

# Regional guidelines on the protection and assistance of cross-border displaced persons and migrants in countries affected by disasters





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# I. INTRODUCTION

INTRODUCTION

## 1.1 Human mobility in the context of disasters and the adverse effects of climate change on the international agenda

Displacement in the context of disasters, including those related to the adverse effects of climate change, is a reality and is one of the greatest humanitarian challenges currently faced by States and the international community. Every year, millions of people are forcibly displaced due to disasters caused by natural hazards, such as flooding, tropical storms, earthquakes<sup>I</sup>, landslides, droughts and glacial melting.

In recent years, twenty five million people on average have been displaced every year in the context of disasters, particularly due to the impacts of sudden-onset natural hazards, such as tropical storms, flooding and earthquakes. Other people have been displaced due to the effects of slow-onset disasters or processes, such as sea level rise, desertification and other forms of environmental degradation, even though global estimates of this type of displacement remain uncertain. Most persons displaced by disasters remain within their own country. However, some cross borders in order to reach safety and seek protection and assistance in another country<sup>II</sup>.

Even though there is no comprehensive and specific international policy framework addressing protection needs in situations of internal or cross-border disaster displacement, in recent years this topic has been included in the main global (multilateral) and regional processes and agendas on humanitarian action, human rights, disaster risk reduction, migration management, consular protection, climate action and sustainable development.

Thus, the increasingly international acknowledgement of the challenges posed by human mobility in the context of disasters and the adverse effects of climate change has been addressed and included in the *United Nations Framework Convention on Climate Change* (UNFCCC), the *Sendai Framework for Disaster Risk Reduction 2015-2030*, the World Humanitarian Summit 2016 and its *Agenda for Humanity*, the *New York Declaration for Refugees and Migrants* in 2016, the *Global Compact on Refugees* and the *Global Compact for Safe, Orderly and Regular Migration*<sup>III</sup>.

The relationship between human mobility and the adverse effects of climate change has been the subject matter of international negotiations under the *United Nations Framework Convention on Climate Change* for over a decade. The focus on human mobility issues gained momentum in the Cancun Adaptation Framework in 2010 (COP16<sup>IV</sup>), but was resumed during the Meeting of States Parties in Doha in 2012 (COP18), with the aim of enhancing understanding of how the impacts of climate change are affecting patterns of human mobility, including migration and displacement<sup>V</sup>. During COP19 in 2013, the *Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts* had a specific action area to address this issue and, subsequently in 2015, the *Paris Agreement* (COP21) marked an unprecedented step forward with the creation of the ‘Task Force on Displacement’ to develop recommendations for integrated approaches to avert, minimise and address displacement related to the adverse impacts of climate change<sup>VI</sup>.

Including human mobility in international negotiations on climate change has implied that the international community will adopt measures to enhance understanding, coordination and cooperation at a national, regional and international level regarding displacement, migration and planned relocation in the context of climate change.

In addition, at an international level the *Sendai Framework for Disaster Risk Reduction 2015-2030* not only recognises in its foreword the devastating effects of displacement, but also recommends a series of guidelines and strategic courses of action to address this phenomenon, including the promotion of transboundary cooperation regarding displacement, the adoption of policies and programmes addressing disaster-induced human mobility, including planned relocation, the identification of risk areas, as well as the strengthening of the resilience of affected people and host communities<sup>VII</sup>. The Sendai Framework also specifically recognises the contribution of migrants to the resilience of host communities and societies.

At the *Fifth Global Platform for Disaster Risk Reduction* held in Cancun in 2017, countries committed themselves to the development of disaster risk reduction strategies that consider regional and cross-border perspectives and include provisions that aim to reduce and prevent displacement



attributed to disasters, address the protection needs of displaced people and promote durable solutions<sup>VIII</sup>.

For its part, the *Global Compact for Safe, Orderly and Regular Migration* (GCM) recognises, for the first time in an international migration instrument of this nature, the need to harmonise and develop approaches and mechanisms at sub-regional and regional levels to address the vulnerabilities of people affected by sudden-onset and slow-onset natural hazards. It identifies the need to ensure their access to humanitarian assistance with full respect for their rights, as well as to integrate displacement considerations into preparedness strategies that include cooperation with neighbouring countries, early warning and contingency planning, evacuation planning, reception and assistance arrangements for such displacements<sup>IX</sup>.

In addition, the GCM recognises the importance of cooperation to identify, develop and strengthen solutions for migrants compelled to leave their country of origin due to slow-onset natural hazards, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise. Such solutions include planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible. Likewise, the GCM urges States to [...] ‘develop coherent approaches to address the challenges of migration movements in the context of sudden-onset and slow-onset natural disasters, including by taking into consideration relevant recommendations from State-led consultative processes, such as the *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*<sup>X</sup>, and the *Platform on Disaster Displacement*<sup>XI</sup>[...]’.

More generally, all these multilateral processes are part of the implementation of the Sustainable Development Goals, contained in the Agenda for Sustainable Development (2030 Agenda), which refers to more frequent and intense disasters and their associated forced displacement as one of the factors that undermine the development of countries. In its Goal 10.7, the 2030 Agenda recognises the need to facilitate orderly, safe, regular and responsible migration and mobility of people, through the implementation of planned and well-managed migration policies<sup>XII</sup>.

## 1.2 Background: the South American Conference on Migration (SACM)

Addressing displacement in the context of disasters and the adverse effects of climate change has been part of the regional agenda of the South American Conference on Migration (SACM) in recent years. The issue of human mobility, disasters and climate change was included both in the Tenth Meeting of the SACM held in Cochabamba, Bolivia, in 2010 and the Fourteenth Meeting of the SACM held in Lima, Peru, in 2014.

In the framework of both meetings, it was agreed to manage strategic partnerships to gain greater knowledge of this issue; to promote the exchange of good practices by governments; and to promote the establishment of a common position on this issue. This topic was revisited during the Fifteenth Meeting of the SACM held in Santiago, Chile, in September 2015.

It was during the Presidency Pro Tempore of the SACM for the 2015-2016 period<sup>XIII</sup> that the Government of Chile included, in its work plan, the discussion of the causes and effects of human displacement due to environmental and climate change-related factors, the promotion of a regional South-South cooperation strategy for environmental emergencies and human displacement, and the request of a regional cooperation scheme on environmental emergencies and human displacement from the Technical Secretariat of the South American Conference on Migration (TS-SACM) and the International Organization for Migration (IOM).

This proposal was resumed during the Sixteenth Meeting of the SACM held in Asunción, Paraguay, in November 2016, when the decision was made to '[...] organise a workshop on a regional level to develop guidelines and practical guidance for people who have been displaced in border areas [...]'. The workshop was held on October 30-31, 2017, under the auspices of the Government of Chile and with the support of the TS-SACM, IOM, and the Platform on Disaster Displacement (PDD).

The outcome of that workshop was shared and discussed during the Seventeenth Meeting of the SACM on November 14-15, 2017 in the city of

Montevideo, Uruguay. There, the representatives of the SACM member countries agreed to continue working on the development of such regional guidelines, which were discussed in a follow-up technical meeting in Santiago, in August 2018 and subsequently approved during the Eighteenth Meeting of the SACM in the city of Sucre, Bolivia, in November 2018.

Finally, it is important to stress that the issues of human mobility in the context of disasters and the adverse effects of climate change have been similarly addressed in other regional spaces, in which the vast majority of SACM member countries have participated. Such is the case of the Nansen Initiative South America Regional Consultation held in Quito in July 2015, under the auspices of the Government of Ecuador<sup>xiv</sup> and the *Brazil Declaration and Plan of Action* (Cartagena +30 process) in 2014, where the countries of Latin America and the Caribbean recognised the challenges posed by climate change and disasters, as well as by the potential cross-border displacement of persons that these phenomena may cause in the region.

In light of the challenges presented by such phenomena, the signatories of the *Brazil Declaration and Plan of Action* requested UNHCR to prepare a study<sup>xv</sup> on the subject with a view to supporting '[...] the adoption of appropriate national and regional measures, tools and guidelines, including response strategies for countries in the region, contingency plans, integrated responses for disaster risk management and humanitarian visa programmes, within the framework of its mandate [...]'].

This regional progress is evidence of the importance accorded to the issue of human mobility in the context of disasters and the adverse effects of climate change in the various regional agendas of interest for SACM member countries.

### **1.3 Human mobility, climate change and disasters in South America**

South America is a region that experiences conditions resulting in exposure to risks, leading to high vulnerability in the event of natural disasters. Such

conditions include landslides, floods and other geophysical hazards, such as earthquakes and volcanic eruptions<sup>xvi</sup>.

In addition, due to the effects of climate change, yearly increases in the frequency, intensity and unpredictability of hydrometeorological events are common, which has led to a significant economic impact for the countries in the area, as well as significant losses that put the livelihoods of affected populations at risk<sup>xvii</sup>.

