

**AGENDA
FOR THE PROTECTION OF
CROSS-BORDER DISPLACED PERSONS
IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE**

FINAL DRAFT

EXECUTIVE SUMMARY

Displacement Realities

Forced displacement related to disasters, including the adverse effects of climate change (disaster displacement), is a reality and among the biggest humanitarian challenges facing States and the international community in the 21st century. Every year, millions of people are displaced by disasters caused by natural hazards such as floods, tropical storms, earthquakes, landslides, droughts, salt water intrusion, glacial melting, glacial lake outburst floods, and melting permafrost. Between 2008 and 2014 a total of 184.4 million people were displaced by disasters, an average of 26.4 million people newly displaced each year. Of these, an annual average of 22.5 million people was displaced by weather- and climate-related hazards. Others have to move because of the effects of sea level rise, desertification or environmental degradation. Looking to the future, there is high agreement among scientists that climate change, in combination with other factors, is projected to increase displacement in the future.

Disaster displacement creates humanitarian challenges, affects human rights, undermines development and may in some situations affect security.

Most disaster displaced persons remain within their own country. However, some cross borders in order to reach safety and/or protection and assistance in another country. While comprehensive and systematic data collection and analysis on cross-border disaster-displacement is lacking, based on available data, Africa along with Central and South America, in particular have seen the largest number of incidences of cross-border disaster-displacement.

The Nansen Initiative has identified at least 50 countries that in recent decades have received or refrained from returning people in the aftermath of disasters, in particular those caused by tropical storms, flooding, drought, tsunamis, and earthquakes. An analysis of the law, relevant institutions and operational responses pertinent to the protection and assistance of cross-border disaster-displaced persons reveals a general lack of preparedness leading to *ad hoc* responses in most cases.

Disaster displacement is multi-causal with climate change being an important, but not the only factor. Population growth, underdevelopment, weak governance, armed conflict, violence, as well as poor urban planning in rapidly expanding cities, are important factors in disaster displacement as they further weaken resilience and exacerbate the impacts of natural hazards, environmental degradation and climate change.

Preparedness

These current and emerging realities call for *increased preparedness, solidarity and cooperation* by States, (sub-)regional organizations and the international community to prevent, avoid, and respond

The Nansen Initiative is a state-led, bottom-up consultative process intended to identify effective practices and build consensus on key principles and elements to address the protection and assistance needs of persons displaced across borders in the context of disasters, including the adverse effects of climate change. It is based upon a pledge by the Governments of Switzerland and Norway, supported by several States, to cooperate with interested States and other relevant stakeholders, and was launched in October 2012.

to disaster displacement and its causes. Since sudden-onset disasters may occur at any time and slow-onset disasters are likely to arise in many parts of the world, cross-border disaster-displacement is a global challenge. Potentially every State could be confronted with such displacement, either as a country of destination, transit or origin.

The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change

The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (hereinafter Protection Agenda), endorsed by a global intergovernmental consultation on 12-13 October 2015 in Geneva, Switzerland, consolidates the outcomes of a series of regional intergovernmental consultations and civil society meetings convened by the Nansen Initiative. To assist States and other actors as they seek to improve their preparedness and response capacity to address cross-border disaster-displacement, the Protection Agenda:

- **Conceptualizes a comprehensive approach to disaster displacement** that primarily focuses on protecting cross-border disaster-displaced persons. At the same time, it presents measures to manage disaster displacement risks in the country of origin;
- **Compiles a broad set of effective practices** that could be used by States and other actors to ensure more effective future responses to cross-border disaster-displacement;
- **Highlights the need to bring together and link multiple policies and action areas to address cross-border disaster-displacement** and its root causes **that to date have been fragmented** rather than coordinated, and calls for the increased collaboration of actors in these fields; and
- **Identifies three priority areas for enhanced action** by States, (sub-)regional organizations, the international community as well as civil society, local communities, and affected populations to address existing gaps.

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

The Protection Agenda is situated in the context of increased international and regional recognition of the challenges of human mobility in the context of disasters and climate change, such as the Conference of the Parties to the UN Framework Convention on Climate Change, Sendai Framework for Disaster Risk Reduction 2015–2030, UN’s 2030 Agenda for Sustainable Development, and the World Humanitarian Summit. The Nansen Initiative has already successfully contributed its relevant findings and conclusions to several of these processes. Thus, the Protection Agenda aims to further complement and support, rather than duplicate, these international and regional frameworks, processes and action areas by providing relevant evidence and examples of effective practices to address disaster displacement and its causes.

Protection

This agenda uses “**protection**” to refer to any positive action, whether or not based on legal obligations, undertaken by States on behalf of disaster displaced persons or persons at risk of being

displaced that aim at obtaining full respect for the rights of the individual in accordance with the letter and spirit of applicable bodies of law, namely human rights law, international humanitarian law and refugee law. While highlighting the humanitarian nature of such protection, the agenda does not aim to expand States' legal obligations under international refugee and human rights law for cross-border disaster-displaced persons and persons at risk of being displaced.

Protecting Cross-Border Disaster-Displaced Persons

Providing protection abroad to cross-border disaster-displaced person can take two forms. States can either admit such persons to the territory of the receiving country and allow them to stay at least temporarily, or they can refrain from returning foreigners to a disaster affected country who were already present in the receiving country when the disaster occurred. In both situations, such humanitarian protection is usually provided temporarily, giving rise to the need to find lasting solutions for them.

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 lasting solution. 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 or not return disaster displaced persons on their territory on an individual or group basis. These humanitarian protection measures are generally temporary, and may be based on regular immigration law, exceptional immigration categories, or provisions related to the protection of refugees or similar norms of international human rights law. The Protection Agenda highlights many effective practices in this regard.

Disaster displaced persons may need to be admitted to another country to escape real risks to their life and health, or access essential humanitarian protection and assistance not available in the country of origin. Absent such immediate needs, States sometimes are also ready to admit persons from disaster-affected countries as an act of international solidarity.

To date, the direct and serious impact of a disaster on a person has been a key consideration guiding admission decisions, including factors such as the seriousness of the disasters' impact, the person's pre-existing vulnerabilities, broader humanitarian considerations, and solidarity with the disaster affected country.

When cross-border disaster-displaced persons are admitted to a country, 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 and the likely duration of stay. Such clarification not only ensures respect for the rights and basic needs of those admitted, but also helps avert the risk of secondary movements to another country.

States and disaster displaced persons may prefer to end cross-border disaster-displacement through voluntary return with sustainable re-integration at the place where displaced persons lived before the disaster. When return to their former homes is not possible or desired, 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 settlement in a new place of residence after return to the country of origin. Particularly when the conditions causing the displacement persist for

an extended period of time or become permanent, finding a lasting solution also may mean facilitating permanent admission in the country that admitted them, or in exceptional cases to a third country.

Managing Disaster Displacement Risk in the Country of Origin

A comprehensive approach to cross-border disaster-displacement also requires tackling disaster displacement risk in the country of origin. Therefore, the Protection Agenda addresses not only the protection and assistance needs of cross-border disaster-displaced persons, but, at the same time, identifies measures to manage disaster displacement risks in the country of origin. These include effective practices to reduce vulnerability and build resilience to disaster displacement risk, facilitate migration and conduct planned relocation out of hazardous areas, and respond to the needs of internally displaced persons.

Reducing Vulnerability and Building Resilience to Displacement Risk: Resilience is a key factor in determining whether and how individuals, families, communities and countries can withstand the impacts of sudden-onset and slow-onset natural hazards and impacts of climate change. Disaster risk reduction activities, infrastructure improvements, urban planning, climate change adaptation measures, land reform, and other development measures to strengthen the resiliency of vulnerable persons or groups of persons are all potential actions to help people remain safely in their homes when faced with natural hazards, and thus substantially reduce the number of disaster displaced persons. Such activities may also help to strengthen host communities' capacity to receive displaced persons, and facilitate finding lasting solutions to end displacement by reducing exposure and building resilience to future hazards. Therefore it is important to specifically address displacement, migration and planned relocation in disaster risk reduction, climate change adaptation and other development plans and strategies.

Migration with Dignity: When living conditions deteriorate in the context of natural hazards and the effects of climate change, individuals and families often use migration as a way to seek alternative opportunities within their country or abroad to avoid situations that otherwise may result in a humanitarian crisis and displacement in the future. Managed properly, migration has the potential to be an adequate measure to cope with the effects of climate change, other environmental degradation and natural hazards. 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 home with newly acquired knowledge, technology and skills. The possibility for permanent migration is particularly important for low-lying small island States and other countries confronting substantial loss of territory or other adverse effects of climate change that increasingly make large tracts of land uninhabitable.

However migration also carries specific risks, in particular for women and children. Migrants might be economically exploited, exposed to dangerous conditions at their place of work or home, face discrimination or become victims of violence or being trafficked.

Measures to help facilitate migration with dignity from countries or areas facing natural hazards or climate change impacts include reviewing existing bilateral and (sub-) regional migration agreements, adopting national quotas or seasonal workers programs, and providing training and education to potential migrants.

Planned Relocation: The risks and impacts of disasters, climate change, and environmental degradation have led many governments around the world to move and settle persons or groups of persons to safer areas, both before and after disaster displacement occurs. However, because of the many negative effects associated with past relocation processes (e.g. challenges related to sustaining livelihoods, cultural ties, identity and connection to land), planned relocation is generally considered a last resort after other options have been reasonably exhausted.

Experience shows that planned relocation is more likely to be sustainable if it is undertaken in consultation with and the participation of affected people, including host communities, and with full respect of the rights of relocated people. Additional factors for success include taking into account community ties, cultural values, traditions, and psychological attachments to their original place of residence, and ensuring adequate livelihood opportunities, basic services, and housing in the new location. Systematic engagement with women, in particular, also contributes to a successful outcome of the relocation process. Clear guidance on these issues facilitates planned relocation processes.

Assisting Internally Displaced Persons: Since most disaster displacement takes place within countries, the protection of internally displaced persons (IDPs) is particularly important. To be effective, approaches to risk mapping, disaster risk reduction measures, contingency planning, the humanitarian response, as well as efforts to find lasting solutions to disaster displacement often require addressing both internal and cross-border displacement at the same time. Furthermore, although more knowledge and data is required to better understand the relationship, it has been observed that cross-border disaster-displacement 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 move abroad.

The UN Guiding Principles on Internal Displacement, which have been recognized by the international community as an “important international framework for the protection of internally displaced persons,” include those displaced in the context of disasters. At the regional level, internal displacement in the context of disasters and climate change is explicitly covered by the AU Kampala Convention. Addressing all stages of disaster displacement in line with these standards within disaster risk management or IDP laws and policies, and clarifying the roles and responsibilities of relevant actors are key elements of preparing an effective response.

Priority Areas for Future Action

Preventing and responding to cross-border disaster-displacement requires enhanced action at the national, (sub-)regional and international level. These effective practices identified in the Protection Agenda provide a starting point to inspire future action, and bring together the many existing policy and action areas discussed in this agenda that have been relatively uncoordinated to date.

As a contribution to future efforts to address cross-border disaster-displacement, this agenda identifies *three priority areas* for action to support the implementation of identified effective practices:

- 1) **Collecting data and enhancing knowledge** on cross-border disaster-displacement;
- 2) **Enhancing the use of humanitarian protection measures** for cross-border disaster-displaced persons, including mechanisms for lasting solutions, for instance by harmonizing approaches at (sub-)regional levels;

3) Strengthening the management of disaster displacement risk in the country of origin by:

- a. Integrating human mobility within disaster risk reduction and climate change adaptation strategies, and other relevant development processes;
- b. Facilitating migration with dignity as a potentially positive way to cope with the effects of natural hazards and climate change;
- c. Improving the use of planned relocation as preventative or responsive measure to disaster risk and displacement;
- d. Ensuring that the needs of IDPs displaced in disaster situations are specifically addressed by relevant laws and policies on disaster risk management or internal displacement.

