

## **INPUT TO THE UN SECRETARY-GENERAL'S REPORT ON THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION**

### ***Submission by the Envoy of the Chair of the Platform on Disaster Displacement***

This submission by the Envoy of the Chair of the Platform on Disaster Displacement provides input to the UN Secretary-General's report on the Global Compact for safe, orderly and regular migration on issues related to cross-border movements of people in the context of disasters triggered by natural hazards and the adverse effects of climate change. It provides basic information on the reality of human mobility in the context of disasters, including the adverse effects of climate change (section I), it describes State practice to address cross-border movements of persons affected by such events (section II), references particularly important international instruments and frameworks addressing this issue (section III), and provides a list of possible action points for inclusion in the Global Compact on Migration.

#### ***1. Understanding drivers of human mobility in the context of disasters, including the adverse effects of climate change***

1. The impacts of sudden-onset events such as flooding, tropical storms, earthquakes or volcano eruptions, and slow-onset events and processes in particular desertification, drought and sea level rise, are important drivers of human mobility. If the impacts of natural hazards amount to a disaster, i.e. situations where such impacts "exceed the capacity of a community or society to cope using its own resources", movements will likely be more forced and sudden, and needs more acute.<sup>1</sup> While the large majority of such movements take place within countries, people may also move across borders. Depending on the circumstances, such movements may be predominantly involuntary, or affected persons may move more as a matter of choice and agency to decide whether they move or to stay, and thus be situated closer to one or the other pole on the continuum, between (completely) voluntary and (completely) forced migration. Many, however, will fall somewhere in the middle with a degree of compulsion and voluntariness underpinning their movement, and particularly so in the context of slow-onset hazards linked to climate change.

2. During 2008 – 2016, on average, more than 25 million people were displaced each year in the context of sudden-onset disasters, particularly floods and tropical storms and in some years also earthquakes.<sup>2</sup> Others have to move because of the effects of slow onset events such as drought, the effects of sea level rise and desertification, as well as other forms of environmental degradation. The large majority of the displaced remain within their own country as internally displaced persons (IDPs). Some cross international borders to find protection and assistance—usually in neighboring countries or within their region. Dynamics vary from region to region with, for instance, drought and

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<sup>1</sup> "Terminology," UN Office for Disaster Risk Reduction (UNISDR).

<sup>2</sup> Internal Displacement Monitoring Centre (IDMC), *GRID2017: Global Report on Internal Displacement*, Geneva 2017, p. 31.

flooding being the key drivers in Africa, and hurricanes, flooding and earthquakes important drivers in the Americas and the Caribbean. Recent disaster events in South Asia demonstrate the impact of heavy monsoon rains on flooding and displacement. While some instances are well documented,<sup>3</sup> the overall number of persons displaced across borders in these contexts is unknown.

3. Primarily, voluntary migration may be and has been used as a coping and adaptation strategy in the context of disasters, including the adverse effects of climate change (hereinafter: disaster). As stressed by the Intergovernmental Panel on Climate Change (IPCC), “[e]xpanding opportunities for mobility can reduce vulnerability” for populations at risk.<sup>4</sup> Thus, “[c]hanges in migration patterns can be responses to both extreme weather events and long-term climate variability and change, and migration can also be an effective adaptation strategy [...]”<sup>5</sup>. Migration is anticipatory when people feel that, in the long-term, their homes will become uninhabitable or their livelihoods destroyed due to disasters and reactive when used to deal with the impacts of such events.

4. Circular or temporary migration and ensuing remittances, skills and knowledge transfer can build the long-term resilience of people and communities and promote livelihood diversification when living conditions become difficult (e.g. in places such as low-lying coastal areas). Permanent migration may be an option for those who anticipate their homes becoming permanently uninhabitable as a consequence of environmental degradation. However, if irregular and not properly supported, circular, temporary or permanent migration may expose people to exploitation, discrimination and other violations of human rights and further exacerbate vulnerability by placing individuals and families in a more precarious situation than if they had stayed in their place of origin.<sup>6</sup>

5. Persons displaced within their own country in the context of disasters may migrate abroad at a later stage if access to humanitarian assistance and protection is limited in the aftermath of a disaster or reconstruction and recovery is slow and insufficient. Migrants may become displaced in countries of transit or destination if affected there by a disaster, particularly so if they are in an irregular and unsupported capacity as these circumstances often see migrants being compelled to live in more hazard-prone areas.

