



Human Rights Council**Fifty-third session**

19 June–14 July 2023

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Providing legal options to protect the human rights of
persons displaced across international borders due to climate
change****Report of the Special Rapporteur on the promotion and protection of
human rights in the context of climate change, Ian Fry***Summary*

The number of people displaced across international borders due to climate change is rapidly increasing, as the effects of climate change become more severe. As people are forced across international borders, they face numerous human rights violations. This is particularly the case for women and children, who make up the majority of displaced people. There are many definitions used to define people displaced by climate change. Some use the term “climate change refugees”, despite the fact that this term does not align with the Convention relating to the Status of Refugees or the Protocol thereto.

In the present report, the Special Rapporteur on the promotion and protection of human rights in the context of climate change considers various international, regional and national legal and policy approaches to address people displaced across international borders due to climate change. He concludes that there is a deficit in legal protection for such people and makes a number of recommendations on how this legal deficit can be resolved, including his recommendation for the development of an optional protocol to the Convention relating to the Status of Refugees to protect the human rights of persons displaced across international borders due to climate change.



I. Introduction

1. In 2021, 38 million people were displaced from their homes, and 22.3 million people were displaced by “weather-related” events.¹ This is fewer than in 2020 (30.7 million people due to weather-related events) and 2019 (24.9 million people due to weather-related events). In 2019 and 2020, droughts were a major factor in displacement. While there are many reports of people displaced across international borders due to climate-related events,² the actual number of people displaced or migrating across international borders is not well known.³ The Special Rapporteur is of the view that it could be in the hundreds of thousands annually, if not more. In 2015, at least 50 countries had experienced people crossing into their countries due to disasters.⁴ The people crossing international borders due to climate change are generally not defined as refugees under the Convention relating to the Status of Refugees of 1951 and the 1967 Protocol thereto, as they do not fit the definition of a refugee. Under the Convention, a refugee is someone who is unable or unwilling to return to his or her country of origin, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. As a consequence, people displaced or migrating across international borders due to climate change are not afforded the same level of legal protection as refugees. They also face the risk of being subjected to a number of human rights violations. Nevertheless, the Office of the United Nations High Commissioner for Refugees (UNHCR) has conceded that, in specific circumstances, notably when the effects of climate change and disasters intersect and are connected with conflict or violence or other forms of persecution, the Convention may be applicable.⁵

2. The purpose of the present report is to consider existing arrangements and explore options to give appropriate legal protection to people who have crossed international borders due to climate change. To prepare the present report, the Special Rapporteur on the promotion and protection of human rights in the context of climate change issued a call for input, to which he received approximately 50 submissions.⁶ He also held online consultations with civil society organizations.

II. Terms used to define persons displaced across international borders due to climate change

3. There are many terms used to define people displaced by climate change. Popular media often define such people as “climate change refugees” or “climate refugees”. For instance, the Environmental Justice Foundation defines climate refugees as persons or groups of persons who, for reasons of sudden or progressive climate-related change in the environment that adversely affects their lives or living conditions, are obliged to leave their homes, either temporarily or permanently, and who move either within their country or abroad.

4. In its submission, Poland, indicated that the term “climate change migrants” applied to persons who changed their living place voluntarily, and the term “people displaced by climate change” applied to those who had been forced to change their domicile. Switzerland

¹ International Displacement Monitoring Centre and Norwegian Refugee Council, *Global Report on Internal Displacement, 2022*. Available at https://www.internal-displacement.org/sites/default/files/publications/documents/IDMC_GRID_2022_LR.pdf.

² *Ibid.*

³ There appears to be a distinct institutional reluctance, unwillingness or political aversion to enumerating the people crossing international borders due to climate change. See also sect. II.

⁴ This included both weather-related and geological disasters. Nansen Initiative on Disaster-Induced Cross-Border Displacement, “Agenda for the protection of cross-border displaced persons in the context of disasters and climate change: volume I”, December 2015. Available at <https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>.

⁵ Submission by Office of the United Nations High Commissioner for Refugees (UNHCR).

⁶ See <https://www.ohchr.org/en/calls-for-input/2022/call-inputs-report-addressing-human-rights-implications-climate-change>.

preferred to use the term “environmentally induced migration and displacement”.⁷ The United States of America used the term “climate change-related migration”.⁸ The International Organization for Migration (IOM) used the terms “environmental migrant” or “displaced person”.⁹ Others used the term “cross-border disaster-displaced persons”.¹⁰

5. According to one submission, the language of “climate mobility” was increasingly gaining traction to encompass the range of movement types that were at play, namely, displacement, migration, planned relocation and evacuation.¹¹ While this may be a convenient term, the Special Rapporteur is of the view that it is limited by the fact that it uses the shortened term of “climate”, rather than climate change, and thereby creates ambiguity as to whether weather-related events are a result of climate change or simply naturally occurring. This could infer some level of climate change denial. The term “mobility” tends to under-emphasize the human rights violations that are inherent in being displaced. Mobility does not distinguish between internal displacement and cross-border displacement.

6. The Nansen Initiative on Disaster-Induced Cross-Border Displacement used the term “cross-border displaced persons in the context of disasters and climate change”.¹² This is close to a workable definition, although the connection between climate change and natural disasters creates some confusion. The Platform on Disaster Displacement, which follows on from the work of the Nansen Initiative, defined a disaster as a “serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources”.¹³ This term ignores the fact that climate change can have an effect on an individual and may not necessarily lead to widespread losses.

7. The International Law Commission referred to the “protection of persons in the events of disasters” with no distinction as to the type of disaster.¹⁴ The Commission referred to a disaster as a “calamitous event which results in the serious disruption of the functioning of society”. The Special Rapporteur is of the view that this definitional threshold is not very helpful, as it would eliminate individuals or small groups of people having to leave their land due to droughts or other climate change-related events.

8. It has been contended that people move across international borders as an “adaptation” strategy. IOM tends to use this concept.¹⁵ The Special Rapporteur is of the view that use of the term adaptation tends to underplay the fact that people are forced from their land. This is not really adapting to climate change, it is escaping its effects.

9. The notion of “displacement” is also important, as it indicates that people have been displaced from their land due to climate change. The displacement may be due to a sudden climate change event, or it may be due to a slow progressing climate change event, such as a drought or sea level rise. In most cases, people in these circumstances are forced to move. They have little choice, and therefore they are displaced. The term “climate-displaced

⁷ Submission by Switzerland.

⁸ United States, White House, “Report on the impact of climate change on migration”, 2021. Available at www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf.

⁹ International Organization for Migration (IOM), “Glossary on migration”, 2019. Available at https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf.