This exposure and vulnerability to natural hazards, added to other urbanisation processes and demographic growth, poverty levels, and lack of access to social and economic services, has resulted in the displacement of hundreds of people every year as a consequence of the impact of disasters. In 2017 alone, thousands of people in Argentina, Paraguay and Peru were displaced due to heavy flooding. In the case of Peru, floods caused the displacement of around 295,000 people<sup>xviii</sup>. Between 2008 and 2017, it is estimated that around ten million people were displaced in the region as a direct consequence of volcanic and seismic activity, landslides and mudslides, floods and storms<sup>xix</sup>.

Even though the vast majority of these displacements in the context of disasters occur within borders of the South American countries, the region has also experienced cases of cross-border displacement. Such cases include dozens of Colombian citizens seeking protection in northern Ecuador during the 2010 wet season, the displacement to Argentina of Chilean citizens living in border areas following landslides and earthquakes, or the case of the displacement of nearly 120 families from the border area of Guayarmerín in Bolivia, who, in 2014, fled from the flooding of the Mamore river to temporary shelters in Brazil, as the water level hindered their movement to safe areas in Bolivia<sup>xx</sup>.

Other cyclic events, such as floods along the common border between Paraguay and Argentina, have historically caused the temporary displacement of Paraguayan citizens to Argentine territory, or the temporary displacement from settlements in the tri-border area of Colombia, Brazil and Peru in the Amazon region, from which people move every year from one country to another to avoid the impact of the cyclic river flooding.

The impact on citizens living in or moving through a third country affected by a disaster is also another dimension of human mobility in the context of disasters. In recent years, the region has experienced a large number of disasters affecting thousands of migrants from SACM member countries, on many occasions, making it impossible for them to return to their countries of origin or placing them in a situation of vulnerability due to the effects of natural hazards.

Such is the case of the hundreds of Colombian citizens directly affected during the earthquake which struck Ecuador in April 2016, many of whom were provided with humanitarian aid and/or repatriated through the consular services of their country of origin (Colombia), resulting from the joint efforts of consular, migration and risk management agencies and the Armed Forces, in close coordination with the affected country (Ecuador).

Displacement and migration are also associated with the impacts of slow-onset natural hazards. While droughts are one of the most prominent slow-onset hazards in the region, other natural hazards such as glacial melting, sea level rise and coastal erosion—although they have occurred throughout history—are influenced by climate change, leading to increasing rainfall patterns and the occurrence of other extreme events, such as the aforementioned droughts<sup>xxi</sup>. All of these have had an impact on human mobility in the region.

Brazil, for example, is one of the South American countries that has been largely impacted by droughts during recent decades, which has contributed to the mobility of millions of people, particularly in the north-eastern region of the country<sup>xxii</sup>. Droughts and their impact on land degradation have been particularly serious in recent decades in Bolivia, Colombia, Ecuador and Venezuela, as well as in southern Peru, Chile and south-eastern Argentina.

Finally, recent studies anticipate that the impacts of climate change will be even more severe in the future, contributing to human mobility at a greater scale, especially during times of drought, heat and low availability of water and other natural resources. The World Bank, for instance, estimates that, without the adoption of additional and concrete measures for mitigation, adaptation to climate change and development, by 2050 more than 140 million people will have become ‘climate migrants’, most of them within

their own countries, highlighting the Latin American region within the most affected regions in the study, with nearly 17 million ‘internal climate migrants’<sup>xxiii</sup>.

These circumstances may force entire populations to be displaced and leave their livelihoods behind, some of them in conditions of vulnerability. Similarly, in the event of risks of flooding in coastal areas and increased sea levels, some people will have to leave their homes for safer areas, within or outside the borders of their countries<sup>xxiv</sup>.

## II. SCOPE AND PURPOSE

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## 2.1 Objective

People that move across international borders in the context of disasters and the adverse effects of climate change, as well as migrants in countries affected by disasters, may be exposed to personal integrity risks, especially if they lack access to safe, orderly and regular migration pathways. Given their vulnerability, they may also experience difficulty in exercising their rights throughout the entire migration process, as well as in gaining access to basic necessities, such as healthcare, food, education and housing<sup>xxv</sup>.

Thus, the *Regional Guidelines on the Protection and Assistance of Cross-Border Displaced Persons and Migrants in Countries Affected by Disasters* (hereinafter ‘the **Guidelines**’) aim at improving the institutional capacity of the humanitarian response to disaster displacement challenges.

In addition, they seek to create a comprehensive framework of minimum protection standards, based, among other aspects, on managing information and coordination between the affected country (country of origin) and the host country (receiving country), and the harmonisation of humanitarian response and assistance among SACM member countries.

To that end, the Guidelines seek to:

- Facilitate the existence of a practical regional framework to facilitate the admission and stay of people from countries affected by disasters and the adverse effects of climate change, based on humanitarian considerations and the domestic regulations of SACM member countries; and
- Support the use of minimum standards for the protection of migrant persons affected by disasters, whether they are residents or in transit to a third country.

## 2.2 Scope and approach

The Guidelines are non-binding; therefore they provide a greater level of flexibility for implementation by SACM member countries. Additionally,



the Guidelines do not create new legal obligations or require the adoption of new laws, but are based on the existing experiences, practices and regulations of SACM member countries.

In addition, as many SACM member countries have adopted state-of-the-art practices, regulations and policies on this subject matter, no content in these Guidelines must be construed in any case as a limitation on countries in the region in providing even higher protection levels or more favourable treatment in keeping with their own domestic laws.

In terms of the geographic scope and in accordance with the administrative structure of each SACM member country, the Guidelines may be applied both at a national and local/municipal level. Each SACM member country has the highest degree of discretion to apply the Guidelines at border points or in 'border areas', as deemed relevant.

SACM member countries must, within their capabilities, encourage local authorities of border areas to make themselves aware of the contents of these Guidelines, in order to strengthen coordination for the reception and assistance of persons displaced by a disaster at the common border, or the activation of corresponding response mechanisms in the event of an impact alert in a member country of the SACM, whether it shares a border or not.

The Guidelines thus respond to exceptional cross-border displacement situations caused by the impact of sudden-onset natural hazards, such as torrential rains and floods, volcanic eruptions, earthquakes and tsunamis.

The Guidelines also encompass other events and disasters considered to be slow-onset which may be associated with the adverse effects of climate change, when they contribute to the decision to migrate or move across an international border.

These Guidelines are applied in the following specific scenarios:

- 1) Protection measures that may be implemented by SACM member countries in cases of entry of people from one of the SACM member countries who are seeking to find safety and assistance by crossing an international border; and

- 2) Protection measures that may be implemented by SACM member countries for migrants in transit or residing in their territory during the impact of a disaster.

Unlike other international<sup>xxvi</sup> and regional<sup>xxvii</sup> instruments compiling a range of practices applied in these contexts, the Guidelines establish general criteria that SACM member countries can use to ensure that future responses to cross-border displacement in the context of disasters are more efficient and consistent with their domestic regulations.

Finally, Chapter V of the Guidelines emphasises the need for SACM member countries to promote cooperation for the identification, development and strengthening of long-term solutions for people who have had to leave their place of habitual residence due to the impacts of slow-onset events and natural hazards, such as environmental degradation, desertification, land degradation, drought and sea level rise. Such solutions include regular migration options, in cases where return to their countries of origin is not possible.

## 2.3 Use and audience of the SACM Guidelines

The Guidelines have been prepared due to the joint efforts of SACM member countries, with the aim of improving institutional capacity for the humanitarian response to the challenges posed by cross-border displacement in the context of disasters, and the assistance of migrants in a country affected by a disaster. As such, they are mainly addressed to governmental authorities, which, of course, does not preclude SACM member countries from cooperating, requesting or receiving assistance from non-governmental bodies providing support in the humanitarian assistance of people directly affected by an event (disaster), as well as inter-governmental agencies and United Nations agencies.

In addition, even though migration management issues have greater relative importance in the guidelines, they foster a comprehensive approach involving authorities and units responsible for first response to incidents associated with the cross-border entry of people displaced due to disasters. Among the relevant authorities and units are border and customs authorities,

security and border police, governing bodies and/or national systems for civil protection and disaster risk management, local governments, municipal cross-border emergency committees and/or boards, and health and education authorities.

To this end, the Guidelines serve as guidance for decision making at a governmental level, especially for those government authorities with responsibilities or powers relating to migration issues, consular management, foreign affairs and disaster risk reduction. This also includes the Armed Forces, which provide support to civil protection bodies and national risk management systems in emergency situations.

Additionally, and in keeping with the principles guiding this effort, especially the ‘whole-of-government approach’, the Guidelines should be shared and coordinated with local bodies, in particular Local Governments situated in border areas which, in most cases, become temporary host communities in the event of these displacement phenomena.