6. As regards the future, the IPCC expects migration and displacement to increase due to the rise in the number of extreme weather events and other adverse effects of climate change. At the same time, the IPCC highlights that “populations that lack the resources for planned migration experience higher exposure to extreme weather events..., particularly in developing countries with low income”, meaning that people who are ‘trapped’ because of poverty face a higher risk of being displaced than those with means and opportunities to plan for moving to safer locations within their own country or abroad before extreme environmental degradation or disaster put their lives and well-being at stake.<sup>7</sup>

7. Movements of people affected by disasters can rarely be ascribed to natural hazards alone. They are regularly triggered by multiple causes. People are forced to move when they are: (i) exposed or

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<sup>3</sup> For example, see, *The Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Geneva 2015, Vol. II, Annex I.

<sup>4</sup> IPCC, ‘Summary for Policymakers’, in *Climate Change 2014: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, 2014, Cambridge University Press, p. 20.

<sup>5</sup> *Ibid.*

<sup>6</sup> Warner K., et al., *Where the Rain Falls: Climate Change, Food and Livelihood Security and Migration: Global Policy Report*, 2012, UNU-EHS, p. 17.

<sup>7</sup> IPCC, *supra* note 4, p. 20.

expect to be exposed to (ii) a sudden-onset natural hazard or slow-onset process of environmental change and (iii) lack the resilience to withstand its impacts. People exposed to hazards and environmental degradation may lack resilience for a multitude of socio-economic and political reasons, including poverty, social and economic marginalization, poor urban planning, expansion of settlements into risk-prone areas, population growth, weak governance regarding disaster risk reduction and management, and in some situations, violence or armed conflict.<sup>8</sup> As compared to the impacts of the natural hazard itself, demographic, social, economic, institutional and political factors contribute as much as, and sometimes even more, to whether affected people will be able to stay or have to move.<sup>9</sup>

## ***II. State practice to respond to cross-border movements of people in the context of disasters, including the adverse effects of climate change***

8. When persons affected by disasters are forced to move across international borders, they normally do not qualify as refugees *per se*, although forms of persecution and violence relevant under (international or regional) refugee law may also occur in disaster contexts.<sup>10</sup> Beyond this, the *non-refoulement* obligation under international human rights law may also impose constraints on returns of persons to disaster-affected countries but the extent to which it may do so is unsettled and is not generally a feature of state practice. However, many States have used their discretion in migration matters to admit such persons at least on a temporary basis, and to refrain from removing migrants who were present on their territory at the time of the disaster, even if their stay has become irregular, either on the basis of regular migration categories such as work permits or family reunification for persons with pre-existing family ties in the country of destination, or on the basis of exceptional migration categories such as temporary protection measures or the provision of humanitarian visas. In the absence of applicable legal instruments, some States have based admission on *ad hoc* decisions.<sup>11</sup>

9. An analysis of such practices indicates that, based on humanitarian considerations, States are willing to admit or refrain from returning persons who are 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 their life or safety; (ii) as a direct result of the disaster, they have been wounded, lost family members, and/or lost their livelihoods; and/or (iii) they would face a real risk to their life or safety or would otherwise face very serious hardship in their country of origin, in particular due to the fact that they cannot access necessary humanitarian protection and assistance there. States may also grant admission or not return persons who originate from States whose government capacity to respond is temporarily overwhelmed due to the disaster.<sup>12</sup>

10. States have also facilitated temporary, circular or, where appropriate, permanent migration as a means to cope with and recover from the consequences of disasters by allowing people to move

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<sup>8</sup> See *Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, 2015, Vol. I. The Agenda was endorsed by more than 100 States in October 2015.

<sup>9</sup> IDMC, *Disaster-related Displacement Risk: Measuring the Risk and Addressing its Drivers*, 2015, pp. 27.

<sup>10</sup> For a discussion of the (non-)applicability of refugee law see, in particular, AF (Kiribati) [2013] NZIPT 800413 (25 June 2013, B Burson).

<sup>11</sup> For examples, see Nansen Initiative, *Protection Agenda*, Vol II, p.45.

<sup>12</sup> Nansen Initiative, *Protection Agenda*, para. 33 and Vol I, p.22.

within the framework of bilateral or regional agreements on the free movement of persons or trans-humance agreements facilitating the cross-border movement of pastoralists and their animals.<sup>13</sup>

### **III. Increased international recognition of the challenges of human mobility in the context of disasters, including the adverse effects of climate change**

11. While no comprehensive normative or policy framework on cross-border movements of persons in the context of disasters exists, the challenges of such mobility, and proposals to address them, have been the topic of several international and regional processes and initiatives.

