

UNHCR Responses - Questionnaire in relation to Human Rights Council Resolution A/HRC/35/20 on human rights and climate change

1. Please describe *the relationship* between the adverse effects of climate change and the rights of migrants, and any human rights obligations to mitigate and adapt to climate change that can be derived from them.

NA

2. Please describe any relevant *commitments, legislation and other measures* that you have taken to adapt to and mitigate climate change and / or protect migrants affected by climate change. Please also note and identify any relevant mechanisms for ensuring accountability for these commitments including about their means of implementation for these commitments.

Caveat on terminology: UNHCR does not consider forcibly displaced person, refugees or otherwise, to be migrants. On terminology, it is understood that the generic term “human mobility” entails “displacement (understood as the primarily *forced* movement of persons), migration (understood as the primarily *voluntary* movement of persons) and planned relocation (understood as planned process of settling persons or groups of persons to a new location)”¹

Commitments/legislation/measures to protect IDPs

The vast majority of people displaced by sudden-onset disasters remain within the boundaries of their own countries.² States have the primary duty and responsibility to protect and assist internally displaced persons (IDPs) in accordance with their obligations under international human rights law as well as, where applicable, international humanitarian law. The UN Guiding Principles on Internal Displacement describe IDPs as “persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence” for reasons including “natural or human-made disasters” and who have not crossed an international border, and elaborate standards for protection before, during, and after displacement.³ The Guiding Principles, while non-binding, are recognized by the international community as an ‘important international framework for the protection of internally displaced persons’ and are increasingly being incorporated into domestic legislation.⁴ IDP protection in disaster context is also required under regional instruments, such as such as the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also referred to as the Kampala Convention and the 2006 Great Lakes IDP Protocol. Both cover people fleeing their homes in disaster and climate change contexts.⁵

Commitments/legislation/measures to protect Refugees

Some people displaced across borders in the context of disaster and climate change may be considered refugees under the 1951 Convention relating to the Status of Refugees, which requires a “well-founded fear of persecution” based on five grounds: race, religion, nationality,

¹ Nansen Initiative. 2015. *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*.

² IDMC. 2016. “Global Report on Internal Displacement.”

³ Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2 (11 February 1998).

⁴ Kälin, Walter, and Nina Schrepfer. 2012. “Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches.” : 80. <http://www.unhcr.org/4f33f1729.pdf>.

⁵ *Ibid.* In particular, Article 5, paragraph 4 of the Kampala Convention provides that ‘States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.’

membership of a particular social group and political opinion.⁶ Where disasters or slow onset events are linked to situations of armed conflict and violence, people displaced as a result may fall within the refugee criteria of the 1951 Convention, as detailed in UNHCR's legal considerations on refugee protection for people fleeing conflict and famine affected countries.⁷ For example, this includes when the collapse of governmental authority triggered by a disaster leads to violence and unrest, or when disaster or slow onset is a result of armed conflict or violence.⁸ Similarly, refugee protection under the international definition may apply when a particular ethnic, religious, national, social or political group is disproportionately affected by disaster and slow onset events as a result of acts or omissions by the state or other actors, which can effectively amount to persecution.⁹

Regional refugee instruments may also have direct application in cases where displacement is caused by disaster or slow-onset climate events. This includes the 1969 OAU Refugee Convention, which has an expanded definition of a refugee where an event is "seriously disturbing public order in either part or the whole" country that "compelled" them to seek refuge abroad.¹⁰ The 1984 Cartagena Declaration's broader refugee definition, encompasses "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order". However, to date, it is still to be determined if these regional refugee definitions would apply in cases where displacement was not caused by violence, such as that solely due to disasters or climate change impacts.

Commitments/legislation/measures to protect others displaced across borders in climate change and disaster contexts who are in need of international protection

In the absence of refugee protection, persons fleeing climate change or disasters should be provided with complementary forms of protection, as a minimum, under temporary protection, particularly when the host country is experiencing large-scale influxes of people or when the situation in the country of origin is fluid or unclear.¹¹ UNHCR's Guidelines on Temporary Protection or Stay Arrangements may also apply in disaster and climate change contexts.¹² In some countries and regions, measures under regional or domestic frameworks such as the EU Temporary Protection Directive¹³ were adopted to address situations of people fleeing violence or civil unrest that did not fall within the 1951 Refugee Convention. While it is not excluded that such measures could apply in other, unforeseen scenarios, including disaster situations, to date they have not been used for this purpose.

General guidance provided by UNHCR to States on the use of humanitarian visas and temporary protection arrangements to facilitate third country stay for displaced persons can also be applied to protect those displaced across borders by climate change and disasters. The 2014 Brazil Declaration and Plan of Action recognizes the challenges posed by climate change and disasters, including the displacement of persons across borders, and underscores the need for

⁶ United Nations. 1951. *The 1951 Convention Relating to the Status of Refugees*. <http://www.unhcr.org/en-us/3b66c2aa10>.