The Guidelines have thus been devised by SACM member countries themselves to guide, in general, the decision-making process, respecting the domestic particularities, institutional structure and organisation of each SACM member country.

Of course, this does not mean that SACM member countries may not implement these Guidelines with the assistance and support of other non-governmental bodies and the collaboration of international agencies.

### III. PRINCIPLES AND KEY CONCEPTS

PRINCIPLES AND

## 3.1 Principles

Based on the particular situations, vulnerabilities and conditions of those who are forced to cross international borders due to the consequences of disasters and the adverse effects of climate change, as well as the particular needs of migrants in disaster-affected countries, the Guidelines are framed within the following guiding principles governing and informing both their content and their implementation:

### International cooperation and solidarity

International cooperation has been one of the main pillars from the very beginning of the SACM, whose purpose as a regional technical and policy forum has been to create and coordinate initiatives and programmes aimed at promoting and developing policies on international migration and its relationship with regional development and integration.

In this regard, the principle of international cooperation governing the relations between SACM member countries guides and informs these Guidelines. The principle involves not only disaster-affected countries, but also aims to foster regional solidarity with countries that have not been directly affected by disaster, but which may, on a temporary basis, receive and admit displaced persons who are in a situation of vulnerability.

### Sovereignty and the exercise of discretion in migration affairs

SACM member countries have sovereign authority and the right to exercise jurisdiction and control over their international borders. Thus, no provision in these Guidelines is to be read as undermining a State's discretion in migration affairs, to conduct ordinary registration, identification and migration management activities.

In addition, no provision in the Guidelines is to be read as contravening regional migration agreements and treaties in force among SACM member countries, which regulate free movement and mobility of persons among countries and which include the citizenship agreements of the Southern

Common Market (MERCOSUR) and the migration agreements of the Andean Community of Nations (CAN).

### **Respect for human rights and non-discrimination**

The basic principle governing these Guidelines is full respect for the fundamental human rights of all persons, in keeping with the spirit and letter of the main international instruments on human rights ratified by SACM member countries. Based on the foregoing, it is understood that these Guidelines do not impose any kind of constraint, limitation or impairment to international human rights law in effect in SACM member countries, international humanitarian law and applicable international refugee law, and any other international legal instrument or domestic regulations protecting rights in a broader manner, including the principle of non-refoulement<sup>xxviii</sup>.

This implies, in turn, full respect for the human rights of all persons under the care and/or protection of the host country, who have been forced to cross an international border as a result of the impact of a disaster, regardless of their migration status. That is, international borders are not limits or geographical areas that preclude or exempt the fulfilment of human rights obligations. Countries are entitled to exercise their jurisdiction at international borders, but they must do so in accordance with their human rights obligations<sup>xxix</sup>.

In this sense, the principle of non-discrimination—an essential foundation for the full realisation of human rights—precludes any act of discrimination by public authorities or third parties, on the basis of ethnic origin, skin colour, sex, language, religion, political opinion, national origin, sexual orientation, property, birth or any other status, such as disability, marital and family status, and migration status; and requires non-discriminatory, humane and dignified treatment, including guarantees of access to shelter, health care services, other basic services and freedom of movement, except otherwise justified on the basis of national security, public order or public health<sup>xxx</sup>.

### **Differentiated assistance according to the needs and vulnerabilities of specific populations**

Humanitarian response includes differentiated assistance for vulnerable populations, among them older, ill and injured persons, accompanied and

unaccompanied children, female-headed households, disabled persons, victims of trafficking, members of ethnic minorities and Indigenous peoples who may live near cross-border areas.

Any differentiated treatment of these groups of persons will solely aim at the legitimate search for protection measures during their stay in the host country, due to the impacts of disaster.

In addition, the Guidelines provide a non-binding cooperation framework acknowledging that displacement and migration in the context of disasters cannot be addressed in isolation; therefore, they require an additional effort to engage in regional and bilateral dialogue and cooperation for their implementation, follow-up and review.

### Co-responsibility

The principle of co-responsibility is cross-cutting throughout the Guidelines, and is understood to mean that responsibility lies with both the host country (receiving country) and the country affected by the impact of a disaster (country of origin). This exercise of co-responsibility implies an ongoing search for communication and coordination channels between origin and host countries that aim at identifying the most pressing needs, and the search for solutions according to the protection needs of persons displaced across borders and persons residing or in transit in a third country.

This principle is also understood to mean that SACM member countries have a primary responsibility to protect their own citizens when they are abroad. Moreover, host and transit countries have responsibilities with respect to all persons in their territories, including migrants, regardless of their migration status<sup>xxxI</sup>.

### Principles of humanitarian response<sup>xxxII</sup>

The Guidelines are based on the guiding principles of Resolution 46/182 of the United Nations General Assembly on *Strengthening the coordination of humanitarian emergency assistance of the United Nations*, and also on the protection and humanitarian response principles of the Humanitarian Charter, which aim at avoiding people's exposure to further harm as a

result of actions taken, providing access to impartial assistance according to needs and without discrimination, protecting persons from physical and psychological damage caused by any kind of violence and coercion, and helping persons to claim their rights and seek redress.

### **Whole-of-government approach**

Due to the multiple causes and complexity of disaster displacement, the Guidelines emphasise that it cannot be approached from only one government sector. In order to develop and implement policies that comprehensively address the needs of the most vulnerable populations, including migrants in countries affected by disasters, a whole-of-government approach is required, to ensure the necessary consistency and coordination among all relevant government sectors and levels. For successful implementation/adoption (?) of the Guidelines, it is essential to include the needs and experience of Local Governments in the decision-making process relating to emergency response plans and arrangements and migration management.

## **3.2 Key concepts**

### **Disaster**

The term ‘disaster’ in the Guidelines implies a serious disruption of the functioning of a community or society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts<sup>xxxiii</sup>.

### **Displacement in the context of disasters**

The term ‘displacement in the context of disasters’ refers to situations where people are forced or obliged to leave their homes or places of habitual residence as a result of a disaster or in order to avoid the impact of an immediate and foreseeable natural hazard. This type of displacement results from the fact that affected persons are (i) exposed to (ii) a natural hazard



in a situation where (iii) they are too vulnerable and lack the resilience to withstand the impact of that hazard. It is the *effects* of natural hazards (including the adverse impacts of climate change) that may overwhelm the resilience or adaptive capacity of an affected community or society, thus leading to a disaster that may potentially result in displacement<sup>xxxiv</sup>.

## Protection

It means any positive action, whether or not based on legal obligations, undertaken by States on behalf of persons displaced by disaster or persons at risk of being displaced, which ‘aim at obtaining the full respect for the rights of the individual in accordance with the letter and spirit of applicable bodies of law, namely human rights law, international humanitarian law and refugee law’. While highlighting the humanitarian nature of such protection, it is not aimed at extending States’ legal obligations under international refugee and human rights law for cross-border persons displaced by disaster and persons at risk of being displaced<sup>xxxv</sup>.

## Humanitarian protection measures

The term ‘humanitarian protection measures’ refers to laws, policies and practices used by States to permit the admission and stay of persons displaced across borders by disaster in their territory<sup>xxxvi</sup>.

## International protection

The term ‘international protection’ is understood in these Guidelines as the protection offered by a State to persons because, in their country of nationality or habitual residence, their human rights are threatened or violated and they were unable to obtain due protection there because it is not accessible, available and/or effective<sup>xxxvii</sup>.

## Complementary protection

The term ‘complementary protection’ is construed in these Guidelines as a form of international protection for those individuals who, in spite of

not qualifying as refugees under international or regional refugee law, are unable to return to their country of origin due to the lack of protection and risk of serious harm to their lives and integrity<sup>xxxviii</sup>. The complementary protection forms adopted by States to ensure that persons in need of international protection effectively receive it are a positive way of responding pragmatically to certain international protection needs<sup>xxxix</sup>.

### **Planned relocation**

‘Planned relocation’ can be described as ‘a planned process in which persons or groups of persons move or are assisted to move away from their homes or places of temporary residence, are settled in a new location, and also provided with the necessary conditions for rebuilding their lives’. Planned relocation can be voluntary or involuntary, and usually takes place within the country, but may, in very exceptional cases, also occur across international borders<sup>xl</sup>.

### **Migration**

For the purposes of the Guidelines and in agreement with the terminology suggested in paragraph 14(f) of the Cancun Adaptation Framework, the term ‘migration’ is used to refer to human movements which are predominantly voluntary as people, while not necessarily having the ability to decide in complete freedom, still possess a measure of choice between different realistic options. In the context of slow onset natural hazards, environmental degradation and the long-term adverse effects of climate change, such a concept of migration is widely used to refer to the ‘avoidance of or adaptation to’ deteriorating environmental conditions that, otherwise, in the future may lead to a humanitarian crisis and displacement<sup>xli</sup>.

