstruction efforts, often hindered by the challenge of finding alternative relocation sites, resolving land tenure issues, or financing construction with higher building standards to withstand future disasters, can delay return for months or years. It is also often difficult to successfully restart and provide support for the development of diversified livelihood opportunities as quickly as possible to support self-reliance.

[132] International support for recovery and reconstruction allowing disaster displaced persons to find durable solutions is often insufficient or ineffective due to a lack of coordination between humanitarian and development actors and their respective donors.

B. Effective Practices for the Transition to Durable Solutions

[133] Effective practices for the transition to durable solutions for cross-border disaster-displaced persons include the following:

- *Ensuring information of, consultation with and participation by affected individuals and communities in finding durable solutions.*

- *Developing inter-governmental mechanisms to determine when return from abroad in disaster contexts is permissible and how to facilitate the return, including necessary exit procedures and travel home.*
- *Allowing cross-border disaster-displaced persons to apply for renewed or permanent admission, or resettlement to a third country when conditions causing the displacement persist for an extended period of time.*
- *Developing measures to sustain cultural and familial ties when return to the country of origin is not possible.*

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PART FIVE: PROTECTING FOREIGNERS CAUGHT UP IN A DISASTER-AFFECTED COUNTRY

[134] In the event of a disaster striking a country or a region as a whole, the nature of on-going migration means that with all likelihood there will be foreigners within a country at the time of a disaster who may be directly or indirectly affected by the event and potentially in need of humanitarian assistance and protection. These may be migrants in transit, migrants temporarily or permanently present in the country on a regular or irregular basis, or tourists and visitors.

[135] Migrants residing in or transiting through a country when a disaster strikes may face specific protection concerns related to receiving emergency humanitarian assistance, accessing consular services, negotiating a release from employment, and facilitating departure and safe passage, noting that such risks are heightened for irregular migrants. Undocumented irregular migrants who have been abroad for extended period of time may also lack the necessary documents to prove citizenship in their native country, placing them in a legal limbo. Migrants may face a heightened risk of arrest or deportation due to lack of documentation that was lost or destroyed in the disaster or during flight.

[136] The foreigners' countries of origin may also face considerable challenges locating their citizens abroad, providing consular services, and organizing orderly and safe repatriation for their citizens in times of disaster. This is particularly true for irregular migrants, migrants in transit, and tourists or visitors who are not registered with their consulate, as well as citizens from countries with no consular representation.

A. Gaps to Be Addressed

[137] Migrant communities and their specific needs are not always included within emergency disaster response plans. National disaster relief laws may not provide for the provision of humanitarian assistance for all people during the immediate phase following the disaster, regardless of their legal status in the country. Migrants with an irregular status may fear deportation or arrest when approaching officials to receive humanitarian assistance, or may lack necessary identity cards required to register for assistance. Finally, longer-term recovery and reconstruction assistance may only include provisions for nationals.

[138] While States affected by a disaster are responsible, albeit to different degrees, for everyone on their territory by virtue of their territorial sovereignty, countries whose citizens are caught up in a disaster situation abroad also have the right and duty to provide consular protection to their citizens. However, this can be particularly difficult if the country of origin does not have a consular presence in the disaster-affected country or lacks an agreement with another country that could substitute for them. Countries of origin may also not have the means and resources to provide effective consular services, including the ability to repatriate citizens who want to return.

[139] Presently, the Migrants in Countries in Crisis (MICIC) initiative, a State-led undertaking, seeks to strengthen the ability of States and other stakeholders to better respond to situations where migrants end up in a vulnerable situation because the country in which they find themselves is in an acute crisis due to a disaster or conflict.⁷³ The ultimate goal of MICIC is to develop a set of voluntary guidelines, principles and best practices, as well as delineate roles and responsibilities, to assist States, international organizations, and other relevant stakeholders.

B. Effective Practices for Protecting Foreigners Caught Up in a Disaster-Affected Country

[140] Effective practices for disaster-affected countries who have foreigners on their territory during the disaster include the following:

- *Reviewing existing national disaster management laws and policies to ensure that disaster preparedness, response and recovery plans include measures to respond to the protection and assistance needs of foreigners, regardless of their legal status, and provide the same emergency assistance and protection as provided to citizens, without discrimination of any kind and with full respect for foreign migrants' human rights.*
- *Ensuring that foreigners in an irregular situation can access emergency protection and assistance without fear of being reported to immigration authorities.*
- *Facilitating access to consular services for foreigners on their territory, as well as facilitating their departure if they wish to repatriate.*
- *Temporarily refraining from enforcing immigration laws in areas directly affected by the disaster and areas where survivors of the disaster find refuge.*
- *Temporarily refraining from requirements enshrined in immigration laws that foreigners cannot fulfill due to the disaster, for instance because they lost necessary documents, no longer possess the resources to pay necessary fees and taxes, or are no longer employed.*
- *Ensuring that foreigners affected by the disaster, as well as their consulates and embassies, are adequately informed of any measures taken in their favor.*
- *Ratifying and implementing relevant international and regional legal frameworks that protect migrants abroad, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.*