Action in the three priority areas requires concerted efforts at all levels. States should consider establishing at the national level designated institutional leadership to bring together different branches of government to coordinate national planning and response efforts for cross-border disaster-displacement. At the same time, effective implementation of activities requires strong involvement and participation of local authorities; affected communities including, where relevant, indigenous peoples; women; youth; as well as civil society organizations and academia.

Recognizing that most cross-border disaster-displacement takes place within regions and therefore appropriate responses vary from region to region, the roles of regional and sub-regional organizations, for example the African Union and the African regional economic communities or the Pacific Islands Forum, are of primary importance for developing integrated responses. More specialized (sub-)regional mechanisms include Regional Consultative Processes (on migration), human rights mechanisms, disaster risk management centres, climate change adaptation strategies, as well as common markets and free movement of persons arrangements, among others. Contributions by the international community and development partners are also important.

At the global level, international organizations and agencies dealing with issues as diverse as humanitarian action, human rights protection, migration management, refugee protection, disaster risk reduction, climate change adaptation, and development may also contribute. In particular, they can provide technical advice as well as capacity building and operational support to (sub-)regional, national and local authorities to support implementation of the three priority areas, according to their respective mandates and areas of expertise. However, there is a need to more closely cooperate with each other and integrate work in these areas.

To facilitate follow up on the agenda and implementation of activities identified in the three priority areas for action addressing cross-border disaster-displacement, it will be important to continue to provide a forum for dialogue among interested States to further discuss how best to protect cross-border disaster-displaced persons; and enhance cooperation and coordination between international organizations and agencies, and other relevant actors, in order to ensure a comprehensive approach to cross-border disaster-displacement.

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INTRODUCTION

I. Displacement Realities

[1] Forced displacement related to disasters, including the adverse effects of climate change, is a reality and among the biggest humanitarian challenges facing States and the international community in the 21st century. Every year, millions of people are displaced by disasters caused by natural hazards such as floods, tropical storms, earthquakes, landslides, droughts, salt water intrusion, glacial melting, glacial lake outburst floods, and melting permafrost. Between 2008 and 2014 a total of 184.4 million people were displaced by disasters, an average of 26.4 million people newly displaced each year.¹ Of these, an annual average of 22.5 million people was displaced by weather- and climate-related hazards. Others have to move because of the effects of sea level rise, desertification or environmental degradation.

[2] Disaster displacement is large-scale, has devastating impacts on people and their communities, raises multiple protection concerns and undermines the development of many States. These challenges are compounded by the fact that disasters exacerbate pre-existing vulnerabilities. Sick and wounded persons, children, particularly when orphaned or unaccompanied, women headed households, people with disabilities, older persons, migrants, and members of indigenous peoples are often among the most seriously affected survivors of disaster. Least Developed Countries, small island developing States, as well as middle-income countries facing specific challenges, and their populations are hardest hit. While many displaced people are able to return to their homes after a short period of time, tens of millions among them need ongoing protection and assistance as well as support to find lasting solutions to end their displacement.

[3] Most disaster displaced persons remain within their own country. However, some cross borders in order to reach safety and/or protection and assistance in another country. The Nansen Initiative has identified at least 50 countries that in recent decades have received or refrained from returning people in the aftermath of disasters, in particular those caused by tropical storms, flooding, drought, tsunamis, and earthquakes (See Annex). Due to a lack of systematic monitoring of cross-border disaster-displacement this number is far from complete. Presently available global data cover "only the incidence of displacement, and not where displaced people flee to or where they eventually settle."² Thus, current evidence is not sufficient to determine how many people have crossed international borders in disaster contexts.

[4] Africa, and Central and South America in particular have seen incidences of cross-border disaster-displacement (See Annex). In Africa, such displacement largely occurs within the context of flooding and drought, but also volcanic eruptions, while in Central and South America, hurricanes, flooding, landslides and earthquakes most frequently lead to cross-border disaster-displacement. Although the adverse impacts of climate change have already started to prompt population movements in the Pacific region, cross-border displacement is not yet a significant reality. However, the effects of rising sea levels such as submergence, coastal flooding, and coastal erosion will seriously affect the territorial integrity of small island developing States and States with extensive low-lying coastlines, and thus may force substantial parts of their populations to move internally when possible, or abroad. As a continent, Asia has the highest number of people internally displaced as a consequence of disasters, notably those caused by tropical storms, earthquakes, glacial lake outburst floods, landslides and large-scale flooding. While instances of cross-border disaster-

displacement have been rare in Asia, there is some evidence that the impacts of natural hazards and climate change contribute to people migrating abroad. Within Europe, although earthquakes and flooding have displaced substantial numbers of people, there is little evidence of significant displacement or migration to other countries.

[5] Looking to the future, there is high agreement among scientists that climate change, in combination with other factors, is projected to increase displacement in the future, with migration increasingly becoming an important response to both extreme weather events and longer-term climate variability and change.³ Sea level rise, in particular, is expected to force tens or hundreds of millions of people to move away from low-lying coastal areas, deltas and islands that cannot be protected such as through infrastructure improvement and coastal protection measures.⁴

[6] However, because disaster displacement is multi-causal, climate change will be an important but not the only contributing factor. Population growth, underdevelopment, weak governance, armed conflict and violence, as well as poor urban planning in rapidly expanding cities, are important drivers of displacement and migration as they further weaken resilience and increase vulnerability, and exacerbate the impacts of natural hazards and climate change. Due to this multi-causality and uncertainty regarding the extent to which States will be successful in their attempts to mitigate and adapt to climate change, accurate global quantitative projections are difficult to make.⁵ However, it is possible to identify areas particularly exposed to natural hazards and thus identify populations at risk of potential displacement. In particular, significant international movements are likely to become inevitable for the populations of low-lying island States, and coastal States losing significant parts of their territory that lack options for internal movement.

[7] Despite the difficulties of quantitative projections, these scenarios, particularly in light of the adverse impacts of climate change, call for *increased preparedness, solidarity and cooperation* by States, (sub-)regional organizations and the international community to prevent, avoid, and respond to disaster displacement and its causes. As sudden-onset disasters may occur any time and slow-onset disasters are likely to occur in many parts of the world, cross-border disaster-displacement is a global challenge. Already many States have been⁶ and potentially every State could be confronted with such displacement, either as a country of destination, transit or origin.

II. The Nansen Initiative

[8] The Nansen Initiative is a state-led, bottom-up consultative process intended to identify effective practices, drawing on the actual practice and experience of governments, and build consensus on key principles and elements to address the protection and assistance needs of persons displaced across borders in the context of disasters, including the adverse effects of climate change. It is based upon a pledge by the Governments of Switzerland and Norway, supported by several States, to cooperate with interested States and other relevant stakeholders,⁷ and was launched in October 2012.⁸ The Nansen Initiative builds on paragraph 14(f) of the 2010 UNFCCC Cancun Agreement⁹ 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,” as well as the Nansen Principles that synthesize the outcomes of the 2011 Nansen Conference on Climate Change and Displacement.¹⁰

[9] The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, endorsed by a global intergovernmental consultation on 12-13 October 2015 in

Geneva, Switzerland, consolidates the outcomes of a series of regional intergovernmental consultations and civil society meetings convened by the Nansen Initiative.¹¹

III. Purpose, Scope and Context of the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change

A. Purpose

[10] The purpose of this agenda is to enhance understanding, provide a conceptual framework, and identify effective practices for strengthening the protection of cross-border disaster-displaced persons. In particular, it explores potential measures that States may voluntarily adopt and harmonize to admit such persons on the grounds of humanitarian considerations and international solidarity with disaster affected countries and communities. It also purports to improve action to manage disaster displacement risk in the country of origin to prevent displacement by addressing underlying risk factors, help people move out of areas at high risk of exposure to natural hazards in order to avoid becoming displaced, and effectively address the needs of those displaced within their own country. It highlights key actions areas to be taken by States, (sub-)regional organizations and the international community. Finally, this agenda also identifies ways to enhance the crucial role of affected populations, local communities, and civil society in addressing disaster displacement.

B. Scope

[11] This agenda addresses displacement in the context of disasters linked to hydro-meteorological and climatological hazards like flooding, tornadoes, cyclones, drought, salt water intrusion and glacial melting as well as geophysical hazards such as earthquakes, tsunamis or volcanic eruptions. It considers the effects of both sudden-onset and slow-onset hazards including, in particular, those linked to the adverse impacts of climate change.¹² 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.

[12] A comprehensive approach to cross-border disaster-displacement also requires tackling disaster displacement risk in the country of origin. Therefore, the Protection Agenda addresses the protection and assistance needs of people who have been displaced across borders (**Part One**) and, at the same time, identifies effective practices to reduce vulnerability and build resilience to disaster displacement risk, facilitate migration out of hazardous areas, conduct planned relocation and respond to the needs of internally displaced persons (**Part Two**). The agenda ends with a list of priority areas for future action at national, (sub-)regional and international levels (**Part Three**).

[13] The Nansen Initiative consultative process identified the specific protection and assistance needs of foreigners caught up in a disaster while abroad. These issues are addressed by the Migrants in Countries in Crisis (MICIC) Initiative,¹³ and therefore fall outside of this agenda.¹⁴

C. Key Notions

[14] This agenda uses “protection” to refer to any positive action, whether or not based on legal obligations, undertaken by States on behalf of disaster displaced persons or persons at risk of being displaced that aim at obtaining full respect for the rights of the individual in accordance with the letter and spirit of applicable bodies of law, namely human rights law, international humanitarian law and refugee law.¹⁵ While highlighting the humanitarian nature of such protection, the agenda does not aim to expand States’ legal obligations under international refugee and human rights law for cross-border disaster-displaced persons and persons at risk of being displaced.

[15] The term “**disaster**” refers to 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.”¹⁶ For the purposes of the Protection Agenda, disasters refer to disruptions triggered by or linked to hydro-meteorological and climatological natural hazards, including hazards linked to anthropogenic global warming, as well as geophysical hazards.

[16] The term “**disaster displacement**” refers to situations where people are forced or obliged to leave their homes or places of habitual residence as a result of a disaster or in order to avoid the impact of an immediate and foreseeable natural hazard. Such displacement results from the fact that affected persons are (i) exposed to (ii) a natural hazard in a situation where (iii) they are too vulnerable and lack the resilience to withstand the impacts of that hazard. It is the *effects* of natural hazards, including the adverse impacts of climate change, that may overwhelm the resilience or adaptive capacity of an affected community or society, thus leading to a disaster that potentially results in displacement.

[17] The above understanding indicates that just as a disaster is complex and multi-causal, so is disaster displacement. In addition to exposure to a natural hazard, a multitude of demographic, political, social, economic and other developmental factors also determines to a large extent whether people can withstand the impacts of the hazard or will have to leave their homes. The Protection Agenda thus recognizes that disaster displacement occurs *in the context* of disasters, including the impacts of climate change, rather than being exclusively caused by a disaster.

[18] Disaster displacement may take the form of spontaneous flight, an evacuation ordered or enforced by authorities or an involuntary planned relocation process. Such displacement can occur within a country (**internal displacement**¹⁷), or across international borders (**cross-border disaster-displacement**).

