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

By David James Cantor

July 2018
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Any feedback or questions about this study may be directed by email to PDD’s Coordination Unit (info@disasterdisplacement.org).
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With the generous support of Switzerland
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INTRODUCTION

This study, commissioned by the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Platform on Disaster Displacement (PDD), responds to a call by governments in Latin America and the Caribbean in the 2014 Brazil Declaration and Plan of Action to assess and provide guidance on the response in those regions to cross-border displacement in the context of disasters linked to natural hazards and climate change (hereinafter ‘disaster displacement’).2

1.1

BACKGROUND TO THE STUDY

In 2014, the governments of Latin America and the Caribbean met in Brasilia, Brazil, to mark the 30th anniversary of the 1984 Cartagena Declaration on Refugees. At the end of the Ministerial Meeting, participating governments adopted the 2014 Brazil Declaration and Plan of Action. Through this instrument, they committed to work together to maintain the highest standard of protection at the international and regional level, implement innovative solutions for refugees and displaced persons and end the difficult situation faced by stateless persons in the region.

The Brazil Declaration gives specific recognition to ‘the challenges posed by climate change and natural disasters, as well as by the displacement of persons across borders that

2 The generous input of the experts interviewed is gratefully acknowledged here (see Annex F for details). Particular thanks to Juan Carlos Mendez (PDD) and Julia Hanby (UNHCR) for help in securing these interviews. The useful feedback received from Walter Kälin, Atle Solberg, Giulia Mancini Pinheiro (PDD) and Madeline Garlick, Ariel Riva, Isabelle Michal, Alexandra McDowall and Luis Diego Obando (UNHCR) is also gratefully acknowledged. Finally, special acknowledgment is given to the Economic and Social Research Council (ESRC) for supporting the broader research project within which the author carried out this investigation (‘Pushing the Boundaries: New Dynamics of Forced Migration and Transnational Responses in Latin America’ [grant number ES/K001051/1]).
INTRODUCTION

these phenomena may cause in the region’. The accompanying Brazil Plan of Action reiterates this call in its chapter on ‘regional cooperation’ with a specific request to UNHCR:

UNHCR’s partner in this study, the PDD, was established on 1 July 2016 to follow-up on the work started by the Nansen Initiative on cross-border disaster displacement and to implement the recommendations of the 2015 Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change (Protection Agenda). Its overall objective is to ‘strengthen the protection of people displaced across border in the context of disasters, including those linked to the effects of climate change, and to prevent or reduce disaster displacement risks’. This study is essential to the achievement of strategic priorities in the PDD Work-plan 2016-2019.

SCOPE OF THE STUDY

The study focuses on legal and policy measures relevant to the cross-border displacement of persons in the context of climate change and disasters linked to natural hazards.

1.2.1 Movement

The principal theme of the study is cross-border or international movement in the context of climate change and disasters linked to natural hazards. In this regard, three categories of movement implicit in the term ‘human mobility’ in paragraph 14(f) of the UN Framework Convention on Climate Change

3 Thirty-second paragraph. Note that, despite its use in the Brazil Declaration, the terminology of ‘natural disasters’ is avoided in this study. It is the occurrence of hazardous events, which may be natural in origin, with societal ‘conditions of exposure, vulnerability and capacity’ leading to ‘human, material, economic and environmental losses and impacts’ that result in a ‘disaster’. As such, disasters are never simply ‘natural’ in character but equally reflect societal vulnerabilities. See, for example, the definition used in UN General Assembly, ‘Report of the Open-ended Intergovernmental Expert Working Group on Indicators and Terminology Relating to Disaster Risk Reduction’ (2016) UN Doc. A/71/644, 13.

4 Ibid.

5 Chapter Seven.


7 UNHCR played an instrumental role in highlighting the gap on cross-border disaster-displacement and supported States in the process of the Nansen Initiative. Presently, UNHCR is a Standing Invitee to the Steering Group of the PDD, a member of the PDD Advisory Committee and has committed to support the PDD in implementing the recommendations of the Nansen Initiative Protection Agenda, particularly through the promotion of policy and normative development in gap areas.
Due to the multi-causal nature of human mobility in the context of both slow- and sudden-onset disasters, the tipping point between a forced and voluntary movement can be difficult to pinpoint. Yet the distinction between a forced and voluntary movement is important not only because international law sometimes requires such precision, but also because the nature of the movement influences a person’s ability to successfully settle at their destination, which may in turn determine their need for additional assistance and future plans, such as any desire to return. As such, this study uses terms such as ‘mobility’ in a broad sense to refer both to voluntary and forced movements, as well as providing a description of the categories of persons who have benefited from the various measures applied in disaster contexts.

Finally, the focus of this study is squarely on human mobility in the international context. As such, internal movement within a country is addressed only tangentially. However, in the international context, the study is not limited only to the consideration of those who flee a country affected by a disaster. In addition, it also addresses the situation of persons from a disaster-affected country who are already overseas but who cannot return to their country due to the disaster.

1.2.2 Regional

The study is regional rather than global in scope, focusing on the three regions of the Americas from which the States that approved the 2014 Brazil Declaration and Plan of Action are drawn: Mexico and Central America, South America and the Caribbean. In addressing themes of cross-border displacement due to climate change and disasters, it describes empirical dynamics of movement and government responses in countries from across the three regions.

The study thus considers the thematic issues in relation to a wide range of States with considerable variation in their history, legal and governmental structures and principles, geographic situation and exposure to climatic factors and natural hazards, size, population and resources. Of the 33 States surveyed by the study, eight are in Central America (and Mexico), 12 in South America and 13 in the Caribbean. However, the picture is complicated also by the inclusion of an additional 18 not fully sovereign territories in South America and the Caribbean that are linked to influential

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8 2015 Nansen Initiative Protection Agenda.
9 Migration and planned relocation are thus addressed solely from the perspective of preventing displacement or finding durable solutions to displacement.
10 This is especially true in the case of slow-onset disasters, when displacement arises as a consequence of a gradual erosion of resilience. In comparison, the forced nature of a population movement in the context of a sudden-onset disaster such as an earthquake is easier to recognize, although other factors such as poverty and lack of preparedness contribute to whether displacement occurs. Finally, the cumulative effect of a series of smaller, sudden-onset disasters can also lead to displacement over time.
12 G. Hugo, ‘Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific’ in J. McAdam (ed), Climate Change and Displacement: Multidisciplinary Perspectives (Hart Publishers 2012).
13 States from Central America and Mexico that approved the 2014 Brazil Declaration and Plan of Action were Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama.
14 States from South America that approved the 2014 Brazil Declaration and Plan of Action were Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela.
15 States from the Caribbean that approved the 2014 Brazil Declaration and Plan of Action were Antigua and Barbuda, Bahamas, Barbados, Cuba, Guyana, Haiti, Jamaica, Saint Lucia, Suriname and Trinidad and Tobago, joined by the territories of the Cayman Islands, Curaçao and the Turks and Caicos Islands.
States from outside the three regions (i.e. France, Netherlands, UK and USA). Their inclusion reflects an aspiration to completeness in the study and an acknowledgement that they are no less exposed to climate change and disasters.

1.2.3 Legal
The study concentrates principally on the identification of legal frameworks relevant to the response by governments to cross-border movement linked to climate change and disasters. However, it also gives consideration to policy frameworks and, at the national level, relevant practice by States. The methodological challenges involved in gathering data for this study mean that the analysis cannot purport to be definitive or comprehensive in this regard. Nonetheless, it offers a good general survey of the relevant frameworks in relation to this theme.

At the international level, it focuses on four frameworks with particular relevance or potential in responding to such cross-border displacement: immigration law; international protection law (refugee and human rights law); disaster management law; and environmental law, focusing specifically on climate law. At the same time, although they may be the most relevant, this is not to suggest that they are the only international frameworks pertinent to addressing cross-border movement in the context of climate change and disasters linked to natural hazards.

These international frameworks do not always map neatly onto national law. As such, the focus at that level is on the national frameworks of: immigration law; international protection law (refugee and complementary protection law); disaster management law; and climate law. Given the focus on cross-border movement, the study analyses immigration and protection frameworks in all pertinent States. However, for the disaster and climate frameworks, it analyses six country case studies, two from each region, as an entry point into the potential application of these wider frameworks to the issue of cross-border movement: Costa Rica and Mexico (Central America); Brazil and Ecuador (South America); and Antigua and Barbuda and the Dominican Republic (Caribbean).

1.3 OTHER METHODOLOGICAL CONSIDERATIONS
This study builds on several similar legal and policy studies that have been carried out in recent years by this author and others. However, it is important to emphasise that the topic is one on which relatively little other academic – or other secondary - literature exists, other than in relation to some of the movement dynamics described by the study for the three regions concerned.

See Annex A.

See 1.3 below.

Drawing on the validation of standards from the Inter-American human rights system by the 2014 Brazil Declaration and Plan of Action, the term ‘international protection’ is used in this study in accordance with the understanding of that term developed by the Inter-American Court of Human Rights in its Advisory Opinion OC-21/14 (19 August 2014) on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, i.e. as “the protection that a State offers to a foreign person because, in her or his country of nationality or habitual residence, that individual’s human rights are threatened or violated and she or he is unable to obtain due protection there because it is not accessible, available and/or effective” (paragraph 37). It clarifies that “[w]hile international protection of the host State is tied initially to the refugee status of the individual, various sources of international law – and in particular refugee law, international human rights law and international humanitarian law – reveal that this notion also encompasses other types of normative frameworks for protection” (ibid.).

These six studies were selected, two from each region, principally on the basis of generally high and consistent levels of documented engagement in the disaster and climate fields by the State concerned.


See section 2 of the study.

16 See Annex A.

17 See 1.3 below.

18 Drawing on the validation of standards from the Inter-American human rights system by the 2014 Brazil Declaration and Plan of Action, the term ‘international protection’ is used in this study in accordance with the understanding of that term developed by the Inter-American Court of Human Rights in its Advisory Opinion OC-21/14 (19 August 2014) on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, i.e. as “the protection that a State offers to a foreign person because, in her or his country of nationality or habitual residence, that individual’s human rights are threatened or violated and she or he is unable to obtain due protection there because it is not accessible, available and/or effective” (paragraph 37). It clarifies that “[w]hile international protection of the host State is tied initially to the refugee status of the individual, various sources of international law – and in particular refugee law, international human rights law and international humanitarian law – reveal that this notion also encompasses other types of normative frameworks for protection” (ibid.).

Moreover, the research was complicated by the fact that not all law and policy in these three regions of the Americas is publicly accessible. This challenge was particularly acute for the Caribbean, where it was often difficult to verify if an identified law or policy was the latest version adopted or in force. In some cases, it was not even possible to obtain the relevant national law or policy from research online, in specialist Caribbean or law libraries and direct enquiries to the governments concerned. As such, particularly for the Caribbean, the analysis of national law and policy should be read as indicative of the general trend rather than definitive as to the particular country or case.

Moreover, in general, details of implementation or other national practices were even less publicly accessible. Previous studies by the author benefitted substantially from interviews with experts in different countries on displacement dynamics and national practice, which are cited here. Yet for this study, there was very little responsiveness on the part of national law experts. Particularly for the Caribbean, it has thus been difficult to pinpoint national practice and the legal basis on which it has been implemented. This is a potentially significant shortcoming. At the same time, the generous input of the few experts who did respond to requests for interviews or data is gratefully acknowledged here.

1.4 STRUCTURE OF THE STUDY

The study starts by reviewing the extant data and research on movement dynamics in these three regions (section 2). It then outlines the four relevant frameworks at the international level – namely immigration, international protection, disaster risk management and climate change - identifying gaps, as well as potential points of interaction and synergy, in relation to each (section 3). National law, policy and practice in Central America and Mexico (section 4) and South America (section 5) and the Caribbean (section 6) are then assessed. At the end of each regional section, an overview of the main challenges and opportunities is presented. The study then offers an overarching analysis and recommendations at inter-regional, intra-regional and national levels (section 7).

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23 For instance, it was not possible to locate even the general immigration laws and policies applicable in Saint Kitts and Nevis or in Saint Lucia, despite requests to the governments of each country and to international organisations working on refugee and migration issues in the Caribbean.

24 In particular, the study should not be relied upon for the purpose of giving immigration or other legal advice in the case of any particular individual or collective.