[141] Effective practices for countries of origin whose citizens are in a disaster-affected country include the following:

- *Developing national policies to prepare for and respond to the needs of citizens abroad in disaster contexts.*
- *Establishing bilateral and (sub-)regional arrangements or standard operating procedures to address the needs of persons caught up abroad in disasters, including issues such as cooperation in the provision of consular services to them and facilitating safe repatriation.*
- *Registering all citizens abroad so that they can be easily identified in the case of a disaster and informing them on the services provided by consulates in case of disasters, including how to access them.*
- *Strengthening consular staff in disaster-affected countries with persons specialized in emergency response.*
- *Providing services such as emergency numbers accessible for disaster-affected citizens and their families back home; locating citizens that cannot be contacted by their families; providing emergency funding; negotiating release from employment contracts where necessary; and facilitating voluntary, orderly, prompt and safe repatriation of citizens.*

PART SIX: THE WAY AHEAD

[142] The Nansen Initiative consultative process has concluded that cross-border disaster-displacement requires enhanced action at the national, (sub-) regional and international level. The Nansen Initiative has contributed to framing and conceptualizing the needs and challenges associated with cross-border disaster-displacement. It has generated knowledge and examples of existing practices, and has also made strides in supporting the integration of the issue within ongoing, relevant international and (sub-) regional processes and frameworks. However, much more needs to be done now and in the future to achieve a comprehensive response to cross-border disaster-displacement that addresses the key knowledge, legal, institutional, operational and financial gaps. Such action will be important for generating wider and more systematic application of the numerous effective practices currently used by States and other actors.

[143] Because the Nansen Initiative is an informal consultative process, the identified priority areas for future action and proposed options for developing an international institutional arrangement for the issue of cross-border disaster-displacement presented in the Protection Agenda are meant to provide orientation and suggestions for future discussions on the topic within formal political structures.

I. Priority Areas for Future Action

[144] The Nansen Initiative consultative process concluded that further action was required to address cross-border disaster-displacement at national, regional, and international levels within four key thematic areas: 1) disaster risk reduction and climate change adaptation; 2) migration management; 3) planned relocation; and 4) protection for displaced persons. Based upon these conclusions, this section sets out four priority areas for future action, identifying key activities under each, as well as institutional actors with expertise and operational experience relevant for carrying out the tasks. Recognizing that the displacement dynamics and appropriate responses will vary from region to region, the roles of regional and (sub-) regional organizations are highlighted as particularly important for developing future responses to address disaster displacement and other forms of disaster and climate change related human mobility.

[145] Under each priority area presented below, specific needs for additional knowledge are highlighted. Examples of relevant ongoing international and regional processes to which the findings and effective practices from the Protection Agenda could contribute are also identified. An internal review process by all relevant actors for each priority area is also recommended.

A. Integrate Human Mobility within Disaster Risk Reduction and Climate Change Adaptation Strategies

[146] Disaster risk reduction (DRR) can play a central role in preventing or mitigating the impacts of disaster displacement, as recognized within the Sendai Framework for Disaster Risk Reduction 2015-2030. Climate change adaptation strategies can also help avoid displacement by building up the resilience of people living in areas facing natural hazards, environmental degradation, or the effects of climate change. Relatedly, development strategies that integrate DRR and climate change adaptation measures are also critical for addressing disaster displacement and other forms of

disaster related human mobility. Despite such recognition, States and other actors consistently noted the need for additional research, technical support, and capacity building to ensure that human mobility considerations are fully and appropriately reflected within DRR and climate change adaptation related laws, policies, strategies, and operational activities.

[147] Drawing from the Outcomes of the Nansen Initiative Regional Consultations and wider consultative process, the following key actions are suggested:

- Develop guidance, and provide technical and capacity building support to national and regional authorities to implement the Sendai Framework on Disaster Risk Reductions' relevant priorities for action related to displacement and other forms of human mobility (UNISDR, IOM, UN OCHA, UNDP, World Bank);
- Develop guidance, and provide technical and capacity building support the inclusion of human mobility considerations within national and regional climate change adaptation strategies and policies, including National Adaptation Plans developed within the UNFCCC process (UNFCCC Secretariat, IOM, UNDP);
- Ensure that access to funding is secured and facilitated to finance human mobility related measures within national and regional climate change adaptation plans (UNFCCC negotiations and institutions, UNDP, World Bank).

[148] Examples of relevant frameworks and processes at the global and regional level include, but are not limited to, the following:

- Implementation of the Sendai Framework for Disaster Risk Reduction (March 2015);
- UN Framework Convention on Climate Change process on adaptation;
- Post-2015 Development Agenda (September 2015);
- IGAD Drought Disaster Resilience and Sustainability Initiative;
- Adoption and implementation of the Strategy for Climate and Disaster Resilient Development in the Pacific (2014/15).

[149] Additional knowledge is required in the following areas:

- How to identify those at risk of being displaced in disaster contexts, including across international borders;
- How to better model and overlay climate change scenarios with disaster risk assessments in order to project displacement risks.