[19] “**Humanitarian protection measures**” refer to the laws, policies and practices used by States to permit the admission and stay of cross-border disaster-displaced persons on their territory.¹⁸

[20] The term “migration” commonly refers to a broad category of population movements.¹⁹ 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.²⁰ For the purposes of this agenda, and in line with the terminology suggested by paragraph 14(f) of the Cancun Climate Change Adaptation Framework,²¹ “**migration**” refers to human movements that are *preponderantly* voluntary insofar as people, while not necessarily having the ability to decide in complete freedom, still possess the ability to choose between different realistic options. In the context of slow-onset natural hazards, environmental degradation and the long-term impacts of climate change, such migration is often used to cope with, “avoid or adjust to”²² deteriorating environmental conditions that could otherwise result in a humanitarian crisis and displacement in the future.

[21] Authorities or in some cases communities may consider relocation as a way to move out of areas with high levels of disaster risk, or as a solution in cases when return to disaster affected areas would be too dangerous or impossible. Such “**planned relocation**” can be described as “a planned process in which persons or groups of persons move or are assisted to move away from their homes or places of temporary residence, are settled in a new location, *and* provided with the conditions for

rebuilding their lives.²³ Planned relocation can be voluntary or involuntary, and usually takes place within the country, but may, in very exceptional cases, also occur across State borders.

[22] These three forms of movement as referred to in Paragraph 14(f) of the Cancun Climate Change Adaptation Framework, namely displacement (understood as the primarily *forced* movement of persons), migration (understood as the primarily *voluntary* movement of persons) and planned relocation (understood as planned process of settling persons or groups of persons to a new location), are referred to in this agenda in generic terms as “**human mobility**.”

[23] This 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.²⁴ “**Exposure**” refers to “people, property, systems, or other elements present in hazard zones that are thereby subject to potential losses.”²⁵ “**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.”²⁶ “**Adaptation**” refers to “the process of adjustment to actual or expected climate and its effects” that “seeks to moderate or avoid harm or exploit beneficial opportunities.”²⁷

D. Context

[24] The Protection Agenda is situated in the context of increased international recognition of the challenges 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 Adaptation Framework**) invited Parties to undertake measures to enhance “understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation,” while the 2012 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.”²⁸ 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 internal and cross-border displacement risk.²⁹ The UN’s **2030 Agenda for Sustainable Development** recognizes that global challenges threaten “to reverse much of the development progress made in recent decades” include “more frequent and intense natural disasters” as well as the “forced displacement of people.”³⁰ The **World Humanitarian Summit** process has also identified disaster displacement as a current and emerging humanitarian challenge.³¹

[25] At the regional level, the **2006 African Union Migration Policy Framework for Africa** states that environmental degradation and poverty are a “significant root causes of mass migration and forced displacement in Africa.”³² 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.”³³ In the Pacific, the Summit of Leaders of the Pacific Islands Development Forum approved the **2015 Suva Declaration on Climate Change**, which states “that climate change is already resulting in forced displacement of island populations and the loss of land and territorial integrity and further highlight[s] that such loss and damage results in breaches of social and economic rights.”³⁴

[26] The Nansen Initiative has already successfully contributed its relevant findings and conclusions to several of these processes.³⁵ Thus, the Protection Agenda aims to further complement and support, rather than duplicate, these international and regional frameworks, processes and action areas by providing relevant evidence and examples of effective practices to address disaster displacement and its causes.

IV. Gaps and the Need for Enhanced Action

[27] Disaster displacement creates humanitarian challenges, affects human rights, undermines development and may in some situations affect security.³⁶ Projections indicate that climate change will further compound these challenges, increasing vulnerability and exposure to disaster displacement risk, including across international borders.

[28] An analysis of the law, relevant institutions and operational responses pertinent to the protection and assistance of cross-border disaster-displaced persons reveals a general lack of preparedness leading to *ad hoc* responses in most cases. In particular, the following key gaps can be identified:

- *Knowledge and data gaps:* While understanding of the causes, dynamics and magnitude of disaster displacement has been growing in recent years, these phenomena are still not fully understood and conceptualized. Therefore better data, concepts and evidence are needed to develop adequate policies. The development of tools and systems that allow for the systematic gathering and analysis of reliable data on displacement, and human mobility more generally, in the context of disasters and the effects of climate change is particularly needed.
- *Legal gaps:* Persons who have moved *across international borders* in disaster contexts are protected by human rights law, and where applicable, refugee law. However, international law does not address critical issues such as admission, access to basic services during temporary or permanent stay, and conditions for return. While a small number of states have national laws or bilateral or (sub-)regional agreements that specifically address the admission or temporary stay of foreigners displaced by disasters, the vast majority of countries lack any normative framework.
- *Institutional and operational gaps:* While many international agencies and organizations work on the issue of disaster displacement, none is explicitly mandated to assist and protect cross-border disaster-displaced persons, which undermines the predictability and preparedness of their responses. Nor do international agencies and organizations have established mechanisms for cross-border cooperation, particularly regarding the search for lasting solutions for the displaced.
- *Funding gaps:* While existing funding mechanisms respond to immediate humanitarian crises in disaster situations, there is a lack of clarity regarding funding for measures to address cross-border disaster-displacement, and find lasting solutions for displacement. While large and visible disasters usually attract substantial humanitarian funding, small-scale disasters often receive inadequate levels of funding at both domestic and international levels. Finally, there is limited experience in requesting funding for human mobility challenges from adaptation finance sources, and thus, it remains to be seen to what extent climate change adaptation funding and other relevant funding will be available to address human mobility challenges.

[29] The key contributions of the Protection Agenda in assisting States as they seek to improve their preparedness and response capacity to address cross-border disaster-displacement include:

- a. **Conceptualizing a comprehensive approach to cross-border disaster-displacement** that not only focuses on protecting cross-border disaster-displaced persons, but also presents measures to manage disaster displacement risks in the country of origin. These include, in particular, measures to prevent displacement and help people to stay, or when movement is unavoidable, to allow people to move out of harm's way from areas facing high levels of disaster risk and enhance the protection of internally displaced persons;
- b. **Compiling a broad set of effective practices** used by States and other actors that could be used by States, (sub-)regional organizations and the international community to ensure more effective future responses to cross-border disaster-related displacement;
- c. **Highlighting the need to bring together and link policies and action areas to address cross-border disaster-displacement** and its root causes **that to date have been relatively uncoordinated**, and calling for the increased collaboration of actors in these fields. Such areas include humanitarian assistance and protection, human rights protection, migration management, disaster risk reduction, climate change adaptation, and development; and
- d. **Identifying three priority areas for enhanced action** by States, (sub-)regional organizations, the international community and other stakeholders, including civil society, local authorities and local communities, **to address existing gaps** namely: (1) Collecting data and enhancing knowledge on cross-border disaster-displacement; (2) Enhancing the use of humanitarian protection measures for cross-border disaster-displaced persons, including mechanisms for lasting solutions; and (3) Strengthening the management of disaster displacement risk in the country of origin.

PART ONE: PROTECTING CROSS-BORDER DISASTER-DISPLACED PERSONS

[30] Providing protection abroad to cross-border disaster-displaced person can take two forms. States can either admit such persons to the territory of the receiving country and allow them to stay at least temporarily (section I), or they can refrain from returning foreigners to a disaster affected country who were already present in the receiving country when the disaster occurred (section II). In both situations, such humanitarian protection is usually provided temporarily, giving rise to the need to find lasting solutions for them (section III).

I. Admission and Stay of Cross-Border Disaster-Displaced Persons

[31] 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 lasting solution. However, a number of States have admitted disaster displaced persons relying upon national legislation or the discretionary power of migration authorities. In some cases they have also based their decisions on

applicable refugee law. The following discussion and examples of effective practices are drawn from this experience.

A. Identifying the Displaced

[32] There are no universally recognized criteria to determine, in the context of disasters, when a movement could be characterized as forced across international borders. Although the difference between displacement and migration can be difficult to pinpoint, it is important to distinguish between voluntary and forced movement. Such a distinction underlies responses by States and the international community because it is commonly acknowledged that those forced to leave their country face a heightened degree of vulnerability and thus have specific protection and assistance needs, including how to find a lasting solution to their displacement.

1. Effective Practices

[33] Factors States could consider with regard to establishing criteria to identify cross-border disaster-displaced persons for the purposes of providing protection and assistance include the following:

- Assessing the direct and serious impact of the disaster on the individual. Someone may be considered a cross-border disaster-displaced person where he/she is seriously and personally affected by the disaster, particularly because
 - i. *An on-going or, in rare cases, an imminent and foreseeable disaster in the country of origin poses 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. This not only depends 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 peoples are often among the most seriously affected survivors of disasters.
- Assessing additional factors. Other relevant factors may include considerations of solidarity with an affected country that is temporarily unable to adequately protect and assist all of its citizens due to the disaster, or humanitarian elements, such as strong ties with family members in the country of destination.
- Assessing contrary factors. Subject to applicable refugee and human rights law, and based upon careful examination of each case, factors justifying non-admission may include national security risks posed by the individual or his/her serious criminal activities.

[34] Effective practices States could consider with regard to establishing mechanisms to identify cross-border disaster-displaced persons include the following:

- *Developing and integrating criteria to identify cross-border disaster-displaced persons (see para. 33) into relevant domestic laws and policies.*
- *Explicitly designating and authorizing competent authorities to permit travel, admission and stay for cross-border disaster-displaced persons in line with such criteria.*
- *Enshrining their legal obligations and commitments in the areas of human rights, refugee protection, the rights of the child, and the protection of trafficked persons (below paras. 39-40; 55-57) in domestic laws and policies on cross-border disaster-displaced persons.*

2. Background Information

a) Situations and criteria

[35] In sudden-onset disaster situations, moving across borders may be the most, or only, reasonable option to seek safety, and protection and assistance. In border regions, for instance, the closest way to safety may be to 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. A disaster may also simply overwhelm the response capacities of affected communities, local and national authorities, international humanitarian actors and civil society alike. Particularly in situations where a disaster occurs amidst an armed conflict, the delivery of humanitarian assistance may be severely hindered by insecurity, a lack of trust of authorities, or discrimination toward certain parts of the population, which could again prompt disaster-affected persons to seek assistance and protection abroad.

[36] 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 more easily be qualified as (primarily voluntary) migration. However, when slow-onset hazards that may have been building over many months or years reach an emergency phase within a short period of time, for example when drought “suddenly” contributes to a famine, people may see 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 erode 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 prompted to leave their homes and seek assistance and protection abroad on a temporary or, in extreme cases of the land becoming uninhabitable, permanent basis.

[37] In these scenarios, affected persons may need to be admitted to another country to escape real risks to their life and health, or access essential humanitarian protection and assistance not available in the country of origin. Absent such immediate needs, States sometimes are also ready to admit persons from disaster-affected countries as an act of international solidarity.

b) Immigration discretion and its limits

[38] The power to regulate the admission of foreigners on its territory is an inherent right of every State and an attribute of its sovereignty. The flexibility inherent in immigration discretion, in particular, allows countries to grant permission for disaster-affected foreigners to travel to, be admitted to and temporarily stay in the country. 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. Consequently, States can exercise their power with a broad degree of discretion. 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.

