Persons Uprooted by Disasters and Climate Change

Opportunities to Enhance Protection and Promote Human Rights in the Global Compacts on Migration and Refugees

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Introduction and Summary

Disasters brought on by natural hazards and the adverse effects of climate change, either alone or in combination with other factors, contribute to a broad spectrum of human movement. Those moving across international borders in the context of disasters and climate change do not always fall neatly within existing definitions of refugees and migrants, leaving the most vulnerable individuals without sufficient protection and at risk of human rights violations.

The extent to which disasters and climate change drive international forced displacement and unsafe, disorderly, and irregular migration in the future depends in part on state action to mitigate disaster and climate risk, as well as state support to build the resilience of the most vulnerable communities. But it will also depend on the extent to which states cooperate actively to enhance international protection and regularize migration pathways for vulnerable persons. As UN member states meet over the course of 2018 to agree upon the terms of global compacts on refugees and migrants, they must seize upon critical opportunities to enhance protection for vulnerable individuals uprooted by disasters and climate change through supporting more expansive, flexible protection mechanisms and migration pathways.

Background

Climate change adverse effects – including rising temperatures, changes in precipitation, desertification, and sea level rise – are a potential driver of displacement and migration both within countries and across international borders, in some cases permanently. While at present there is insufficient data regarding the number of people compelled to leave their countries due to climate change, there is ample evidence that events directly linked to climate change are already acting to influence population movements. In addition, disasters brought on by natural hazards – some of which may be linked to climate change – already displace millions of people each year within their own countries. There is evidence that in certain instances, those displaced by disasters are compelled to seek international protection outside their countries of origin.
At present there is no comprehensive international legal framework for protecting people who are forcibly displaced or who migrate to another country in the context of climate change. Those uprooted due to disasters, environmental factors or climate change effects do not fit neatly within existing national and international laws and policies for protecting refugees. The 1951 UN Convention relating to the status of refugees and its protocol (Refugee Convention) protects people who are forced to flee their countries owing to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” As such, it does not extend to people fleeing their countries due to climate change-related effects, although some regional refugee conventions may afford some protection. In the case of vulnerable persons facing irreversible climate change impacts at home to which adaptation is not possible, international migration will not be a matter of choice, but of necessity.

In September 2016, UN member states adopted the New York Declaration for Refugees and Migrants. In addition to committing to address the factors that create and exacerbate large movements of refugees and irregular migration, the New York Declaration called on states to commit to improve planning for and response to such movements. As part of the Declaration, UN member states agreed they would work to develop and approve two different compacts – a Global Compact for Safe, Orderly and Regular Migration (GCM) and a Global Compact on Refugees (GCR).

**Global Compact on Migration**

**Promoting Development, Resilience, and Self Reliance:** The March 28, 2018 draft of the GCM (Draft Rev 1 of the GCM) acknowledges the need both to address disasters and climate change as drivers of migration (Objective 2) as well as to enhance protection and migration pathways for people moving in such contexts (Objectives 2, 5).

RI welcomes provisions in the GCM Draft Rev 1 that aim to address underlying causes of vulnerability that contribute to unplanned and irregular forms of migration. In particular, RI supports provisions in the draft aimed at supporting development, resilience, and self-reliance primarily through implementation of the relevant instruments of the 2030 Agenda for Sustainable Development – including the Sustainable Development Goals and Addis Ababa Action Agenda, the Paris Climate Change Accord, and the Sendai Framework for Disaster Risk Reduction.

**Enhancing International Protection and Migration Pathways:** RI strongly supports provisions in the text that call on states to “establish comprehensive policies that protect and assist migrants in vulnerable situations” (Objective 7c). This includes “enhance(ing) humanitarian protections for cross-border disaster displaced persons, including life-saving humanitarian assistance, admission, stay and situations where return is not possible,” and “expand(ing) mechanisms for resilience and lasting solutions by harmonizing approaches at sub-regional and regional levels” (Objective 2l).

Yet to ensure that safe, orderly and regular migration pathways are available to persons compelled to move across borders in the context of disasters and climate change the GCM needs to go further. States must commit to cooperating to expand regular migration pathways. This includes not only building on existing bi-lateral or regional measures or arrangements such as “humanitarian visas, private sponsorships, access to education for children, and temporary work permits,” (Objective
5f) for those uprooted by disasters and climate change but also allowing for more expansive, more varied, and more flexible migration pathways, especially where the absence of such pathways will result in human rights violations or human suffering.

**Planned Relocation:** Planned relocation of communities facing disaster or climate risk is a complex, resource-intensive process that must include human rights safeguards and, where involuntary, be used only as a last resort where adaptation in place is not possible. Internal, planned relocation (or inland retreat) is already a necessary reality for many communities across the globe today. In the decades to come, international planned relocation may increasingly be necessary where remaining in place puts communities at risk or where return is not possible following a disaster because the land is no longer habitable.