12. The 2010 Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC) in Cancun invited 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.”<sup>14</sup> In 2012, within the context of loss and damage, the COP acknowledged the need to for greater understanding and expertise on ‘how impacts of climate change are affecting patterns of migration, displacement and human mobility’.<sup>15</sup> The Paris Climate Change Agreement (2015), explicitly references the rights of migrants in its preamble and its associated COP Decision (I/CP.21) calls for the establishment of a task force ‘to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change’.<sup>16</sup>

13. The highly authoritative Sendai Framework for Disaster Risk Reduction (SFDRR) adopted in March 2015 and subsequently endorsed by the UN General Assembly,<sup>17</sup> acknowledges in its preamble that displacement is one of the devastating effects of disasters and that migrants are a relevant stakeholders. There are multiple references to different forms of mobility throughout the SFDRR, including the promotion of “transboundary cooperation [...]to build resilience and reduce disaster risk, including epidemic and displacement risk” (para. 28(d)); the encouragement of “the adoption of policies and programmes addressing disaster-induced human mobility to strengthen the resilience of affected people and that of host communities” (para. 30(l)); and the recognition that “[m]igrants contribute to the resilience of communities and societies” (para. 36(a)(vi)). Other provisions are also highly relevant for the prevention of disaster displacement, including the goal of a substantial reduction of the number of disaster affected people by 2030 (para. 18 b), the development of policies on planned relocation to move people out of harm’s way (para. identification of high risk areas and locations (para.27(k)), or the “identification of areas that are safe for human settlement” (para. 30(g)).

14. More generally, the full implementation of the Sustainable Development Goals (SDGs) as set out in the 2030 Agenda for Sustainable Development (2030 Agenda), which refers to “more frequent and intense natural disasters” and related “forced displacement of people” as factors undermining de-

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<sup>13</sup> For example, see, ECOWAS Heads of State adopted the decision A/DEC.5/10/98 in support of pastoralism in the region, and the, Nansen Initiative, *Protection Agenda*, Vol II, Annex II, pp. 43 and 48.

<sup>14</sup> UNFCCC, 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*, UN Doc. FCCC/CP/2010/7/Add.1, para. 14(f).

<sup>15</sup> 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, para 7(vi).

<sup>16</sup> *Adoption of the Paris Agreement*, Decision 1/CP.21, UN Doc FCCC/CP/2015/L.9/Rev.1, 12 December 2015, para. 49.

<sup>17</sup> *Sendai Framework for Disaster Risk Reduction 2015-2030*, Geneva United Nations Office for Disaster Risk Reduction, Geneva 2015.

velopment,<sup>18</sup> is relevant for building resilience of persons affected by disasters to prevent displacement, reduce displacement risks and address relevant drivers of irregular migration.

15. The Draft Articles on the Protection of Persons in the Event of Disasters of the International Law Commission (ILC),<sup>19</sup> while not explicitly referring to migration, are also important for people moving in such situations as they detail the scope and content of State's duties in the context of sudden and slow onset disasters with respect to preventive as well as remedial actions. More specifically, the Human Rights Council has recently called for "protecting and promoting human rights of migrants and persons displaced across international borders, in the context of the adverse impacts of climate change."<sup>20</sup>

16. Outside the UN, the non-binding Nansen Initiative Protection Agenda,<sup>21</sup> endorsed by 109 government delegations in 2015, conceptualizes a comprehensive approach to disaster-related cross-border displacement and its prevention. It presents a toolbox that not only focuses on protecting those who cross borders, but also presents measures to manage disaster displacement risks in countries of origin. The Agenda compiles a broad set of effective practices and highlights three priority areas for action at the national, (sub-)regional, and international levels: (1) Collecting data and enhancing knowledge on cross border displacement; (2) Enhancing the use of humanitarian protection measures for those who cross borders in the context of disasters, including the adverse effects of climate change; and (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; and (d) Ensuring the needs of IDPs displaced in disaster situations are specifically addressed in relevant laws and policies on disaster risk management and internal displacement.

17. The Migrants in Countries in Crisis (MICIC) Initiative, a government-led process seeking to improve the ability of States, the private sector, international organizations, and civil society to prepare for and respond to the needs of migrants in countries experiencing conflicts or natural disasters, developed detailed practical Guidelines and identified a series of effective practices on the protection of such migrants with regard to crises preparedness, emergency response and post-crisis action.<sup>22</sup>

18. Regional organizations and processes have also increasingly recognized the challenges of cross-border movements in the context of disasters. One example is the Regional Conference on Migration (RCM) in Central America, the Caribbean and North America, which adopted in November 2016 'A Guide to Effective Practices for RCM Member Countries: protection for persons moving across borders in the context of disasters'. In Africa, there are regional processes such as the Intergovernmental Authority on Development's Regional Consultative Process on Migration (IGAD RCP) and the Migration Dialogue for West Africa (MIDWA) that have also started to focus their attention on the drivers

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<sup>18</sup> *Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc. A/RES/70/1 (2015).