¹⁰ Platform on Disaster Displacement, “Strategy, 2019–2022”, 2019. Available at https://disasterdisplacement.org/wp-content/uploads/2019/06/26062019-PDD-Strategy-2019-2022-FINAL_to_post_on_website.pdf.

¹¹ Submission by Jane McAdam.

¹² Nansen Initiative, “Agenda for the protection of cross-border displaced persons”.

¹³ Platform on Disaster Displacement, “Strategy, 2019–2022”.

¹⁴ [A/71/10](#), chap. IV.E.

¹⁵ For instance, IOM notes that Hurricanes Eta and Iota caused disasters in Honduras, leading to at least 13,386 houses being affected. According to IOM, this led to people migrating out of Honduras as an adaptation strategy. IOM, “Regional report: highly vulnerable migrant flows and border mobility in Guatemala, Honduras, El Salvador, Costa Rica and Mexico”, 2021. Available at <https://dtm.iom.int/sites/g/files/tmzbd11461/files/reports/%28eng%29RondaFinal-DTMRegional.pdf>.

persons” has been suggested.¹⁶ For the purposes of clarity, in the present report, the Special Rapporteur uses the term persons displaced across international borders due to climate change. While this term is used to give clarity, it should not be forgotten that it is only a label and that this label does not adequately describe the hardships faced by displaced individuals or the circumstances that have driven them to cross international borders.

10. The Special Rapporteur is of the view that it is important to remember that climate change is primarily caused by greenhouse gas emissions from major emitting countries. There is an important aspect of causality and international responsibility that must be considered when referring to climate change displaced persons. While people suffering from so-called “natural disasters”, such as earthquakes and tsunamis, may experience similar hardships in the context of those events, the responsibility for responding to climate change is quite different, and differentiation is needed. However, the countries that are historically the most responsible for the climate crisis spend more money securing their borders to keep migrants out than on tackling the crisis that forces people from their homes in the first place.¹⁷

III. Instances and projections of cross-border displacement due to climate change

11. The Intergovernmental Panel on Climate Change has calculated that 3.3 billion people are living in countries with high human vulnerability to climate change. Global concentrations of high vulnerability are emerging in transboundary areas, encompassing more than one country as a result of interlinked issues concerning health, poverty, migration, conflict, gender inequality, inequity, education, high debt, weak institutions, lack of governance capacities and infrastructure.¹⁸ The United Nations High Commissioner for Refugees has stated that the adverse effects of climate change and disasters are increasingly contributing to human movements,¹⁹ in the form of the planned relocation of individuals or communities, migration or displacement.²⁰

12. A thorough assessment of persons displaced internationally by climate change has not been done. The Special Rapporteur is concerned that neither UNHCR nor IOM provide a total assessment of the number of persons displaced internationally as a consequence of climate change, although they do provide numbers in individual cases. There appears to be a reluctance to make such a total assessment. This is a significant oversight. Most statistics are on internally displaced persons, but, as soon as they cross international borders, their status becomes poorly defined. Some appear to argue that it is too difficult to define people as victims of climate change as the root cause of their displacement. While this may be the case in some circumstances, it is very clear that climate change events are drivers of displacement, and people can be defined as being displaced by climate change.

¹⁶ Letter dated 20 September 2021 from Alexander Vernon et al. addressed to the President of the United States of America and the Secretary of the Department of Homeland Security concerning executive authority to admit those who flee or cannot safely return to their home country due to climate change. See also Aydali Campa, “Climate migrants lack a clear path to asylum in the US”, Inside Climate News, 21 May 2022.

¹⁷ Transnational Institute, “Global climate wall: how the world’s wealthiest nations prioritise borders over climate action”, 25 October 2021. Available at <https://www.tni.org/en/publication/global-climate-wall>.

¹⁸ Pörtner, H.O. et al., Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, H.O. Pörtner et al. (eds.), Cambridge University Press, Cambridge, United Kingdom of Great Britain and Northern Ireland.

¹⁹ Human mobility is an overarching umbrella term that refers to three forms of population movement: (a) displacement, the primarily forced movement of persons; (b) migration, the primarily voluntary movement of persons; and (c) planned relocation, the process of settling persons or communities in a new location. See also United Nations Framework Convention on Climate Change decision 1/CP.16 para. 14 (f)).

²⁰ Submission by UNHCR.

13. It is estimated that, in 2020, 75 per cent of new displacements from Somalia to Kenya were as a result of climate change.²¹ The International Rescue Committee noted that, in 2022, 60,000 Somalis had fled climate change and crossed into Kenya, where they are now located in Dadaab refugee camp.²² According to UNHCR, in January 2022, Dadaab refugee camp hosted over 200,000 registered refugees and asylum-seekers and an uncounted number of unregistered refugees, many of whom had arrived in the preceding 12 to 18 months, fleeing the latest climate change-induced catastrophic drought in Somalia.²³

14. In the dry corridor region of Central America, in particular in Guatemala, Honduras and El Salvador, it was noted in 2016 that over 3.5 million people needed humanitarian assistance due to an extended drought.²⁴ According to the World Food Programme, El Niño drought conditions that had started in 2014 caused a significant increase in irregular migration to the United States.²⁵ It found that there was a propensity for that displacement among the younger and more vulnerable people.²⁶ In addition to the economic problems that they faced as a consequence of the drought and their inability to feed their families properly, displaced people from middle and low socioeconomic strata had to acquire debts, with family assets used as collateral, to pay for the emigration journey to the United States or elsewhere.²⁷ In 2020, two severe hurricanes caused considerable damage to infrastructure, crops and livestock in Honduras, forcing people to be displaced across international borders.²⁸ One representative of a civil society organization from Latin America indicated that some people had been reluctant to identify as people displaced by climate change, even though they later admitted to that fact, as they would not have been given refugee status. They instead contrived stories to say that they had been subjected to harassment by gangs or militia groups in their country of origin.²⁹

15. The Intergovernmental Panel on Climate Change projects population displacements by 2050 in Central and South America, sub-Saharan Africa and South Asia due to climate change to range from 31 million to 143 million people.³⁰ In February 2023, the Secretary-General stated that, for the hundreds of millions of people living in small island developing States and other low-lying coastal areas around the world, sea level rise is a torrent of trouble that would lead to a mass exodus of entire populations on a Biblical scale.³¹

²¹ Amali Tower, "Climate change driving displacement as Somalia faces famine: an interview with the UN's Christophe Hodder", *Climate Refugees*, 8 June 2022. Available at www.climate-refugees.org/perspectives/2022/6/8/somalia.

²² Madiha Raza, "Humanitarians needs mount as almost 60,000 refugees from Somalia arrive in Dadaab Refugee camp due to impact of climate change, warns IRC", *Reliefweb*, news release, 7 November 2022. Available at <https://reliefweb.int/report/kenya/humanitarian-needs-mount-almost-60000-refugees-somalia-arrive-dadaab-camp-due-impact-climate-change-warns-irc>.