[39] The discretionary power of States in immigration matters is not unlimited, however, and must be exercised with respect for applicable rules of international and national law that may constrain its use in particular circumstances. First, international human rights law, despite the absence of specific jurisprudence, may arguably protect a disaster displaced person against removal in certain limited situations.³⁷ Regional human rights law may go further and prohibit return to a country where the lack of humanitarian protection and assistance would lead to a situation deemed to be inhuman.³⁸ Similarly, at least one court has interpreted the “best interests of the child” principle (Article 3 International Convention on the Rights of the Child) to be a “central aspect” in return proceedings, meaning that a child, in principle, cannot be returned to a country if it is not in the child’s best interest, including where he or she would face a real risk of human rights violations.³⁹ Second, refugee law protects persons against forcible return (*refoulement*)⁴⁰ when relevant grounds of persecution occur in a disaster context (below paras. 55-57). Third, persons affected by disasters also continue to benefit from relevant protection under international, regional or national laws relating to victims of trafficking.⁴¹ However, these existing guarantees for non-return find only exceptional and very limited application in disaster scenarios.

[40] Conventions protecting the human rights of migrants do not provide additional protection with regard to admission and non-return.⁴² However, States may be bound by bilateral or (sub-)regional agreements guaranteeing free movement to certain categories of persons, which may also be applicable in disaster situations. Some countries have also undertaken preliminary discussions on a possible “right to migration” that could eventually become relevant in disaster situations.⁴³

3. Gaps and Challenges

[41] While some countries possess legal provisions to identify those in need of protection abroad in disaster situation, most States lack laws and policies that would provide criteria if cross-border disaster-displaced persons arrived at their borders. Even in regions where relevant legal provisions are more common, such as in the Americas, such approaches could benefit from a certain degree of harmonization to better facilitate regional cooperation in addressing disaster displacement.

B. Preparedness

[42] States, particularly those in regions exposed to high levels of disaster risk, need to prepare for potential cross-border disaster-displacement to avoid being overwhelmed in the event of a sudden or large-scale influx of people in search of protection and assistance abroad.

1. Effective Practices

[43] Effective practices States could consider with regard to preparedness include the following:

- *Mapping historical cross-border displacement and migration movements, particularly in disaster contexts, to help identify 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, with respect to receiving cross-border disaster-displaced persons.*
- *To the extent that they do not exist or are inadequate, considering the development of new legal and/or policy frameworks or amending existing ones with clear criteria and procedures to identify cross-border disaster-displaced persons (above para. 33) and permit their travel, admission and stay.*
- *Building the capacity of competent border and immigration authorities through training and technical support to apply relevant legal frameworks and policies for cross-border disaster-displaced persons.*

2. Background Information

[44] Preparedness measures may vary depending on whether a State is a country of origin, transit or destination. States that already experience cross-border disaster-displacement can undertake efforts to improve and refine their responses. States that have not yet experienced such displacement, but which are likely to be impacted by climate change, may need to undertake different preparedness measures.

3. Challenges and Gaps

[45] Very few national and regional disaster contingency planning and response mechanisms acknowledge the potential for cross-border disaster displacement. Similarly, border and immigration authorities 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.

C. Humanitarian Protection Mechanisms for Admission and Stay

[46] 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 measures that allow them to admit cross-border disaster-displaced persons on their territory. These humanitarian protection measures may be based on regular immigration law, exceptional immigration categories, or provisions related to the protection of refugees or similar norms of international human rights law.

1. Effective Practices

[47] Effective practices States could consider with regard to admission and stay of cross-border disaster-displaced persons include the following:

- *Granting visas that authorize travel and entry upon arrival for people from disaster-affected countries, or temporarily suspending visa requirements.*
- *Prioritizing and expediting the processing of regular migration categories for foreigners from affected countries following a disaster, or waiving certain admission requirements for such categories.*
- *Relying upon regular (sub-)regional or bilateral free movement schemes to permit the temporary entry and stay of disaster displaced persons, and providing for the suspension of documentation requirements in disaster situations, recognizing that such persons may not possess, or have lost and are unable to acquire documentation normally required.*
- *Granting temporary entry and stay for cross-border disaster-displaced persons, such as through the issuance of humanitarian visas or other exceptional migration measures.*
- *Granting entry and temporary stay for a group or “mass influx” of cross-border disaster-displaced persons.*

- *Developing transhumance agreements to facilitate the cross-border movement of pastoralists and their livestock, particularly in situations when drought endangers the health and lives of humans and animals.*
- *Reviewing asylum applications of and granting refugee status or similar protection under human rights law to displaced persons in disaster contexts who meet the relevant criteria under applicable international, regional, or national law.*
- *Exploring at sub-regional and regional levels, where relevant, whether and under what circumstances regional instruments on refugee, and similar protection under human rights law, can and should be interpreted as applying to cross-border disaster-displacement situations.*
- *Reviewing and harmonizing existing humanitarian protection measures at sub-regional and regional levels.*

2. Background Information⁴⁴

a. Regular migration categories

[48] A first tool that has been used by some States consists of admitting cross-border disaster-displaced persons on the basis of regular migration categories, for instance i) by allowing individuals from disaster-affected countries to request that the receiving State prioritize or expedite the processing of their existing or new immigration applications; ii) by waiving certain requirements or application fees; iii) by using criteria on “humanitarian and compassionate” grounds; iv) by granting a visa waiver for non-national residents to sponsor relatives from disaster-affected countries; or v) by expanding the use of pre-existing temporary work quotas to target people from disaster-affected areas.⁴⁵

b) Free movement of persons

[49] In some regions of the world, cross-border disaster-displaced persons may benefit from pre-existing (sub-) regional or bilateral agreements on the free movement of persons that were adopted for other purposes, but which may allow disaster displaced persons to freely travel to another country. However, even where they exist, free movement agreements do not always guarantee the entry of disaster displaced persons, particularly if they have documentation requirements that such persons may not be able to meet. Free movement agreements may also have suspension clauses, such as for mass influx situations.

c. Exceptional migration measures

[50] A third tool identified from State practice is to admit cross-border disaster-displaced persons by granting temporary entry and stay on the basis of a variety exceptional migration measures.

[51] A small number of States have developed specific legal measures to temporarily admit individuals 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.” Some of these laws grant national immigration authorities the discretionary authority to determine whether what they call a “humanitarian visa,” “temporary protection” or similar measure will be activated, and are limited to certain categories of individuals. Other countries have used “humanitarian” grounds to grant temporary entry and stay on an *ad hoc* basis for individuals who are personally and seriously affected by a disaster.

[52] While exceptional migration measures are often granted on an individual basis, some States have developed exceptional measures, including forms of “temporary protection,” 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. In other disaster situations, the entry of groups of displaced persons fleeing disasters has been allowed or tolerated without taking a formal decision, or has been permitted on an *ad hoc* basis relying upon humanitarian and solidarity principles.

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

d. Pastoralist transhumance arrangements

[54] 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, CEMAC⁴⁶). 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. Pastoralists in Africa also often rely on traditional informal arrangements that facilitate cross-border movement.

e. Refugee protection and similar protection under human rights law

[55] In general, disaster situations do not as such fall within the scope of application of international or regional refugee protection instruments. However, in some cases, refugee law or similar protection under human rights law will be applicable. For instance, the effects of a disaster may create international protection concerns by generating violence and persecution, such as when a collapse of governmental authority triggered by the disaster leads to violence and unrest⁴⁷ or when a government uses a disaster as pretext to persecute its opponents.⁴⁸ Thus, it is still necessary for competent authorities to carefully scrutinize cases from a disaster-affected country with a view to assessing if refugee status, or similar protection from return under applicable human rights law, is required due to any such negative consequences of the disaster.

[56] 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 the *prima facie* recognition of refugee status for people from particular parts of Somalia. Arguably, the facts 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, justified considering them as victims of an event “seriously disturbing public order in either part or the whole” of the country that “compelled” them to seek refuge abroad.⁴⁹

[57] In some countries, measures under regional or domestic frameworks of “complementary protection” such as the EU Temporary Protection Directive⁵⁰ adopted to address “refugee-like” situations of people fleeing violence or civil unrest that did not fall within the 1951 Refugee Convention,⁵¹ could also be relevant. However, while it is not excluded that such measures could apply in other, unforeseen scenarios, including disaster situations, to date they have not been used for this purpose.

3. Challenges and Gaps

[58] Existing mechanisms at the national level are largely unpredictable, because they generally rely upon the discretionary power of relevant authorities 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 humanitarian protection measures at (sub-) regional levels. It also remains unclear to what extent regional instruments such as the 1969 African Union Refugee Convention or the 2001 EU Temporary Protection Directive are applicable for cross-border disaster-displacement. Consequently, the unpredictable nature of existing measures results in uncertainty about when cross-border disaster-displaced persons will be admitted.

[59] States may have an interest in considering the harmonization of humanitarian protection measures at the (sub-)regional level. Such harmonization may facilitate international cooperation and solidarity in situations when national authorities cannot find solutions on their own. Furthermore, harmonization may help to ensure that all their citizens benefit from humanitarian protection measures in case of cross-border disaster-displacement. However, to date, such harmonization processes are largely absent.

D. Rights and Responsibilities during Stay

[60] When cross-border disaster-displaced persons are admitted to a country, 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 and the likely duration of stay. Such clarification not only ensures respect for the rights and basic needs of those admitted, but also helps avert the risk of secondary movements to another country.

1. Effective Practices

[61] Effective practices States could consider with regard to the rights and responsibilities of admitted cross-border disaster-displaced persons during their stay include the following:

- *Clarifying and ensuring that those admitted enjoy full respect of their human rights, and, if needed, 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 identity.*
- *Ensuring that information about their rights and responsibilities is provided to admitted persons in a language and manner they are likely to understand.*
- *Issuing personal documentation, when relevant, indicating the status under domestic law and the right to stay of the admitted person.*

2. Background

[62] Under international human rights law, States have assumed obligations to ensure respect for the human rights of persons who have been permitted entry to, or who are otherwise present in, their territory. In addition, States should consider the key protection concerns for cross-border disaster-displaced persons. These include: safeguarding personal integrity; family unity; provision of and access to food, health, shelter, adequate housing and education; access to livelihood opportunities; freedom of movement; respect for culture and language; and access to personal documentation. Women and children in particular may face a heightened risk of trafficking and exploitation, and in some situations, cross-border disaster-displaced persons may face potential *de facto* statelessness. Some States' humanitarian protection measures account for the fact that people's needs may change over time, particularly when displacement lasts an extended period of

time. Finally, host communities may also have specific concerns that need to be recognized and addressed.

3. Challenges and Gaps

[63] Unless cross-border disaster-displaced persons are admitted under a regular migration category, few States have outlined the specific rights of such persons during their stay. In particular, temporary admission measures that rely on *ad hoc* discretionary powers may lack details regarding the rights and responsibilities that accompany the status. At the bilateral or (sub-)regional level, State cooperation to delineate and agree upon such rights and responsibilities in advance of a cross-border movement is rare.

II. Non-Return of Foreigners Abroad at the Time of a Disaster

[64] Citizens and permanent residents of a disaster-affected country may be abroad when a disaster hits. In particular, if they were required to leave the country or face deportation under applicable migration law, such persons may face a real risk to their life and safety or very serious hardship linked to the disaster upon return to their country of origin or habitual residence. In this and other situations, some States have refrained from sending such persons back to their country of origin or former habitual residence during and in the aftermath of a disaster, or allowed them to extend their stay, for reasons of international solidarity and grounded in humanitarian considerations.

A. Effective Practices

[65] Effective practices States could consider 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 suspending their deportation or extending or changing their existing migration status on humanitarian grounds 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 manage the return of its citizens for reasons related to the disaster.*
- *Providing persons eligible for humanitarian protection measures with adequate information on the possibility to benefit from such protection, and their rights and responsibilities once such protection has been granted.*

B. Background

[66] Returning foreigners who were abroad when a disaster hit their country of origin in the post-disaster phase could be problematic for a number of reasons. Government authorities in the disaster-affected country may temporarily lack the capacity to receive their own citizens due to the impacts of the disaster. Return may place their lives and health at risk or expose them to serious hardship because of lack of access to adequate assistance and protection. Under such circumstances such persons may be considered cross-border disaster-displaced persons *sur place*.⁵² To identify such persons, States often use the same or similar criteria as described above (para.33).