<sup>19</sup> *Draft Articles on the Protection of Persons in the Event of Disasters*, adopted by the International Law Commission at its sixty-eighth session, in 2016, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/71/10), para. 48.

<sup>20</sup> Human Rights Council, *Human Rights and Climate Change*, Res. 35/L.32 (2017), para. 7.

<sup>21</sup> *Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Volume I, 2015.

<sup>22</sup> MICIC/IOM, *Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster*, Geneva 2016.

of movements related to disasters. Building on the work of these and other Regional Consultative Processes on Migration (RCPs), there are opportunities to strengthen harmonization and coordination of approaches at regional level, building on existing State practices.

#### ***IV. Addressing cross-border movements of people in the context of disasters, including the adverse effects of climate change, in the Global Compact for Migration***

19. Concrete action and recommendations for inclusion in the Global Compact on Migration with regard to addressing drivers of population movements in the context of disaster may include:

##### Addressing drivers and managing disaster displacement risks in countries of origin:

- Enhanced action to take, in accordance with relevant international frameworks and instruments, integrated and effective DRR and climate change adaptation measures to reduce risks of disaster displacement, in particular through mapping of areas or communities at risk of disaster displacement and systematic integration of human mobility aspects into regional, national and local disaster risk reduction and climate change adaptation policies and strategies.
- Adoption of long-term, multi-disciplinary and strategic measures in national and local development plans to address human mobility in the context of slow-onset environmental degradation related to the adverse effects of climate change, such as desertification and sea level rise.
- Inclusion of disaster displacement risk mapping and displacement scenarios in disaster preparedness processes, such as early warning, contingency planning, stockpiling, coordination arrangements, evacuation planning and public information and ensuring that funding is allocated for displacement and migration related measures within local, national and regional disaster risk management plans and activities.
- In areas and regions at high risk to disaster and exposure to natural hazards and the adverse effects of climate change, inclusion of cross-border displacement and migration scenarios within bilateral and/or regional disaster contingency planning.
- Development, in accordance with relevant international frameworks and instruments, of national guidelines and framework for planned relocation processes as a preventive or responsive measure to reduce the risk of disasters and displacement and as an option of last resort.
- Provision of swift and adequate humanitarian assistance and protection to IDPs in disaster contexts and strengthened implementation of existing frameworks and policies, including domestic legislation or policies on internal displacement that cover IDPs displaced in disaster contexts.

##### Facilitating safe, orderly and regular migration in disaster and climate change contexts:

- In order to allow affected persons to adapt to climate change and cope with disasters, creation and expansion of safe legal pathways to temporary, circular, or permanent migration, based on domestic immigration laws, labor mobility schemes or regional agreements on free movement of persons.
- Provision of residency permit quotas or seasonal worker programs in accordance with international labor standards to prioritize people from countries or areas facing natural hazards, high levels of disaster risks or climate change impacts.

- In order to reduce the risk of disaster displacement of migrants, ensure that migrants are integrated, where possible, into local DRM structures and that they have access to information from early warning systems in a language they can easily understand.

Providing humanitarian and temporary protection and assistance in disaster situations, based on humanitarian considerations:

- As a matter of State discretion in migration matters, and based on humanitarian considerations, provision of humanitarian protection measures, such as temporary protection or humanitarian visas to admit persons who are directly and seriously affected by disasters, or to allow those already in another country, whose return is not permitted, not reasonable, or not possible.
- Enhanced dialogue and action by regional organizations, as well as processes such as the Regional Consultative Processes on Migration (RCPs), to agree on and harmonize responses such as temporary protection or humanitarian visas to admit persons who are directly and seriously affected by disasters, or to allow those already in another country whose return is not permitted, not reasonable, or not possible, or if their country of origin is temporarily unable to protect and assist them due to a disaster. Enhanced application of such responses, including through the adoption or harmonization of relevant domestic laws and policies or regional or bilateral agreements on admission and non-return of such persons that are in accordance with international human rights law.
- Establishment of protocols and procedures with neighboring countries on cross-border displacement for disaster situations.
- Enhanced cooperation between countries of origin, transit and destination to find durable solutions for persons benefitting from temporary protection.
- Promotion of strategic, multi-donor approaches, including flexible funding instruments and multi-year funding cycles, to support responses to disaster displacement and for finding durable solutions.

Enhancing data and analysis:

- Enhanced, systematic and harmonized collection and analysis of data and knowledge on movements of persons affected by sudden-onset natural hazards and slow-onset environmental degradation, including the adverse effects of climate change;
- Strengthened cooperation on data collection and risk analysis to better predict, understand and address the drivers of disaster displacement and other type of mobility in the context of disasters, including the adverse effects of climate change.