²³ *Ibid.*

²⁴ Food and Agriculture Organization of the United Nations, "Dry corridor Central America, situation report", June 2016. Available at <https://www.fao.org/3/br092e/br092e.pdf>.

²⁵ World Food Programme, "Food security and emigration: why people flee and the impact on family members left behind in El Salvador, Guatemala and Honduras", research report, September 2017. Available at <https://docs.wfp.org/api/documents/WFP-0000019629/download/>.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ UNHCR, "In Honduras, climate change is one more factor sparking displacement", 9 November 2021. Available at <https://www.unhcr.org/news/stories/2021/11/61844eef4/honduras-climate-change-factor-sparking-displacement.html>.

²⁹ Testimony during an online event.

³⁰ Pörtner, H.O., et al., *Contribution of Working Group II*.

³¹ United Nations, "Secretary-General's remarks to the Security Council debate on sea-level rise: implications for international peace and security", 14 February 2023. Available at www.un.org/sg/en/content/sg/statement/2023-02-14/secretary-generals-remarks-the-security-council-debate-sea-level-rise-implications-for-international-peace-and-security.

IV. Human rights implications of persons displaced across international borders due to climate change

16. The human rights implications of climate change displacement, in particular for persons displaced across international borders due to climate change, are significant and disturbing. People displaced by climate change face multiple violations of their human rights. The climate change event may deprive people of their right to food, water, sanitation, housing, health, education and, for some, the right to life. Studies suggest that women and children are the most affected by disasters and the effects of climate change, as they are up to fourteen times more likely to be killed than men by a climate disaster, such as a hurricane, typhoon, cyclone or flood. In 2018, more than half of the 41 million people internally displaced were women. In addition, most early warning systems for disasters and other emergencies are designed and used by men without considering a gender perspective.³²

17. The process of moving across international borders is fraught with rights violations. Large numbers of people displaced across borders die or go missing every year at both land and sea borders. Between 2014 and 2022, more than 50,000 people lost their lives during migratory movements. More than half of those deaths occurred on routes to and within Europe, including in the Mediterranean Sea.³³ A percentage of them were undoubtedly persons displaced across international borders due to climate change. According to the Inter-American Commission on Human Rights, death at the hands of criminal networks and armed groups is one of the greatest risks to migrants.³⁴ Some people crossing international borders face additional threats, as well as additional risks of human rights violations, because of personal characteristics, such as their age, gender identity, disability or health status.³⁵

18. The testimonies made to the Special Rapporteur suggest that persons displaced across international borders due to climate change may be denied basic human rights and may face harassment and torture at the hands of armed gangs. Displaced children may be exposed to a variety of risks, such as abuse, violence, trafficking, exploitation and other forms of maltreatment.³⁶ The International Institute for Environment and Development reports that there is a clear link between climate-induced migration, displacement and modern slavery. The Institute noted that there was a lack of recognition of that relationship, resulting in an absence of strong, targeted policies, and therefore lack of protection for the people who need it the most.³⁷ This concern was also noted during the Special Rapporteur's visit to Bangladesh, where individuals and households displaced by climate change were targeted by traffickers and forced into exploitative labour and sex work.³⁸

19. Studies by OHCHR in Libya suggest that there is systematic murder, torture, rape, threat of rape, killings, sexual violence, enslavement, racial abuse and beatings perpetrated against migrants by some State authorities, militias, armed groups and traffickers.³⁹ In 2022,

³² Care International, "Evicted by climate change: confronting the gendered impacts of climate-induced displacement", July 2020. Available at <https://careclimatechange.org/wp-content/uploads/2020/07/CARE-Climate-Migration-Report-v0.4.pdf>.

³³ J. Black and Z. Sigman, "50,000 lives lost during migration: analysis of Missing Migrants Project data 2014–2022". IOM Global Migration Data Analysis Centre. Available at <https://missingmigrants.iom.int/sites/g/files/tmzbdl601/files/publication/file/2022%2050k%20deaths.pdf>.

³⁴ Ibid.

³⁵ OHCHR, Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations. Available at www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf.

³⁶ United Nations Children's Fund, Guiding Principles for Children on the Move in the Context of Climate Change. Available at www.unicef.org/globalinsight/media/2796/file/UNICEF-Global-Insight-Guiding-Principles-for-children-on-the-move-in-the-context-of-climate-change-2022.pdf.

³⁷ Submission by the International Institute for Environment and Development.

³⁸ Bharadwaj, R et al., "Social protection and informal job market reform for tackling the climate migration nexus", International Institute for Environment and Development, working paper, September 2022. Available at <http://pubs.iied.org/21121IIED>.

³⁹ A/HRC/49/4.

there were more than 60,000 migrants in Libya, comprising more than 40 nationalities.⁴⁰ According to IOM, the top 10 countries of origin for migrants repatriated from Libya through the voluntary humanitarian return programme are Nigeria, Mali, the Niger, Bangladesh, Guinea, the Sudan, the Gambia, Côte d'Ivoire, Ghana and Senegal. In a focused study on the Gambia, climate change was identified as one of the drivers of the displacement of Gambians because of extreme climate and weather conditions, coastal erosion and flooding.⁴¹ It is highly likely that a significant proportion of migrants from the other top 10 countries of origin are also persons displaced across international borders due to climate change.

20. The issue of the militarization of borders, and the subsequent human rights abuses of these militarized processes, was a major theme highlighted in a submission by one civil society organization. It suggested that, as more people are displaced across borders due to climate change, border personnel are becoming more and more brutal, heavily armed and restrictive. Domestic and gender-based violence is increasing, due to such measures, making women, children and lesbian, gay, bisexual, transgender, queer and intersex people highly endangered.⁴²

21. Indigenous Peoples face particular challenges when they are displaced across international borders due to climate change. In 2018, it was estimated that there were 83,000 Indigenous "international migrants" in nine Central American countries, most of whom were women.⁴³ For these peoples, climate change has been identified as one of the drivers of international displacement.⁴⁴ Indigenous Peoples in such situations face a number of human rights violations, including extrajudicial killing, sexual assault and harassment.⁴⁵ They also face various health concerns, due to a lack of access to medical services.⁴⁶

22. It should not be forgotten that some people are not able to move during a climate change event. Some people are trapped for a variety of reasons, including owing to their economic or social circumstances or their age.⁴⁷ Although it is beyond the scope of the present report to consider trapped populations, their plight should not be forgotten.

V. Importance and necessity of a specific consideration of climate change displacement

23. Climate change is a global phenomenon that is only going to increase in its impact. The preamble to the Paris Agreement sets this out in clear terms:

Acknowledging that climate change is a common concern of humankind, parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, the empowerment of women and intergenerational equity.