B. Promote Migration as a Potentially Positive Form of Adaptation

[150] If well supported and managed, migration has the potential to help people living in areas subject to deteriorating environmental changes to avoid situations that otherwise may result in a humanitarian crisis and displacement in the future. However, additional research, guidance, and operational support are necessary to make the most of this potential within climate change and development policies, strategies and initiatives. Part of making migration a positive form of adaptation to the effects of natural hazards and environmental degradation includes addressing the specific protection needs of mobile populations, and the safety and security of migrants, including when they are caught up in a disaster situation abroad.

[151] Drawing from the Outcomes of the Nansen Initiative Regional Consultations and wider consultative process, the following key actions are suggested:

- States and regional organizations to review existing regional, sub-regional and bi-lateral free movement of persons agreements to determine to what extent they do or could better facilitate migration as an adaptation measure;
- Provide technical and capacity building support to national authorities to review, adapt or develop national legislation to facilitate migration as adaptation, such as through seasonal worker programmes (IOM, ILO, UNDP);
- Support States and (sub-) regional organizations in developing and implementing bilateral or (sub-) regional agreements facilitating temporary, circular or permanent migration for people from areas particularly affected by disasters and the effects of climate change (IOM, ILO, regional economic commissions);
- Undertake capacity building programs for migrants from areas exposed to environmental degradation or cyclical natural hazards (IOM, ILO, UNDP).

[152] Examples of relevant frameworks and processes at the global and regional level include, but are not limited to, the following:

- Global Forum on Migration and Development (GFMD);
- Regional consultative processes on migration (RCPs);
- Migrants in Countries in Crisis (MICIC) Initiative;
- IOM: Migration, Environment and Climate Change: Evidence for Policy Project (MECLEP).
- UNESCAP/ILO/UNDP: Pacific Climate Change and Migration Project.

[153] Additional knowledge is required in the following areas:

- Determining to what extent people already rely on migration as an adaptation strategy, and what lessons can be learned for improving the benefits and addressing protection risks.

C. Improving the Use of Planned Relocation as Preventative or Responsive Measure to Disaster Risk and Displacement

[154] The planned relocation of people living in areas prone to natural hazards, either before or after a disaster has occurred, is increasingly recognized as a potentially positive measure to move those at risk of death, injury or displacement. However, because of the many negative effects associated with past relocation processes, planned relocation is generally considered a last resort after all other options have failed and community resilience has significantly eroded. Additional guidance and technical support is required to support authorities on the potential use of planned relocation, and in particular about how manage processes in ways that include affected communities throughout the process in full respect of their rights.

[155] Drawing from the Outcomes of the Nansen Initiative Regional Consultations and wider consultative process, the following key actions are suggested:

- Develop operational guidance and technical support regarding the implementation of disaster and climate change-related planned relocation process that respects people's rights (World Bank, UNDP, UNHCR);

- Provide technical advice and operational support to national and local authorities seeking to use planned relocation within climate change adaptation or disaster risk reduction strategies and plans (UNDP, World Bank, UNISDR, UNFCCC Secretariat);
- Integrating the possibility of planned relocation within disaster response strategies (UNOCHA, IOM, UNDP).

[156] Examples of relevant frameworks and processes at the global and regional level include, but are not limited to, the following:

- Implementation of the Sendai Framework for Disaster Risk Reduction (March 2015);
- UN Framework Convention on Climate Change process on adaptation;
- IASC Global Cluster System (Camp Coordination and Camp Management, Protection, and Early Recovery Clusters);
- UNHCR/Brookings Institution/Georgetown University: Planned Relocation, Disasters and Climate Change Project.

[157] Additional knowledge is required in the following areas:

- Collection, analysis and evaluation of effective practices for planned relocation processes in the context of disasters and environmental degradation.

D. Ensuring Protection and Assistance for Disaster Displaced Persons

[158] While some countries possess legal provisions explicitly addressing humanitarian protection for disaster displaced persons, many States still lack laws and policies that would provide guidance and a predictable response if such persons arrived at their borders. Even in regions where relevant legal provisions exist, such approaches could benefit from further harmonization to better facilitate regional cooperation in addressing disaster displacement. Since most disaster related displacement takes place within countries, the protection of internally displaced persons (IDPs) is also important. Improved predictability and accountability for protection and assistance for disaster displaced persons, including finding durable solutions, are also essential components for developing a comprehensive response.

[159] Drawing from the Outcomes of the Nansen Initiative Regional Consultations and wider consultative process, the following key actions are suggested:

- Review domestic legislation to determine to what extent existing laws allow for the temporary admission and stay or non-return for cross-border disaster-displaced persons, including finding durable solutions;
- Undertake reviews of humanitarian protection mechanisms with a view to develop and harmonize such mechanisms at the regional level (UNHCR, IOM);
- Provide technical and capacity building support for authorities wishing to develop national or regional humanitarian protection mechanisms (UNHCR, IOM);
- Review existing national and regional disaster response mechanisms and their incorporation of disaster displacement (UN OCHA, UNISDR, UNHCR, IOM);
- Review institutional mandates at the country level within the IASC Cluster Approach regarding leadership for the protection of disaster displaced persons, including finding durable solutions, to ensure greater predictability and accountability (UN OCHA, UNHCR, OHCHR, UNICEF, UNDP);

- Ensure that funding mechanisms for durable solutions to displacement can be activated already during the humanitarian response (UNDP, UN HABITAT, UNHCR).