In such situations, states must be sure that safe, orderly, and regular migration pathways are provided, and that relocation is undertaken in a planned fashion that upholds the human rights and dignity of those compelled to migrate, while mitigating the human rights impacts associated with permanent displacement (GCM Objectives 5 and 7).

Objective 2j of Draft Rev. 1 of the GCM calls on states to “use practical migration measures of tailored duration, including planned relocation, to facilitate migration as an adaptation strategy to sudden-onset natural disasters as well as slow-onset environmental degradation related to the adverse effects of climate change, such as desertification, land degradation, drought and sea level rise, when adaptation in the country of origin is not feasible.”

RI supports the use of “practical” migration pathways that allow for planned relocation but believes that the opportunities to migrate must also be expanded. In addition, RI suggest that the phrase “of tailored duration” (Objective 2j) be deleted as overly restrictive. Planned relocation may, in some instances, be necessary as a permanent measure.

**Global Compact on Refugees**

Section 1.6 of Draft 1 of the GCR Program of Action (dated 9 March 2018) includes a section on UNHCR support to host states in “identifying international protection challenges.” The present text states that: “[W]here appropriate, UNHCR will provide guidance and support for measures to address broader international protection challenges, together with other stakeholders with relevant expertise. This could include: …measures to protect those displaced by natural disasters, taking into account regional refugee instruments, as well as practices such as temporary protection, humanitarian stay arrangements, and complementary or subsidiary protection...” (GCR Program of Action para. 55, footnotes omitted).

RI welcomes UNHCR guidance and support for measures to protect those uprooted in the context of disasters and climate change. As drafted, however, the text refers only to those “displaced by natural disasters.” All references to climate change as a cause of displacement were deleted from the prior draft. As such, the current text does not cast the net widely enough to capture a much broader spectrum of human movement influenced by disasters and climate change. Moreover, by circumscribing the cause of displacement to a “disaster,” the text excludes environmental or climate change-related effects which do not rise to the level of a disaster yet compel vulnerable individuals to flee. RI suggests, therefore, that the text be revised to state that “UNHCR will provide guidance and support for measures to address broader international protection challenges, together with other
stakeholders with relevant expertise. This could include: “… measures to protect those compelled to flee their countries in the context of disasters and climate change…”

Role of the Nansen Protection Agenda and the PDD

RI strongly welcomes references in both draft compacts to the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Nansen Protection Agenda) and its implementing platform, the Platform on Disaster Displacement (PDD). The Nansen Protection Agenda, endorsed by over 100 governments, is the culmination of more than three years of regional and global consultations. As such, it represents hard-won political consensus on practical, actionable measures to address cross-border displacement in the context of disasters and climate change. Referencing the Agenda in the compacts also acknowledges the substantial body of knowledge and information collected during the course of the Agenda’s development. Finally, the PDD can provide a unique role in supporting states in carrying forward and implementing commitments in the compacts.

Conclusion

At present, existing national and international laws and policies for protecting the human rights of refugees and migrants are insufficient and ill-suited to protect those uprooted by disasters and climate change-related effects. Evidence that climate change is already dislocating vulnerable communities, and the fact that the future effects of climate change will undoubtedly have a far greater impact on displacement and migration, clearly implicate the human rights obligations of states to proactively address this issue. The development of the GCM and the GCR present critical opportunities to enhance protection and promote human rights for vulnerable individuals compelled to move in the context of disasters and climate change. The scale of future unplanned, disorderly, and unsafe human movements will depend on the extent to which governments act on this opportunity.

Endnotes

i For example, climate change-related effects on the Arctic – which is warming at twice the rate of the rest of the planet – are already forcing Alaskan native communities to retreat inland. R. Bronen, Climate-Induced Displacement of Alaska Native Communities, January 30, 2013. https://www.brookings.edu/research/climate-induced-displacement-of-alaska-native-communities.


vi Several regional instruments in Africa and Latin America extend the Refugee Convention to those fleeing events “seriously disturbing public order” or other forms of “generalized violence.” Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”), adopted September 10, 1969, 1001 UNTS 45, Article 1, paragraph 2; Inter-American Commission on Human Rights, Cartagena Declaration on Refugees, November 22, 1984, in Annual
The process for developing the GCM, which articulates a broad normative framework for ensuring safe, orderly, and regular migration, is being led by members states with the support of the UN Special Representative for International Migration. The GCR, in contrast, builds on the existing international regime for refugees but offers guidelines for ensuring more equitable and predictable responses to large refugee crises, and consists of two parts: a Comprehensive Refugee Response Framework (CRRF) set forth in an Annex to the New York Declaration, and a Program of Action, which is being developed through a consultative process with member states led by the UN High Commissioner for Refugees (UNHCR).

As noted in the text and its footnotes, refugee protection for people outside of their country and unable to return due to “events seriously disturbing the public order” is already afforded under regional refugee law including the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees, and also supported by temporary protection, humanitarian stay arrangements, and complementary or subsidiary protection. In some instances, this may extend to people compelled to move in the context of disasters and climate change.

Nansen Protection Agenda, supra n. 3, p. 6.