24. The Special Rapporteur is of the view that climate change displacement is a global problem that must be addressed at the international level. It is evident that a limited number of countries are facing an unfair and unjust burden in dealing with situations of people

⁴⁰ OHCHR, "Nowhere but back: assisted return, reintegration and the human rights protection of migrants in Libya", November 2022. Available at www.ohchr.org/sites/default/files/2022-12/Report-on-assisted-return-and-reintegration.pdf.

⁴¹ Ibid.

⁴² Submission by the Centre for Feminist Foreign Policy.

⁴³ IOM Regional Office for Central and North American and the Caribbean, "5 key aspects on the migration of Indigenous Peoples". Available at <https://rosanjose.iom.int/en/blogs/5-key-aspects-migration-indigenous-peoples>.

⁴⁴ Ibid.

⁴⁵ Testimonies heard during online consultations.

⁴⁶ Ibid.

⁴⁷ Armelle Gouritin and Raul Pachero-Vega, "Aproximación al encuentro entre migración y efectos climáticos". in Armelle Gouritin (ed.), *Migrantes climáticos en México*, 2021, (México: FLACSO México).

displaced across international borders due to climate change. For instance, it was estimated in 2018 that just 10 – mostly very poor – countries now host more than 60 per cent of the world’s refugees, and presumably that included persons displaced across international borders due to climate change, with the entire developed world taking in only 15 per cent of those in need of asylum.⁴⁸

25. It requires an international response, commensurate with the enormity of the issue, and a global sense of responsibility. To date, most reports and initiatives have been focused on internally displaced people. The Special Rapporteur stresses that it is now time for the international community to realize a responsibility to those displaced across international borders. Consistent with the Paris Agreement, the international community has a responsibility to find the necessary funding and technical and humanitarian support to assist those displaced across international borders due to climate change and uphold their rights.

26. The Special Rapporteur underscores that people displaced by climate change should be considered legally and procedurally different to those affected by geological disasters, such as earthquakes and tsunamis. Climate change is a global issue, with drivers created primarily by industrialized countries. This means that persons displaced across international borders due to climate change should be considered in the context of causality and responsibility. While the effects may be similar to those of geological disasters, the response mechanisms will be different, due to the international responsibility for climate change effects. Geological disasters are primarily the responsibility of the affected State to deal with. Whereas some international humanitarian support may be provided, it is often ad hoc and short lived. Some of the humanitarian responses may be similar for all types of disasters, nevertheless, the legal and procedural responsibility for persons displaced across international borders due to climate change requires differentiated treatment. Furthermore, financial assistance for those displaced by climate change should be different, due to obligations established under article 4 of the United Nations Framework Convention on Climate Change and article 8 of the Paris Agreement.

27. While in the past it has been claimed that it is difficult to differentiate between the causes of displacement, the effects of climate change are well documented. The Special Rapporteur is of the view that this claim is no longer valid. The science is very clear that extreme weather events today have a human-induced factor due to climate change. It is not too difficult to identify whether people have originated from areas subject to climate change effects. The World Meteorological Organization, for example, has the Global Climate Observing System,⁴⁹ which regularly assesses the status of global climate observations. Many of the processes reviewed in the present report retain the view that displacement due to climate change cannot be differentiated from other causes. This view appears to be motivated by outdated factual evidence and political motivations to deny climate change causality.

28. The political sensitivity around the issue of climate change displacement across international borders is highlighted by the fact that there is far more documentation and strategies written about people internally displaced by “disasters”. As has been stated previously, this tends to place the onus of response obligations on the affected State. When people are displaced across international borders, the guidance and legal protection mechanisms tend to evaporate, because of the political sensitivity around such occurrences. The Special Rapporteur is of the view that it is now time to put aside this denial and accept the fact that a large number of people are being displaced across international borders due to climate change and that there is an international legal responsibility to properly protect them.

⁴⁸ James C. Hathaway, “The global cop-out on refugees”, *International Journal of Refugee Law*, vol. 30, No. 4.

⁴⁹ See <https://gcos.wmo.int>.

VI. Legal approaches to address the rights of people displaced across international borders due to climate change

A. International approaches

29. There are a number of international human rights treaties that are relevant in providing protections for persons displaced across international borders due to climate change. In addition, transnational criminal law addresses criminal actions related to migration, in particular the United Nations Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It should be noted that there are significant gaps in the ratification of these treaties, notably among small island developing States, and more significant gaps in their implementation.⁵⁰ Gaps in ratification may relate to reporting burdens.⁵¹ Nevertheless, every effort should be made to encourage all countries to ratify these significant treaties.

30. The legal concept of non-refoulement, which aims to prevent a refugee from being forced to return to his or her country, is well founded in the Convention relating to the Status of Refugees. In addition, the concept appears to have been elevated to the level of customary international law and provides a legal obligation on all States to enforce this right.⁵² Under international human rights law, the principle of non-refoulement entails an obligation not to remove a person, whatever his or her status, when there are substantial grounds for believing that he or she would be at risk of being subject to serious violations of human rights, including torture or other cruel, inhuman or degrading treatment or punishment.⁵³

31. Other relevant human rights include the rights to life,⁵⁴ to leave and enter or return to one's country,⁵⁵ to food,⁵⁶ to adequate housing,⁵⁷ to health⁵⁸ and to water and sanitation.⁵⁹ Human rights gaps in the context of persons displaced across international borders due to climate change have also been addressed by the United Nations High Commissioner for Human Rights⁶⁰ and the Special Rapporteur on the human rights of migrants.⁶¹

32. Apart from general human rights obligations under the treaties listed above, there are some legal options available for the protection of people displaced across international borders due to climate change.

⁵⁰ For the status of ratification, see the United Nations Treaty Collection. Available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en.

⁵¹ Testimony by a representative for a small island developing State.

⁵² Lauren Nishimura, "Climate change migrants: impediments to a protection framework and the need to incorporate migration into climate change adaptation strategies", *International Journal of Refugee Law*, vol. 27, No. 1.

⁵³ Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3; International Covenant on Civil and Political Rights, art. 7; and International Convention for the Protection of All Persons from Enforced Disappearance, art. 16 (1).

⁵⁴ International Covenant on Civil and Political Rights, art. 6.

⁵⁵ *Ibid.*, art. 12.

⁵⁶ International Covenant on Economic, Social and Cultural Rights, art. 11.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, art. 12.

⁵⁹ See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water; and General Assembly resolution 64/292.

⁶⁰ [A/HRC/38/21](#).

⁶¹ [A/77/189](#).