25 See, particularly, Cantor, Law, Policy and Practice.

26 By common agreement, this has taken the form of ‘background’ information to which the name of the individual is not expressly linked in this study. Thus, where a published footnoted source is not provided for an evidentiary claim made in this study, it should be assumed that the information derives from an interview or email correspondence with one of the persons listed in the appendix. Where requested by the source, their names and identification details have been anonymised.
MOVEMENT AND DISASTERS: REGIONAL RESEARCH, EVIDENCE AND DATA
The 2014 Brazil Declaration and Plan of Action points to the ‘new challenges posed by climate change and natural disasters’ in Latin America and the Caribbean. Indeed, across the Americas, most countries are vulnerable to disasters linked to natural hazards and climatic factors and have suffered the effects in the past decade. The regions of Central America and Mexico, South America and the Caribbean are no exception and their countries are often affected by both sudden- and slow-onset disasters linked to natural hazards and climatic factors.

Specifically, the Brazil Declaration and Plan of Action address the challenge of ‘displacement across borders’ caused by these phenomena. As a first step towards understanding the displacement and framing the response by governments, this section shows that population movement in the context of these phenomena is already relatively well-documented. It begins at the level of the Americas by briefly reviewing the main dynamics of internal movement (section 2.1) and cross-border movement (section 2.2) in the context of disasters linked to natural hazards and climate change. It then analyses in greater detail the evidence relating to these forms of movement in each of the three selected regions: Central America and Mexico (section 2.3); South America (section 2.4) and the Caribbean (section 2.5).

2.1 AMERICAS: INTERNAL MOVEMENT LINKED TO DISASTERS AND CLIMATE

Most of the existing scholarship and statistics are largely focused primarily on forms of movement within these countries. Indeed, looking to the future, one study predicts that by 2050 what it refers to as ‘internal climate migrants’ - i.e. persons forced to displace within their own countries due to slow-onset climate impacts such as water stress, crop failure and sea level rise - will number between 9.4 million and 17.1 million persons in Latin America (up to 2.6 percent of the total population of the region). The study sees them moving from less viable areas with lower water availability and crop productivity and from areas affected by rising sea level and storm surges. Looking to the climate change patterns, some view the intensification of these trends leading to ‘hotspots’ of climate out-migration in the poorest and most vulnerable areas.

Conversely, the scale of internal movement due to rapid-onset disasters linked to natural hazards and climatic factors is already significant. Indeed, across the three regions, quantitative data from one source points to over 20 million reported incidents of internal movement by individuals in contexts of disasters linked to rapid-onset natural hazards and climatic factors over the past ten years (i.e. between 2008 and 2017). This figure does not give a picture of whether such incidents of movement are repeated, temporary or permanent in character. However, practical limitations in the data collection methods suggest that the true figure for overall internal displacements in the context of rapid-onset disasters is likely to be higher.

2.2 AMERICAS: CROSS-BORDER MOVEMENT LINKED TO DISASTERS AND CLIMATE

Comparably detailed data tracking population movement across borders in the context of disasters linked to natural hazards and climatic factors is already significant. Indeed, across the three regions, quantitative data from one source points to over 20 million reported incidents of internal movement by individuals in contexts of disasters linked to rapid-onset natural hazards and climatic factors over the past ten years (i.e. between 2008 and 2017). This figure does not give a picture of whether such incidents of movement are repeated, temporary or permanent in character. However, practical limitations in the data collection methods suggest that the true figure for overall internal displacements in the context of rapid-onset disasters is likely to be higher.
disasters linked to natural hazards and climatic factors are not available. Nonetheless, as a survey of the research carried out by an earlier study by this author has shown, such environmental events and processes have been linked to the cross-border movement of persons. Broad conclusions about emerging patterns in the three regions that can be derived from the previous study are as follows:

- Slow-onset disasters caused by changing weather and rainfall patterns, soil erosion, permafrost, glacier melting and other environmental changes contribute to international movement but, as household resilience is modulated through a wider set of ‘non-environmental’ factors, these changes often seem to play an indirect or aggravating role in the decision to leave their homes;

- Rapid-onset disasters linked to natural hazards such as storms, earthquakes and volcanos lead to increased international movement in the form of (i) short-term movement across a contiguous land border by border-dwellers fleeing or affected by a natural hazard (referred to here as ‘trans-border displacement’ to distinguish it from cross-border displacement in the broader sense of international movement), and (ii) longer-term patterns of movement by persons from a country very severely affected by a disaster. Persons who were outside the country at the time of the disaster may also be unable to return due to its impacts;

- Drawing a bright line between slow-onset disasters and rapid-onset disasters as a cause for international movement may not always be desirable or even possible, particularly in contexts where their impacts combine to force households to move;

- In disaster contexts, proximity to a border, familial connections with migrants outside the country and previous experience of international migration appear to be significant factors at the individual level in promoting movement that is international in character;

- International movement that takes place in disaster contexts tends to be mixed with and follow ‘traditional’ migration and displacement routes rather than creating its own, except where they are blocked (in which case new routes appear to be created);

- Except for trans-border displacements in the face of rapid-onset disasters (see above), international movements in the context of rapid- and slow-onset disasters are not always immediate and often appear to be delayed by a considerable period of time;

- Disaster evacuation is usually limited to nationals of the affected country (within its borders) or nationals of other States (to their home countries) but the international evacuation of nationals of an affected country to another country also occasionally takes place.

This gives a broad overview of how disasters linked to natural hazards and climate factors as a driver of international population movement in Latin America. Developing this analysis, the following sections will analyse the evidence for population movement, and its dynamics, in the context of both slow-onset and rapid-onset disasters on a regional basis for, respectively, Central America and Mexico (section 2.3), South America (section 2.4) and the Caribbean (section 2.5).

### 2.3 MEXICO AND CENTRAL AMERICA

The climate of Mexico and Central America is characterised by extremes, including droughts and tropical storms, with high rainfall and high winds of increasing frequency and intensity. In Costa Rica, El Salvador, Mexico, Nicaragua and Panama, repeated or prolonged temperature variability, particularly heat exposure and
droughts (and hurricanes) have been shown to promote mobility from the rural areas, especially among young people in households dependent on rain-fed agriculture, particularly young women.\textsuperscript{37} In this context, international mobility dynamics have been documented in the case of movement from Honduras\textsuperscript{38} and, particularly, from Mexico to the USA.\textsuperscript{39} In Mexico, droughts are linked to greater increases in movement from rural areas and to the USA than is the case for other climatic shocks.\textsuperscript{40}

In Mexico and Central America, rapid-onset disasters linked to natural hazards have produced at least three million reported incidents of internal movement by individuals over the past ten years (2008-2017), the vast majority in Mexico.\textsuperscript{41} This figure is relatively small compared to those for South America and the Caribbean.\textsuperscript{42} Nonetheless, serious rapid-onset disasters in Central America are also consistently shown to lead to increased out-migration/forced displacement from affected countries in the region, including in the cases of severe tropical storms in Central America,\textsuperscript{43} such as the 1998 Hurricane Mitch,\textsuperscript{44} and devastating earthquakes, such as that in 2000 in El Salvador.\textsuperscript{45}

One distinct line of research shows that hurricanes and severe storms in Mexico and Central American countries correlate with an increase in regular immigration to the US in both permanent and temporary immigration categories.\textsuperscript{46} Factors relevant to higher levels of forced displacement/migration in these contexts include countries with larger stocks of US immigrants (i.e. larger diaspora in US), poorer countries and those closer to the US.\textsuperscript{47} In general, the increase in international movement from Mexico and Central America to the USA than is the case for other climatic shocks.\textsuperscript{48}

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41 See Annex B.

42 See below.

43 O.C. Andrade Afonso, ‘Natural Disasters and Migration: Storms in Central America and the Caribbean and Immigration to the U.S.’ (2011) 14 Explorations 1.


47 Ibid. Note, though, that there is also evidence that such events may decrease migration prospects generally (after the earthquake in El Salvador by limiting access to saving and credits) or in particular sectors (among small business owners after Hurricane Mitch in Nicaragua who retain family members to assist with stabilising the family business). Such disasters may also have no overall impact on the likelihood of international livelihood migration but increase migrant selectivity according to previous household experience of international migration (as in Nicaragua). See P. Loebach, ‘Household Migration as a Livelihood Adaptation in Response to a Natural Disaster: Nicaragua and Hurricane Mitch’ (2016) 38 Population and Environment 185; T. Halliday, ‘Migration, Risk and Liquidity Constraints in El Salvador’ (2006) 54 Economic Development and Cultural Change 893.
takes place about a year after a severe storm. In the case of Mexico, the probability of movement, which is low immediately after a shock, increases to peak three years after the event and then declines.49

The specific trend of ‘trans-border displacement across a contiguous land border’ in the face of rapid-onset disasters (see above) is also documented in Mexico and Central America, as with northern Guatemalans who cross into Mexico in anticipation of being better able to weather an oncoming tropical storm on that side of the border.50 The research on Mexico and Central America also contains reference to instances of international movement due to the combined impact of both slow- and rapid-onset disasters, such as the rural communities in Honduras where the effects not only of slow-onset environmental degradation but also of rapid-onset tropical storms make living there unnviable.51

2.4 SOUTH AMERICA

The climate of South America is characterised by increased rainfall extremes, especially in the south-east, and increasing dry spells to the north-east.52 In rural areas of South America, extreme temperatures have the most consistent link to increased inter-provincial migration/displacement, particularly by women.53 The impact of climatic changes such as droughts on permanent and temporary internal migrations from rural areas has been documented for Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador and Peru.54 At the same time, research here emphasises that slow-onset disasters do not consistently increase internal forced displacement/migration from rural areas and, in some cases, may reduce them as households respond to changing environmental conditions in diverse ways.55 Relatively little evidence exists of international mobility in these contexts.

Rapid-onset disasters linked to natural hazards have reportedly produced almost eleven million incidents of internal movement by individuals in South America over the past ten years (2008-2017).56 Research from Peru shows that, whereas individual perceptions of long-term (gradual) environmental events such as droughts lower the likelihood of internal mobility, sudden-onset events such as floods

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48 However, where countries have numerous storms in consecutive years the individual effect of the storms is not discernible (e.g. Belize). See Andrade Aphonso, ‘Natural Disasters and Migration’. Intriguingly, research on internal movements linked to large disasters in Latin America suggests that migration from rural areas peaks around one year after the occurrence of a drought, earthquake or storm but about two years after a flood. See M.A. Messick, Natural Disasters in Latin America: The Role of Disaster Type and Productive Sector on the Urban-Rural Income Gap and Rural to Urban Migration (2016) University of Southern Mississippi Dissertations, Summer 8-2016.


50 Cantor, Law, Policy and Practice, 12.

51 See Wrathall, ‘Migration Amidst Social-Ecological Regime Shift’.


53 Note, though, that there is some variation according to country and historical climate conditions. See B. Thiede, C. Gray and V. Mueller, ‘Climate Variability and Inter-provincial Migration in South America, 1970-2011’ (2016) 41 Global Environmental Change 228.


56 See Annex B.
increase movement.\textsuperscript{57} For large disasters, one study suggests that internal movement from rural areas peaks around one year after the occurrence of a drought, earthquake or storm and about two years after a flood.\textsuperscript{58}

In South America, there is relatively little research on the relationship between rapid-onset disasters linked to natural hazards and longer-term international movement from countries in this region. However, there are more frequent examples of trans-border displacement across a contiguous land border in the face of rapid-onset disasters, as with the victims of widespread flooding in southern Colombia who cross into northern Ecuador.\textsuperscript{59} Other examples of such trans-border displacement exist where the difficulty of internal movement from remote border zones affected by disasters is outweighed by the relative ease of access to safe locations on the other side of the border, as in the case of Chileans who crossed into Argentina following the devastation wrought by mudslides and earthquakes in certain frontier zones of Chile.\textsuperscript{60} Flooding in Amazonian Bolivia and Peru has also resulted in short-term movement by residents of border areas with Brazil to seek assistance in Brazil.