⁷ UN High Commissioner for Refugees (UNHCR), *Legal considerations on refugee protection for people fleeing conflict and famine affected countries*, 5 April 2017, available at: <http://www.refworld.org/docid/5906e0824.html>

⁸ *Ibid*, para. 19 and UNHCR Guidelines on International Protection No. 12

⁹ *Ibid*, para. 32

¹⁰ UNHCR. 2011. "Persons Covered by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees." (January): 1–11.

¹¹ EXCOM, Providing International Protection Including Through Complementary Forms of Protection, 2 June 2005, EC/55/SC/CRP.16, available at: <http://www.unhcr.org/refworld/docid/47dfb49d.html>

¹² UNHCR. 2014. 26 *Guidelines on Temporary Protection or Stay Arrangements*. <http://www.refworld.org/docid/52fba2404.html>.

¹³ European Union, Council Directive 2001/55/EC

the international community, including UNHCR, to give more attention to application of temporary protection in these situations. In support of the adoption of appropriate national and regional measures, UNHCR has compiled good practices from countries in the region, which may apply in disaster contexts.¹⁴

The Nansen Initiative Protection Agenda on cross-border displacement in the context of disasters and climate change was endorsed by 109 States in 2015. As recognised in that document, States may have an interest in considering the harmonization of humanitarian protection measures at the regional or sub-regional level.¹⁵ Such harmonization may facilitate international cooperation and solidarity in situations when national authorities cannot achieve solutions on their own. Furthermore, harmonization may help to ensure that all citizens benefit from humanitarian protection measures in case of cross-border disaster-displacement. However, to date, such harmonization processes are largely absent. UNHCR's experience also demonstrates that, within the overarching protection framework, capacity-building (both before and after disasters) is essential in order to strengthen the implementation of temporary protection activities by national and civil society institutions.

3. Please share a summary of any relevant data as well as any related mechanisms to measure and monitor the impacts of climate change on the enjoyment of human rights for migrants, especially for vulnerable groups such as children, women or migrants living with a disability and the allocation of resources to address these impacts.

NA

4. Please identify and share examples of good practices and challenges in the promotion, protection and fulfilment of the human rights of migrants in the context of the adverse impacts of climate change.

A good practice is the use of Temporary Protection or Stay Arrangements (TPSAs). “The purpose of these Guidelines is to guide and assist Governments in the development of as responses to humanitarian crises and complex or mixed population movements, particularly in situations where existing responses are not suited or adequate. The TPSAs described in this document would ideally be developed on a multilateral/regional basis, while requiring implementation at the individual State level. The benefits of moving away from unilateral, ad hoc responses to those that are multilateral, as well as more predictable and harmonized yet flexible, are well acknowledged. This document sets out the elements of possible TPSAs, preferably as a standing arrangement that can be activated in response to particular situations or events when they arise.”¹⁶

However, the ‘temporary protection’ label is potentially misleading, even as it appears key to generating responsive reception policies on the part of some States. Experience demonstrates that protection needs are potentially long-term or ongoing, particular if displacement becomes

¹⁴ UNHCR. Humanitarian Visas – Good Practices from Central and South America. 2014. Available at: http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/Proteccion/Buenas_Practicas/9234

¹⁵ Nansen Initiative. 2015. *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*.

¹⁶ UN High Commissioner for Refugees (UNHCR), *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, available at: <http://www.refworld.org/docid/52fba2404.html>

protracted, which is to say that the temporal end point is not clearly identifiable in advance.¹⁷ The impact of sudden-onset disasters, such as hydro-meteorological events, may prove relatively short term when considered through the lens of humanitarian assistance, but may be lengthier when viewed from the perspectives of DRR and the promotion of resilience, adaptation, and development. Similarly, the effects of slow-onset environmental degradation may be less dramatic in their immediate aftermath, but may ultimately have a longer-term, even permanent, impact on the viability of habitats and potential for return. With these varying perspectives in mind, the notion of temporary protection needs to be linked into longer-term strategies, with due regard also to the critical differences between internal and cross-border displacement.¹⁸

To operationalize guidance developed in 2014 and 2015 by UNHCR, Georgetown University and Brookings, "A toolbox: Planning Relocations to Protect People from Disasters and Environmental Change" was jointly developed, and validated by States at a workshop co-organized with Georgetown University and IOM in May 2017.

For further good practices, refer to the Nansen Initiative Protection Agenda Volume I. For further regional examples, refer to the Nansen Initiative Protection Agenda Volume II.

5. Please provide any additional information you believe would be useful to understand efforts made and challenges faced as well as the necessary means of implementation for climate change adaptation and mitigation related to the protection of migrants and persons displaced across international borders because of the sudden-onset and slow-onset adverse effects of climate change.

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¹⁷ UN High Commissioner for Refugees (UNHCR), *UNHCR and Climate Change, Disasters, and Displacement*, May 2017, available at: <http://www.refworld.org/docid/59413c7115.html>

¹⁸ UN High Commissioner for Refugees (UNHCR), *UNHCR and Climate Change, Disasters, and Displacement*, May 2017, available at: <http://www.refworld.org/docid/59413c7115.html>