### **Environmental migration**

IOM’s working definition states that environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad<sup>xlii</sup>.

## **Humanitarian assistance**

The concept of ‘humanitarian assistance’ is understood in the Guidelines as aid that seeks to save lives and alleviate the suffering of a crisis-affected population. Humanitarian assistance must be provided in accordance with the basic principles of humanity, impartiality and neutrality, with full respect for the sovereignty of States<sup>XLIII</sup>.

## **IV. CONTINGENCY MEASURES TO REDUCE AND AVOID THE RISK OF DISPLACEMENT IN THE COUNTRY OF ORIGIN**

Even though the Guidelines focus on measures to address and protect cross-border displaced persons once a disaster has occurred, this chapter aims at recommending a series of measures that SACM member countries can take into consideration in order to minimise the risk of disasters and displacement, especially through the authorities and national systems of disaster risk management<sup>XLIV</sup>.

These measures place persons at the centre and it is primarily expected that citizens of a disaster-prone country remain in their place of habitual residence or else leave the risk areas to avoid future displacements, that is, managing to reduce vulnerability and strengthening resilience in the event of displacement.

The following are measures that countries of origin can take to manage displacement risk:

- 1) Mapping areas and communities at risk of displacement, in particular in border areas, as well as systematically integrating human mobility considerations into local, national and regional plans, strategies and policies for the reduction of disaster risks and adaptation to climate change.
- 2) Promoting cross-border cooperation and facilitating planning in relation to the use of shared resources, for example in river basins and along the coasts, in order to increase resilience and reduce disaster risk, including the risk of displacement<sup>XLV</sup>.
- 3) Developing public policies on migration as a climate change adaptation measure for the benefit of persons and groups of persons in conditions of vulnerability, living in areas exposed to high environmental degradation and/or prone to disasters.
- 4) Integrating disaster displacement considerations into disaster response plans and arrangements, both at a local/national and regional level, including early warning elements, bilateral contingency planning, simulation exercises, mechanisms for coordination and evacuation, reception and assistance, especially in those regions with high exposure to natural hazards and disaster risks.

- 5) Strengthening the plans and budgets of Local Governments in terms of emergency assistance and disaster risk management, with the aim of improving the capacity of the local response to face disaster displacement challenges, especially in border areas.
- 6) Developing guidelines and/or guides on planned relocation, as a preventive measure to reduce the risk of displacement, as a last resource option, in keeping with the respective international frameworks.

## V. PROTECTION OF PERSONS DISPLACED FROM COUNTRIES AFFECTED BY DISASTERS

## 5.1 Measures in plans and preparations for coordinating the protection of persons displaced across borders in the context of disasters

SACM member countries should promptly establish domestic and regional mechanisms and procedures to activate humanitarian protection for people directly affected by a disaster who cross borders. In addition, countries of origin play an essential role, for example, by asking a host country not to return their citizens until conditions have improved for their safe return.

To that end, countries may consider the possibility of:

- Designing inter-agency coordination mechanisms and arrangements for assistance at a domestic level, in keeping with the respective institutional competencies and mandates to provide a timely response to the possible influx of persons, which should be defined by the **Ministry or body responsible for activation and coordination**;
- Designing domestic procedures in each country to activate and coordinate humanitarian responses at an institutional level, following the **formal request or call for international assistance by the country affected by disaster**, which may result from the possibility of influx or displacement of persons to a third country;
- Making corresponding efforts to integrate humanitarian responses to situations of cross-border displacement into **existing bilateral humanitarian agreements<sup>XLVI</sup>**, especially when there are **areas of border integration, bilateras border commissions and/or joint thematic boards**.

## 5.2 Measures to identify needs and activate humanitarian response

Following a disaster, and as a direct result of it, SACM member countries require measures to identify people facing a real threat to their lives or safety, or extreme difficulties in their countries of origin, for the purpose of



activating domestic mechanisms to adequately respond to the protection needs of such people.

This may happen because affected people cannot access the humanitarian protection that they need in their country of origin, given that the situation temporarily exceeds the response capacity of the affected country, and therefore, the access to first responder services has been overwhelmed by the impact of the disaster; thus, it is imperative for these people to seek protection in another country. In addition, there may be situations where people displaced as a direct result of these natural events are refugees, in accordance with international and regional refugee law instruments; there may even be situations where the impacts of such events intersect with famine, armed conflicts or violence<sup>XLVII</sup>.

Moreover, SACM member countries may establish clear and precise criteria to identify persons displaced across borders as a direct consequence of the impact of a disaster, as well as the needs of such persons. To that end, countries may consider the possibility of:

- Determining, on site, the protection needs of a person or group of persons displaced across a national border with direct **injuries and/or physical impairment**;
- Determining the protection needs of a person or group of persons displaced across a national border due to the **material impossibility of returning to their country of origin as a result of the impact and damage caused by the disaster**;
- Determining the protection needs of a person or group of persons from a disaster-affected country through the objective and technical analysis of the **impact, dimension or severity of the disaster in the country of origin**;
- Determining the potential protection needs of a person or group of persons from a disaster-affected country when **the affected country officially declares a 'state of emergency', 'public calamity' or 'exception'** as a consequence of the impact of the disaster;
- Determining the potential protection needs of a person or group of persons from a disaster-affected country when **the affected country**

**makes an official or express request to the host (receiving) country** concerning the possibilities of cross-border displacement or influx of persons into a third country (bordering or non-bordering).

### **5.3 Admission and stay of displaced persons from a disaster-affected country<sup>XLVIII</sup>**

When exercising discretion in migration issues based on humanitarian considerations, SACM member countries may provide protection to persons displaced across borders in the context of disasters by admitting them to the territory of the host country and allowing them to stay in it, at least temporarily; or else, they may refrain from returning, to a disaster-affected country, those people who were already in the host country when the disaster happened.

However, it is important to note that the exercise of discretion in migration issues has certain limits<sup>XLIX</sup> derived from international human rights law and the law on refugees, including the principle of *non-refoulement*. Additionally, States may be bound by bilateral or (sub) regional agreements which guarantee free mobility for certain categories of people and which may also be applicable to disaster situations; for example, decisions and resolutions that form the migration community law of the Andean Community of Nations<sup>L</sup> (CAN) and the ‘Agreement on Residence for Nationals of the States Parties to MERCOSUR’.

These protection measures based on humanitarian considerations are generally temporary and may rely on: i) regular migration legislation (See Annex A); ii) the use of exceptional migration categories; and iii) international and complementary protection derived from refugee and human rights law.

In the three situations above, SACM member countries may establish domestic mechanisms and procedures to admit people from a disaster-impacted country. For that purpose, countries may consider the possibility of:

- Expediting migration or administrative resolutions at a national or local (border) level for the **facilitation**, easing or **exemption of ordinary requirements or submission of certain documents** for regular entry into the territory of the host country;
- Issuing **humanitarian visas or temporary stay agreements** for migration purposes, in accordance with the respective migration law, or as an exceptional measure due to humanitarian reasons, even when the domestic regulations do not explicitly provide for it;
- Using **refugee law**<sup>LI</sup> and other *non-refoulement* protection provisions under human rights rules as a measure to provide international protection, when the effects of a disaster may give rise to international protection concerns; for instance, when there are disturbances, conflicts and violence following the collapse of government authorities due to the disaster, and such a situation entails an imminent risk to the lives of the people affected if they return to their country of origin<sup>LII</sup>;
- Facilitating and training migration management and/or border security teams for the prompt **identification, registration and documentation** of people from a disaster-affected country. This may include determining a category or **group of persons** (*prima facie*) who will receive immediate protection in the host country. The identification, registration and documentation process must not limit or delay the access to humanitarian assistance to address the immediate needs of the displaced, given their condition of vulnerability. The information shall be, as far as possible, broken down by age, gender, nationality, disability, health conditions and other special needs;
- Renewing and/or extending the stay of displaced persons in the host country due to humanitarian reasons, or else identifying exceptional migration alternatives to **regularise the migration status** of people from the disaster-affected country (see Annex B);
- Issuing migration provisions to **avoid and/or suspend the deportation** of those nationals from the disaster-affected country who were already in the host country before the impact of the event and who cannot return in a voluntarily or safe manner to their country of origin, as their safety would be in danger;

- **Renewing, extending and/or regularising the migration status** in the host country of **resident or in-transit migrants** from the disaster-affected country, given the temporary lack of capacity of the affected country to adequately receive its nationals.