2.5 CARIBBEAN

The climate of the Caribbean is characterised by rising temperatures, increasingly frequent extreme weather events and rising sea levels.\textsuperscript{61} In the Dominican Republic and Haiti, repeated or prolonged temperature variability, particularly heat exposure and droughts (and hurricanes) promote mobility from rural areas, especially among young people in households dependent on rain-fed agriculture, particularly young women.\textsuperscript{62} A circular relationship between mobility, environmental degradation and poverty has been posited for these countries, with poverty, as the driver for mobility shaped by climatic factors, soil erosion and catastrophic events.\textsuperscript{63} Slow-onset disasters caused by changing weather and rainfall patterns, soil erosion and other forms of environmental degradation have also been shown to contribute to international movement from the Dominican Republic and Haiti.\textsuperscript{64}

In the Caribbean, rapid-onset disasters linked to natural hazards, particularly frequent and intense storms (and the 2010 earthquake in Haiti) have produced over six-and-a-half million reported incidents of internal movement by individuals over the past ten years (2008-2017), the vast majority in Cuba and Haiti.\textsuperscript{65} Given the relatively small population of the Caribbean, compared with Central America (and Mexico) and South America, this figure is high. Moreover, studies show that some rapid-onset disasters in the Caribbean also lead to increased out-migration from affected countries, such as: the regular tropical storms across the region;\textsuperscript{66} the 2010 Haiti earthquake\textsuperscript{67}; and the 1995 volcanic eruption on the British overseas territory of


\textsuperscript{58} M.A. Messick, \textit{Natural Disasters in Latin America}.

\textsuperscript{59} Cantor, \textit{Law, Policy and Practice}, 12.

\textsuperscript{60} Ibid.


\textsuperscript{63} B. Wooding and M.A. Morales, \textit{Migración y sostenibilidad ambiental en Hispaniola} (Observatorio Migrantes del Caribe/CIES-UNIBE 2014)


\textsuperscript{65} See Annex B.

\textsuperscript{66} Andrade Afonso, ‘Natural Disasters and Migration’.

Montserrat. The literature also describes international movement as a result of the combined impact of both slow- and rapid-onset disasters in Haiti, where slow-onset environmental degradation combines with rapid-onset tropical storms to make life there unviable.

A discrete line of research shows that hurricanes and severe storms in Caribbean countries correlate with an increase in regular immigration to the US in both permanent and temporary immigration categories. Factors relevant to higher levels of mobility in these contexts include countries with larger stocks of US immigrants (i.e. larger diaspora in US), poorer countries and those closer to the US. In general, the increase in international movement from Caribbean countries affected by a severe storm takes place about a year after the event. However, this line of research offers but a partial picture of the impact of rapid-onset disasters on the complex and often invisible regional dynamics of wider Caribbean migration that have a strong irregular component to the US and other rich countries.

One of the most significant and best-documented of recent Caribbean migration/displacement flows linked to a rapid-onset disaster is the intensification and diversification of mobility from Haiti following the 2010 earthquake. In this case, trans-border displacement to the Dominican Republic (which makes up the other half of the island of Hispaniola) took place in the immediate aftermath of as affected Haitians massed on the border seeking assistance and support. However, sectors of Haitian society also began to move to Brazil and other countries of South America, partly as a response to the difficulties of accessing the USA, Canada and French Guyana after the earthquake. The availability of international aid meant that such movement beyond Hispaniola by Haitians was not immediate; and it has continued long after the aftershocks of the earthquake died away.

Another recent example of the complexity of Caribbean regional migration flows and the link to rapid-onset disasters is the movement of Puerto Ricans to the US following the devastation wrought on the islands by Hurricane Maria in 2017. Sources differ as to the scale of the influx but one conservative estimate is that over 135,000 Puerto Ricans migrated to the US after the disaster. Of these, some 50,000 to 75,000 may have settled permanently just in Florida. Several thousand of the families who moved to the mainland received Temporary Shelter Assistance from the federal authorities to cover basic living expenses until their homes in Puerto Rico were deemed habitable. There are strong indications that the lasting impact of the disaster will result in a continuing and large flow of persons from the island to the mainland.

74 See, for example, C. Audebert, ‘The Recent Geodynamics of Haitian Migration in the Americas: Refugees or Economic Migrants?’ (2017) 34 Revista Brasileira de Estudos de População 55; P. Weiss Fagen, Receiving Haitian Migrants in the context of the 2010 Earthquake (Nansen Initiative 2013) 16.

75 Ibid.

76 The need to collect sufficient resources to migrate may also lead to this time-lag effect as a result of the time involved in collecting savings, fundraising or awaiting the arrival of resources sent by family members or others.


in the coming years. Yet this substantial regional flow of persons is not ‘international’ in the sense that Puerto Ricans are US citizens and have the right to live on the mainland US.

Moreover, the Caribbean is the only region in the Americas where cross-border evacuation has been relatively regularly implemented for nationals of a country severely affected by a rapid-onset disaster. This reflects, in part, its island nature, such that trans-border movement across a contiguous land border by persons fleeing or affected by an extremely serious disaster is not generally possible. Thus, the volcanic eruption on Montserrat led to the entire population being evacuated overseas. After the 2010 Haiti earthquake, certain profiles of Haitian nationals were evacuated by Canada, Mexico and the USA. Such forms of movement are distinct in that they are less a spontaneous reaction by affected persons and more often reflect interventions in the affected country by more prosperous and well-equipped governments in the Americas or beyond.

More recently, in the aftermath of the 2017 hurricanes Irma and Maria, the US unincorporated territory of Puerto Rico received ships evacuating not only US citizens but also vulnerable persons of other nationalities from affected British, Dutch and French overseas territories in the Caribbean. Certain independent Caribbean States also received persons, as in the hosting of persons from devastated Dominica by nearby Antigua and Barbuda, and by Trinidad and Tobago. These cross-border displacements in the aftermath of those 2017 storms took place alongside the precautionary wholesale mandatory internal evacuation of the island of Barbuda by Antigua and Barbuda and by The Bahamas of its southern islands.

2.6 OBSERVATIONS AND RECOMMENDATIONS

These findings show that the 2014 Brazil Declaration and Plan of Action is not premature in pointing to the new challenges posed by disaster displacement in Latin America and the Caribbean. Such population movement is already a reality across the

80 Between 2017 and 2019, the research indicates that almost half a million other Puerto Ricans could relocate to the mainland due to the direct effects of the disaster. Hinojosa et al, ‘Puerto Rican Post-Maria Relocation by States’. See also the attitude survey reported in NBC, “I’m staying”: Months after Maria, Puerto Ricans settle in Florida’, 14 March 2018, https://www.nbcnews.com/news/latino/i-m-staying-months-after-maria-puerto-ricans-settle-florida-n851826. Moreover, recent studies suggest that the full impact of the disaster is not yet properly understood, with the death toll reportedly much higher than previously thought. See N. Kishore et al, ‘Mortality in Puerto Rico after Hurricane Maria’ (2018) New England Journal of Medicine.
81 The only large Caribbean island with a land border is Hispaniola, which is divided between the Dominican Republic and Haiti.
82 Canter, Law, Policy and Practice, 13.
83 Ibid.
Americas. Indeed, in relation to the empirical dynamics of movement in the three regions of the Americas, we can add substantially to the findings on emerging patterns of mobility that were reached by the earlier study on this topic carried out under the auspices of the Nansen Initiative. As regards the current state of research and data-gathering needs in countries in Latin America and the Caribbean, we can add the following conclusions:

- There are relatively good data and research attesting to the fact of population movement in the context of both slow- and rapid-onset disasters against a backdrop of climate change; they equally point to some of its substantive dynamics.

- Even if we do not have exact figures and often lack official data, the scale of internal displacement linked to these phenomena appears to be quite considerable and seems to be driven particularly by the consequences of droughts and temperature extremes in rural areas of the affected countries, as well as storms and flooding.

- We lack even approximate data on the scale of international movement linked to these phenomena. More precise data from official sources would help to estimate the scale of the movements involved. Even so, the existing evidence points to certain dynamics for international movement linked to these phenomena, including:
  - There is good anecdotal evidence that short-term trans-border displacements linked to these phenomena occur in all three regions, albeit that this tendency is less evident in the Caribbean given its relative lack of international land borders on the islands. However, further research is needed on its dynamics, profile and scale.
  - Existing research shows that longer-term patterns of international movement linked to these phenomena take place from Mexico and Central America and the Caribbean towards the USA and other rich countries, particularly due to severe storms (and the 2010 Haiti earthquake). It may be that these movements are particularly from poor countries or the poor areas of certain countries. There is less evidence to substantiate such trends in South America but this may simply be due to an absence of research. There is less research and data on any longer-term patterns of intra-regional movement within the three regions. In all three regions, further research is needed on the dynamics, profile and scale of such movements.
  - In all three regions, we lack an understanding, in the disaster and climate change context, of the relationship between internal and international movement by affected persons.
  - For both internal and international movement (except short-term trans-border displacements), there appears to be a substantial time-lag of at least a year between the slow- or rapid-onset disaster event and ensuing movement by some of the affected persons, pointing to complexity in the link between the disaster and movement.
  - Both internal and international movement appear to follow existing migratory routes for the pertinent nationality, except when they are blocked. However, this could merely reflect a paucity of data and research on other migratory routes followed by affected persons.

87 See above, section 2.2, referring to Cantor, Law, Policy and Practice.
The 2014 Brazil Declaration and Plan of Action promote the adoption of new ‘integrated responses’ to the challenges associated with cross-border disaster displacement. These are not limited to the law relating to international protection in the form of refugee and human rights law. Rather, the Plan of Action specifically contemplates the inclusion of other legal frameworks, including those for ‘disaster risk management’ and, as a facet of immigration law, ‘humanitarian visa programmes’. To what extent, then, do other legal frameworks contain provisions that expressly address the challenge of cross-border disaster displacement or which may be applied in order to do so?

At the international level, this raises questions about whether, or how, international law addresses the new challenge of disaster displacement. This section identifies four main areas of international law as potentially relevant. They are the international law relating to international protection, i.e. immigration law (section 3.1), refugee and human rights law (section 3.2), that governing disaster risk management (section 3.3) and that pertaining to climate change (section 3.4). These areas of law provide relevant parameters for the adoption, design and application of national law for the protection to persons who are displaced across a border in the context of climate change or disasters linked to a natural hazard.

3.1 IMMIGRATION

At the global level, international law contains few pertinent instruments on immigration. Even the relatively poorly-ratified 1990 International Convention on the Protection of the Rights of All Migrant Workers and Their Families contains few provisions specifically relevant to those fleeing a disaster. Thus, at the moment, immigration is a field principally regulated by law at the national level.

88 See section 1.1 above.
89 See sections 4-6 below.
Nonetheless, at the global level, international guidance on this point already exists. Based on seven regional consultations with governments and a survey of international practice, the 2015 Nansen Initiative Protection Agenda recommends the following as ‘effective practices’ for providing protection and assistance to cross-border disaster-displaced persons: establishing criteria to identify such persons, including assessing the ‘direct and serious impact’ of the disaster on the individual and the seriousness of the disaster’s impact, as well as additional and contrary factors; and establishing mechanisms to identify such persons by integrating the criteria into relevant domestic laws and policies, designating and authorizing competent authorities to apply such criteria and enshrining their refugee and human rights obligations in domestic laws and policies on cross-border disaster-displaced persons. In 2015, more than 100 States affirmed their support and endorsement of these global guidelines.

Moreover, as an envisaged outcome of the process initiated by the 2016 New York Declaration for Refugees and Migrants, the proposed 2018 Global Compact for safe, orderly and regular Migration (GCM) may provide a broad non-binding framework of agreed international principles on immigration. The final draft refers to creating “conducive political, economic, social and environmental conditions for people to lead peaceful, productive and sustainable lives in their own country and to fulfil their personal aspirations, while ensuring that desperation and deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration”, inter alia, by taking account the 2030 Agenda for Sustainable Development. In enhancing pathways for regular migration, it also refers to measures to assist and protect migrants affected by disasters and the impact of climate change in their countries of origin.

At the regional level, including in the Americas, there are several regional integration processes that have developed agreements that either allow for free movement based on supranational forms of ‘citizenship’ of the pertinent entity (i.e. erasing national boundaries between member States) or allow for favourable migration treatment between member States. They may offer a legal basis for international movement by persons affected by a disaster. Nonetheless, given their close ties to national laws and policies in the pertinent blocs, they will be addressed further in relation to each of the regions in turn.