[67] Furthermore, States may refrain from return to allow migrants to send back remittances in support of their family members in disaster-affected areas.

[68] Thus, humanitarian protection measures for foreigners already abroad not only protect affected persons from the conditions in their country of origin, but may also be a measure of solidarity with a disaster-affected country. Non-return measures may be provided for by law setting out the conditions for applying them or be based on *ad hoc* decisions. States have a wide measure of discretion, subject however to the limitations set out above (paras. 38-40), when granting protection from return.

C. Challenges and Gaps

[69] 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. It may be difficult to identify persons eligible for protection against return, particularly if they are in the country on an irregular basis. Foreigners may also lack sufficient information about their rights and responsibilities in the event that temporary relief from return is granted (see paras. 60-63 above).

III. Finding Lasting Solutions for Cross-Border Disaster-Displaced Persons

[70] Admission, stay and non-return of cross-border disaster-displaced persons usually is granted on a temporary basis. When such temporary measures come to end, displaced persons will need to find a solution that allows them to rebuild their lives in a sustainable way either in their country of origin, or in some cases, in the country that received them or in exceptional cases in a third country.

A. Effective Practices

[71] Effective practices States could consider with regard to finding lasting solutions for cross-border disaster-displaced persons include the following:

- *Developing criteria and mechanisms, preferably at a bilateral or (sub-)regional level, to determine when return from abroad in disaster contexts may take place and how to facilitate the return, including necessary exit procedures and travel.*
- *Ensuring cooperation between countries of origin and receiving countries and, where relevant, with international organizations, to ensure that returnees are received with respect for their safety, dignity, and human rights, and under conditions that allow them to find lasting solutions to their displacement.*
- *Alternatively, allowing cross-border disaster-displaced persons to apply for renewed or permanent residency, or resettlement to a third country when conditions causing the displacement persist for an extended period of time or become permanent.*
- *Developing measures to support sustained cultural and familial ties when return to the country of origin is not possible.*
- *Ensuring information of, consultation with and participation by affected persons or groups of persons, including host communities, in finding lasting solutions.*
- *Integrating interventions aimed at finding lasting solutions for cross-border disaster-displaced persons into general development plans through resilience building measures and recovery/reconstruction support at all relevant levels.*

B. Background

[72] States and disaster displaced persons may prefer to end cross-border disaster-displacement through voluntary return with sustainable re-integration at the place where displaced persons lived before the disaster. When return to their former homes is not possible or desired, 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 settlement in a new place of residence after return to the country of origin. Particularly when the conditions causing the displacement persist for an extended period of time or become permanent, in exceptional circumstances finding a lasting solution also may mean facilitating permanent admission in the country that admitted them or in a third country.

[73] A comprehensive approach to finding solutions to cross-border disaster-displacement that allows displaced persons to rebuild their lives in sustainable ways requires accurate information about their needs and capacities, and mechanisms to ensure effective consultation and participation by the displaced. Lasting solutions must also include measures that ensure, among others, access to adequate housing, basic services and education, and the restoration of livelihoods.⁵³

[74] It is important to recognize that although disaster displacement primarily constitutes a humanitarian and human rights challenge, it also carries with it significant development challenges as well as opportunities. The ability of affected persons to keep or regain their self-sufficiency is an essential component of finding lasting solutions to displacement. Particularly important are resilience building measures that seek to build and strengthen the ability of those groups, communities and institutions most affected by disaster displacement to recover from such disruption in a timely and efficient manner, and to enable affected people to help themselves. Responding to disaster displacement through sustainable development interventions thus has the potential to benefit not only the disaster displaced populations but also their host communities.

C. Challenges and Gaps

[75] In the absence of 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. Local governance models generally face challenges to ensure the inclusion of disaster displaced persons in community service delivery schemes, which could replace often problematic, parallel humanitarian delivery systems. International support for recovery and reconstruction allowing disaster displaced persons to find lasting solutions is often insufficient or ineffective due to significant conceptual, operational and institutional differences in the respective approaches between humanitarian and development actors and their respective funding mechanisms and modalities.

PART TWO: MANAGING DISASTER DISPLACEMENT RISK IN THE COUNTRY OF ORIGIN

[76] There are a number of measures States can take to manage disaster displacement risk in the country of origin to help people stay, move out of areas at risk, and address the specific needs of those that have been internally displaced. Available policy options to reduce vulnerability and build the resilience of people at risk of disaster displacement include disaster risk reduction, climate change adaptation and overall development measures. Second, when movement is unavoidable, policy options include facilitating migration and planned relocation to move people away from hazardous areas to safer areas before a disaster occurs and to help them to cope with the impacts of

natural hazards and the adverse effects of climate change. Finally, integrated humanitarian action, disaster risk management and development interventions are essential for protecting those who have been internally displaced and finding durable solutions for them. Whereas most of these tools would be used within the country of origin, facilitating migration with dignity requires cooperation with destination countries.

I. Reducing Vulnerability and Building Resilience to Displacement Risk

[77] State responsibility includes preparing for foreseeable disasters and take reasonable measures to prevent threats to the lives and property of people, including preventing displacement.⁵⁴ To some extent, disaster displacement is 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, in order to focus measures aimed at reducing exposure and vulnerability, and enhancing resilience.

A. Effective Practices

[78] Effective practices States could consider with regard to taking measures to reduce vulnerability and build resilience to displacement risk include the following:

- *Elaborating new or reviewing separate or joint climate change adaptation and disaster risk management strategies, plans or laws at all levels, in close cooperation with local governments and affected communities, to specifically incorporate disaster displacement risks and protection needs.*
- *Taking measures to identify people at risk of displacement in the immediate and long term, and develop appropriate responses, in particular by:*
 - *Encouraging local communities to develop and institutionalize community-based and traditional disaster risk mapping tools and methodologies to establish preparedness and response plans with the support of local and national authorities, civil society and the private sector, in particular to identify potential areas suitable for evacuation and, if necessary, planned relocation.*
 - *Establishing preparedness and early warning systems that clearly describe the hazards, identify populations most at risk of displacement, determine evacuation corridors and sites, and ensure that information reaches affected communities and can be easily understood by them.*
 - *Prioritizing infrastructure improvements, such as sea-walls, dams, dykes, and earthquake resistant buildings, in areas where people are most at risk of displacement.*
 - *Investing in measures, such as improving housing, livelihood diversification, education, food security, and health care, that increase the resilience and adaptive capacity of persons and groups of persons at risk of displacement, those that have to move or are already displaced, as well as host communities.*
- *Enhancing the disaster risk reduction and climate change adaptation capacity of local authorities and communities.*
- *Ensuring that, where needed, countries have adequate access to climate change adaptation and other relevant funding for human mobility related programs and activities.*
- *Developing bilateral and regional contingency plans that identify transboundary risk scenarios and formulate comprehensive disaster risk management measures to reduce vulnerability and strengthen capacity to respond to cross-border disaster-displacement.*

B. Background

[79] Resilience is a key factor in determining whether and how individuals, families, communities and countries 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 country's level of development. Low levels of development or uneven development that exacerbate, rather than reduce, inequality also contribute to heightened vulnerability to disaster risk.⁵⁵ In general, not only are poorer people more likely to be displaced in disasters, poorer communities as a whole are less likely to benefit from sufficient levels of governance, infrastructure, livelihood opportunities, urban planning, building codes, and disaster preparedness and response to withstand the impact of natural hazards.

[80] This underscores the importance of ensuring strong, sustainable and inclusive development in order to better manage displacement risks of all kinds, before, during and following disasters. States currently use a wide range of policy options to build people's resilience to natural hazards. Development spans economic measures, such as job opportunity creation; social measures, such as education, health and housing; governance priorities, such as social inclusion and the rule of law; and spatial planning, including urbanization and rural and urban development policies. Implementation of such development activities is critically important to help people remain safely in their homes when faced with natural hazards and reduce displacement risk. Such activities may also help to strengthen host communities' capacity to receive displaced persons, and facilitate finding lasting solutions to end displacement by reducing exposure and building resilience to future hazards.

[81] The Sendai Framework on Disaster Risk Reduction 2015 – 2030 acknowledges the large number of disaster displaced persons identified 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 ecosystems 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 occurs.

[82] In some parts of the world the adverse effects of climate change already contribute to displacement, migration and planned relocation. Therefore, both climate change mitigation and adaptation measures can also play an important role in reducing disaster displacement. The 2010 UNFCCC Cancun Adaptation Framework calls for many activities to help build the resilience of communities in the face of climate change impacts, such as impact and vulnerability assessments, strengthening institutional capacities, and strengthening data, information and knowledge systems.⁵⁶ The Warsaw International Mechanism for Loss and Damage associated with climate change impacts also identifies displacement as a potential consequence of climate change. The Mechanism's initial two year work plan, approved at the twentieth session of the Conference of the Parties to the UNFCCC, will seek to enhance understanding and expertise- and their application- of how impact of climate change are affecting patterns of migration, displacement and human mobility.

[83] The 2030 Agenda for Sustainable Development contains a commitment "to cooperate internationally to ensure [...] the humane treatment", *inter alia*, of "displaced persons,"⁵⁷ and to

build the resilience, *inter alia*, of those in vulnerable situations to climate-related extreme events and other disasters.⁵⁸ In this regard, Goal 13 – Take Urgent Action to Combat Climate Change and Its Impacts breaks new ground. The intention to “leave no one behind” when the goals are implemented to ensure equality, non-discrimination, equity and inclusion, as well as the reference to displaced persons and migrants among vulnerable groups establish a clear link between displacement, climate change, natural hazards, and development.

C. Challenges and Gaps

[84] Existing disaster risk reduction and climate change adaptation strategies normally neither acknowledge nor reflect the reality that very high numbers of people are displaced every year by disasters and thus do not adequately address human mobility issues.⁵⁹ Where bilateral or regional disaster risk management mechanisms exist, the potential for cross-border disaster-displacement is generally not recognized within contingency planning and response plans.

[85] Some States have requested specific guidance on how to appropriately include displacement, migration and planned relocation within national and regional DRR and climate change adaptation policies and strategies. Furthermore, the implementation of human mobility issues included within national and regional climate change adaptation plans, policies and strategies may require adaptation funding, including from the operating entities of the financial mechanism of the UNFCCC and other funding mechanisms.

[86] Disaster displacement is not only a fundamental humanitarian concern but also a development issue. Another persistent challenge in disaster risk reduction and resilience building measures is closing the gap between humanitarian and development action. At the national level, this challenge illustrates the need for coordination between government departments, and increased integration of elements of disaster risk management and climate change adaptation plans into development policies. At the local level, building the capacity and empowering local authorities and communities is needed.

II. Facilitation of Migration with Dignity in the Context of Natural Hazards and Climate Change

[87] 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 often use migration as a way to seek alternative opportunities within their country or abroad to avoid situations that otherwise may result in a humanitarian crisis and displacement in the future. Pastoralists use migration as a traditional coping method to access water and grazing land in times of environmental stress.