[160] Examples of relevant frameworks and processes at the global and regional level include, but are not limited to, the following:

- World Humanitarian Summit (Istanbul, March 2016);
- Inter-Agency Standing Committee Transformative Agenda;
- Human Rights Council discussions on human rights and the environment;
- International Law Commission: Protection of Persons in the Event of Disasters;
- Regional Conference on Migration's (Puebla Process) review of humanitarian protection measures;
- Implementation of the Brazil Declaration and Plan of Action (Brasilia, December 2014).

[161] Additional knowledge is required in the following areas:

- Further development of systems to collect and analyze the number of people displaced in disaster contexts, both internally and across international borders (IDMC, JIPS, UN OCHA, UNHCR, IOM);
- Analysis about the effectiveness of existing humanitarian protection mechanisms in responding to the protection needs of cross-border disaster-displaced persons (UN OCHA, UNHCR, IOM).

[162] In preparation for future action in these four priority areas, it is recommended that States and (sub-) regional organizations, as well as relevant UN agencies and international organizations, conduct an internal review to identify their potential contributions to developing a comprehensive response to cross-border disaster-displacement and other forms of disaster- and climate change-related human mobility in line with the effective practices identified in this Protection Agenda. Such a process could include a survey of, as relevant, i) existing tools, knowledge and expertise, ii) operational experience and capacity, and iii) examples of existing legal frameworks, policies, and practices. It could also include a gap analysis to identify areas requiring further development and financial support.

II. Establishing an International Institutional Arrangement

[163] In addition to States, the Nansen Initiative consultative process identified numerous actors that are either already explicitly responding to the challenge of cross-border disaster-displacement, or whose ongoing mandate or activities are recognized as essential components to the development of a comprehensive response. As extensive as these are, the multiplicity of actors and the unpredictable or uneven nature of the operational responses contributed to the conclusion that the current legal frameworks, institutional and funding arrangements, and operational responses are insufficient to meet the challenges ahead, particularly in light of climate change and disaster risk projections.

[164] Participants in the process recognized the need for a catalyst to generate greater attention and urgency to the topic of cross-border disaster-displacement. While a significant number of activities are taking place, they are not implemented systematically in all affected regions nor is there

clarity on institutional accountability and leadership. Thus, the need to better coordinate these diverse set of actions under an overall strategic vision and objective was further noted. Finally, even with improved collaboration and coordination of existing activities, the Nansen Initiative process concluded that despite developed practices in some regions of the world, a significant legal gap remains for displaced persons seeking to cross international borders in disaster contexts. Addressing this legal gap does not currently fit within any one of the international institution's mandates. Future steps need to be taken to further develop strategic objectives, improve coordination, and address legal challenges related to cross-border disaster-displacement.

[165] An important first step for future action will be to start the development of an institutional arrangement, including within and in coordination with the United Nations, for the topic of cross-border disaster-displacement and other forms of disaster and climate change-related human mobility. Once the Nansen Initiative concludes at the end of 2015, an intermediate and transitional arrangement may be put in place to carry the immediate work forward and support the implementation of the Protection Agenda.

[166] The future institutional arrangement will ideally build upon existing structures and mechanisms, rather than create new ones, to avoid duplication. At the same time, in view of existing institutional gaps, it could function as a stand-alone, but lean arrangement with the capacity to act as a catalyst for sustained action on cross-border disaster-displacement. Finally, the arrangement would need to reflect the cross-cutting, multi-causal nature of cross-border disaster-displacement, and the fact that a comprehensive response requires engagement in a diverse set of areas, including humanitarian action, human rights protection, migration management, disaster risk reduction, climate change adaptation, refugee protection, and development.

[167] Key functions of the arrangement would include:

- Providing institutional leadership and a focal point to advocate for a sustained focus on cross-border disaster-displacement and other forms of disaster and climate change-related human mobility;
- Providing a forum for continued action, coordination and integration of the topic within relevant ongoing international and (sub-) regional processes;
- Supporting the implementation of the Protection Agenda;
- Further developing the Protection Agenda's examples of good practices responding to cross-border disaster-displacement and other forms of disaster- and climate change-related human mobility with practical and operational guidance;
- Providing technical and training support to States, (sub-) regional organizations, international organizations and other key actors seeking to incorporate the issue of cross-border disaster-displacement and other forms of disaster- and climate change-related human mobility within relevant laws, policies or operational responses, such as,
 - a. Harmonizing migration and humanitarian protection mechanisms
 - b. Reviewing and/or revising disaster risk reduction and climate change adaptation strategies to include human mobility considerations, and other relevant policy areas, such as food security and education
 - c. Strengthening protection frameworks for internally displaced persons.
- Consolidating and supporting the generation of new tools, information and analysis on cross-border disaster-displacement, such as,

- a. Commissioning new research, and collecting data on disaster-displacement
- b. Supporting emergency and post-disaster needs assessments
- c. Developing trans-boundary disaster risk scenarios.
- Advocating for the need to strengthen, revise or expand existing financial mechanisms to support a comprehensive response to cross-border disaster-displacement and other forms of disaster- and climate change-related human mobility, including prevention and finding durable solutions.