3.2

INTERNATIONAL PROTECTION

International refugee and human rights law imposes constraints on the immigration-related discretion of States to remove, expel or deport non-nationals or refuse them admission at the border, as well as imposing certain obligations to provide such persons with status-based forms of international protection. These bodies of international law thus have potential relevance to the protection of persons fleeing a disaster-affected country.

91 In this regard, the Protection Agenda (22-23) further specifies that:
   Someone may be considered a cross-border disaster-displaced person where he/she is seriously and personally affected by the disaster, particularly because
   I. An on-going or, in rare cases, an imminent and foreseeable disaster in the country of origin poses a real risk to his/her life or safety;
   II. as a direct result of the disaster, the person has been wounded, lost family members, and/or lost his/her (means of) livelihood; and/or
   III. in the aftermath and as a direct result of the disaster, the person faces a real risk to his/her life or safety or very serious hardship in his/her country, in particular due to the fact that he/she cannot access needed humanitarian protection and assistance in that country.
   A. because such protection and assistance is not available due to the fact that government capacity to respond is temporarily overwhelmed, and humanitarian access for international actors is not possible or seriously undermined, or
   B. because factual or legal obstacles make it impossible for him/her to reach available protection and assistance.
92 On refugee and human rights obligations in this context, see section 3.2 below.
93 At the time of writing of this study, the final draft of the GCM is dated 11 July 2018 and can be found here: https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf
94 Ibid, Objective 2, paragraph 18.
95 Ibid, Objective 3, paragraph c.
96 See below, sections 4.1.1.2, 5.1.1.2 and 6.1.1.2.
3.2.1 Global refugee standards

At the global level, the 1951 Convention relating to the Status of Refugees (the Refugee Convention) is a ‘cornerstone’ of international protection for refugees. As updated by its 1967 Protocol, which removed the original temporal limitation, Article 1A (2) of the Convention defines a ‘refugee’ as

[a person who] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Certain individuals who might meet the Article 1A(2) definition are excluded from the protection of the Convention, inter alia, due to strong suspicions of serious criminality on their part. The Convention also sets out the obligations, rights and benefits of refugee status, including a qualified guarantee of non-refoulement that applies also to non-admission at the border.

No international decision-making body has pronounced on whether the Article 1A(2) definition extends to persons fleeing a disaster linked to a natural hazard. Nonetheless, the lack of persecution means that such situations are not in themselves generally seen as a basis for refugee status, a reading confirmed by the jurisprudence of leading national courts.

Moreover, sporadic calls by academics to amend the Convention definition to address such situations (or to develop new refugee-inspired treaty law on environmental displacement) have not been acted upon by States.

Moreover, as an envisaged outcome of the process initiated by the 2016 New York Declaration for Refugees and Migrants, the 2018 Global Compact on Refugees (GCR) developed through consultations with States acknowledges that “climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements”. It also refers to the relevance of disaster risk reduction in refugee contexts.

On the provision of guidance and support by relevant stakeholders to address other protection challenges, the GCR highlights “to assist those forcibly displaced by natural disasters, taking into account national laws and regional instruments as applicable, as well as practices such as temporary protection and humanitarian stay arrangements”.

3.2.2 Regional refugee standards

In Central and South America, a complementary refugee definition also exists at the regional level. This is based on the non-binding 1984 Cartagena Declaration which, inter alia, recommends that States in this region also treat those forcibly displaced by natural disasters, taking into account national laws and regional instruments as applicable, as well as practices such as temporary protection and humanitarian stay arrangements.

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97 Article 1C governs the cessation of refugee status.
98 Article 1F.
99 Articles 2-35. Non-refoulement refers to the sending of a person to a territory where she faces serious harm. The non-refoulement guarantee in Article 33(1) of the Convention is qualified in that Article 33(2) makes it inapplicable to individuals who represent specified forms of serious danger to the host State.

100 See, for example, Supreme Court of Canada, Canada (Attorney General) v Ward [1993] 2 S.C.R. 689. By contrast, the Supreme Court of New Zealand in Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment [2015] NZSC 107 has not ruled out the possibility that environmental degradation resulting from ‘climate change or other natural disasters could create a pathway into the Refugee Convention’. For the latest word on the issue, see M. Scott, Refugee Status Determination in the Context of ‘Natural’ Disasters and Climate Change (Lund University 2018).


102 At the time of writing of this study, the advanced draft of the GCR is dated 20 July 2018 and can be found here: http://www.unhcr.org/5b51fd587. See paragraph 8.

103 Ibid., paragraphs 9, 53, 79.
104 Ibid., paragraph 63.
persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.105

Although the Cartagena Declaration is not a treaty, fifteen States in the regions of Central America and Mexico and South America have incorporated a complementary refugee definition based on that recommended by the Declaration into their national law.106 In these States, persons recognised under this expanded definition are refugees and entitled to all of the rights and benefits accruing under the Convention.

Some suggest that the situational element of ‘other circumstances which have seriously disturbed public order’ might include disasters linked to natural hazards. As such, persons who flee the country as their ‘lives, safety or freedom’ are threatened by the disaster would qualify as refugees under the Cartagena definition. As yet, though, States have tended to apply this situational element as requiring a direct link to governmental or political circumstances.107

Following the adoption of the 1984 Cartagena Declaration, States in the region have met on each ten-year anniversary to adopt a new declaration to build on its premise of a regional approach to refugee protection in Latin America.108 The framework and roadmap for action adopted at its 30th anniversary, in the form of the 2014 Brazil Declaration and Plan of Action, extended the regional approach to include not only Central and South America but also, for the first time, the Caribbean.

Moreover, the 2014 Brazil Declaration and Plan of Action not only requested that UNHCR undertake the present study on cross-border disaster displacement. It also espoused other relevant concepts that are taken up throughout this study. Most crucial is the strong focus on ‘regional cooperation and solidarity’ throughout the instrument in relation to movement due to multiple causes,109 which underpins recommendations made by this study. In addition, the study develops analysis and recommendations on implementing specific concepts in the Plan of Action at the national level, such as those concerning ‘free movement mechanisms’ and ‘humanitarian visas’.110

3.2.3. Human rights standards

Human rights law contains prohibitionary rules on refoulement said to offer ‘complementary protection’ to the international protection provided by refugee status. Thus, the absolute prohibition on torture, inhuman and degrading treatment or punishment in human rights treaty law also prevents the refoulement of a non-national to a territory where she faces a real risk of being subjected to such treatment (or to arbitrary deprivation of her life). However, unlike refugee law, such non-removability does not usually confer any particular status on the individual beneficiary.111

This human rights-based non-refoulement principle appears expressly in the 1984 Convention Against Torture (CAT),112 the 1985 Inter-American Convention to Prevent

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105 Conclusion 3.
106 In addition, in Costa Rica, national legislation does not refer expressly to the definition but the authorities have been ordered by the courts to apply it as a matter of national law. See section 4.2.1 below.
108 At the ten-year anniversary, States adopted the 1994 San Jose Declaration on Refugees and Displaced Persons. At the 20 year anniversary, States adopted the 2004 Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America. At the 30-year anniversary, States adopted the 2014 Brazil Declaration and Plan of Action.
109 See, particularly, Chapters 4, 5 and 6 of the Plan of Action.
110 See, particularly, Chapter 3 (‘Comprehensive, Complementary and Sustainable Solutions’) of the Plan of Action. These concepts are integrated by the chapters concerning national approaches in the present study.
111 The exception is the ‘subsidiary protection’ status conferred on beneficiaries of Article 15(a)-(b) of the EU Qualification Directive. However, access to this status is equally governed by exclusion clauses modelled on those in Article 1F of the Refugee Convention.
112 Articles 3 and 16.
and Punish Torture\textsuperscript{113} and the 2004/14 EU Qualification Directive (EUQD).\textsuperscript{114} It has also been read into the 1950 European Convention on Human Rights (ECHR),\textsuperscript{115} the 1966 International Covenant on Civil and Political Rights (ICCPR),\textsuperscript{116} the 1969 American Convention on Human Rights (ACHR)\textsuperscript{117} and the 1948 American Declaration on the Rights and Duties of Man (ADHR)\textsuperscript{118} by the international human rights treaty bodies tasked with interpretation of these and other instruments.\textsuperscript{119}

No international decision-making body has yet confirmed the application of human rights-based non-refoulement guarantees in the context of persons fleeing from a disaster-affected country. In principle, any such protection would likely be based on qualifying the expulsion of a person to a ‘real risk’ to life and limb due to the disaster as an act of inhuman or degrading treatment by the expelling State. In any other words, to engage the rule it would be necessary to show a direct and imminent link to the threat posed by a disaster in the territory to which the person is to be expelled.\textsuperscript{120}

3.2.4 Wider implications

The risk of a disaster occurring in the country of origin might occasionally provide a basis for refugee status under the Convention or the Cartagena definition, as where the risk to life or limb posed by the disaster is linked to discrimination and a lack of national protection. By contrast, international human rights law may provide a more general basis for preventing the refoulement of a person to a territory where a risk to life or limb is posed by an imminent disaster. In each case, the imminence of the disaster and the severity of risks involved will be a relevant factor.\textsuperscript{121}

At the same time, it is important to emphasise that the occurrence of a disaster may generate wider and longer-lasting conditions that do provide a need for international protection under refugee or human rights law. In particular, where a disaster linked to a natural hazard and/or climate change unleashes violence or persecution, triggers a collapse in governmental authority or is used as a pretext by the government to persecute opponents, then the dangers inherent in those wider conditions can provide a basis for protection under international refugee or human rights law.\textsuperscript{122}

Similarly, the disaster may produce sufficiently serious ongoing conditions – combining both environmental and non-environmental factors – that removal to the territory would constitute inhuman or degrading treatment. In this regard, the jurisprudence of international human rights treaty bodies has characterised

\begin{itemize}
\item Article 13, fourth paragraph, referring to the context of extradition.
\item Article 15(a)-(b).
\item Article 3, as confirmed by a long line of cases following European Court of Human Rights, Soering v UK (1989) 11 EHRR 439.
\item Article 5, as confirmed by Inter-American Court of Human Rights, Advisory Opinion on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Series A, No. 21, 19 August 2014, paragraph 226. Note also that Article 22(8) ACHR echoes Article 33(1) of the Refugee Convention by preventing refoulement to a territory where the ‘right to life or personal freedom [of the non-national] is in danger of being violated because of his race, nationality, religion, social status or political opinions’. On the interpretation of this provision and others of the ACHR in the expulsion context, see Inter-American Court of Human Rights, Pacheco Tineo Family v Bolivia, 25 November 2013, Series C, No. 272, paragraphs 128-160.
\item Moreover, the Inter-American Court of Human Rights (in Advisory Opinion on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection (2014) Series A, No 21, paragraphs 222, 231-232) has interpreted the ‘best interests of the child’ principle in Article 3 of the 1989 Convention on the Rights of the Child to be a ‘central aspect’ in return proceedings, meaning that a child, in principle, cannot be returned to a country if it is not in the child’s best interest, including where he or she would face a real risk of human rights violations.
\end{itemize}

\textsuperscript{120} On human rights non-refoulement protection in relation to slow-impact disasters, see OHCHR, The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants (22 March 2018) 21-22.

\textsuperscript{121} See, for example, J. McAdam, ‘Climate Change Displacement and International Law: Complementary Protection Standards’ (2011) UNHCR Legal and Protection Policy Research Series, 15-36.

3.3 DISASTER RISK MANAGEMENT

The concept of ‘disaster risk management’ (DRM) can be used as an umbrella for the fields designated in national law by terms as varied as civil defence, disaster measures, disaster risk management, disaster risk reduction, disaster preparedness and response and emergency response.124 This section assesses the potential relevance of such international law as relates to this field to the protection of non-nationals fleeing a disaster in the country of origin. At both global and Americas levels, it first analyses the global frameworks for DRM (sections 3.3.1) and then turns to those at the regional level in this part of the world (section 3.3.2).

3.3.1 Global DRM standards

No legally-binding instrument on disaster risk management exists at the global level.125 Yet the field has produced international normative frameworks. Thus, at the global level, the Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters has been taken forward by the new Sendai Framework for Disaster Risk Reduction 2015-2030. Both are non-binding instruments adopted by State conferences and endorsed by the UN General Assembly. Yet, whilst recognising the need to address displacement in the context of disasters linked to natural hazards, their focus is principally upon attention to internal displacement by national and local authorities.