## 5.4 5.4 Protection for persons displaced from a disaster-affected country

Based on the regulations and available capacity at a national and local level of the national risk management and emergency response systems, including the assistance and cooperation of international agencies<sup>LIII</sup>, SACM member countries may establish the following guidelines to provide timely humanitarian protection to displaced persons. To that end, they must consider the possibility of:

- Using and/or facilitating existing inter-agency communication and coordination channels to coordinate humanitarian assistance in **frontier sectors or 'border areas'** for the direct assistance of displaced persons, especially when there are previous collaboration agreements such as **cross-border working committees or other previously implemented bodies of bilateral collaboration**;
- Developing **action criteria or protocols to identify differentiated protection needs of migrants in vulnerable situations**<sup>LIV</sup>, such as elderly people, children, disabled people, female heads of household and ethnic minorities;
- Designing the necessary operating mechanisms to promptly address the **immediate needs** of people from the disaster-affected country, among them, medical needs, temporary accommodation, food, and family tracing, regardless of their migration status or lack of documentation;
- Identifying in the host (receiving) country adequate **facilities to transfer and temporarily shelter** displaced persons from the affected (origin) country;
- Facilitating the access by displaced persons to the **consular services**

**of their country of origin** to support the efforts for the identification, registration and determination of specific needs, such as repatriation and family tracing;

- Identifying and facilitating the tasks of **consular cooperation networks** from South American countries, for the purpose of providing assistance and consular support to citizens requiring support;
- Determining the **termination of the temporary stay** in consultation between **the host country and the country of origin**, based on an objective assessment of the resolution of the original situation which affected the country of origin, as long as people can return in safe and decent conditions.

## 5.5 Durable solutions for persons displaced by disaster, whose return to their country of origin is not possible

Whenever the admission and stay, in another country, of persons displaced by disaster is granted as a temporary protection measure, upon the termination of such measures, beneficiaries need to find a durable solution allowing them to rebuild their lives in a sustainable manner.

When returning to places of habitual residence is not possible, either because the area is no longer inhabitable or due to increased exposure to the risk of new disasters, SACM member countries may:

- For the country of origin (affected by the disaster): map and identify new areas for future resettlements, when the return of its overseas nationals is possible and can be conducted in a dignified and safe manner. The exact timescale for this return shall be jointly determined by the countries involved, using appropriate consular networks, as well as previously existing migration return mechanisms.
- For the host (receiving) country: when the conditions giving rise to the displacement in the country of origin remain over the long term, or if their

length becomes indefinite or permanent, a durable solution may imply facilitating permanent residence in the host country, or else voluntary relocation to a third country. These durable solutions should ensure, among other things, access to adequate housing, basic services and education.

In addition, SACM member countries must guarantee that affected people, including host communities, are informed and consulted, and participate in the processes to find durable solutions.

## VI. PROTECTION OF MIGRANTS IN DISASTER-AFFECTED COUNTRIES

## 6.1 Assistance and protection of resident or in-transit migrants in a disaster-affected country (host country)

Given the particular vulnerabilities that resident or in-transit migrants face and may face in a third country affected by a disaster, SACM countries may consider the following:

- Encouraging incorporation of resident and in-transit migrants in **prevention plans and systems, emergency arrangements and response**, so that they have access to timely information about the risks that they face, can participate in planning, preparedness, response and recovery activities, and understand the internal dynamics of the national risk management and emergency response systems<sup>LVI</sup>;
- Facilitating **access to humanitarian assistance without any kind of discrimination**, regardless of a person's migration status;
- **Temporarily suspending deportation activities or operations in certain geographical areas** which have been directly affected by a disaster, both at a national and regional level (provinces, departments or States), for the purpose of safeguarding people's lives, including migrants with an irregular status, by providing them with humanitarian assistance without them fearing deportation by the corresponding migration authorities;
- Temporarily suspending the **payment of immigration fees, fines or taxes** for staying in an irregular manner in the territory of the host country following the disaster, once a person's migration status has expired (temporary resident, student, worker, etc.), given the lack of capacity in many cases to meet the requirements for admission and residence, or the possible inability to travel to a safe place to submit the documentation required;
- Facilitating access to **consular services in the country of origin** for the purpose of keeping an updated record of the particular needs of migrants, as well as facilitating services and direct support for its overseas nationals;



- Exercising positive discretion in migration issues, by adopting administrative measures aimed at avoiding deportation of **persons who have lost the legal capacity to reside in the disaster-affected country**, for example, all those people whose spouses died as a consequence of the disaster and had the nationality of the host country, or else those people who have lost businesses and property, and whose migration status has expired and cannot stay in a regular or legal manner in the host country.

## 6.2 Assistance and protection of overseas nationals who are directly affected by a disaster (country of origin)

In keeping with the relevant international instruments<sup>LVII</sup>, in disaster contexts, countries have the obligation to take the necessary measures to ensure the effective consular protection of their nationals who are outside their country of origin when a disaster occurs (see Annex C).

In this sense, countries of origin may play a determining role in protecting their overseas nationals, especially through their consular teams. To that end, SACM member countries may implement the following measures:

- Strengthening and organising **consular crisis management teams** from the country of origin stationed in the host country, for the purpose of responding to emergency situations or natural disasters in an adequate and timely manner, including through the creation of operating procedures or action protocols;
- Facilitating detailed information about **contact data, services, capacities and resources available** to assist overseas nationals affected by a disaster, including possible resources for relocation, evacuation and repatriation;
- Incorporating the emergency units and/or consular teams of the diplomatic missions accredited in a disaster-affected country into the **ordinary and extraordinary structures and risk management and emergency response systems, both at a national and border level**;

- Strengthening and leveraging **existing consular cooperation mechanisms and networks**<sup>LVIII</sup>, to facilitate the exchange of information and support for assisting overseas nationals in case of a disaster, including the protection of citizens whose country has no consular representation in the affected country;
- Strengthening **special migration funds and/or consular services for crisis management** in the country of origin, for the purpose of responding to disaster situations in an adequate and timely manner, and safeguarding the lives and physical and mental wellbeing of its overseas nationals, including through repatriation plans in coordination with the Armed Forces and other bodies with the required logistic and operating capacity.

## VII. IMPLEMENTATION, FOLLOW-UP AND REVIEW

For effective implementation of the Guidelines, SACM countries require concerted efforts at regional and bilateral levels, which take into consideration different domestic realities, capacities and levels of preparedness and administration, as well as existing obligations under international law.

Embracing the spirit of international solidarity and cooperation, SACM countries express their commitment to implementing these Guidelines, and to that end, they shall make the necessary efforts at bilateral, regional and multilateral levels, so that the Guidelines become integrated into and enhance existing mechanisms and agreements in the region; in particular, consular cooperation mechanisms, agreements on residence and free movement within the Southern Common Market (MERCOSUR) and the Andean Community of Nations (CAN), as well as mechanisms and agreements on mutual assistance in cases of disasters in the region.

Even though the Guidelines reflect a collaborative effort by SACM member countries, their implementation shall be promoted in cooperation with civil society organisations, Local Governments and affected communities, intergovernmental agencies and United Nations agencies, as well as other relevant stakeholders.

As regards follow-up, SACM member countries pledge to follow up their implementation at local, national and regional levels, and for that purpose, they may establish a two-yearly review mechanism to analyse gaps, opportunities and difficulties in achieving the objectives of the Guidelines, as well as the possible creation of an external advisory group, which may consist of intergovernmental agencies, United Nations agencies, independent experts in the areas of disaster risk management, climate change and migration management, and other actors, who, within their mandates and experience, may provide guidance and support to address such humanitarian challenges.

The Technical Secretariat of the South American Conference on Migration (TS-SACM/IOM), in coordination with the incumbent Presidency Pro Tempore of the SACM, shall serve as the focal point to call for the two-yearly review and updating of these Guidelines.