A. Effective Practices

[88] Effective practices States could consider with regard to facilitating migration with dignity as a potentially positive way to cope with the effects of natural hazards, environmental degradation and climate change 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 as simplified travel and customs documents. In the absence of such agreements, negotiating and implementing new agreements to facilitate migration with dignity.*

- *Developing or adapting national policies providing for residency permit quotas or seasonal worker programs in accordance with international labour standards to prioritize people from countries or areas facing natural hazard or climate change impacts.*
- *Providing training and education, including through qualification and accreditation alignment, to enable people from countries facing natural hazard or climate change impacts to compete for skilled employment opportunities in a regional or global labour market, and in this regard to cooperate closely with employers.*
- *Providing cultural orientation and other pre-departure training for documented migrants to help them move in safety and dignity.*
- *Reducing the costs of sending remittances from diaspora communities used to support and build the resilience of families remaining at home.*
- *Facilitating pastoralists' traditional practice of moving internally and across international borders to access water, pasture and regional markets during times of drought, such as through the development of transhumance agreements or special travel permits to facilitate the cross-border movement of livestock.*

B. Background

[89] Managed properly, migration has the potential to be an adequate measure to cope with the adverse effects of climate change, other environmental degradation and natural hazards. 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 home with newly acquired knowledge, technology and skills. Diaspora remittances and investments in disaster-prone countries of origin can also play an important role in early recovery and provide a foundation for long-term development solutions. 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.

[90] The possibility for permanent migration is particularly important for low-lying small island States and other countries confronting substantial loss of territory or other adverse effects of climate change that increasingly make large tracts of land uninhabitable.

[91] While migration can be highly beneficial, it also carries specific risks, especially for women and children. Migrants might be economically exploited, exposed to dangerous conditions at their place of work or home, face discrimination or become victims of violence or being trafficked. This is particularly true for those using irregular means for migration, but also for regular migrants. 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.⁶⁰ The migration of a substantial number of members of a community or family may undermine their resilience. This is why it is important that people can migrate with dignity and with respect of their human rights.

[92] In certain situations, people in the most desperate circumstances may lack the resources to move at all, forcing them to remain in unsafe areas.⁶¹

C. Challenges and Gaps

[93] With very few exceptions, planned and coherent approaches to recognizing, facilitating, managing and harnessing the benefits of migration as a means of coping with the adverse effects of

climate change, environmental degradation and natural hazards are absent in most regions and countries. Similarly, where human mobility is included in national or regional climate change adaptation strategies, migration is generally viewed as something to be avoided, rather than recognized as a potentially positive adaptation strategy. There is a lack of regional or bilateral agreements specifically addressing and regulating migration as a response to the negative effects of climate change and other natural hazards.

III. Planned Relocation with Respect for People's Rights

[94] The risks and impacts of natural hazards, climate change, and environmental degradation have led many governments around the world to move and settle persons or groups of persons to safer areas, both before and after disaster displacement occurs.⁶² However, because of the many negative effects associated with past relocation processes (e.g. challenges related to sustaining livelihoods, cultural ties, identity and connection to land), planned relocation is generally considered a last resort after other options have been reasonably exhausted.

A. Effective Practices

[95] Effective practices States could consider with regard to planned relocation include, in particular, the following:

- *Developing international and regional guidance, as well as national and local level laws and public policies, to support effective and sustainable planned relocation processes adapted to the local context and with full respect for the rights of affected persons or groups of persons, including members of host communities.*
- *Identifying and setting aside suitable land and living space for planned relocation as a disaster preparedness and climate change adaptation measure.*
- *Ensuring that planned relocation sites do not expose relocated people to greater disaster risk and provide for disaster risk management measures in the event of future disasters.*
- *Implementing planned relocation in a manner that*
 - *takes into account all relevant social, economic, cultural and demographic factors, including in particular the specific needs of women and children, particularly vulnerable persons and, where relevant, indigenous peoples;*
 - *engages both relocated persons or groups of persons and host communities in consultation, planning, implementation and evaluation of planned relocation programmes and projects;*
 - *takes into account community ties, cultural values, traditions, and psychological attachments to their original place of residence;*
 - *ensures adequate livelihood opportunities, basic services, and housing in the new location;*
 - *provides for adequate mechanisms and safeguards to prevent and solve conflicts, such as over land, other resources, and access to services and livelihoods; and*
 - *uses planned relocation in ways that help to achieve development goals.*

B. Background

[96] Planned relocation in the context of disasters and the effects of climate change may be relevant, each with its own challenges:

- 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 landslides) or when areas become unfit for habitation due to environmental degradation or the impacts of climate change (sea level rise, drought, or melting permafrost).
- 2) As a lasting solution within the country of origin to allow disaster displaced people to rebuild their lives if the impacts of the disaster or the risk of future disasters rendered their place of origin as no longer fit for habitation.
- 3) As a lasting solution in a receiving country in the extreme event that impacts of climate change and other natural hazards render large parts of or an entire country unfit for habitation (e.g., low-lying island States).

[97] Experience shows that planned relocation meets resistance or is not sustainable if it is undertaken without consultation and the participation of affected people, including host communities, and if livelihood, community cohesion and cultural traditions issues are neglected.⁶³ Systematic engagement with women, in particular, often contributes to a successful outcome of the relocation process.

C. Challenges and Gaps

[98] While planned relocation has the potential to increase vulnerable persons or groups of persons' 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. Furthermore, no clear criteria or guidance exist to determine when planned relocation is an adequate or necessary policy option in disaster and climate change related contexts and how such relocation should be implemented.⁶⁴

IV. Addressing the Needs of Internally Displaced Persons in Disaster Contexts

[99] Since most disaster displacement takes place within countries, the protection of internally displaced persons (IDPs) is particularly important. To be effective, approaches to risk mapping, disaster risk reduction measures, contingency planning, the humanitarian response, as well as efforts to find lasting solutions to disaster displacement often require addressing both internal and cross-border displacement at the same time. Furthermore, although more knowledge and data is required to better understand the relationship, it has been observed that cross-border disaster-displacement 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 move abroad.

A. Effective Practices

[100] Effective practices States could consider with regard to protecting and assisting IDPs in disaster contexts include the following:

- *Reviewing domestic legislation or policies on internal displacement to identify whether the notion of IDPs includes those displaced in disaster contexts, and if not consider expanding that notion in line with the UN Guiding Principles on Internal Displacement and relevant (sub-)regional instruments.*

- *Reviewing domestic legislation and policies on disaster risk management to identify whether they contain specific and adequate provisions addressing all stages of disaster related internal displacement and, if not, revise such laws and policies in line with the UN Guiding Principles on Internal Displacement and relevant (sub-)regional instruments.*
- *Specifically incorporating IDP protection considerations, and clarifying roles and responsibilities of relevant actors within disaster risk reduction and humanitarian response plans, as well as relevant development plans, in accordance with respect for the human rights of IDPs.*
- *Strengthening the institutional capacity and resources of national and local authorities to enhance protection and support for IDPs in disaster contexts.*
- *Ensuring that projects and programs regarding humanitarian assistance, early recovery and durable solutions in disaster contexts provide meaningful information and opportunities for consultation with and participation by displacement-affected persons or groups of person, those at risk of displacement and host communities.*

[101] Effective practices States could consider with regard to finding durable solutions for IDPs in disaster contexts include the following:

- *Consistently establishing links between humanitarian and development activities to ensure that IDPs find durable solutions, such as by specifically addressing internal displacement within recovery, reconstruction and post-disaster development plans.*
- *Using thematic clusters or sectoral working groups in the rehabilitation, recovery and reconstruction response to disasters that build upon those used during the humanitarian response to ensure an effective transition.*
- *Ensuring information of, consultation with and participation by affected individuals, in particular women, youth, and where relevant members of indigenous peoples, and host communities.*
- *Emphasizing the re-establishment of livelihoods and basic services, in addition to housing and infrastructure reconstruction, within durable solutions strategies.*
- *Incorporating within long-term development planning measures that support durable solutions, particularly in return areas, and enable IDPs to better withstand future natural hazards, environmental degradation, and the adverse effects of climate change.*

B. Background

[102] States have the primary duty and responsibility to protect and assist IDPs in accordance with their obligations under international human rights law as well as, where applicable, international humanitarian law. The UN Guiding Principles on Internal Displacement, which have been recognized by the international community as an “important international framework for the protection of internally displaced persons,”⁶⁵ address this responsibility.⁶⁶ They describe 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.⁶⁷ States are also responsible for finding durable solutions for IDPs. 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. Importantly, finding durable solutions for IDPs creates particular challenges that, unresolved, can leave people in protracted displacement situations.

[103] A small number of States have developed national laws and policies on internal displacement that specifically apply to disaster contexts. At the (sub-)regional level, disasters and climate change are explicitly covered by the 2009 African Union Convention on the Assistance and Protection of Internally Displaced Persons in Africa (AU Kampala Convention), and the 2006 Great Lakes IDP Protocol.⁶⁸

C. Challenges and Gaps

[104] Despite widespread recognition of the principles outlined in the UN Guiding Principles on Internal Displacement, most States neither have laws and policies specifically addressing internal displacement in disaster contexts, nor do they address such displacement in their legal frameworks on disaster management and response. Where States have adopted IDP specific instruments, the challenge lies in implementing them in operational terms. Institutional accountability for IDP protection at the international level in disaster situations 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.⁶⁹

[105] 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, potentially leaving IDPs in temporary or transitional shelter for years at a time. 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.

PART THREE: PRIORITY AREAS FOR FUTURE ACTION

[106] Cross-border disaster-displacement requires enhanced action at the national, (sub-) regional and international level. A number of effective practices have been identified that contribute to a comprehensive approach to cross-border disaster-displacement, including through the management of disaster displacement risk in the country of origin. These effective practices can provide inspiration to States and other relevant actors seeking more coherent and effective approaches to cross-border disaster-displacement in the future. They also provide a starting point to bring together the many existing policy and action areas discussed in this agenda that have been relatively uncoordinated to date.

[107] The consultative process leading to this agenda was intended to build consensus on key principles and elements addressing the protection and assistance needs of cross-border disaster-displaced persons at a policy level, rather than focus on implementation. As a contribution to future efforts to address cross-border disaster-displacement, this agenda identifies *three priority areas* for action to support the implementation of identified effective practices:

- 1) **Collecting data and enhancing knowledge** on cross-border disaster-displacement;
- 2) **Enhancing the use of humanitarian protection measures** for cross-border disaster-displaced persons, including mechanisms for lasting solutions, for instance by harmonizing approaches at (sub-)regional levels;

3) **Strengthening the management of disaster displacement risk in the country of origin by:**

- a. Integrating human mobility within disaster risk reduction and climate change adaptation strategies, and other relevant development processes;
- b. Facilitating migration with dignity as a potentially positive way to cope with the effects of natural hazards and climate change;
- c. Improving the use of planned relocation as a preventative or responsive measure to disaster risk and displacement;
- d. Ensuring that the needs of IDPs displaced in disaster situations are specifically addressed by relevant laws and policies on disaster risk management or internal displacement.

[108] Concerted action in these areas will be important for generating wider and more systematic application of the numerous effective practices currently used by States and other actors. In particular, such action requires a shared understanding of and coordinated approaches to cross-border disaster-displacement that bring together and link humanitarian action, human rights protection, migration management, refugee protection, disaster risk reduction, climate change adaptation, and development interventions.

[109] Action in the three priority areas requires concerted efforts at all levels. It is necessary that States at the national level establish clearly designated institutional leadership to bring together different branches of government to coordinate national planning and response efforts for cross-border disaster-displacement. At the same time, effective implementation of activities requires strong involvement and participation of local authorities; affected communities including, where relevant, indigenous peoples; women; youth; as well as civil society organizations and academia.