[168] An international institutional arrangement could take various forms or configurations. Potential options include:

1. Improved **IOM and UNHCR collaboration** building upon the two organizations' respective areas of expertise.
2. An **inter-agency coordination mechanism**, with a rotating chair and supported by a small secretariat, with participation by multiple agencies including, but not limited to, UNHCR, IOM, UN OCHA, UNISDR, UNDP, UNFCCC Secretariat, UNICEF, and OHCHR.
3. A **Joint Support Unit** in the form of an inter-agency secretariat comprised of representatives seconded from relevant agencies, and housed within the UN Secretariat or one of the agencies.
4. An institutional arrangement **inspired by other inter-agency processes** that have developed stand-alone technical and operational capacity, and possess a governing structure comprised of States and/or international organizations.

[169] To complement the more technical and operational work of the international institutional arrangement, it may also be useful to designate a senior level individual or "champion" for the issue of cross-border disaster-displacement to ensure the issue maintains a high profile, is promoted among States, and is adequately addressed and coordinated across relevant parts of the United Nations. Potential options for such a role include:

1. Using the **Special Procedure of the Human Rights Council** to create a new Special Rapporteur on the Human Rights of Cross-Border Disaster-Displaced Persons, develop a "joint programme of work" amongst current mandate-holders, or extend a Special Rapporteur's existing mandate to include cross-border disaster-displacement.
2. Establishing the position of a **Special Representative** or a **Special Advisor to the Secretary-General** on cross-border disaster-displacement.

[170] To support the international institutional arrangement, interested States may form an **inter-governmental support group** to provide additional political attention and a forum for continued dialogue on the issue of cross-border disaster displacement. In the absence of, or as an alternative to the designation of a senior level individual within the United Nations, States could decide to designate a senior official as **representative** of the group to carry out advocacy and generate sustained attention on cross-border disaster displacement at the political level.

ANNEXES

ANNEX I: Nansen Initiative Definitions

This Annex lists definitions of key terms used in the Protection Agenda.

ANNEX II: Regional Dynamics of Disaster Related Human Mobility

This Annex summarizes information on disaster- and climate change-related human mobility in different regions of the world gathered by the Nansen Initiative in the course of its consultations and meetings and reflecting research commissioned by it.

ANNEX III: State Practice Regarding Admission, Stay and Non-return of Disaster-affected Persons

This Annex summarizes information on State practice on the use of immigration law to admit, allow stay of, and suspend deportation/return of disaster-affected foreigners.

Endnotes

[The endnotes are provisional only and will be complemented in the final version of this Agenda]

¹ Internal Displacement Monitoring Centre (IDMC), “Global Estimates 2013: People Displaced by Disasters,” September 2014.

² The Protection Agenda does not use the notion of “climate refugee” as it also addresses protection and assistance of persons displaced in the context of geo-physical disasters. Furthermore, the fact that the present stage of science does not allow to establish a direct causal link between general global warming and a specific extreme weather event as well as the multi-causal nature of displacement creates caution against the use of this term.

³ IPCC, “Summary for Policymakers: Climate Change 2014: Impacts, Adaptation and Vulnerability.” Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press: 2014, p. 20.

⁴ See, e.g., id., pp. 17 and 20.

⁵ The Steering Group is comprised of nine Member States: Australia, Bangladesh, Costa Rica, Germany, Kenya, Mexico, Norway, the Philippines, and Switzerland, and complemented by IOM and UNHCR as standing invitees. The Steering Group is joined by the European Union and Morocco in their capacity as co-chairs of the Group of Friends.

⁶ Paragraph 14(f) invites States to enhance their action on adaptation including by “[m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.” Outcome of the Ad-hoc Working Group on Long-term Cooperative Action under the Convention, Cancún, December 2009.

⁷ Nansen Conference on Climate Change and Displacement in the 21st Century held in Oslo on 5-7 June 2011. Nansen Principle IX calls for a “more coherent and consistent approach at the international level [...] to meet the protection needs of people displaced externally owing to sudden-onset disasters.”

⁸ During a Ministerial Meeting of UN Member States facilitated by UNHCR in December 2011, Norway and Switzerland made the following statement: “A more coherent and consistent approach at the international level is needed to meet the protection needs of people displaced externally owing to sudden-onset disasters, including where climate change plays a role. We therefore pledge to cooperate with interested states, UNHCR and other relevant actors with the aim of obtaining a better understanding of such cross border movements at relevant regional and sub-regional levels, identifying best practices and developing consensus on how best to assist and protect the affected people.”