The old Hyogo Framework, covering the period up to 2015, had the reduction of disaster losses through the integration of disaster risk reduction into development planning as one of its principal strategic goals. It addressed displacement only in this connection by calling on States to ‘[e]ndeavor to ensure, as appropriate, that programmes for displaced persons do not increase risk and vulnerability to hazards’ as a measure to reduce underlying risk factors related to changing ‘social and economic development practices’.126 As such, its treatment of displacement was limited to sounding a warning about the potential of programmes for the benefit of displaced persons to further increase localised risk and vulnerability to disasters.

Building on the Hyogo Framework, the current Sendai Framework more substantively integrates the challenge of displacement. Indeed, strengthening disaster risk governance by mainstreaming of disaster risk reduction in and across all sectors is a priority of the Sendai Framework.127 Thus, at the global and regional levels, cross-border ‘displacement risk’ is to be addressed principally through ‘transboundary cooperation’ in planning and implementing ecosystem-based approaches for shared resources (e.g. river basins and coastlines) so as to reduce disaster risk.128 At national and local levels, it also pushes States to adopt policies and programmes ‘addressing disaster-induced human mobility’ in order to meet the distinct priority of strengthening the resilience of affected persons and host communities.129

In tandem, at the national and local levels, the Sendai Framework integrates disaster displacement-related considerations in

123 See, for example, European Court of Human Rights, Sufi and Elmi v UK (2011) Application Nos. 8319/07 and 11449/07.


125 Although in disasters linked to armed conflict, the international law of armed conflict may apply.

126 Paragraph 4(i)(i)

127 Paragraph 26. The four priorities of the Sendai Framework are as follows (paragraph 20):
Priority 1: Understanding disaster risk.
Priority 2: Strengthening disaster risk governance to manage disaster risk.
Priority 3: Investing in disaster risk reduction for resilience.
Priority 4: Enhancing disaster preparedness for effective response and to “Build Back Better” in recovery, rehabilitation and reconstruction.

128 Paragraph 28(d).

129 Paragraph 30(l). It emphasises that all ‘migrants contribute to the resilience of communities and societies and their knowledge, skills and capacities can be useful in the design and implementation’ of disaster risk reduction and management (paragraphs 30(v) and 27(h)).
relation to the priority of enhancing disaster preparedness, response and recovery. Thus, with a view to ‘ensuring rapid and effective response to disasters and related displacement’, it recommends evacuation exercises and the establishment of area-based support systems, including access to safe shelter and relief supplies.130 It also specifies that measures to integrate post-disaster reconstruction into the economic and social sustainable development of affected areas ‘should also apply to temporary settlements for persons displaced by disasters’.131

Another widely-applied non-binding framework is the 2007 Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance,132 approved by delegates of the Red Cross and Red Crescent Movement133 and promoted by the UN General Assembly.134 The Guidelines address the role of affected States, assisting States, assisting humanitarian organisations and other assisting actors in international operations for disaster relief. In particular, they seek to clarify relevant legal rules and principles to be incorporated and implemented by national law.135

The principal focus of the Guidelines is the relationship between the affected State and the assisting States (and other entities) in the disaster context, particularly in enhancing the quality and efficiency of international disaster relief and initial recovery assistance.136 Conversely, the Guidelines stipulate that assisting actors should not only ‘abide by the laws of the affected State and applicable international law, coordinate with domestic authorities, and respect the human dignity of disaster-affected persons at all times’ but also ensure that such relief and assistance is provided ‘in accordance with the principles of humanity, neutrality and impartiality’.137

Issues relating to the movement of people and goods, and thus applicable immigration and customs law, are central to the Guidelines. However, this is principally in relation to facilitating movement of assisting personnel into the affected State. In particular, the Guidelines call for affected States to:

- (a) Grant visas and any necessary work permits, ideally without cost, renewable within their territory, for the time necessary to carry out disaster relief or initial recovery activities;
- (b) In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;
- (c) Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers [etc...];
- (d) Facilitate freedom of access to and freedom of movement in and from the disaster-affected area, bearing in mind the safety of disaster relief and initial recovery personnel.138

Similarly, the Guidelines recommend that both originating and transit States ‘waive or

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130 Paragraph 33(h).
131 Paragraph 33(j).
134 See, most recently, UN General Assembly, Resolution 72/133 (16 January 2018) paragraph 29.
135 The ‘Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance’ (2013) developed by IFRC, OCHA and the Inter-Parliamentary Union provides further guidance in this regard.
136 For example, Guideline 10(1) provides that disaster relief or initial recovery assistance: ... should be initiated only with the consent of the affected State and in principle, on the basis of an appeal. The affected State should decide in a timely manner whether or not to request disaster relief or initial recovery assistance and communicate its decision promptly. In order to make this decision, the affected State should promptly assess needs. Consideration should be given to undertaking joint needs assessments with the United Nations and other assisting humanitarian organisations.
137 Guideline 4(1)-(2).
138 Guideline 16(1).
In all of these scenarios, the Guidelines recognise that the granting of these special facilities may be subject to State interests such as national security and public order. However, any measures to protect such interests ‘should be tailored to the exigencies of the specific disaster and consistent with the humanitarian imperative of addressing the needs of affected communities’. In other words, in the context of disaster relief, the principle is that State interests in immigration control should seek special tailored forms of compatibility with the prevailing humanitarian imperative.

Concern with displacement and its impact in the context of disasters is evident elsewhere in the Guidelines. At the inter-State level, procedures to share information about disasters, including emerging hazards, are justified by the need to ‘minimize transboundary impacts’ or, in other words, to prepare for impacts such as the displacement of persons across borders. Moreover, the Guidelines specify that the delivery of disaster relief and initial recovery assistance by assisting actors should be responsive to the special needs of particularly vulnerable groups that may include, inter alia, ‘displaced persons’.

Alongside the Guidelines, other non-binding international frameworks set out protection standards for persons caught up in disasters. For instance, in 2014, the International Law Commission adopted Draft Articles on the Protection of Persons in the Event of Disasters. They also emphasise the duty to cooperate, including through ‘humanitarian assistance’, and the injunction on the affected State not to arbitrarily withhold consent to external assistance. They equally articulate the duty on the affected State to take ‘necessary measures, within its national law’ to facilitate external assistance from relief personnel in such fields as ‘visa and entry requirements’. However, they are silent on the protection standards applicable to persons who flee the disaster-affected country.

Similarly, in 2016, the Migrants in Countries in Crisis Initiative published its Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster. These Guidelines address a range of legal, policy and practical considerations relevant to human mobility in the context of disasters. In particular, there is useful guidance on assistance and protection to migrants who find themselves caught up in a disaster in country where they are living or through which they are transiting. On international movement, though, they include only a single recommendation that, as a last resort, ‘where protection cannot be provided locally, it may be necessary to… evacuate [migrants] to States of transit or the State of origin’.

3.3.2 Regional DRM standards

At regional level, the First Meeting of Ministers and High-Level Authorities on the Implementation of the Sendai Framework in the Americas took place in 2016. The meeting adopted the 2016 Asunción Declaration and ‘Guidelines towards a Regional Action Plan for the Implementation of the Sendai Framework 2015-2030’ that develops regional and national foci for implementation, although it

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139 Guideline 16(2).
140 Guidelines 15.
141 Guideline 7.
142 Guideline 4(3)(a).
144 Articles 7-8.
145 Articles 12-13.
146 Article 15(1)(a).
does not specifically mention displacement.\textsuperscript{149} In 2017, 16 States and one territory in the Caribbean, Central and South America also submitted reports to the UNISDR Sendai Framework Data Readiness Review.\textsuperscript{150} The report includes two categories relating to data collection on evacuation. Of those 17, 12 confirmed that they collected data on one or both evacuation categories but provided no further information.\textsuperscript{151} The report does not otherwise include a category relating to displacement.

Moreover, at the regional level, binding international law on DRM does exist in the Americas. For instance, predating the 2007 IFRC Guidelines, there is the 1991 Inter-American Convention to Facilitate Disaster Assistance, a regional treaty adopted under the auspices of the OAS. With six States parties in the Caribbean, Central and South America,\textsuperscript{153} it articulates a more rudimentary form of several principles expressed by the Guidelines. For instance, whilst oriented primarily to inter-State assistance, the 1991 OAS Convention provides that personnel of the assisting State may enter, cross, and leave the territory of the assisted state party..., as necessary to carry out their mission. To this end, each state party shall provide such personnel with the necessary immigration documents and facilities, in accordance with its laws.\textsuperscript{154}

Relevant treaties aside, the OAS has encouraged member States to incorporate the IFRC Guidelines into their national law.\textsuperscript{155} In 2011, within the regional SICA forum, the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPREDENAC)\textsuperscript{156} adopted a ‘Regional Manual on Procedures for Foreign Ministries in Cases of Disasters’ for its member States of Central America, Belize and the Dominican Republic.\textsuperscript{157}

A similar provision exists in the 1991 Agreement establishing the Caribbean Disaster Emergency Response Agency (CDEMA; renamed Caribbean Disaster Emergency Management Agency (CDEMA) in 2009), a source of international law for the 14 States (and territories) parties in the Caribbean and South America.\textsuperscript{158} In that treaty, the requesting State undertakes to ‘facilitate the entry into, stay in and departure from its territory’ of personnel whom it has accepted following prior notification by the sending State.\textsuperscript{159} The CDEMA 2013 Model Comprehensive Disaster Management Legislation and Regulations does not address this issue in any further

\begin{itemize}
\item \textsuperscript{150} They were: Antigua and Barbuda, Barbados, Guyana, Jamaica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Trinidad and Tobago and also the British Overseas territory of Anguilla (in the Caribbean); Costa Rica, Guatemala, Honduras and Mexico (in Central America); and Argentina, Bolivia, Brazil, Colombia and Ecuador (in South America).
\item \textsuperscript{151} Indicator G-6 on the Sendai Framework Data Readiness Review form, i.e. ‘population exposed or at risk from disasters protected through pre-emptive evacuation following early warning’ and ‘people evacuated attributed to disasters’.
\item \textsuperscript{152} They were: Antigua and Barbuda, Jamaica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Trinidad and Tobago and the British overseas territory of Anguilla (in the Caribbean); Costa Rica, Guatemala, Honduras (in Central America); and Brazil, Colombia, Ecuador (in South America). Of States that answered one or both questions in the negative, most planned to start collecting such data subject to ‘capacity’, ‘resources’ and/or ‘technology transfer’. See for example, the reports from Bolivia, Guyana and Jamaica.
\item \textsuperscript{153} The parties are Colombia, Dominican Republic, Nicaragua, Panama, Peru and Uruguay.
\item \textsuperscript{154} Article VIII(a).
\item \textsuperscript{155} See, for example, OAS General Assembly, Resolution 2750 (4 June 2012) OAS Doc AG/RES. 2750 (XLI-O/12), paragraph 1, endorsing the OAS - Permanent Executive Committee of the Inter-American Council for Integral Development (CEPCIDI), General Framework for the “Inter-American Plan for Disaster Prevention and Response and the Coordination of Humanitarian Assistance” (10 May 2012) OAS Doc OEA/Ser.W/IV CEPCIDI/1053/12 rev 1, http://www.rimd.org/advf/documentos/50421d77a5538.pdf, paragraph 2.2.3.2.
\item \textsuperscript{156} Centro de Coordinación para la Prevención de los Desastres Naturales en America Central – CEPREDENAC.
\item \textsuperscript{157} SICA - CEPREDENAC, Manual Regional de Procedimientos de las Cancillerías en casos de Desastres (2011).
\item \textsuperscript{158} Current States parties are Antigua, Bahamas, Barbados, Belize, Dominican Republic, Grenada, Guyana, Jamaica, St Kitts and Nevis, Santa Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago. The British overseas territories of the British Virgin Islands and Montserrat are also parties.
\item \textsuperscript{159} Article 21(2)(c).
\end{itemize}
However, it does make provision for evacuation, although this appears to be conceived as purely internal in character.

Within certain regional fora, there is some recognition of the need to address displacement in the context of disasters linked to natural hazards. For instance, within the regional SICA forum, CEPREDENAC has included among the key actions in its 2014-2019 Plan:

- Promote mechanisms that guarantee the international protection of migrants in cases of disasters and attend to their needs, including access to humanitarian assistance, protection and visibility in registers and statistics, as well as the right to information and communication with family members, taking into consideration what has been agreed to in existing International Conventions.