[110] Recognizing that most cross-border disaster-displacement takes place within regions and therefore appropriate responses vary from region to region, the roles of regional and sub-regional organizations, for example the African Union and the African regional economic communities or the Pacific Islands Forum, are of primary importance for developing integrated responses, including policies and strategies and, where appropriate, normative frameworks to address the three priority areas. More specialized (sub-)regional mechanisms include Regional Consultative Processes (on migration), human rights mechanisms, disaster risk management centres, climate change adaptation strategies, as well as common markets and free movement of persons arrangements, among others.

[111] At the global level, international organizations and agencies dealing with issues as diverse as humanitarian action, human rights protection, migration management, refugee protection, disaster risk reduction, climate change adaptation, and development may also contribute. In particular, they can provide technical advice as well as capacity building and operational support to (sub-)regional bodies as well as national and local authorities, particularly in the most vulnerable countries, to support implementation of the three priority areas, according to their respective mandates and areas of expertise.

I. Collecting Data and Enhancing Knowledge on Cross-Border Disaster-Displacement

[112] Knowledge and data on cross-border disaster-displacement is growing, particularly regarding concepts, numbers and regional dynamics. At the same time, despite efforts by academic

institutions, and non-governmental and international governmental organizations and agencies, comprehensive, reliable and timely global data on cross-border disaster-displacement are still not available. Similarly, additional knowledge is also needed on disaster-related migration and planned relocation processes.

[113] In order to address these challenges and gaps, and to promote and facilitate the collection of data and enhanced knowledge, the following *key actions* are suggested:

- [i] Setting up new or building upon existing systems to⁷⁰
 - a. Collect, consolidate and analyze gender- and age-disaggregated data regarding the overall number of people displaced in disaster contexts, both internally and across international borders, based on clear criteria and effective methods;
 - b. Develop methodologies to identify those at risk of being displaced in disaster contexts, including across international borders;
 - c. Determine to what extent men and women already rely on migration as a strategy to cope with the effects of natural hazards and the effects of climate change, and what lessons can be learned for improving the benefits of migration and addressing related protection risks;
 - d. Collect, analyze and evaluate effective practices for planned relocation processes in the context of disasters and effects of climate change.
- [ii] Establishing an inter-agency mechanism for improved data collection on disaster displacement that enhances synergies between actors, addresses gaps, and improves clarity on roles and responsibilities.
- [iii] Analyzing the effectiveness of existing humanitarian protection mechanisms in responding to the protection needs of cross-border disaster-displaced persons.

II. Enhancing the Use of Humanitarian Protection Measures for Cross-Border Disaster-Displaced Persons

[114] Some States possess legal provisions explicitly providing for humanitarian protection measures for cross-border disaster-displaced persons. However, most States lack laws and policies that would offer guidance and a predictable response if such persons arrived at their borders or were on their territory. Even in regions where relevant legal provisions exist, such approaches could benefit from further harmonization to better facilitate regional cooperation in addressing cross-border disaster-displacement. Improved accountability for protection and assistance for cross-border disaster-displaced persons, including finding lasting solutions, are also needed.

[115] In order to address these challenges and gaps, and to promote and facilitate the implementation of identified effective practices for promoting protection and assistance for cross-border disaster-displaced persons (see paras. 33-34; 43; 47; 66; 65; 71), the following *key actions* are suggested:

- [i] Reviewing existing domestic laws, policies and strategies to determine to what extent they allow for the temporary admission, stay or non-return, as well as lasting solutions for cross-border disaster-displaced persons, and revising them where appropriate, taking into account the specific needs of women and children, particularly vulnerable persons and, where relevant, members of indigenous peoples;

- [ii] Exploring the need to harmonize approaches to admission, stay and non-return of cross-border disaster-displaced persons at (sub-)regional levels;
- [iii] Exploring the need to develop new, or revise and harmonize existing national, bilateral or (sub-)regional cross-border disaster risk management and humanitarian response mechanisms to ensure that such mechanisms integrate cross-border disaster-displacement risk;
- [iv] Exploring the need to develop bilateral or (sub-) regional cooperation mechanisms facilitating the return and sustainable reintegration of cross-border disaster-displaced persons to find lasting solutions;
- [v] Establishing mechanisms in support of governments at the UN Country Team or Humanitarian Country Team level to determine the respective roles and responsibilities of international organizations and agencies to address the protection and assistance needs of cross-border disaster-displaced persons in the receiving country.

III. Strengthening the Management of Disaster Displacement Risk in the Country of Origin

[116] There are a number of measures States can take to manage disaster displacement risk in the country of origin to help people stay, move out of areas at risk, and address the specific needs of those that have been internally displaced.

A. Integrating Human Mobility within Disaster Risk Reduction and Climate Change Adaptation Strategies, and Other Relevant Development Processes

[117] While climate change adaptation, disaster risk reduction and other development strategies can also help avoid displacement by building up the resilience of people living in areas facing natural hazards, environmental degradation and the adverse effects of climate change, existing disaster risk reduction and climate change adaptation related laws, policies, strategies, and operational activities, with very few exceptions, do not address disaster displacement, migration and planned relocation. Furthermore, the current and projected impacts of natural hazards and the adverse effects of climate change suggest that efforts to address disaster and displacement risk and build resilience need to be scaled up to meet present and future challenges.

[118] In order to address these challenges and gaps, and to promote and facilitate the implementation of identified effective practices on reducing vulnerability and building resilience to displacement risk (see para. 78), the following *key actions* are suggested:

- [i] Developing guidance, and providing technical and capacity building support to national and local authorities and (sub-)regional organizations to implement the Sendai Framework on Disaster Risk Reduction's relevant priorities for action related to displacement, migration and planned relocation.
- [ii] Developing guidance, and providing technical and capacity building to national and local authorities, and (sub-)regional organizations to support the inclusion of human mobility considerations within climate change adaptation strategies and policies, including through collaboration, as appropriate, with UNFCCC bodies and processes.⁷¹
- [iii] Continuing to consider the issues of displacement, migration and planned relocation within on-going activities of the Conferences of Parties to the UNFCCC.
- [iv] Revising laws, policies, strategies and plans on disaster risk reduction, climate change adaptation, and overall resilience building with a view to integrate human mobility aspects.

- [v] Ensuring that access to funding is secured and facilitated to finance human mobility related measures within local, national and regional climate change adaptation, disaster risk reduction, and resilience building plans and activities.

B. Facilitating Migration with Dignity as a Potentially Positive Way to Cope with the Effects of Natural Hazards and Climate Change

[119] If well supported and managed, migration has the potential to help people living in areas exposed to natural hazards, environmental deterioration and the adverse impacts of climate change to avoid situations that otherwise may result in a humanitarian crisis and displacement in the future. However, in many parts of the world regular channels for such migration are few or do not exist. Due to a lack of opportunities for regular migration, some persons impacted by natural hazards may resort to irregular migration with all its negative consequences, particularly for women and children.

[120] In order to address these challenges and gaps, and to promote and facilitate the implementation of identified effective practices on facilitating migration with dignity as a potentially positive way to cope with the effects of natural hazards, environmental degradation and climate change (see para. 88), the following *key actions* are suggested:

- [i] Reviewing, adapting or developing national legislation, as well as bilateral or (sub-)regional agreements, to facilitate temporary, circular or, where appropriate, permanent migration as means to cope with the effects of natural hazards, environmental degradation and climate change.
- [ii] Preparing persons who envisage migration as a positive coping strategy to build their capacity to compete in the labour market.
- [iii] Reviewing existing regional, sub-regional and bilateral free movement of persons agreements to determine to what extent such agreements already, or could better, facilitate international migration.

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

[121] The planned relocation of persons or group of persons is recognized as a preventative or responsive measure to disaster risk and displacement, including the adverse effects of climate change. In some cases, planned relocation has been identified as necessary, but cannot be carried out due to policy, institutional, financial and other limitations. In other situations, planned relocation processes are undertaken without sufficient guidance and capacity to ensure the process is sustainable and fully respects the rights of the relocated persons or groups of persons, and host communities.

[122] In order to address these challenges and gaps, and to promote and facilitate the implementation of identified effective practices on planned relocation as preventive or responsive measures to disaster risk and displacement (see para. 95) the following *key actions* are suggested:

- [i] Developing international and (sub-)regional operational guidance to support effective and sustainable disaster risk and climate change related planned relocation processes.⁷²
- [ii] Reviewing or developing relevant instruments and institutional capacity, particularly in the areas of disaster risk management, climate change adaptation and development, to integrate planned relocation as a potential tool to address the effects of natural hazards, environmental degradation and climate change, and ensure that planned relocation, when carried out, respects the rights of relocated persons and members of host communities.

- [iii] Providing technical support and strengthen the capacity and leadership of relevant national and local authorities, and communities to carry out, when appropriate, planned relocation that takes into account the specific needs of women and children, particularly vulnerable persons and, where relevant, members of indigenous peoples.

D. Ensuring that the Needs of IDPs Displaced in Disaster Situations Are Addressed by Relevant Laws and Policies

[123] Since most disaster displacement takes place within countries, the protection of IDPs is an important part of managing displacement risk, but relevant domestic laws, policies and strategies often do not address the specific needs of such persons. At the same time, international institutional accountability in support of governments for IDP protection within a specific disaster response is often not predictable.

[124] In order to address these challenges and gaps, and to ensure that IDPs displaced in disaster situations are addressed by relevant laws and policies (see paras. 100-101), the following *key actions* are suggested:

- [i] Reviewing or developing relevant instruments and institutional capacity in order to ensure that internal displacement in disaster contexts is integrated within domestic disaster risk management or IDP laws, policies and strategies.
- [ii] Reviewing the mandates and potential roles of international organizations and agencies, in anticipation of future disasters, to ensure predictable, timely and accountable international leadership in supporting governments to protect IDPs and find durable solutions.
- [iii] Ensuring that funding mechanisms for finding durable solutions to internal disaster displacement can be activated already during the humanitarian response.

IV. Possible Next Steps

[125] To facilitate follow up on this agenda and implementation of activities identified in the three priority areas for action addressing cross-border disaster-displacement, it will be important to continue to:

- [i] Provide a forum for dialogue among interested States to further discuss how best to protect cross-border disaster-displaced persons, and prevent disaster displacement, where possible.
- [ii] Enhance cooperation and coordination between international organizations and agencies, and other relevant actors, in order to ensure a comprehensive approach to cross-border disaster-displacement.

ANNEXES

ANNEX I: Countries That Received and/or Did Not Return Disaster-Affected Foreigners

ANNEX II: Examples of Cross-Border Disaster-Displacement

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ANNEX I: Regional Dynamics of Disaster-Related Human Mobility

ANNEX II: Effective Practices for Cross-Border Disaster-Displacement

ANNEX III: Disaster Displacement References in International, (Sub-)Regional and National Agreements, Declarations, and Policies

Endnotes

¹ Internal Displacement Monitoring Centre (IDMC), "Global Estimates 2015: People displaced by disasters," July 2015, p.8. Note, IDMC's estimates do not include drought and other incidents of environmental degradation.

² *Ibid*, p. 17.

³ The IPCC also highlights that "populations that lack the resources for planned migration experience higher exposure to extreme weather events." 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 For example, the NASA Earth Science Division director Michael Freilich stated, based upon computer simulation of sea level rise, "More than 150 million people, most of them in Asia, live within one meter of present sea level."

<http://www.abc.net.au/news/2015-08-27/sea-levels-set-to-rise-nasa-says/6728008>. See also <https://www.nasa.gov/press-release/nasa-science-zeros-in-on-ocean-rise-how-much-how-soon>.

⁵ IPCC *supra* note 3, p. 20.

⁶ See Annex for more detailed description and examples.

⁷ 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."

⁸ The Nansen Initiative is led by the Governments of Norway and Switzerland. Its 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. The Consultative Committee informs the process through expertise.