⁹ Internal Displacement Monitoring Centre (IDMC), “Global Estimates 2013: People Displaced by Disasters,” September 2014.

¹⁰ An estimated 290,000 Somalis were estimated to have fled abroad during the Horn of Africa drought crisis in 2011-2012. As of 1 March 2015, only small numbers of Somalis had been recorded as returning under the UN pilot program for safe returns. For example, after two years the overall 477,424 registered Somali refugee numbers in 2013 in Kenya fell by only 53,117, indicating that most drought-affected refugees remain in camps. See UNHCR, “Refugees in the Horn of Africa: Somali Displacement Crisis”, <<http://data.unhcr.org/horn-of-africa/regional.php>> and Kenya Somali Refugees, UNHCR update factsheet 29 January 2014, <data.unhcr.org/horn-of-africa/download.php?id=1295>.

¹¹ Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012, Decision 3/CP.18, Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity, FCCC/CP/2012/8/Add.1.

¹² Framework on Disaster Risk Reduction 2015 – 2030, adopted by the Third World Conference on Disaster Risk Reduction in Sendai/Japan on 18 March 2015 (UN Doc. A/CONF.224/CRP.1).

¹³ Brazil Declaration, “A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean”, Brasilia, 3 December 2014.

¹⁴ African Union Convention for the Protection and Assistance for Internally Displaced Persons in Africa, 2009.

¹⁵ “Terminology,” UN Office for Disaster Risk Reduction (UNISDR). According to UNISDR, “Disasters are often described as a result of the combination of: the exposure to a hazard; the conditions of vulnerability that are present; and insufficient capacity or measures to reduce or cope with the potential negative consequences. Disaster impacts may include loss of life, injury, disease and other negative effects on human physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption and environmental degradation.” See <http://www.unisdr.org/we/inform/terminology#letter-d>

¹⁶ According to the Guiding Principles on Internal Displacement, “internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.” (UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998).

¹⁷ IASC, *Handbook for the Protection of Internally Displaced Persons*, Global Protection Cluster Working Group, March 2010, p. 7.

¹⁸ Ibid, p. 7

¹⁹ UNISDR, Terminology, <<http://www.unisdr.org/we/inform/terminology#letter-r>>

²⁰ IPCC, 2014: Annex II: Glossary [Mach, K.J., S. Planton and C. von Stechow (eds.)]. In: *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, p. 118.

²¹ IOM defines migration as, “The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.” International Organisation for Migration, *Glossary on Migration* (2011).

²² IOM’s working definition states: “Environmental migrants are persons or groups of persons who, for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to have to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their territory or abroad.” International Organization for Migration (ed), ‘Discussion Note: Migration and the Environment MC/INF/288-1’ (2007).

²³ Barnett, Jon and Webber, Michael, “Migration as Adaptation: Opportunities and Limits” in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary perspectives* (Hart, Oxford, Portland, Or 2012).

²⁴ IASC, *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*. The Brookings-Bern Project on Internal Displacement (2011).

²⁵ Foresight, *Migration and Global Environmental Change*, Final Project Report, The Government Office for Science, London, 2011.

²⁶ IPCC, “Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation: Summary for Policymakers,” A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change, Cambridge University Press: 2012, p. 5.

²⁷ Susan Martin, ‘Climate Change, Migration, and Governance’ (2010) 16(3) *Global Governance* 397; Fabrice G Renaud and others, ‘A Decision Framework for Environmentally Induced Migration’ (2011) 49 *International Migration* e5.

²⁸ Thus, within hours and days after the 2010 earthquake wounded Haitians sought access to medical help in the Dominican Republic as the Haitian health system had totally collapsed and international humanitarian aid not yet arrived.

²⁹ Thus many victims of the 2011-2012 Somalia famine fled to Kenya, Ethiopia and Djibouti only after food aid did not reach them when they were internally displaced.

³⁰ For example, in times of drought, Nepalese may migrate to India in search of seasonal employment so they can send back remittances to their families in mountain communities to improve food security.

³¹ Koko Warner, Tamer Afifi, Kevin Henry, Tonya Rawe, Christopher Smith, and Alex de Sherbinin, “Where the Rain Falls: Climate Change, Food and Livelihood Security and Migration,” *Global Policy Report*, UNU-EHS, November 2012, p.17

³² Foresight, ‘Migration and Global Environmental Change’ (Final Project Report, The Government Office for Science, Foresight, 2011).

³³ For example, in Viet Nam, people living within the Mekong River Delta are moved out of flood prone areas in an effort to normalize their living conditions.

³⁴ See the Nansen Conference Principle II: “States have a primary duty to protect their populations and give particular attention to the special needs of the people most vulnerable to and most affected by climate change and other environmental hazards, including the displaced, hosting communities and those at risk of displacement.” UNHCR, “Summary of Deliberations on Climate Change and Displacement,” April 2011.