Similarly, in light of the 2017 hurricane impact in the Caribbean, the CDEMA Executive Director pointed to ‘the need for non-impacted States to consider arrangements for the receipt of displaced persons from affected States’, adding that the appropriate measures will need ‘full consideration within the context of CARICOM’s broader policy but also individual national government policies’.

Finally, in 2015, at the VII Regional Meeting on International Humanitarian Assistance Mechanisms in Latin America and the Caribbean (MIAH), participating countries adopted a declaration that encourages governments ‘to promote mechanisms to receive and protect refugees and asylum seekers due to humanitarian causes’.

### 3.3.5 Wider implications

At the international level, the law and policy relating to disaster risk management does not have as a principal focus the protection of persons who have fled the affected territory. Rather, for obvious reasons, the main focus of the pertinent legal and policy standards is on the national territory affected by, or at risk of, a disaster. Nonetheless, there are several areas of this body of international law with potential relevance to the protection of persons who are displaced across a border in the context of disasters linked to natural hazards.

Firstly, the international DRM frameworks address human mobility in the context of disasters from the perspective of movement into the affected State by humanitarian personnel of assisting States (and sometimes other entities). As a matter of principle, the IFRC Guidelines provide that, in disaster contexts, affected States should apply national immigration law in a flexible and expedited manner for such persons and that State interests in immigration control should seek special tailored forms of compatibility with the prevailing humanitarian imperative. Such principles may suggest a DRM-specific basis for the proposition that, in disaster contexts, even the immigration law of non-affected States wishing to assist should take reasonable account of the humanitarian imperative in relation to the situation of persons from the disaster-affected territory. This might also be framed as an additional form of humanitarian assistance to those provided directly in the affected territory; and one that has less intrusive implications for the sovereignty of the affected State.
Secondly, in the international DRM frameworks, there is also a strong emphasis on cooperation between the affected State and other States in the provision of assistance. In principle, it is clear that this extends to inter-State cooperation on displacement issues. Indeed, the 2007 IFRC Guidelines point towards the imperative to develop inter-State cooperation-based procedures as a means of preventing and minimising transboundary impacts such as population displacement across borders.\(^{166}\) Albeit within the territory of the affected State, the Guidelines also expressly recognise that ‘displaced persons’ may be a particularly vulnerable group with special needs.\(^{167}\) Both of these principles are reiterated by the 2015 Sendai Framework.\(^{168}\) Moreover, at the regional level, DRM bodies both in Mexico and Central America and in the Caribbean have expressly recognised the need to develop DRM-based arrangements to protect and assist displaced persons from affected States.

### 3.4 CLIMATE CHANGE

International environmental law provides the framework for the international law relating to climate change. It is based on a diverse set of general principles and rules, the precise parameters and legal status of which can sometimes be difficult to determine. They are often taken to encompass: the responsibility of States not to cause transboundary environmental damage; the preventive action principle; the principle of cooperation; the principle of sustainable development; the precautionary principle; the polluter pays principle; and the principle of common but differentiated responsibility.\(^{169}\) This section assesses the relevance of the standards pertinent to the specific environmental issue of climate change at both global (section 3.3.1) and regional (3.3.2) levels.

#### 3.4.1 International standards on climate change

International climate change law is rooted in the 1992 UN Framework Convention on Climate Change (UNFCCC).\(^{170}\) The UNFCCC has the prevention and mitigation of climate change as a primary goal but it also contains obligations for States to plan for, facilitate, assist and cooperate in ‘adaptation’ to the adverse effects of climate change.\(^{171}\) The 1992 UNFCCC establishes a Conference of the Parties (COP) that meets regularly to review implementation and which takes decisions to promote effective implementation.\(^{172}\) Subsequent agreements adopted at these COPs include the 1997 Kyoto Protocol (COP3) and its amendments and the 2015 Paris Agreement (COP21).\(^{173}\)

Displacement linked to climate change is acknowledged within the UNFCCC context. In particular, the 2010 Cancun Agreement (COP16) invites States parties to enhance action on adaptation by undertaking, *inter alia*, ‘measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels’.\(^{174}\) Further work to advance the understanding of how ‘impacts of climate change are affecting patterns of migration, displacement and human mobility’ was acknowledged at Doha (COP18) in 2012.\(^{175}\)

In 2013, the COP19 established the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts as a platform to enhance understanding, action and support on such loss and damage on a cooperative basis.\(^{176}\) This Mechanism was

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\(^{166}\) Guideline 7.

\(^{167}\) Guideline 4(3)(a).

\(^{168}\) Paragraphs 28(d) and 30(l).

\(^{169}\) See, for example, P. Sands and J. Peel, *Principles of International Environmental Law*, 3\(^{rd}\) edn (CUP 2012) 187-237.

\(^{170}\) This treaty has been ratified by all States and territories in the Caribbean, Central and South America.

\(^{171}\) Articles 4(1)(b), 4(1)(e), 4(3), 4.4. and 4.5

\(^{172}\) Article 7.

\(^{173}\) These treaties have both been ratified by all States and territories in the Caribbean, Central and South America except Colombia and Suriname, which have not ratified the 2015 Paris Agreement.

\(^{174}\) Decision 1/CP.16, paragraph 14(f).

\(^{175}\) Decision 3/CP.18, paragraph 7(a)(vi).

\(^{176}\) Decision 2/CP.19. See also 2015 Paris Agreement (COP21), Article 8.
instructed by the Paris Conference to create a Task Force to ‘develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change’. Against this backdrop, the 2016 Marrakech Conference (COP22) encouraged States parties to incorporate consideration of, inter alia, ‘displacement, migration and human mobility’ into planning and action and to encourage bilateral and multilateral entities to support such efforts. 

States to the UNFCCC may also participate in different processes to identify and establish the specific national measures for contributing to climate change adaptation and mitigation. Under the non-binding 2010 Cancun Agreement, States are encouraged to formulate and implement National Adaptation Plans as a means of identifying adaptation needs and developing national responses to reduce vulnerability to the impacts of climate change, by building adaptive capacity and resilience, and to facilitate the integration of climate change adaptation into new policies and actions. Meanwhile, under the 2015 Paris Agreement, each State party is required as a matter of treaty law to prepare successive reports outlining the Nationally Determined Contributions (NDCs) to climate change mitigation that it intends to achieve.

3.4.2 Regional standards on climate change

In the Americas, there are relatively few examples of relevant regional standards. Nonetheless, within SICA, the Central-American Commission on Environment and Development (CCAD) has formulated as an operational objective the need to ‘[d]evelop national strategies designed to deal appropriately with the ever more frequent processes of evacuation, temporary and permanent relocation and migration of populations most affected by the increase of recurring extreme climate events’.

3.4.3 Wider implications

The international instruments adopted under the UNFCCC echo the emphasis in the DRM field on encouraging States to incorporate displacement in the context of climate change into their national laws and policies and to develop cooperative inter-State mechanisms to support their response to such situations. The emphasis on integrated approaches is also reiterated in mechanisms such as the Task Force on Displacement. There is also a strong emphasis on information-gathering that could point towards an institutional basis for improved data collection as well as independent research. They also point towards the potential for ‘migration as adaptation’ in situations of extreme environmental degradation, perhaps even in the form of planned relocation to another country. Some similar calls are reiterated in regional forums in the Americas, particularly in the Central American context.

177 Decision 1/CP.21, paragraph 49. The first meeting of the Displacement Task Force was held in 2017. See https:// unfccc.int/event/first-meeting-of-the-task-force-on-displacement.
179 Decision 5/CP.17, paragraph. In relation to theme of human mobility, see K. Warner et al, Integrating Human Mobility Issues within National Adaptation Plans (June 2014) UNU Policy Brief No. 9.
180 Article 4.
181 Comisión Centroamericana de Ambiente y Desarrollo (CCAD)
182 SICA - Comisión Centroamericana de Ambiente y Desarrollo, Estrategia Regional de Cambio Climático (November 2010) http://bvssan.incap.int/local/cambio-climatico/Estrategia-Regional-Cambio-Climatico.pdf, operational objective 1.1.5.3.
183 For example, in this regard, see the research papers developed within the framework of the Task Force on Displacement’s work-plan: Mapping of existing international and regional guidance and tools on averting, minimizing, addressing and facilitating durable solutions to displacement related to the adverse impacts of climate change; Mapping of existing relevant policies and institutional frameworks that deal with the climate and displacement interaction at the national level, both available at http://www.environmentalmigration.iom.int/iom-pdd-task-force-displacement-stakeholder-meeting
3.5

OBSERVATIONS AND RECOMMENDATIONS

The 2014 Brazil Declaration and Plan of Action point towards the need for ‘integrated responses’ to the challenge of cross-border disaster displacement. The analysis in this section of the study shows that considerable synergies and convergence do indeed exist between international frameworks in the four areas of international law and policy on pertinent applicable principle. As such, the overarching framework of legal obligations and policy imperatives at the international level serve to provide a useful set of parameters for the development of, in the words of the Plan of Action, ‘appropriate national and regional measures, tools and guidelines’ to address this new displacement challenge.

Across the four areas of international law reviewed here, it is possible to distil a number of key principles that both guide and channel national and regional responses to cross-border disaster displacement. These principles include the following:

- International cooperation to enhance understanding of such movements, i.e. through data-collection and -sharing by governments and studies such as this one;

- International cooperation to develop integrated planning/response approaches between States to prevent and address such forced movement, with special emphasis on adoption of transboundary cooperation and preparedness mechanisms;

- International cooperation in the provision of humanitarian assistance in disaster contexts, principled interpretation of which may point towards the desirability of assisting persons who flee their country as a result, alongside any provision of assistance on the territory of the affected State;184

- At the national level, planning/response to cross-border displacement in the context of disasters and climate change must be integrated across diverse fields of law and policy, including immigration, disaster risk management and climate change action;

- At the national level, any immigration discretion in law and policy is circumscribed by wider international obligations from the fields of refugee protection, human rights and disaster risk managements (as well, potentially, as that of climate change);

- At the national level, principles of disaster risk management re-emphasise that, in disaster contexts, State interests in immigration control might ideally seek special tailored forms of compatibility with the prevailing humanitarian imperative as a means of assisting and, where necessary, protecting persons fleeing the affected State.

184 This is especially relevant in light of the sometimes challenging sovereignty implications of the latter but it should not be viewed as a substitute for the offer of other forms of international aid to the affected country.
CENTRAL AMERICA AND MEXICO: NATIONAL LAW, POLICY AND PRACTICE
The 2014 Brazil Declaration and Plan of Action requested this study, *inter alia*, ‘with the aim of supporting the adoption of appropriate national and regional measures, tools and guidelines’ to address the new challenge of cross-border disaster displacement. This includes ‘response strategies […], contingency plans, integrated responses for disaster risk management and humanitarian visa programmes’. Other chapters of the Plan of Action equally emphasise the relevance of ‘regional cooperation and solidarity’ and ‘free movement mechanisms’ to developing national and regional responses.

Towards this end, the study analyses existing legal and policy frameworks at national and regional level relevant to addressing the protection of cross-border disaster-displaced persons. By region, the study starts with Central America and Mexico (section 4) and then considers South America (section 5) and the Caribbean (section 6). It builds on the analysis of international frameworks that circumscribe these national approaches (section 3). The aim is not only to describe current law, policy and practice at the national level in the three regions but also to identify how national and regional measures, tools and guidelines can be further developed from what already exists.

Central America is comprised of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama. For the purposes of this study, Mexico – whilst located geographically in North America - is also included in this section, given its proximity to, and strong links with, regional movements of persons in and from Central America. Across these eight countries, this is a region that experiences international movement in the context of disasters linked to natural hazards and climate change. However, it is also a region that is known for its relatively advanced law and policy on disasters and on immigration.

This section reviews how the national frameworks of the countries of this region are used, or could be used, for the protection of affected persons. It focuses on national law, policy and practice in four fields: immigration law – including regular migration categories and exceptional migration categories (section 4.1); international protection law – including refugee law and complementary protection law (section 4.2); disaster risk management law (section 4.3); and climate law (section 4.4).