⁹ 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." United Nations Framework Convention on Climate Change Decision 1/CP.16, *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, FCCC/CP/2010/7/Add.1 (15 March 2011), available from <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>.

¹⁰ 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."

¹¹ Over the course of 2013-2015, intergovernmental Regional Consultations were held in the Pacific (the Cook Islands), Central America (Costa Rica), the Greater Horn of Africa (Kenya), Southeast Asia (the Philippines) and South Asia (Bangladesh). Civil Society meetings took place in the Pacific (Fiji), Central America (Guatemala), the Greater Horn of Africa (Kenya), Southeast Asia (Thailand), and South Asia (Nepal). Additional consultations were held on West Africa (Germany), Southern Africa (South Africa), and South America (Ecuador). Reports and conclusions from these meetings can be found at www.nanseninitiative.org.

¹² 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 large-scale industrial accidents. It is, however, not applicable to disasters caused by violence and armed conflict.

¹³ See <https://www.iom.int/micic>.

¹⁴ Please see Volume II that includes the Summary of Conclusions from the Nansen Initiative Regional Consultations, which include conclusions on migrants caught up in a disaster situation while abroad.

¹⁵ The IASC, established in 1991 in GA Resolution 46/182, adopted this definition as used and agreed upon during ICRC workshops. Such protection may include activities aimed at preventing or stopping violations and ending harm, providing remedies when such rights have been violated, and promoting an overall environment conducive for the respect of such rights and thus may be responsive, remedial and environmental building. See IASC, *Protection of Internally Displaced Persons*, Policy Paper Series, New York, December 1999.

¹⁶ 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." "Terminology," UN Office for Disaster Risk Reduction (UNISDR), <http://www.unisdr.org/we/informterminology#letter-d>

¹⁷ 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.

¹⁸ Humanitarian protection measures should not be equated with subsidiary and complementary protection as generally used in refugee and similar contexts, although in some circumstances the later forms of protection might also be relevant in disaster contexts. See paras. 55-57 in the text.

¹⁹ 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).

²⁰ 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).

²¹ See paras. 22 and 24 in the text.

²² Barnett, Jon and Webber, Michael, "Migration as Adaptation: Opportunities and Limits" in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary perspectives* (Hart, Oxford: 2010).

²³ Brookings, Georgetown University and UNHCR, "Guidance on Planned Relocation within National Borders: To Protect People from Impacts of Disasters and Environmental Change, Including Climate Change," Draft, 5 June 2015. See also: IASC, *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*. The Brookings-Bern Project on Internal Displacement (2011). "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 UNISDR, Terminology, <<http://www.unisdr.org/we/informterminology#letter-r>>

²⁵ UNISDR, Terminology, <<http://www.unisdr.org/we/informterminology#letter-e>>

²⁶ UNISDR, Terminology, <<http://www.unisdr.org/we/informterminology#letter-r>>

²⁷ 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.

²⁸ 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.

²⁹ 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).

³⁰ UNDP, *Transforming Our World: The 2030 Agenda for Sustainable Development*, (advance unedited version) para. 14 <https://sustainabledevelopment.un.org/content/documents/7891Transforming%20Our%20World.pdf>.

³¹ World Humanitarian Summit Synthesis Report, *forthcoming*, 2015. See also the WHS, Final Report, Regional Consultation for the Pacific, Auckland, 30 June -2 July 2015, p. 24-27.

³² African Union, *The Migration Policy Framework for Africa* p.1. See also the 2014 Fifth African Regional Platform on Disaster Risk Reduction, which states, "Disasters are not constrained by administrative boundaries and require trans-boundary policies and programmes. Population movements induced by disasters (fast- and slow-onset) and long-term violent conflicts call for cross-border cooperation."

³³ 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.

³⁴ Pacific Islands Development Forum Secretariat, *Suva Declaration on Climate Change*, 4 September 2015, p.2 at <http://pacificdf.org/wp-content/uploads/2013/06/PACIFIC-ISLAND-DEVELOPMENT-FORUM-SUVA-DECLARATION-ON-CLIMATE-CHANGE.v2.pdf>

³⁵ The Nansen Initiative has, in particular, provided input to the Sendai Framework for Disaster Risk Reduction, the World Humanitarian Summit Process, the UNFCCC negotiations, the Brazil Declaration and Plan of Action, and the Strategy for Climate and Disaster Resilient Development in the Pacific. The Nansen Initiative also participated in the elaboration of the OSCE Self-Assessment Tool for Nations to Increase Preparedness for Cross-Border Implications of Crises (OSCE Secretariat, Transnational Threats Department, Borders Unit, 2013) which, *inter alia*, covers disaster-related cross.

³⁶ For the purposes of this agenda, "security" refers to the physical security of disaster-affected people.

³⁷ See for instance Article 6, paragraph 1 of the International Covenant on Civil and Political Rights obliging States Parties not only to respect the right to life but also protect life, an obligation that the Human Rights Committee has interpreted as preventing States Parties that have abolished the death penalty from extraditing a person to a State where he or she would face capital punishment (see *Kindler v. Canada*, Communication No. 470/1991, U.N. Doc. CCPR/C/48/D/470/1991 (1993)) or return rejected asylum seekers to countries where they would face a real risk of being killed. 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 but rather relied upon their discretionary authority, often on “humanitarian grounds.” See Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press: Oxford, 2012) p. 49.

³⁸ See, e.g., M.S.S. v Belgium and Greece, ECtHR, no. 30696/10 (2011), and Sufi and Elmi v United Kingdom, ECtHR, nos. 8319/07 and 11449/07 (2011).

³⁹ 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. See paras. 222, 231-232.

⁴⁰ 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.

⁴¹ See, for example, the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children states in Article 7 on the Status of victims of trafficking in persons in receiving States, that “each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases” and “give appropriate consideration to humanitarian and compassionate factors.”

⁴² See the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Doc. A/RES/45/158, 18 December 1990.

⁴³ Nansen Initiative, South American Regional Consultation Outcome Report, September 2015. Other countries have incorporated into their legislation the right to not to have to migrate due to a lack of development.

⁴⁴The examples in this section are mainly drawn from research commissioned by the Nansen Initiative, and the consultative process. See 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,” Nansen Initiative, December 2014; Robert Freeman, “Southern Africa Background Paper,” Nansen Initiative, June 2015; François Gemenne, Julia Blocher, Florence de Longueville, Nathalie Perrin, Sara Vigil, Caroline Zickgraf, Dalila Gharbaoui & Pierre Ozer, “Catastrophes, Changement Climatique et Déplacements forcés Dynamiques régionales de mobilité en Afrique de l’Ouest,” Nansen Initiative, 2014; Nicolás Rodríguez Serna, “South American Background Paper,” Nansen Initiative, June 2015. Patricia Weiss Fagan, “Receiving Haitian Migrants,” Nansen Initiative, December 2013; Tamara Wood, “Protection and Disasters in the Horn of Africa: Norms and practice for addressing cross-border displacement in disaster contexts,” Nansen Initiative, 2014.

⁴⁵ 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.

⁴⁶ For more about the Economic Community of West Africa (ECOWAS) and the Economic Community of Central African States (CEMAC) transhumance arrangements see 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>.

⁴⁷ 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.

⁴⁸ 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).

⁴⁹ See Tamara Wood, “Protection and Disasters in the Horn of Africa: Norms and practice for addressing cross-border displacement in disaster contexts,” Nansen Initiative, 2014, p. 32-33.

⁵⁰ See Council of the European Union, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures for promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

⁵¹ See also UNHCR, “Guidance Note on Temporary Protection or Stay Arrangements,” Division of International Protection, January 2014.

⁵² 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, paras. 94-96.

⁵³ *IASC Framework on Durable Solutions for Internally Displaced Persons*, The Brookings Institution- University of Bern Project on Internal Displacement, April 2010.

⁵⁴ See Draft Article 16 Duty to reduce the risk of disasters, International Law Commission, Protection of Persons in Situations of Disaster, Draft Articles 16-17, UN Doc. A/CN.4/L.815, 23 July 2013. See also 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.

⁵⁵ UNISDR, *Global Assessment Report on Disaster Risk Reduction 2015*, <http://www.unisdr.org/we/inform/publications/42809>.

⁵⁶ UNFCCC, *supra* note 9, paras.14 (b)(c)(h).

⁵⁷ UNDP, *supra* note 27, para. 35.

⁵⁸ *Ibid*, Goal 1.5.

⁵⁹ See, for example, Daniel Petz, “Strengthening Regional and National Capacity for Disaster Risk Management: The Case of ASEAN,” (November 2014) The Brookings-LSE Project on Internal Displacement; 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.

⁶⁰ 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

⁶¹ Foresight, *Migration and Global Environmental Change* (Final Project Report, The Government Office for Science, Foresight, 2011).

⁶² See examples in Annex, and Daniel Petz, “Planned Relocations in the Context of Natural Disasters and Climate Change: A Review of the Literature,” Brookings Institution, 2015.

<http://www.brookings.edu/~media/research/files/papers/2015/06/planned-relocations-climate-change/brookings-planned-relocations-annotated-bibliography-june-2015.pdf>

⁶³ Brookings, Georgetown University and UNHCR, “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>>

⁶⁴ Presently, the Planned Relocation, Disasters and Climate Change Project, led by the Brookings Institution, Georgetown University and UNHCR, is in the process of developing such guidance. See *supra* note 20.

⁶⁵ See General Assembly resolutions: A/RES/62/153, para. 10; A/RES/64/162, para. 10; A/RES/66/165, para. 12.

[A/RES/68/180](#) para. 16; Human Rights Council: Res. 6/32 para. 5; 2005 World Summit Outcome, A/RES/60/1, 24 October 2005, para. 132; Human Rights Council resolutions: A/HRC/RES/6/32, para. 5; A/HRC/RES/14/6, para. 9; A/HRC/RES/20/9, para. 1; A/HRC/RES/23/8, para. 12.

⁶⁶ See General Assembly Resolutions: A/RES/62/153, para. 10; A/RES/64/162, para. 10; A/RES/66/165, para. 12.

[A/RES/68/180](#) para. 16; Human Rights Council: Res. 6/32 para. 5; 2005 World Summit Outcome, A/RES/60/1, 24 October 2005, para. 132; Human Rights Council resolutions: A/HRC/RES/6/32, para. 5; A/HRC/RES/14/6, para. 9; A/HRC/RES/20/9, para. 1; A/HRC/RES/23/8, para. 12.

⁶⁷ Guiding Principles on Internal Displacement (UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998).

⁶⁸ International Conference on the Great Lakes, Protocol on the Protection and Assistance to Internally Displaced Persons, 2006.

⁶⁹ Under the Inter-Agency Standing Committee’s Cluster Approach to coordinate 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. Other activities to provide protection and assistance to IDPs in disaster situations are also included within all the sectoral clusters, notably the Camp Coordination and Camp Management Cluster led by IOM (disasters) and the Emergency Shelter Cluster convened by IFRC (disasters). See the Global Protection Cluster: <http://www.globalprotectioncluster.org/en/areas-of-responsibility/protection-in-natural-disasters.html>.

⁷⁰ Since 2008, IDMC has been collecting global data on disaster displacement, and has also developed models to project future disaster displacement. IOM’s Displacement Tracking Matrix collects data on displacement in disaster situations where the organization has field operations.

⁷¹ IOM is currently developing guidance on integrating human mobility within National Adaptation Plans. See <http://environmentalmigration.iom.int/integrating-human-mobility-issues-within-national-adaptation-plans>.

⁷² See *supra* notes 20 and 59.