³⁵ See, for example, Petz, Daniel, ‘Strengthening Regional and National Capacity for Disaster Risk Management: The Case of ASEAN,’ (November 2014) The Brookings-LSE Project on Internal Displacement; Internal Displacement Monitoring Centre (IDMC), “Neglected Displacement: Human Mobility in Pacific Disaster risk Management and Climate Change Adaptation Mechanisms,” September 2013; and IOM, ‘No 18 International Dialogue on Migration: Climate change, Environmental Degradation and Migration’ (2012) p. 34-36.

³⁶ For example Tonga’s Joint National Action Plan (JNAP) integrating Climate change and Disaster risk Management under the one Ministry (MEIDECC) see *Tonga Government Ministry of Information and communications* at <http://www.mic.gov.to/news-today/press-releases/5274-building-a-more-resilient-tonga-against-disaster-risk> ; The Philippines Climate Change Act 2009 which integrates DRR with climate change adaptation plans, planning, development and poverty reduction; Malawi’s mainstreaming of DRR into the NAPA and into local government climate change action plans; The Bangladeshi Governments partnership with the Flood Forecast and Warning Centre (FFWC) and ActionAid to incorporated DRR approaches into climate change adaptation plans in three agro-ecological zones; Samoa’s NAPA which priorities DRR and climate change adaptation policies under the same Ministry of Environment and National Resources; and the Maldives Strategic National Action Plan (SNAP) that integrates DRR and climate change adaptation and promotes partnership between policy makers, experts and practitioners to develop comprehensive risk management policies. See Tom Mitchel, Maarten van Aalst & Paula Silva Villanueva, ‘Assessing Progress on Integrating Disaster risk Reduction and Climate Change Adaptation in Development Processes,’ (September 2010) *Strengthening Climate Resilience Discussion Paper 2: Institute of Development Studies*.

³⁷ Marine Franck, ‘National Adaption and Planning for Relocation’ in Koko Warner, Walter Kalin, Susan Martin, Youssef Nassef, Siun Lee, Susanne Melde, Hannah Entwisle Chapuisat, Marine Frank and Tamer Afifi, *Integrating Human Mobility Issues Within National Adaption Plans* (UNU-EHS Policy Brief, June 2014) p. 35.

³⁸ Koko Warner, Tamer Afifi, Kevin Henry, Tonya Rawe, Christopher Smith, and Alex de Sherbinin, “Where the Rain Falls: Climate Change, Food and Livelihood Security and Migration,” *Global Policy Report*, UNU-EHS, November 2012, p.17

³⁹ Foresight, 'Migration and Global Environmental Change' (Final Project Report, The Government Office for Science, Foresight, 2011).

⁴⁰ For example, in 2000 Guatemalan authorities relocated 625 families from the town of Caratrian Ixtahuacan based upon scientific evidence of potential landslides. Likewise, the devastating effects of the 2013 Cyclone Haiyan, which internally displaced some four million people, led the Government of the Philippines afterwards to decide to relocate 200,000 families from hazard-prone areas.

⁴¹ Planned Relocations, Disasters and Climate Change: Consolidating Good Practices and Preparing for the Future, Sanremo Consultation Report, 12-14 March 2014. <<http://www.unhcr.org/53c4d6f99.pdf>>

⁴² See *IASC Framework on Durable Solutions for Internally Displaced Persons*, The Brookings Institution- University of Bern Project on Internal Displacement, April 2010, p. 5.

⁴³ Guiding Principles on Internal Displacement ((UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998).

⁴⁴ *Ibid*, Principle 5.

⁴⁵ Under the Inter-Agency Standing Committee's Cluster Approach to coordination international humanitarian action, UNHCR is the global protection cluster lead. However, in the event of a disaster at the country level, leadership of the protection cluster is determined on a case by case basis between UNHCR, OHCHR and UNICEF, under the leadership of the UN Humanitarian Coordinator.

⁴⁶ For guidance see, in particular, the Operational Guidelines for the Protection of Persons in Situations of Natural Disasters (UN Doc. A/HRC/16/43/Add.5), and the Framework on Durable Solutions for Internally Displaced Persons (IN Doc. A/HRC/13/21/Add.4).

⁴⁷ Hugo, Graeme, 'Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific,' in in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary perspectives* (Hart, Oxford, 2012).

⁴⁸ Walter Kälin and Nina Schrepfer, 'Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches' (February 2012). Legal and Protection Policy Research Series, 35; To date, States have not relied explicitly upon international human rights law obligations or complementary protection mechanisms as the legal basis for admitting disaster displaced persons. Instead, States have relied upon their discretionary authority, often on "humanitarian grounds." See McAdam, Jane, "Climate Change, Forced Migration, and International Law" (Oxford University Press, 2012) 49.

⁴⁹ The outcomes from the Bellagio Conference on Climate Change and Displacement state that in the case of a mass influx of individuals, States have recognized "minimum obligations to ensure admission to safety, respect for basic human rights, protection against *refoulement* and safe return when conditions permit to the country of origin. In an analogous situation where persons are in distress at sea, states have accepted time honoured duties to come to their rescue." See UNHCR, "Summary of Deliberations on Climate Change and Displacement," Bellagio Conference on Climate Change and Displacement, (2011). This recognition to date has only been formally recognized within the context of identifying refugees. However, some examples of state practice suggest that States are recognizing obligations in other contexts as well, though not consistently or in a widespread manner. See also the International Convention on the Safety of Life at Sea as updated in 1974, and the International Convention on Maritime Search and Rescue of 1979.