4.1

**IMMIGRATION LAW**

Immigration law in the Spanish-speaking countries that constitute a majority in Central America is rooted in a civil law system derived from continental Europe. The relative degree of sophistication of the national immigration law framework differs in each. Mexico is an outlier in that it is not a part of Central America but represents an important point of contact between Central and North America. As a former British colony with a common law system, is another outlier in the region. Its immigration law is based on British law in the territory prior to independence and often has greater parallels with former British colonies in the Caribbean than with other States in Central America.

4.1.1 Regular migration categories

National immigration law usually establishes regular migration categories for such purposes as tourism, visiting, studies, employment and family. Such regular migration categories may sometimes offer a basis for travel, entry or stay in a country for persons from a country affected by a disaster linked to natural hazards or climate change. This section examines the provisions relating to regular migration categories in the national law of countries in Central America and Mexico for travel for short periods as a visitor (section 4.1.1.1) and for travel and stay for longer periods (section 4.1.1.2).

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185 See section 1.1 above.
186 Ibid.
187 See, particularly, Chapter 3 ("Comprehensive, Complementary and Sustainable Solutions") of the Plan of Action. These concepts are integrated by the chapters concerning national approaches in the present study.
188 See section 2.3 above.
189 For the purposes of this analysis, it is thus included within the regional analysis of Central America and any reference here to ‘Central America’ should be taken to include Mexico unless otherwise specified.
190 See section 6 for details.
4.1.1.1 Travel and entry for short periods

For movement within Central America and Mexico, most States allow visa-free travel, entry and stay for periods of at least 30 days by nationals of other States in this region. Panama looks like an exception but nationals of the two countries that do not benefit from a visa exemption (Belize and Mexico) can straightforwardly acquire a visa for entry on arrival at its borders. Mexico is an exception in that it maintains visa requirements for nationals of El Salvador, Guatemala, Honduras and Nicaragua. In practice, then, except for the North American State of Mexico, Central America is a largely visa-free zone in terms of travel, entry and stay as visitors or tourists for short periods.

For travel into the region from South American or Caribbean countries, Mexico and all Central American States maintain visa requirements for nationals of Cuba, the Dominican Republic and Haiti. Many also require visas for travel by nationals of Grenada and Jamaica in the Caribbean and Bolivia, Ecuador, Guyana and Suriname in South America. Many also maintain visa requirements for one other nationality from the Caribbean or South America based on particular bilateral considerations. Nonetheless, aside from those named above, nationals of other States or territories in the Caribbean or in South America often benefit from visa-free travel, entry and stay for short periods as visitors or tourists in Central American countries or Mexico.

These visa arrangements for travel and entry for short periods are not for the purpose of providing protection to persons fleeing a disaster in their own country. Indeed, they allow travel and entry purely on the basis of nationality rather than individual circumstances. Nonetheless, in practice, the existence of a visa waiver might be used by persons from a disaster-affected country as a basis to travel and stay temporarily in another country. Conversely, where visa requirements are maintained, this may represent an additional obstacle to persons seeking to flee that country. In general, though, most Central American countries except Mexico allow visa free travel by nationals of other Central American countries and all require a visa for nationals of Cuba, the Dominican Republic and Haiti.

4.1.1.2 Travel and stay for longer periods

Where persons affected by a disaster in their country of nationality have a sufficient link with the host State to justify travel and/or stay on the basis of a regular migration category stipulated in that country’s national immigration law, this will provide a basis for regular movement in this context. In some Central American countries, such categories can be applied flexibly on the basis of immigration discretion. For instance, Costa Rica has facilitated access to regular migration categories through a flexible application of the substantive criteria (e.g. to allow stay as a family members on the basis of a more distant family connection than that normally permitted) for irregular migrants from Nicaragua who had been personally affected by a disaster in their home country.

In addition, such movement may be facilitated by the existence of regional integration arrangements of which both the State of origin and the host State are members. For ‘citizens’ of such supranational entities, principles of free movement often confer on such persons a right to travel to, enter and stay in another member State for reasons such as work or family. Thus, within the System for Central-American Integration (SICA), the governments of El Salvador, Honduras, Guatemala and Nicaragua have agreed the free movement of their citizens across borders without checks.

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191 For relevant details, see Annex C.
192 Guatemala and Nicaragua are particularly notable in this regard. See Annex C.
193 For example, Costa Rica requires visas of Colombian nationals. See Annex C.
194 Cantor, Law, Policy and Practice, 32.
195 Sistema de la Integración Centroamericana – SICA.
or restrictions. As such, citizens fleeing a disaster in one of these four States should have unimpeded access to the territory of another State party to this so-called ‘CA-4’ agreement.

### 4.1.2 Exceptional migration categories

National immigration law often also regulates ‘special cases’ that fall outside the established regular migration categories. For persons affected by a disaster in their home country but who are unable to travel to, enter or stay in the host country on some regular basis (e.g. due to family ties etc.), any national law provisions relating to such exceptional migration categories may be pertinent to their situation. This analysis distinguishes two approaches based on whether the national immigration law deals with such special cases through a broad immigration discretion (section 4.1.2.1) or through a provision that is oriented more specifically towards humanitarian considerations (section 4.1.2.2). These provisions are often based on individual circumstances rather than nationality.

#### 4.1.2.1 Broad discretion

On the entry and stay of non-nationals who fall outside the regular migration categories, just two Central American States – El Salvador and Belize - leave the issue relatively unregulated and offer only minimal legal guidance. This is likely due to the fact that the immigration law of each country is quite old and ‘unmodernised’ in its essentials, having been the subject of merely minor updates to amend the wording rather than the basic structure or premises of the original framework. This is a distinct contrast to the more ‘modern’ immigration laws - many with a firm emphasis on the human rights of migrants - adopted wholesale by other States in Central America over the past 20 years.

In this regard, among Spanish-speaking countries, El Salvador is unusual in that its immigration law merely articulates a general discretionary power when deciding immigration cases. Specifically, the Interior Ministry is able to ‘interpret and resolve by analogy, or founded in consideration of good sense and natural reasons, cases that are expressly contemplated in the present Law’. It has been used to grant temporary residence where a non-national shows a sufficient degree of ‘vulnerability’ and could be applied to resolve requests for entry or stay from non-nationals fleeing disasters, although it has yet to be used in that capacity. A new immigration law with a stronger focus on human rights remains under discussion by the legislature after being proposed in 2016.

By contrast, the legal framework of Belize resembles that of former British colonies in the Caribbean. It confers a broad discretion on officials specifically in relation to entry by non-nationals. In this respect, it gives the Director of Immigration and Nationality Services the power to issue a ‘special permit’ for entry and stay of up to two months (renewable) where this is considered ‘desirable’, even if the person may be a ‘prohibited immigrant’. It also confers a power on the Minister to make regulations governing the permits and the conditions on which they shall be issued. Such discretion could be exercised by the authorities in each case to admit non-nationals fleeing a disaster overseas.

Finally, this kind of broad discretion in immigration law has been used by Central American States to regularise the immigration situation of irregular migrants affected by a disaster in their home country. Thus, after

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196 The legal basis for this system is the Acuerdo de Nueva Ocotepeque - Reunión de Presidentes de Guatemala, Honduras y El Salvador (12 May 1992) as specifically developed through the 1993 Acuerdo de Managua - Reunión de Presidentes de Guatemala, Honduras, Nicaragua y El Salvador (22 April 1993). This created the CA-4 card to facilitate such free movement, replaced in 2004 by the Entry and Exit Card (Tarjeta de Ingreso y Egreso - TIE). See V.M. Vega Briquel, ‘La libre circulación de personas físicas en el Derecho Comunitario. Análisis comparado de la Unión Europea y el Sistema de la Integración Centroamericana’ (2015) 4 Revista de Derecho Comunitario, Internacional y Derechos Humanos 12.


198 Cantor, Law, Policy and Practice, 43.


200 Immigration Act (Belize), revised 2000, Chapter 156, Section 18(1).

201 Ibid, Section 39.
Hurricane Mitch in 1998, States including Costa Rica, Nicaragua and Panama used such legal provisions to create one-off programmes to regularise the situation of hundreds of thousands of irregular migrants, the majority Nicaraguans who had been affected by the devastation wrought on their country by the hurricane.\(^{202}\) By contrast, Mexico exercised its discretion in pledging not to remove Haitians from its territory for a period following the 2010 earthquake in Haiti.\(^{203}\)

### 4.1.2.2 Humanitarian provision

Most States in the region of Central America and Mexico have adopted immigration law provisions that specially recognise and regulate the situation of non-nationals whose cases, whilst falling outside the regular migration categories, disclose ‘humanitarian’ considerations. The pertinent provision (or provisions) regulates one or more aspects of the immigration process, i.e. travel to the country,\(^{204}\) entry to the country,\(^{205}\) or stay in the country.\(^{206}\) Regardless of the national context, though, the provision always applies on the basis of the individual circumstances of the case at hand. The phrasing varies slightly between the immigration law of the different countries.\(^{207}\) However, these differences in phrasing are irrelevant to the basic significance of the concept, which speaks to the existence of pressing humanitarian considerations in the case at hand.

The law of some countries in this region affords officials broad discretion in how they interpret the ‘humanitarian considerations’ concept in that it does not offer further guidance on the scope of the concept.\(^{208}\) Yet most laws do provide guidance on its scope in the context of Central America and Mexico by reference to three inter-related factors.\(^{209}\) As can be seen, the national law of a country, or even a single provision of the law, may make reference to more than one of these factors. This is hardly surprising given that the three factors overlap considerably. Moreover, in any event, each merely provides an example of how the underlying concept can be interpreted and applied in practice by the national authorities of the country.

The first factor is that the person is a ‘victim’ of serious adverse circumstances. In Nicaragua, humanitarian visas can be granted, \textit{inter alia}, to persons who ‘suffer violations of their human rights and victims of people-trafficking, in particular women and children’.\(^{210}\) Under Mexican immigration law, for example, stay as a visitor for ‘humanitarian reasons’ can be granted to persons including victims of crimes committed in Mexico.\(^{211}\)

The second is that the person finds herself in ‘vulnerable’ circumstances related to their individual condition. In Costa Rica, a ‘humanitarian reason’ for entry is defined as a ‘circumstance in which a foreign national with a high degree of vulnerability finds herself to the detriment of her condition as a human person’;\(^{212}\) similarly, ‘reasons of humanity’ for stay are defined as ‘a special situation of vulnerability derived from her age, gender, disability, among other conditions’.\(^{213}\) In Mexico, entry for a ‘humanitarian cause’ can be

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\(^{202}\) Cantor, \textit{Law, Policy and Practice}, 37-40.

\(^{203}\) Ibid, 41.

\(^{204}\) Mexico. See Annex D.

\(^{205}\) Costa Rica, Guatemala, Honduras, Mexico, Nicaragua and Panama. See Annex D.

\(^{206}\) Costa Rica, Guatemala, Honduras, Mexico, Nicaragua and Panama. See Annex D.

\(^{207}\) For example: ‘exceptional humanitarian reasons’ (Panama – entry and stay); ‘humanitarian cause’ (Mexico – entry and stay); ‘humanitarian motives’ (Honduras – entry); ‘humanitarian reason’ (Costa Rica - entry); ‘humanitarian reasons’ (Guatemala – entry and stay; Honduras – stay; Mexico – travel and stay; Nicaragua – stay); ‘humanitarian visa’ (Mexico – travel; Nicaragua – entry and stay); ‘reasons of humanity’ (Costa Rica – stay). See Annex D.

\(^{208}\) Honduras – entry and stay; Nicaragua – stay. See Annex D.

\(^{209}\) A fourth is the entry of humanitarian workers to the country if affected by a disaster. See below.


\(^{211}\) Reglamento de la \textit{Ley de Migración} (Mexico) published in Diario Oficial on 28 September 2012, Articles 137 and 141.