## NOTES

SECTION

- i. Internal Displacement Monitoring Centre (2017) GRID2017: Global Report on Internal Displacement. Geneva: IDMC, p. 31
- ii. The Nansen Initiative (2015). Agenda for the Protection of People Displaced Across Borders in the Context of Disasters and Climate Change Volume I. Geneva: The Nansen Initiative, p.14.
- iii. General Assembly (2018). Intergovernmental Conference in charge of approving the Global Compact for Safe, Orderly and Regular Migration. A/CONF.231/3. Marrakech, December 10-11, 2018.
- iv. See paragraph 14 (f) of Decision 1 / CP16 of the Cancun Agreement (UNFCCC) on the results of the work of the Ad Hoc Long-Term Cooperative Action Working Group under the UN Doc Convention. FCCC/CP/2010/7/Add.1.
- v. See 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: "7. Acknowledges the further work to advance the understanding of and expertise on loss and damage, which includes, inter alia, the following: (a) Enhancing the understanding of: (vi) How impacts of climate change are affecting patterns of migration, displacement and human mobility;". Available in: <http://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf#page=21>.
- vi. Adoption of the Paris Agreement, Decision 1/CP.21, UN Doc FCCC/CP/2015/L.9/Rev.1, 12 December 2015, paragraph. 49.
- vii. UNISDR (2015). Sendai Framework for Disaster Risk Reduction 2015-2030, Geneva: United Nations Office for Disaster Risk Reduction.
- viii. See paragraph 48 of the 'Chair's Summary: 2017 Global Platform for Disaster Risk Reduction' (UNISDR 2017) 7. Available in: [http://www.unisdr.org/files/53989\\_chairssummaryofthe2017globalplatfor.pdf](http://www.unisdr.org/files/53989_chairssummaryofthe2017globalplatfor.pdf).
- ix. See objectives 2 and 5 of the Global Compact for Safe, Orderly and Regular Migration. Final Draft. 11 July 2018. New York.
- x. Non-binding document adopted by 109 States during the intergovernmental consultation of the Nansen Initiative held in 2015 in Geneva, Switzerland, which consolidates the results of a series of regional intergovernmental consultations and effective practices to improve preparedness and capacity to respond to the challenges regarding the protection of people displaced across borders in the context of disasters and climate change. Available in: The Nansen Initiative (2015). Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Volume I. Geneva: The Nansen Initiative: <https://disasterdisplacement.org/resources>
- xi. Intergovernmental process officially launched within the framework of the World Humanitarian Summit in 2016 in Istanbul, Turkey, with the purpose of continuing the work started and recommendations of its predecessor, the previous Nansen Initiative.
- xii. General Assembly (2015). Transforming our world: the 2030 Agenda for Sustainable Development. A/RES/70/1. Objective 10.7.

- xiii. SACM (2016). XVI South American Conference on Migration. Towards free movement. Paraguay: SACM. Regional Consultation Workshop in South America by the Nansen Initiative and the Refugee Law Initiative of the University of London “Studies, Legislation, policy and practice in the matter of temporary humanitarian protection of foreigners in the context of disasters”, organized jointly by the Government of Ecuador and the Nansen Initiative; Quito, Ecuador, July 15-16, 2015. Preparatory study available at: <https://disasterdisplacement.org/portfolio-item/central-america-commissioned-research>
- xiv. Cantor, D (2018). Cross-border displacement, climate change and disasters: Latin America and the Caribbean. Study prepared for UNHCR and PDD at request of governments participating in the 2014 Brazil Declaration and Plan of Action. Geneva: UNHCR-PDD (not published).
- xv. See: ECLAC (2014). Handbook for Disaster Assessment. Santiago: ECLAC
- xvi. UNISDR / ECHO (2015). South America: approach to disaster risk management. UNISDR.
- xvii. IDMC (2018). Global Report on Internal Displacement 2018. Geneva: IDMC.
- xviii. See Rodríguez, N. (2015). Human Mobility in the context of Hazard-related disasters in South America. Geneva: NRC/IDMC-UNHCR, p.12 and Cantor, D (2018). Cross-border displacement, climate change and disasters: Latin America and the Caribbean. Study prepared for UNHCR and PDD at request of governments participating in the 2014 Brazil Declaration and Plan of Action. Geneva: UNHCR-PDD (not published).
- xix. Veridiana Sede, ‘Floods and Displacement in Bolivia’ at François Gemenne, Pauline Brücker and Dina Ionesco, The State of Environmental Migration 2014: A Review of 2013 (2014 IOM SciencesPo) 175, 180.
- xx. Álvarez Gila et al (n 47) 22-30 and IOM, ‘Migration, Environment and Climate Change: Document for Discussion, Presented at the Tenth South American Conference on Migration in Cochabamba, Plurinational State of Bolivia, October 25 and 26, 2010’ (2010).
- xxi. IOM (2015), ‘Migration, Desertification, Land Degradation, Drought and Climate Change in South America’ (IOM Migration, Environment and Climate Change Series: Module IV, 2015), p.2. Available in: <https://environmentalmigration.iom.int/>
- xxii. Rigaud, Kanta Kumari; de Sherbinin, Alex; Jones, Bryan; Bergmann, Jonas; Clement, Viviane; Ober, Kayly; Schewe, Jacob; Adamo, Susana; McCusker, Brent; Heuser, Silke; Midgley, Amelia. (2018). Groundswell: Preparing for Internal Climate Migration. World Bank, Washington, DC: World Bank. Available in: <https://openknowledge.worldbank.org/handle/10986/29461>
- xxiii. Diarmid Campbell-Lendrum and Lilibeth Acosta-Michlik, Ulka Kelkar and Upasna Sharma, ‘A Critical Overview: Local Evidence on Vulnerabilities and Adaptations to Global Environmental Change in Developing Countries’ [2008] 18(4) Global Environmental Change 539, At: Rodríguez, N. (2015). Human Mobility in the context of Hazard-related disasters in South America. Geneva: NRC/IDMC-UNHCR, p.16.

- xxiv. ACNUDH (2018). Correct the deficit in the protection of human rights in the context of migration and the displacement of people across international borders as a result of the adverse effects of climate change and support the adaptation and mitigation plans of developing countries that seek to correct protection deficit. A/HRC/38/21. Geneva: ACNUDH.
- xxv. The Nansen Initiative (2015). Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Volume I. Geneva: The Nansen Initiative; and MICIC (2016). Guidelines for the protection of migrants in countries affected by conflict or natural disasters. Geneva: MICIC-IOM.
- xxvi. See: RCM (2016). Effective Practice Guide for RCM member countries. Protection of people displaced across borders in the context of disasters. San José: RCM.
- xxvii. Fundamental principle of the international system for the protection of the right of refugees against expulsion or any form of return to the borders of territories where the life or liberty of the person would be in danger. At the regional level, this principle is widely recognized by the 'Cartagena Declaration'. See: UNHCR (1984). Cartagena Declaration on Refugees. Adopted by the "Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems", held in Cartagena, Colombia, from November 19 to 22, 1984. Available at: <https://www.acnur.org/5b076ef14.pdf> Likewise, this principle is contained in paragraph 37 of the Global Compact for Safe, Orderly and Regular Migration, in which the States undertake to respect the prohibition of collective expulsion and the return of migrants when they run a real and foreseeable risk of dying or suffering torture and other cruel, inhuman or degrading treatment or punishment, or other irreparable damage, in accordance with the obligations under international human rights law '(General Assembly (2018) Intergovernmental Conference in charge of approving the Global Compact for Safe, Orderly and Regular Migration A/CONF.231/3 Marrakech, 10-11 December 2018.
- xxviii. OHCHR (2014). Recommended Principles and Guidelines on Human Rights at International Borders. Geneva: OHCHR.
- xxix. UNHCR (2014). Guidelines on temporary protection or stay agreements. Geneva: UNHCR
- xxx. MICIC (2016). Guidelines for the protection of migrants in countries affected by conflict or natural disasters. Geneva: MICIC-IOM, p.24.
- xxxi. United Nations General Assembly (1991). Resolution 46/182 Strengthening the coordination of emergency humanitarian assistance of the United Nations. A/RES/46/182. ORIGINAL: ENGLISH. See also: The Sphere Project (2011). Humanitarian Charter and minimum standards for humanitarian response. UK.
- xxxii. UNISDR. Report of the open-ended intergovernmental expert working group on indicators and terminology related to disaster risk reduction (2016). A/71/644.
- xxxiii. The Nansen Initiative (2015). Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Volume I. Geneva: The Nansen Initiative.



- xxxiv. The Nansen Initiative (2015). Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Volume I. Geneva: The Nansen Initiative, p.17.
- xxxv. The Nansen Initiative (2015). Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Volume I. Geneva: The Nansen Initiative, p.17.
- xxxvi. As defined by the Inter-American Court of Human Rights in its Advisory Opinion OC-21/14 (of August 19, 2014) on the rights and guarantees of girls and boys in the context of migration and / or in need of international protection (paragraph 37). In the same paragraph, the Court indicates that although the international protection of the host State is initially linked to the condition or status of refugee, the various sources of international law - and in particular refugee law, international refugee law human rights and international humanitarian law - reveal that this notion also encompasses other types of normative protection frameworks. To delve into the definition of international protection see: General Assembly (1998). Action taken on decisions of the forty-eighth session of the Executive Committee. Executive Committee of the High Commissioner's Program. A/AC.96/903 25 August 1998 and UNHCR (1998). Note on International Protection EC/48/SC/CRP.27. UNHCR Standing Committee. Available at: <http://www.unhcr.org/excom/standcom/3ae68d054/note-international-protection.html>
- xxxvii. See: UN High Commissioner for Refugees (UNHCR) (2017). Persons in need of international protection, June 2017.
- xxxviii. McAdam, J (2011), 'Climate Change Displacement and International Law: Complementary Protection Standards' [2011] 3 UNHCR Legal and Protection Policy Research Series, and Executive Committee of the High Commissioner's Program (2000). Complementary forms of protection: their nature and relationship with the international protection regime. EC/50/SC/ crp.18, June 9, 2000.
- xxxix. UNHCR, Georgetown University, IOM (2017). A Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change
- xl. Paragraph 14 (f) of Decision 1 / CP16 of the Cancun Agreement (UNFCCC) on the results of the work of the Ad Hoc Long-Term Cooperative Action Working Group under the Convention UN Doc. FCCC/CP/2010/7/ Add .1 and Barnett, Jon and Webber, Michael, "Migration as Adaptation: Opportunities and Limits" in Jane McAdam (ed), Climate Change and Displacement: Multidisciplinary perspectives (Hart, Oxford, 2010).
- xli. IOM (2007) Migration and the Environment MC/INF/288-1' (2007).
- xl. xliii United Nations (2003). General Assembly Economic and Social Council. A/58/89 - E/2003/85.
- xliii. To deepen this type of practice See: UNISDR / NRC (2018) From words to action. Disaster displacement: how to reduce risk, cope with its effects and strengthen resilience Guidance for the implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030. Geneva: UNISDR (2018 Public Preview).