⁵⁰ See, for example, the judgment of the Inter-American Court of Human Rights, *Advisory Opinion on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (2014) Series A, No 21, para 222.

⁵¹ *Ibid*, para 231.

⁵² *Ibid*, para 241.

⁵³ See, for example, the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air.

⁵⁴ The relevant rule in relation to refugees is Article 33 of the Refugee Convention. Complementary protection provisions concerning *refoulement* are derived usually from the provisions of international human rights law treaties.

⁵⁵ The examples in this section are mainly drawn from David J. Cantor, 'Law, Policy and Practice Concerning the Humanitarian Protection of Aliens on a Temporary Basis in the Context of Disasters: States of the Regional Conference on Migration and Others in the Americas', December 2014 (to be published by the Nansen Initiative).

⁵⁶ Nansen Initiative, "Discussion Paper: Draft Elements of a Guide to Effective Practices on Admission and Stay for Persons Moving across Borders in the Context of Disasters," Regional Workshop on Temporary Protection Status and/or Humanitarian Visas in Situations of Disaster, February 2015.

⁵⁷ Argentina, Cuba, Finland, Mexico, and Sweden all have national laws that explicitly recognize the impacts of natural hazards as potential grounds for authorizing the entry and stay of foreigners.

⁵⁸ The terminology is drawn from national legislation in Finland, Mexico, and Argentina/Sweden, respectively.

⁵⁹ In Argentina such measures are limited for "special cases" of a broader "transitory residents" class of people while in Mexico, a visa issued for a "humanitarian cause" is available only for those with a relative already in the country who can sponsor a person who "finds herself in a situation of danger to her life or integrity owing to violence or a duly accredited natural disaster."

⁶⁰ Both Sweden and Finland address the question of a potential internal flight option. Finland: Humanitarian protection may be refused "if he or she, in a part of his or her home country or country of permanent residence, does not ... face a real risk of being subjected to serious harm, and if he or she can reasonably be expected to reside in that part of the country." Assessment will take account of the "general circumstances prevailing in that part of the country and of the applicant's personal circumstances." (Section 88e(323/2009).

⁶¹ Examples are the 1995 volcanic eruption in Montserrat and the 2010 earthquake in Haiti (Canada, Mexico, USA

⁶² See Finland's measures for "registering a large number of displaced persons entering the country simultaneously," within its Aliens Act specifically include situations when aliens "cannot return safely to their home country or country of permanent residence because there has been a massive displacement of people in the country or its neighboring areas as a result of ... an environmental disaster" (Finland Aliens Act, Section 133).

⁶³ This is particularly true in Africa.

⁶⁴ E.g. Panama's "temporary humanitarian protection" measures.

⁶⁵ F.A. Abiola, A. Teko-Agbo, C. Biaou and m. Niang. "Socio-Economic and Animal Health Impact of Transhumance," Conf. OIE 2005, 105-119. <http://www.oie.int/doc/ged/d3248.pdf>.

⁶⁶ For example, a few States (Panama, Peru) found that asylum seekers from Haiti had a "well-founded fear of persecution by non-State actors that arose from the vacuum of governmental authority after the earthquake in Haiti," thus applying the 1951 Refugee Convention.

⁶⁷ In New Zealand, the Refugee Status Appeals Authority found that a female activist from Myanmar had a well-founded fear of arrest and sentencing because in the aftermath of Cyclone Nargis she had distributed humanitarian aid purchased by foreigners who supported an opposition party. Refugee Appeal No 76374, Decision of 28 October 2009 (B.L. Burson [member]), available online at https://forms.justice.govt.nz/search/IPT/Documents/RefugeeProtection/pdf/ref_20091028_76374.pdf (last accessed 4 March 2015).

⁶⁸ See Tamara Wood, "Protection and Disasters in the Horn of Africa: Norms and practice for addressing cross-border displacement in disaster contexts", p. 32-33 (to be published by the Nansen Initiative).

⁶⁹ See also UNHCR, "Guidance Note on Temporary Protection or Stay Arrangements," Division of International Protection, January 2014.

⁷⁰ For example, Panama, Venezuela, and Peru's "temporary humanitarian protection" measures are located within its domestic refugee legislation.

⁷¹ Such circumstances could arise, if applied by analogy to the circumstances under which a person becomes a refugee *sur place*. "A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee 'sur place.' A person becomes a refugee 'sur place' due to circumstances arising in his country of origin during his absence." UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," HCR/IP/4/Eng/REV.1, Reedited, Geneva January 1992, UNHCR, 1979, para. 94-96.

⁷² *IASC Framework on Durable Solutions for Internally Displaced Persons*, The Brookings Institution- University of Bern Project on Internal Displacement, April 2010.

⁷³ For details see <https://www.iom.int/cms/micic>.