B. Regional approaches

33. Some regions have broadened the definition of refugees to provide an opportunity for persons displaced across international borders due to climate change to be potentially encompassed within the definition. For instance, the African Union defines the circumstances defining refugees to include events seriously disturbing public order in either part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality.⁶² The notion of events seriously disturbing public order could well be interpreted as a climate change event. Nevertheless, not all climate change events could be defined as disturbing public order; some events may have individual effects, which may not trigger the collective concept of public order. Furthermore, beyond the limits of these regional agreements, the refugee status of such people would be returned to the more limiting definition under the Convention relating to the Status of Refugees.

34. The Central America Four Free Mobility Agreement allows for the free movement of persons between the borders of Guatemala, Nicaragua, El Salvador and Honduras, without visas or passports and with limited migration and customs restrictions.⁶³ Regular migration categories under the Mobility Agreement include allowing foreigners to apply to renew their immigration status, taking into account national law, the post-disaster situation in the country of origin and the specific situation of each person, including his or her vulnerabilities.

35. The concept of non-refoulement was also confirmed by the Inter-American Court of Human Rights in an Advisory Opinion, in which it stated that the expression of international protection should be applied, *inter alia*, “to any foreign person based on international human rights obligations, and in particular the principle of non-refoulement, as well as complementary protection or other forms of humanitarian protection”.⁶⁴

36. With respect to matters relating to the Convention on the Rights of the Child, the Inter-American Court of Human Rights identified the particular circumstances of children who were members of Indigenous communities when they had been displaced, voluntarily or forcibly, outside their territory and community, indicating that the measures of protection must be adopted and implemented taking their cultural context into consideration.⁶⁵

37. In East Africa, the Protocol on Free Movement of Persons in the Intergovernmental Authority on Development Region was created to address issues of drought and desertification.^{66, 67} The Protocol has yet to enter into force. Under the new Protocol, persons fleeing disasters will be allowed to seek refuge in a neighbouring country; they will not need to return until doing so is safe. This includes those who cross a border in expectation of, during or following a disaster.

38. The European Union applies a common European asylum system and uses the definition of refugee contained in the Convention relating to the Status of Refugees and therefore does not have a provision for people displaced across international borders due to climate change.⁶⁸ It affirms the principle of non-refoulement and recognizes the best interests

⁶² Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.

⁶³ Sistema de la Integración Centroamericana, “Un vistazo a la integración”. Available at www.sica.int/sica/vista.aspx.

⁶⁴ Inter-American Court of Human Rights, Advisory Opinion OC-21/14 of 19 August 2014, Requested by the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay on the Rights and Guarantees of Children in the context of Migration and/or in Need of International Protection.

⁶⁵ *Ibid.*

⁶⁶ Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment.

⁶⁷ Member countries of the Intergovernmental Authority on Development include Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, the Sudan and Uganda.

⁶⁸ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary

of the child, consistent with the Convention on the Rights of the Child. In addition, the Council of the European Union Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons expands the definition of refugee to include “persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights”.⁶⁹ The Special Rapporteur is of the view that the temporary nature of the protection provided by that Directive may allow for persons displaced across international borders due to climate change to be afforded temporary protection, but it would not be adequate for those displaced permanently due to slow onset events.

C. National approaches

39. There are some circumstances where national Governments have afforded certain levels of protection for persons internationally displaced due to climate change.

40. Both Italy and Sweden have a specific protection status in place for reasons of calamity or natural disaster, for third-country nationals who do not qualify for refugee status or subsidiary protection status.⁷⁰ The residence permit that Sweden offers has similar conditions to the harmonized European Union refugee status, while that of Italy is comparable to European Union subsidiary protection, although the status offers less favourable conditions, such as in terms of the length of the residence permit.

41. The United States offers temporary protection status to foreign citizens located in the United States, consisting of temporary approval to remain in special situations determined by the Secretary of Homeland Security, namely, due to conditions in the country that temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. The temporary protection status currently only applies to citizens of 15 countries.⁷¹ The United States has provided temporary protection status for citizens of Honduras, for example, due to the environmental disaster and substantial disruption of living conditions caused by Hurricane Mitch and the fact that Honduras was unable, temporarily, to handle adequately the return of Honduran nationals.⁷² A similar temporary protection status was applied to citizens of Nicaragua.

42. The United States also has deferred enforced departure, which allows certain individuals from designated countries and regions facing political or civic conflict or natural disaster to remain in the United States.⁷³

43. In Argentina, South American nationals can apply for a residence visa due to humanitarian reasons.⁷⁴ Since 2022, the humanitarian reasons have included natural

protection, and for the content of the protection granted. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0095>.

⁶⁹ 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 promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. Available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32001L0055>.

⁷⁰ European Migration Network, “Comparative overview of national protection statuses in the EU and Norway: EMN Synthesis Report for the EMN Study 2019”, May 2020. Available at www.udi.no/globalassets/global/european-migration-network_i/studies-reports/emn_synthesis_report_nat_prot_statuses_final.pdf.

⁷¹ Afghanistan, Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Myanmar, Nepal, Nicaragua, Somalia, South Sudan, the Sudan, the Syrian Arab Republic, Ukraine, Venezuela (Bolivarian Republic of) and Yemen.

⁷² United States, Immigration and Naturalization Service, INS No. 1964-98, AG Order No. 2201-98. Available at www.govinfo.gov/content/pkg/FR-1999-01-05/html/98-34849.htm.

⁷³ Liberia, Venezuela (Bolivarian Republic of) and Hong Kong, China. See United States Citizenship and Immigration Services, Deferred enforced departure (<https://www.uscis.gov/humanitarian/deferred-enforced-departure>).

⁷⁴ Argentina, Law No. 25871 (2003), art. 24 (h); and decree No. 616/2010, art. 24 (h).

disasters.⁷⁵ The residence permit lasts six months, with the possibility of renewal before the expiration date. The Plurinational State of Bolivia has explicitly referenced climate change migration and the need to protect those migrating in its immigration law when there is a risk or threat to life, whether due to natural causes or environmental, nuclear, chemical, environmental or famine disasters.⁷⁶ Brazil provides humanitarian reception for two years, subject to renewal, in cases of an environmental disaster.⁷⁷ In Canada, special measures are applied to certain serious disasters; this included Typhoon Haiyan in the Philippines in 2013. Special measures apply mostly to people who can prove their link to the disaster and have immediate family members in Canada.⁷⁸

44. There is jurisprudence to suggest that courts in at least one European country are taking a broader perspective with respect to providing protective measures for persons displaced across international borders due to climate change. For example, the Constitutional Court of Austria has concluded that disasters can be considered when analysing subsidiary protection, as well as country of origin. The Court has concluded that the drought in Somalia and the poor supply situation and country reports had to be considered for subsidiary protection. In relation to floods in Pakistan, the Court ruled that authorities were obliged to carefully assess the situation after a disaster and to explain on which sources the authority's findings were based.⁷⁹ While they were defined as disasters, the fact remains that those events were artefacts of climate change. The Supreme Court of Italy granted an appeal for a refugee, considering the serious environmental disaster in the Niger Delta.⁸⁰