- xliv. See: CAN (2017). Andean Strategy for Disaster Risk Management –EAGRD– Decision 819. Lima: Andean Community of Nations, p.42.
- xliv. For example the ‘Agreement on Cooperation in Disaster Matters’ between Argentina and Chile (1997), the ‘Memorandum of Understanding on Humanitarian Assistance between Uruguay, Brazil and Bolivia’ (2015), the ‘Memorandum of Understanding on Cooperation on Disasters between Chile and Peru (2002) and the ‘Memorandum of Understanding between the Government of the Eastern Republic of Uruguay and the Government of the Federative Republic of Brazil in the Area of Humanitarian Assistance and Civil Defense’ (2011).
- xlvi. On this topic, consult: UN High Commissioner for Refugees (UNHCR) (2017), Legal considerations on refugee protection for people fleeing conflict and famine affected countries. Available at: <http://www.refworld.org/docid/5906e0824.html>. In the context of this regulatory absence, the countries of the region have adopted tools to admit and not return people displaced by disasters. These humanitarian protection measures are generally of a temporary nature, based on migration categories, regular and exceptional, and in very few cases, provisions derived from the right of refuge to grant protection. To expand on this, see: Cantor, D (2015). Laws, policies, and practices regarding temporary humanitarian protection of foreigners in the context of disasters: Member States of the Regional Conference on Migration and other States of the Americas. Nansen Initiative: Geneva.
- xlvi. Contemporary international law does not explicitly address whether a person can be admitted to a third country as a result of a disaster, under what conditions, what rights they have during the stay, and under what conditions can they return to their country of origin. This premise, however, does not exempt the member countries of the SACM from their international obligations in terms of international human rights law, especially when the life and integrity of a person is in danger if they are returned to their country of origin.
- xlvi. In this regard, see: RCM (2016). Guide to Effective Practices for RCM member countries. Protection of people moving across borders in the context of disasters. San José: CRM, p16.
- xlix. Andean Community of Nations (2018). Norms on Migration in the Andean Community. Compiled Text: CAN: Lima.
- i. In the case of applicants for refugee status, host countries must follow the ordinary procedures for access and application for the determination of refugee status.
- ii. See: RCM (2016). Guide to Effective Practices for RCM member countries. Protection of people moving across borders in the context of disasters. San José: RCM, p13; The Nansen Initiative (2015). Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Volume I. Geneva: The Nansen Initiative, p29; and UNHCR (1984). Cartagena Declaration on Refugees. Adopted by the “Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems”, held in Cartagena, Colombia, from November 19 to 22, 1984, PART III

Available at: [https:// www.acnur.org/5b076ef14.pdf](https://www.acnur.org/5b076ef14.pdf)

- lii. It is important to note that the Global Compact on Refugees (GCR) in its paragraph 63 calls on all actors with relevant mandates and experience to provide guidance and support to address other humanitarian protection challenges. This could include measures to assist those displaced by natural disasters, taking into consideration internal regulations, applicable regional instruments, as well as practices such as temporary protection and humanitarian stay arrangements. Final version as of June 26, 2018 available at: <https://www.unhcr.org/5b3295167.pdf>
- liii. For a general guide see: GMG (2018). Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations. Geneva: GMG. Available at: <https://www.ohchr.org/EN/Issues/Migration/Pages/VulnerableSituations.aspx>
- liv. See: OHCHR (2016). Situation of migrants in transit. Geneva: OHCHR. Available at: [https://www.ohchr.org/Documents/Issues/Migration/StudyMigrants/OHCHR\\_2016\\_Report-migrants-transit\\_SP.pdf](https://www.ohchr.org/Documents/Issues/Migration/StudyMigrants/OHCHR_2016_Report-migrants-transit_SP.pdf)
- lv. See Annex D.
- lvi. In particular the Vienna Convention on Consular Relations (adopted on 24, 1963, coming into force on March 19, 1967).
- lvii. Especially the Consular Cooperation Mechanism between the Mercosur Countries, Bolivia and Chile from the year 2000, MERCOSUR/CMC/DEC. N° 35/00 and the Andean Cooperation Mechanism in matters of Consular Assistance and Protection and Migratory Matters, Decision 548 of the Andean Community of Nations (CAN).

ANNEXES

ANNEXES

## ANNEX A

### EXAMPLES OF REGULAR MIGRATION OPTIONS AND CATEGORIES FOR ADMISSION AND STAY OF PERSONS DISPLACED BY DISASTER IN SACM MEMBER COUNTRIES

Country	Migration option or category	Source
Argentina	<i>Scope: Admission without a visa.</i> <i>Definition: <b>Exceptional humanitarian reasons.</b></i>	Law No. 25871 (2003), Article 34
	<i>Scope: Admission or stay for humanitarian reasons.</i> <i>Definition: Persons who, in spite of not requiring international protection, temporarily cannot return to their country of origin given prevailing humanitarian reasons or due to the <b>consequences of natural</b> or man-made environmental <b>disasters</b> (option of temporary residence for 6 renewable months).</i>	Law No. 25871 (2003), Article 24(h); Regulations under the Migration Law (2010), Article 24(h)
	<i>Scope: Admission and stay for humanitarian reasons.</i> <i>Definition of the migration category: Humanitarian reasons, for which the following situations shall be especially taken into consideration: 1) Persons requiring international protection who, not being refugees or asylum-seekers in terms of the applicable legislation, are protected by the principle of <i>non-refoulement</i> and cannot regularise their migration status through the remaining criteria established [migration legislation].</i>	Law No. 25871 (2003), Article 23(m); Regulations under the Migration Law (2010), Article 23(m)
Bolivia	<i>Scope: Admission.</i> <i>Definition of the migration category: The National Migration Council shall promote the signing of international covenants and agreements on climate change and environmental issues with the various States, for the protection of affected Bolivians; in addition, it shall coordinate public policies enabling, if necessary, the <b>admission of populations displaced due to climate impacts, when there is a risk or threat to their lives, arising from natural causes or environmental, nuclear or chemical disasters, or famine.</b></i> <b>Climate Migrants:</b> Groups of people forced to move from one State to another due to climate effects, when there is a risk or threat to their lives, arising from natural causes, environmental, nuclear or chemical disasters, or famine. (Article 4(16)).	Law No. 370 (2013), Article 65 (climate change migration)

Country	Migration option or category	Source
Brazil	<p><i>Scope:</i> Admission.</p> <p><i>Definition of the migration category:</i> Humanitarian visa. Temporary visas for humanitarian reception may be granted to stateless persons or nationals from any country in a situation of serious or imminent institutional instability, armed conflict, major calamity, environmental disaster or gross violation of human rights or international humanitarian law.</p>	<p>Law No. 13445 (2017), Article 14; Decree No. 9199 (2017), Article 36</p>
	<p><i>Scope:</i> <b>Humanitarian residence</b> (for two renewable years).</p> <p><i>Definition of humanitarian residence:</i> Residence may be authorised, after registration, for immigrants, border residents or visitors based on humanitarian considerations (humanitarian reception). When the determined residence period ends, the institution which granted the initial residence authorisation may, at the immigrant's request, renew the initial period for two more years or grant residence for an indefinite period.</p> <p>Temporary residence authorisation based on humanitarian reception may be granted to stateless persons or nationals from any country going through a situation of environmental disaster. A joint decision made by the Minister of Justice and Public Security, the Minister of Foreign Affairs and the Minister of Labour shall determine the requirements to authorise residence based on humanitarian reception grounds, to renew the residence period and to extend it indefinitely.</p>	<p>Law No. 13445 (2017), Article 30; Decree No. 9199 (2017), Articles 142 and 145.</p>
Ecuador	<p><i>Scope:</i> Admission and stay.</p> <p><i>Definition:</i> Persons subject to protection for humanitarian reasons and humanitarian visas: Foreign people who, without meeting the requirements set forth in this Law to access a migration status, prove the existence of <b>exceptional humanitarian reasons as they are victims of natural or environmental disasters</b>. These persons may access a <b>humanitarian visa</b> for a period of up to two years. Following such term, should the reasons why the humanitarian visa was applied for persist, it may be extended until the reasons giving rise to the visa granting cease. Humanitarian visas are granted at no cost to those applying for the refugee or stateless person status and those proving the existence of exceptional humanitarian reasons as they are victims of natural or environmental disasters.</p>	<p>Organic Law on Human Mobility (2017), Articles 58 and 66(5); Executive Decree No. 111 (2017), Article 55</p>