45. The rights to the claim of “climate change refugee” was tested in the case of a Kiribati citizen living in New Zealand. Ioane Teitiota sought refugee status under section 129 of the Immigration Act of 2009, on the basis that his homeland, Kiribati, was facing steadily rising sea water levels as a result of climate change. His claim was taken to the Immigration and Protection Tribunal. Although the Tribunal accepted that Mr Teitiota's concerns about Kiribati and its future were justified, it dismissed his appeal, holding that he was neither a refugee within the meaning of the Convention relating to the Status of Refugees, nor a protected person within the meaning of the International Covenant on Civil and Political Rights.⁸¹ Mr. Teitiota took his case to the Human Rights Committee, which found that Mr. Teitiota, had not established that the assessment of the domestic authorities had been clearly arbitrary or erroneous in that regard or had amounted to a denial of justice.⁸² Nevertheless, the Committee did state that, even where climate-induced asylum-seekers were not entitled to refugee status, receiving States had human rights obligations not to deport or to return them, when returning them to their State of origin would lead to the violation of their right to life.⁸³

46. Notwithstanding the above-mentioned case, the Special Rapporteur is of the view that there is a growing body of law in some countries to suggest that people are being given some level of protection status when they are displaced across international borders due to climate change. Nevertheless, this protection is haphazard and signifies a general lack of uniformity at the international level on this issue.

⁷⁵ Argentina, Dirección nacional de migraciones, Disposición No. 891/2022. Available at www.boletinoficial.gob.ar/detalleAviso/primera/262784/20220519.

⁷⁶ Plurinational State of Bolivia, Law No. 370 (2013). Available at www.refworld.org/docid/55b636204.html.

⁷⁷ Brazil, Law No. 13.445 of 24 May 2017. Available at www.refworld.org/es/pdfid/592c6f744.pdf.

⁷⁸ Canada, Immigration and Refugee Protection Act of 2001. Available at <https://perma.cc/EYW7M5Ey>.

⁷⁹ Margit Ammer et al., “Disaster-related displacement into Europe: judicial practice in Austria and Sweden”, Ludwig Boltzman Institute and Raoul Wallenberg Institute of Human Rights and Humanitarian Law, April 2022. Available at <https://rwi.lu.se/wp-content/uploads/2022/04/ClimMobil-1.pdf>.

⁸⁰ Italian Supreme Court of Cassation, ordinance No. 5022/2021 of 12 November, 2020.

⁸¹ Human Rights Committee, *Ioane Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016).

⁸² *Ibid.*

⁸³ *Ibid.*

VII. Policy approaches to address climate change displacement

47. There are a number of policies and soft law agreements related to persons displaced across international borders due to climate change. Some of these key policy instruments are set out below.

A. Cartagena Declaration on Refugees

48. At the Latin American regional level, the Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama in 1984, broadened the refugee definition for Latin America and proposed new approaches to the humanitarian needs of refugees and displaced people in the spirit of solidarity and cooperation. The Cartagena Declaration expands the regional definition of refugee in the Americas to include persons who have fled their countries because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights “or other circumstances that have seriously disturbed the public order”. Thirty years after the adoption of the Cartagena Declaration, in the Brazil Declaration and Plan of Action, parties encouraged new strategies to further enhance opportunities for local integration, resettlement, voluntary repatriation and regional labour mobility programmes, as well as guaranteed rights for refugees and the displaced.

B. Guiding Principles on Internal Displacement

49. The Guiding Principles on Internal Displacement, developed by the Representative of the Secretary-General on internally displaced persons in 1998, defines internally displaced persons as 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.⁸⁴ The Guiding Principles only apply to internally displaced persons, however they provide potentially useful guidance for the treatment of persons displaced across international borders due to climate change.

C. Global Forum on Migration and Development

50. The Global Forum on Migration and Development was launched in 2007 and is a State-led, informal and non-binding process, which aims to shape the global debate on migration and development. The aim of the Forum is to allow Governments, in partnership with civil society, the private sector, local and regional governments, youth, the United Nations system and other relevant stakeholders to analyse and discuss sensitive issues, create consensus, pose innovative solutions and share policy and practices. In 2022, the Forum Chair chose “The impact of climate change on human mobility: preventive action, humanitarian action and development” as one of the priority areas of work.⁸⁵

D. United Nations Declaration on the Rights of Indigenous Peoples

51. The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007, establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world, and it elaborates on existing human rights standards and fundamental freedoms as they apply to Indigenous Peoples. Article 36 of the Declaration states that Indigenous Peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations

⁸⁴ Global Protection Cluster, Global Database on IDP Laws and Policies (www.globalprotectioncluster.org/old/global-database-on-idp-laws-and-policies/).

⁸⁵ See <https://gfmdivcivilsociety.org/2022-2023-co-chairmanship/>.

and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

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

52. The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, resulting from the Nansen Initiative, was a State-led, consultative process designed in 2012 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.⁸⁶ The Nansen Initiative identified at least 50 countries that, in recent decades, had received or refrained from returning people in the aftermath of disasters, in particular those caused by tropical storms, flooding, drought, tsunamis and earthquakes.⁸⁷ It suggested three priority areas for future efforts, including collecting data and enhancing knowledge, enhancing the use of humanitarian protection measures and strengthening the management of disaster displacement risk in the country of origin.⁸⁸

F. Peninsula Principles on Climate Displacement within States

53. The Peninsula Principles on Climate Displacement within States were developed by a civil society organization, Displacement Solutions, in 2013, in consultation with representatives from 10 countries. The Principles are aimed at providing a comprehensive normative framework, based on principles of international law, human rights obligations and good practice, within which the rights of climate-displaced persons can be addressed. Although the Principles primarily relate to internal displacement, they may have relevance for the treatment of persons displaced across international borders due to climate change.

G. 2030 Agenda for Sustainable Development

54. Two of the key principles of the 2030 Agenda for Sustainable Development, adopted by the General Assembly in 2015, are to leave no one behind and reach those furthest behind first. The Sustainable Development Goals recognize the urgency of climate change; Goal 13 is to take urgent action to combat climate change and its impact. They also recognize the vulnerability of migrants to exploitation and abuse, specifically through the targets related to countering human trafficking, namely, target 5.2, to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation, target 8.7, to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms, and target 16.2, to end abuse, exploitation, trafficking and all forms of violence against and torture of children.

H. Task Force on Displacement

55. The Task Force on Displacement was established in 2015 at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. In its first phase, the Task Force developed recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change. In its third plan of action, the Task Force set out the aim to develop a technical guide, jointly with the expert group on non-economic losses, on averting, minimizing and addressing non-economic losses in the context of human mobility, including

⁸⁶ Nansen Initiative, “Agenda for the protection of cross-border displaced persons”.

⁸⁷ Ibid.

⁸⁸ Ibid.

the effect on Indigenous or local knowledge, societal identity and cultural heritage, a technical guide on integrating the linkages between human mobility and climate change into relevant national climate change planning processes and a technical guide on access to finance for averting, minimizing and addressing the effects of displacement, in collaboration with the expert group on action and support.⁸⁹

I. Migration Governance Framework

56. In the Migration Governance Framework, of 2015, IOM sought to present, in a consolidated, coherent and comprehensive way, a set of three principles and three objectives which, if respected and fulfilled, would ensure that migration was humane and orderly and benefitted migrants and society.

J. Guidance for Protecting People from Disasters and Environmental Change through Planned Relocation

57. The Guidance for Protecting People from Disasters and Environmental Change through Planned Relocation, developed through a joint initiative of Brookings, the Institute for the Study of International Migration of Georgetown University and UNHCR in 2015, is aimed at providing overarching principles for States and other actors to plan and implement planned relocations to protect people from disasters and environmental change. It includes a number of principles, including the principle that planned relocation should be carried out within a rights-based framework that safeguards both individual and collective civil, political, economic, social and cultural rights of relocated persons and other affected persons throughout all phases of the process. The rights to self-determination, preservation of identity and culture and control of land and resources are important, in particular for Indigenous communities.

K. Platform on Disaster Displacement

58. The Platform on Disaster Displacement was developed to follow on from the work of the Nansen Initiative and to support States and other stakeholders to implement the recommendations of the Nansen Initiative.⁹⁰ The Platform promotes measures to address the protection and assistance needs of persons displaced across borders in the context of disasters and the adverse effects of climate change, including by making use of instruments such as humanitarian visas, temporary protection measures and other effective practices that States can use to provide humanitarian protection to cross-border disaster-displaced persons. It also aims to manage displacement risk in the country of origin. The Platform has produced a toolbox for States to use to better prevent and prepare for displacement before a disaster strikes.⁹¹ The Special Rapporteur considers the Platform to be probably the most comprehensive programme currently available to address people displaced by disasters. Nevertheless, it fails to recognize the particular circumstances of persons displaced across international borders due to climate change, with respect to the international community's responsibility to address climate change harm. It continues to blur the boundaries between natural disasters and the effects of climate change and places the onus of responsibility on the affected State to respond to the "disaster". Countries affected by the effects of climate change are mostly those countries that have contributed the least to greenhouse gas emissions. In the Special Rapporteur's view, the Platform appears to perpetuate the unfair burden placed on affected States.

⁸⁹ United Nations Framework Convention on Climate Change, Third rolling plan of action of the task force on displacement for 2022–2024. Available at https://unfccc.int/sites/default/files/resource/Third_rolling_PoA_TFD_%202022.pdf.

⁹⁰ Platform on Disaster Displacement, "Strategy 2019–2022."

⁹¹ Ibid.

L. Global Compact for Safe, Orderly and Regular Migration

59. The Global Compact for Safe, Orderly and Regular Migration, adopted by the General Assembly in 2018, is a non-legally binding, cooperative framework that builds on the commitments agreed upon by Member States in the New York Declaration for Refugees and Migrants. In paragraph 21 (h) of the Global Compact, Governments committed to cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible. The Global Compact is also aimed at building on existing national and regional practices for admission and stay of an appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin owing to sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children and temporary work permits, while adaptation in or return to their country of origin is not possible.

M. Global Compact on Refugees

60. The Global Compact on Refugees, affirmed by the General Assembly in 2018, is a non-legally binding framework developed by UNHCR and aimed at easing pressures on host countries, enhancing refugee self-reliance, expanding access to third-country solutions and supporting conditions in countries of origin for return in safety and dignity. It is aimed at facilitating more predictable and equitable responsibility-sharing, recognizing that a sustainable solution to refugee situations cannot be achieved without international cooperation. It is also aimed at providing a blueprint for Governments, international organizations and other stakeholders to ensure that host communities receive the support that they need and that refugees can lead productive lives. The Global Compact has only limited references to climate change and displacement in the final text. It states that while not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements.

N. Words into Action series of guidelines on disaster displacement

61. The Words into Action series of guidelines on disaster displacement was developed through a partnership of the United Nations Office for Disaster Risk Reduction, the Platform on Disaster Displacement and the Norwegian Refugee Council and launched in 2019. The goal of the guidelines is to explain how Governments can practically implement the Sendai Framework for Disaster Risk Reduction 2015–2030, target E, to substantially increase the number of countries with national and local disaster risk reduction strategies by 2020, and thereby reduce the risk of disaster displacement and related human suffering. According to the guidelines, the first step is to map previous displacement and identify at risk populations, develop disaster risk reduction measures to increase resilience and reduce exposure and consider migration or planned relocation measures. The guidelines use the collective term of “disasters” to include climate change and, like other linked programmes such as the Platform on Disaster Displacement, the guidelines are focused on placing the onus on the affected State to address the disaster and build resilience.

O. Guidance note on regular pathways for admission and stay for migrants in situations of vulnerability

62. The guidance note on regular pathways for admission and stay for migrants in situations of vulnerability was developed by the United Nations Network on Migration, in 2021, and is aimed at responding to the reality of many migrants who lack access to regular migration options but are compelled to leave their countries of origin due to, inter alia, lack of access to rights, separation from families, gender-based violence and inequalities, as well

as disasters, the adverse effects of climate change and environmental degradation. It is aimed at building capacity to analyse the need for, and strengthen the design, implementation, monitoring and review of, pathways for admission and stay for migrants in situations of vulnerability. It considers matters relating to the availability and flexibility of pathways, admission and stay procedures and the resulting conditions and duration of relevant measures. It indicates that, even where not strictly required by international law, extending pathways of admission or stay for compassionate, humanitarian or other considerations can also be done as an exercise of discretion, international cooperation and solidarity.