Country	Migration option or category	Source
Peru	<p><i>Scope:</i> Admission and stay.</p> <p><i>Definition of the humanitarian migration status:</i> For foreigners who are in the national territory and who, without meeting the requirements to access the asylum-seeker or refugee status, are in a situation of great vulnerability or whose lives will be in danger should they leave the Peruvian territory, or those requiring protection due to a serious threat or act of violation or undermining of their fundamental rights. Additionally, it shall be applicable to those seeking refuge or asylum or those who have <b>migrated due to natural and environmental disasters</b>; or to those who have been victims of human smuggling or trafficking; or to unaccompanied children and adolescents; or to stateless persons. It shall also be applied to people who are outside the national territory in exceptional situations of internationally acknowledged humanitarian crises, who request entry into Peru and protection. It allows for the performance of profit-generating activities as employees, self-employed people or freelancers. It is granted by the Ministry of Foreign Affairs and the term for stay is one hundred and eighty-three (183) days, being it possible to extend it as long as the vulnerability conditions for which the migration status was granted persist.</p>	<p>Legislative Decree No. 1350 (2017), Article 29.2(k); Supreme Decree 007-2017-IN, Article 91.</p>

## ANNEX B

### EXAMPLES OF MIGRATION REGULARISATION PRACTICES BASED ON HUMANITARIAN CONSIDERATIONS FOR PEOPLE DISPLACED BY DISASTER IN SACM MEMBER COUNTRIES

Country	Migration option or category	Source
Argentina	<b>Temporary regularisation measure for a specific group based on humanitarian considerations (directly affected by disasters):</b> Authorisation of temporary residence for a six-month term for nationals from the Republic of Haiti, who entered Argentina as tourists before March 1, 2017 and do not fall within any of the other criteria established by the Migration Law to access temporary residence. The decision is grounded on the impacts of the <b>2010 earthquake and the 2016 Hurricane Matthew</b> on the Haitian society and population and the calls of the international community not to involuntarily repatriate citizens from that country due to the consequences of both disasters. The term of temporary residence is two years and the payment of migration fees is exempted due to the vulnerability conditions of beneficiaries.	Provision DI-2017-1143-APN-DNM#MI. National Directorate for Migration.
Brazil	<b>Migration regularisation policy for Haitian citizens (permanent visa):</b> Administrative resolution based on humanitarian reasons for Haitian citizens. For the purposes of this regulatory resolution, humanitarian reasons are considered to be <b>those which result from the worsening of the living conditions of the Haitian population as a consequence of the earthquake which hit that country on January 12, 2010.</b> It is a special visa, granted by the Ministry of Foreign Affairs. This visa was temporary, extended up to October 2015. Initial 5-year residence and possibilities of renewal subject to the working situation.	Regulatory Resolution (RN) No. 97 of January 12, 2012. National Immigration Council (CNIg).



Country	Migration option or category	Source
Ecuador	<b>Regularisation programme for a specific group:</b> extraordinary regularisation process in favour of Haitian citizens with an irregular migration status, who entered that country before January 31, 2010. The programme states that 'while the natural disaster emergency in Haiti lasts, the Ecuadorian State shall provide for the respective regularisation of Haitian citizens, for which they shall be subject to the 12-XI migration category, involving a temporary visa that allows them to access a job in the country and freely leave and enter Ecuador, and enjoy all rights for five years'.	Executive Decree No. 248 of February 2010
Peru	<b>Migration regularisation based on humanitarian considerations (temporary term to be defined by the authorities):</b> in exceptional cases, migration authorities may implement mass and individual regularisation programmes, for foreigners in vulnerable situations. These categories of foreign persons include forcibly displaced people and others requiring protection because their fundamental rights are seriously affected or threatened.	Legislative Decree No. 1350 (2017), Article 36; Supreme Decree 007-2017-IN, Article 91.

## ANNEX C

### EXAMPLES OF PRACTICES FOR ASSISTING OVERSEAS NATIONALS AFFECTED BY DISASTER IN SACM MEMBER COUNTRIES

Country	Migration option or category	Source
Brazil	<p>The Ministry of Foreign Affairs of Brazil has a <b>Consular Portal</b> addressed to its citizens who are experiencing an emergency situation abroad, understood as a situation which puts the lives, safety and dignity of Brazilian citizens in danger. These emergency situations include <b>disasters</b>. The portal includes telephone numbers and information about the procedures to follow in case of a disaster, as well as the information to be submitted for receiving optimum support. In cases of disaster, the Consular Portal recommends getting in contact with Brazilian consular authorities to request guidance for the identification of accommodation or possible evacuation. The portal also includes basic information about the steps to take in case of earthquakes, tsunamis and volcanic eruptions.</p>	Ministry of Foreign Affairs
Chile	<p>The Ministry of Foreign Affairs of Chile has a <b>Consular Emergency Unit</b>, which works to assist foreign persons affected by disasters on Chilean territory, as well as to coordinate protection and consular assistance for Chilean citizens affected by a disaster overseas. The Emergency Unit of the Chilean Foreign Ministry has consular instructions about how to face emergencies affecting Chileans abroad, including guidelines for action before, during and after the emergency; as well as for the facilitation of contact with family members, linkage with institutions from the country where they reside, and coordination of procedures with Chilean institutions. The Emergency Unit has also been responsible for programmes such as 'Chile va contigo' (Chile goes with you), and the registration of travellers to optimise assistance in disaster situations.</p>	Ministry of Foreign Affairs of Chile. Directorate-General for Consular Affairs and Immigration. Consular Emergency Unit.

Country	Migration option or category	Source
Colombia	<p>The Ministry of Foreign Affairs of Colombia has a <b>Committee of Assistance to Fellow Nationals Abroad</b>, as well as a <b>Special Migration Fund</b> (FEM, in Spanish) aimed at immediately protecting and assisting Colombian citizens affected by '<b>exceptional situations and/or natural disasters</b>'. According to domestic regulations, when overseas nationals or their families are affected by a 'natural disaster', they shall be immediately assisted and the appropriateness of repatriation shall be assessed, for which the respective consulate shall provide immediate emergency assistance or protection.</p>	<p>Decree No. 1743 Official Journal No. 49.621 of August 31, 2015. Ministry of Foreign Affairs of Colombia, Internal Working Group for the Assistance of Fellow Nationals.</p>

## ANNEX D

EXAMPLES OF DISASTER RISK MANAGEMENT  
AND HUMAN MOBILITY PRACTICES IN SACM  
MEMBER COUNTRIES

Country	Migration option or category	Source
Chile	<p><b>Migration and Disaster Risk Management Board:</b> comprising the Directorate-General for Consular Affairs and Immigration of the Ministry of Foreign Affairs, the National Emergency Office (ONE-MI in Spanish), the Department of Foreign Affairs and Migration (DEM in Spanish) of the Ministry of the Interior and the Ministry of Foreign Affairs, the 'Migration and Disaster Risk Management Board' aims to promote a preventive culture and improve the response to and assistance of migrant populations in Chile. To that end, work is conducted within the national setting to promote the National Disaster Risk Management System (National Civil Protection System).</p> <p>The 'Migration and Disaster Risk Management Board' coordinates the efforts led by ONEMI and the former Emergency Committee of the Directorate for Consular Services for the coordination and facilitation of contacts, training and workshops on the integration of migrants into the emergency planning at a national and local level, for the purpose of strengthening institutional coordination for assisting migrants in Chile.</p>	Ministry of Foreign Affairs of Chile.
Peru	<p>The <b>2017-2025 National Migration Policy:</b> takes into consideration [...] 'the frequent natural events affecting Peru, as well as the permanent risk of earthquakes of great magnitude, which oblige the Peruvian State to include foreign persons in the country in its preparedness activities for a prompt and timely response to any emergency. In that sense, it is necessary to implement a national strategy for the identification and targeted response to the needs of this community settled in Peru during an emergency or disaster' [...].</p> <p>In addition, the Policy and its mechanisms are also integrated with other State policies and plans, among them, the <b>National Disaster Risk Management System.</b></p>	<p>Supreme Decree which passes the 2017-2025 National Migration Policy</p> <p>Supreme Decree No. 015-2017-RE</p>



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