63. While evolutionary progress is being made in providing policy frameworks for people displaced across international borders, the Special Rapporteur is of the view that it is evident that many of the soft law processes reviewed above are primarily written from a developed country perspective, with a strong reluctance to accept climate change causality, and place climate change within an umbrella definition of “natural hazards” or “natural disasters”. One of the primary soft law processes reviewed in the present report, the Platform on Disaster Displacement, uses “natural hazards” as an all-embracing term.⁹² Defining climate change within the context of natural hazards, deliberately and, in the Special Rapporteur’s view, irresponsibly, blurs the boundaries between human-induced climate change and geological disasters. For too long, the denial of climate change and reference to natural hazards or disasters has pervaded many policy instruments at the global and regional levels. The acknowledgement that climate change is a driver of migration, in the guidance note on regular pathways for admission and stay for migrants in situations of vulnerability, is progress. Nevertheless, it is only a guidance note, and it does not provide legal protection for persons displaced across international borders due to climate change.

VIII. Normative gaps in the protection of people displaced across international borders due to climate change

64. While various human rights treaties provide general obligations to protect all people from various human rights violations, the particular circumstances and vulnerabilities of persons displaced across international borders is not well addressed. Most States have ratified the human rights treaties that have relevance to people displaced internationally due to climate change, with some notable exceptions. Nevertheless, the Special Rapporteur is of the view that there is a major omission in the protection of persons displaced across international borders due to climate change. There are far too many instances in which such persons are subject to abuse, exploitation, discrimination and other severe human rights violations. This is particularly the case for women and children. This is due not only to an absence of international instruments to give proper protection to persons displaced across international borders due to climate change, but also to the lack of effective implementation of those instruments that exist and appropriate international cooperation with respect to the policy instruments that apply to such persons. Without appropriate protection, persons displaced across international borders due to climate change continue to be subjected to numerous human rights violations. The Special Rapporteur is of the view that they fall through the cracks, as far as appropriate legal protection is concerned, once they cross international borders. International law does not address critical issues, such as the admission, stay and conditions for return of persons displaced across international borders due to climate change, with some exceptions, including non-refoulement obligations. While a small number of States have national laws or bilateral, regional or subregional agreements that specifically address the admission or temporary stay of foreigners displaced by climate change, the vast majority of countries lack any normative framework.⁹³ There are simply insufficient pathways for persons displaced across international borders due to climate change to move

⁹² Platform on Disaster Displacement, “Key messages for COP 26”, 2021. Available at https://disasterdisplacement.org/wp-content/uploads/2021/10/19102021_PDD_key_messages_for_COP26_screen_compressed-1.pdf.

⁹³ IOM, “Protection of the human rights and fundamental freedoms of migrants and the specific needs of migrants in vulnerable situations”, 2017. Available at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Protection-of-Human-Rights-and-Vulnerable-Migrants.pdf.

regularly across borders, and they are therefore put at significant risk to various human rights violations.⁹⁴

65. Developing new normative arrangements to respect, protect and enforce the rights of persons displaced across international borders due to climate change should not be considered a threat to public order in receiving countries. It is simply a response to a growing problem caused by climate change. The Special Rapporteur is of the view that countries most affected by climate change should not bear the cost of protecting those who are affected and forced to flee and who face violence, exploitation, abuse and other rights violations. The international community has a duty of care to such people.

66. It is well recognized that the United Nations currently lacks a system-wide lead, coordination mechanism or strategy on people displaced across international borders as a consequence of climate change.⁹⁵ While temporary humanitarian protection measures are employed by a variety of United Nations agencies, long-term legal protection is lacking. There is a clear responsibility of the international community, established under article 8 of the Paris Agreement, to ensure cooperation and address loss and damage. While the term loss and damage is not defined in the Paris Agreement, it should give rise to expectations that the rights of people displaced by climate change should fall within the umbrella of this term.

67. The tragic growth in the number of children becoming persons displaced across international borders due to climate change demands urgent action and normative protection. In this respect, the United Nations Children's Fund (UNICEF) and IOM have developed the Guiding Principles for Children on the Move in the Context of Climate Change, including a rights-based approach, the best interests of the child, accountability, awareness of and participation in decision-making, family unity, protection, safety and security, access to education, health care and social services, non-discrimination and nationality. The Special Rapporteur is of the view that the Guiding Principles should become normative obligations for all States.

IX. Conclusions and recommendations

68. **International normative protections should reflect the preambular text of the Paris Agreement, which obliges parties to respect the rights of various rights holders. There is an urgent need to provide a legal regime to protect the rights of persons displaced across international borders due to climate change. Considering that the Convention relating to the Status of Refugees comes close to affording the type of protections that are needed, it would seem logical to establish a new protocol under the Convention to give protection to persons displaced across international borders due to climate change. This would normalize existing informal arrangements that the United Nations High Commissioner for Refugees applies in some circumstances. It would be logical for UNHCR to take up the mantle of administering this new protocol, in collaboration with the Task Force on Displacement, IOM, UNICEF and other United Nations agencies.**

69. **As an interim measure, until such a protocol is developed, all nations should be encouraged to develop national legislation that provides humanitarian visas for persons displaced across international borders due to climate change. Regional human rights bodies should be encouraged to expand their definition of refugees to include such persons.**

70. **Critically, parties to the Paris Agreement should be developing funding arrangements to assist persons displaced across international borders due to climate change to address their vulnerabilities. Ad hoc humanitarian support is not adequate to meet the needs of such people. Funding arrangements could come under developmental work on the loss and damage fund.**

⁹⁴ A/77/170.

⁹⁵ United Nations Framework Convention on Climate Change, Report of the Task Force on Displacement, 2018. Available at <https://unfccc.int/documents/182429>.

71. **The Special Rapporteur recommends that:**

(a) **The Human Rights Council make a recommendation to the General Assembly to commence negotiations on an optional protocol to the Convention relating to the Status of Refugees to define and give legal protection to persons displaced across international borders due to climate change;**

(b) **UNHCR, IOM, UNICEF and other relevant United Nations agencies collaborate to provide guidance on the development of a new legal protocol as described in subparagraph (a) above;**

(c) **UNHCR, IOM, UNICEF and other relevant United Nations agencies commence consultations with national Governments, civil society organizations and other relevant institutions on the development of a new legal protocol as described in subparagraph (a) above;**

(d) **The Guiding Principles for Children on the Move in the Context of Climate Change should be incorporated into the new legal protocol;**

(e) **Regional organizations be encouraged to expand their legal arrangements to include the legal protection of persons displaced across international borders due to climate change and, in regions where there are no regional organizations, Governments within those regions should collaborate to explore options for developing such arrangements;**

(f) **National Governments be encouraged to develop national legislation providing for humanitarian visas for persons displaced across international borders due to climate change;**

(g) **Parties to the United Nations Framework Convention on Climate Change and the Paris Agreement be encouraged to develop appropriate financial arrangements to give support to persons displaced across international borders due to climate change through funding arrangements developed under the umbrella of the loss and damage fund;**

(h) **OHCHR be encouraged to continue developing education material, technical cooperation and simplified reporting procedures to encourage countries, in particular small island developing States, to accede to all the human rights treaties.**