\(^{213}\) Reglamento de Extranjería (Costa Rica) Article 135.
granted, *inter alia*, to a person who ‘due to her situation of vulnerability cannot be returned to her country of origin, or cannot continue with her journey’.214 Panama lists five criteria of personal vulnerability that show ‘exceptional humanitarian reasons’, such as being a child who is ‘undocumented or in a vulnerable situation’.215

The third is that the person faces circumstances of serious danger. In Costa Rica and Nicaragua, in some contexts, ‘humanitarian reasons’ is framed by immigration law as referring narrowly to protection against *refoulement* under international human rights law.216 More broadly, in Guatemala, humanitarian reasons can refer, *inter alia*, to ‘reasons of armed conflict’.217 Similarly, in Mexico, ‘humanitarian reasons’ for a humanitarian visa can more broadly include a person finding herself ‘in a situation of danger to her life or integrity owing to… a duly accredited natural disaster’222 or that she is ‘victim of a natural catastrophe’.223

Plainly, each factor can encompass the situation of non-nationals affected by a disaster overseas.220 Indeed, the law of several States explicitly confirms that disasters fall within the scope of the underlying ‘humanitarian considerations’ concept. For instance, in Guatemala, the existence of a ‘natural catastrophe in neighbouring countries, which obliges the persons or group of persons to flee for their lives’ is listed among the ‘humanitarian reasons’ for entry and stay.221 Similarly, for the grant of a humanitarian visa, Mexico defines ‘humanitarian reasons’ as meaning that the non-national seeking to travel to Mexico ‘finds herself in a situation of danger to her life or integrity owing to… a duly accredited natural disaster’222 or that she is ‘victim of a natural catastrophe’.223

Where stay is authorised on the basis of one of these ‘humanitarian considerations’ provisions, this is always on a temporary basis at the outset. The period granted initially ranges from between one year (e.g. Costa Rica) and up to six years (e.g. Panama). Usually the category entitles the recipient to an immigration status of temporary residence, with all of the entitlements to work and services, along with the relevant obligations, specified in the national law of the country concerned.

4.1.3 Regional developments

At the regional level, Central American forums on immigration have a long engagement with movement in the context of disasters. Following Hurricane Mitch in 1998, an Extraordinary Meeting of Central American Presidents (Esquipulas Process) in Comalapa, El Salvador, issued an appeal to States that ‘a general amnesty be conceded to undocumented Central American immigrants who currently reside in different countries, with the objective of avoiding their deportation and, consequentially, greater aggravation of the current situation of our countries’.224

Hurricane Mitch prompted similar interest among States of the Regional Conference on Migration (RCM), which brings together all Central and North American States and

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214 Ley de Migración (Mexico) published in Diario Oficial on 25 May 2011, last reformed 7 June 2013, Article 37(III) (e) and Article 42; Reglamento de la Ley de Migración (Mexico) Article 63(III).


216 See below.

217 Decreto 44-2016: Código de Migración (Guatemala) 12 October 2016, published 18 October 2016, Article 68.

218 Ley de Migración (Mexico) Articles 41, 116(l)(b).

219 Reglamento de la Ley de Migración (Mexico) Article 63(III).

220 Indeed, Panama is reported to have granted temporary residence on this basis of the ‘humanitarian reasons’ category to a number of Haitians following the 2010 earthquake, simply on the basis of the situation caused by the earthquake. See Cantor, *Law, Policy and Practice*, 51-52.

221 Decreto 44-2016: Código de Migración (Guatemala) 12 October 2016, published 18 October 2016, Article 68.

222 Ley de Migración (Mexico) Articles 41, 116(l)(b).

223 Lineamientos Generales para la expedición de visas que emiten las secretarías de Gobernación y de Relaciones Exteriores (Mexico), published in Diario Oficial de la Federación, 11 October 2014, eighteenth general provision, procedure 9, second resolution criteria, insert (a)(ii).

the Dominican Republic. These States also agreed that the RCM was ‘an ideal forum for attending to the migratory aspects derived from this natural disaster’. From 2014, this vision was developed through a series of RCM/Nansen Initiative workshops and meetings that culminated in 2016 with the adoption of an RCM non-binding regional Guide on ‘Protection for Persons moving across Borders in the Context of Disasters’.

This regional Guide provides detailed guidance to RCM States on how to utilise existing provisions of national immigration law to address the protection of non-nationals affected by a disaster in their country of origin or the country in which they are living or through which they are transiting. The approach and definitions adopted largely reflect those contained in the 2015 Nansen Initiative Protection Agenda, which was in fact largely derived from practice in the Americas. In addition, the framework provides guidance on mechanisms and principles of bilateral cooperation and multilateral cooperation through the RCM in response to cross-border displacement in the context of disasters linked to natural hazards. This has been built into practice by some RCM member States.

4.2 INTERNATIONAL PROTECTION LAW

The sovereign discretion of States to regulate their immigration affairs through the creation and application of national law and policy is circumscribed by each State’s international commitments. At the international level, the law of international protection — comprised by international refugee law and international human rights law — represents one important parameter in this regard. The analysis thus examines national refugee law (section 4.2.1) and other forms of complementary protection in national law (section 4.2.2). In particular, it assesses the extent to which such law is applied, or might be applied, by States in the region of Central America and Mexico to provide protection to non-nationals affected by a disaster in their home country based on their individual circumstances.

4.2.1 Refugee law

All Central American States and Mexico are parties to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. They have all incorporated the amended Convention refugee definition and status determination procedures into their national law. In general, Central American States do not treat persons fleeing from disasters linked to natural hazards as Convention refugees. Nonetheless, in the aftermath of the 2010 earthquake in Haiti, a small number of Haitian students who applied for asylum were recognised as refugees by Panama, apparently due to the risks in return deriving from the ensuing chaos in Haiti rather than on the basis of the disaster itself.

Six of the eight States in this region (not Panama) have also incorporated expressly into national law an expanded refugee definition based on that recommended by the 1984 Cartagena Declaration. Moreover, in Costa Rica, national legislation does not refer expressly to the definition but the authorities have been ordered by the courts to apply it as a matter of national law. However, of the five situational elements in the Cartagena definition, national law in Belize does not refer to ‘generalised violence’ or ‘massive...
violation of human rights’.234 Moreover, Mexico interprets the ‘massive violations of human rights’ element as requiring a ‘determined policy’ and that of ‘other circumstances which have seriously disturbed public order’ as applicable only to ‘acts attributable to man’.235 Yet, prior to its adoption of this interpretation, Mexico recognised a few asylum claims from Haitians fleeing increased insecurity unleashed by the 2010 earthquake under the latter element.236

4.2.2 Other forms of international protection
In Central America and Mexico, within the UN human rights system, all eight States are parties to the ICCPR237 and to the CAT. At the regional level, within the Inter-American system, all are OAS member States (and thus bound by the ADHR) and all except for Belize are parties to the ACHR and have accepted the jurisdiction of the Inter-American Court.238 A strong framework of human rights treaty law thus exists in Central America and Mexico, with Belize’s non-ratification of the ACHR and refusal to accept the jurisdiction of relevant human rights treaty bodies as the sole exception to this trend.

A number of States in the region of Central America and Mexico make provision in their national laws for human rights-based protection against refoulement. Several prohibit return expressly on the basis of a threat to life or a risk of being submitted to torture (Costa Rica, Guatemala, Mexico), with some also prohibiting return to a risk of cruel, inhuman or degrading treatment or punishment (Guatemala, Mexico).239 In Mexico, beneficiaries receive a specific ‘complementary protection’ status in national law, although access to this protection is subject to exclusion clauses derived from those in refugee law.240 To the extent that the circumstances engendered by disasters create such risks in the country of origin, such provisions may offer a source of protection for affected persons fleeing to one of these countries.

Other national law provides for protection against removal for humanitarian reasons, where this is framed specifically ‘in conformity with international human rights instruments’ (Costa Rica, Nicaragua), or due to a ‘well-founded fear of violations of human and citizenship rights for political reasons’ (Honduras).241 However, given the interpretation of the non-refoulement rule in international human rights law,242 it is not clear that such provisions offer non-nationals affected by disasters in their own country any wider protection against removal than the more specific provisions above. Similar questions about the scope of ‘international protection’ can be posed for the Costa Rican refugee law provision that allows temporary protection to be offered in the event of a ‘mass influx… by persons needing international protection’.243

4.3 DISASTER RISK MANAGEMENT LAW
All States in the region of Central America and Mexico have adopted national laws on disaster risk management, albeit that the laws refer to this concept using a range of different terminology. In relation to the two case study countries, Costa Rica (section 4.3.1) and Mexico (section 4.3.2), the study analyses the extent to which such national laws and policies address issues of displacement or movement of persons, especially in the cross-border context.
4.3.1 Costa Rica

National law on disaster management in Costa Rica distinguishes between disasters and emergencies: disasters are defined as a ‘situation or process… that, on encountering suitable conditions of vulnerability in a community, causes intense alterations in the normal functioning of society…’; emergencies, by contrast, are a ‘[s]tate of crisis caused by the disaster and based in the scale of the damages and losses’. The Executive is given the power to declare a State of Emergency in any part of the national territory. There is no requirement that national capacity be overwhelmed.

The only reference to issues of displacement or migration in national law concerns evacuation. In the ‘response phase’, it provides the Executive with the power to ‘take whatever measures it considers necessary to evacuate persons and goods’. Nonetheless, official documents obliquely recognise the need to consider issues of displacement and mobility when integrating gender considerations in disaster response and reconstruction. In updating protocols and procedures, the Subsistema de Preparativos y Respuesta is also instructed to take account of the different needs of population groups, including migrants.

Costa Rica has a procedure for soliciting international assistance through its Foreign Ministry once it has been confirmed that ‘national capacity for response has been overwhelmed’. The aid required is to be specified by Costa Rica, which may also apparently treat entry by assisting actors on an exceptional basis outside the normal framework of national and international laws. However, the legal basis in national law for these actions is not specified.

Moreover, Costa Rica and Panama have broken new ground by developing a set of bilateral mechanisms and policies to manage displacement and disaster risks. These include a set of draft Standard Operating Procedures (SOPs) for their respective disaster response systems to address cross-border displacement in the context of disasters. The SOPs are based heavily on the 2016 RCM Protection Guide. A simulation exercise to put the SOPs into practice was also carried out jointly by the two countries with the involvement of PDD in 2017.

4.3.2 Mexico

National law on disaster management in Mexico defines a ‘disaster’ as a result of ‘the occurrence of one or more severe or extreme agents of disturbance, whether linked or not, that, taking place in a period and in a determined zone, cause damages and, due to their scale, exceed the response capacity of the affected community’. At the Federal level, the Executive has the responsibility to declare emergencies or disasters.

The law specifies that the civil protection authorities have the duty to control evacuation routes and coordinate and supervise civil protection brigades in evacuation of persons. The authorities have the duty to control evacuation routes and coordinate and supervise civil protection brigades in evacuation of persons.

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245 Ibid, Article 4.
246 Ibid, Article 29.
247 Ibid, Articles 30(a) and 34.
254 See 4.1.3 above.
256 Ley General de Protección Civil (Mexico) 19 April 2012, published in the Diario Oficial de la Federación on 6 June 2012, reformed in Diario Oficial on 23 June 2017, Article 2(XVI).
257 Ibid, Article 7(IV).
258 Ibid, Articles 55 and 75.
It defines an ‘evacuee’ as a person who ‘facing the possibility or certainty of an emergency or disaster, leaves her place of usual residence in a preventative and provisional way to guarantee her safety and survival’. The law also specifies that the federal government has the responsibility to attend to the ‘negative effects caused by extreme climatological phenomena in the rural sector’. Although not explicit, this engages with movement away from rural areas in the context of extreme climate conditions.

In the aftermath of disasters, Mexican migration law allows the entry of non-nationals to Mexico for ‘humanitarian reasons’ in order to ‘support aid or rescue actions in emergency or disaster situations in the national territory’. Entry as a visitor can also be granted under migration law for persons invited by federal, state or municipal authorities to ‘support aid or rescue actions in emergency or disaster situations in the national territory’, including those who are members of organisations not affiliated with a State.

The 1990 bilateral accord with Guatemala on disaster response does not specifically address the protocols to be applied in the event of cross-border population displacement. Nonetheless, recently, Mexico has reportedly been developing bilateral discussions with Guatemala in the framework of this accord to explore cooperation in the response to this contingency.

### 4.4 CLIMATE LAW AND POLICY

Some States in the region of Central America and Mexico have adopted national laws on climate change. In relation to the two case study countries, Costa Rica (section 4.4.1) and Mexico (section 4.4.2), the study analyses the extent to which such national laws and policies address issues of displacement or movement of persons, especially in the cross-border context.

#### 4.4.1 Costa Rica

In 2018, Costa Rica adopted a National Adaptation Plan under the UNFCCC process. Moreover, previous national policy on climate change makes no mention of issues of migration or displacement.

#### 4.4.2 Mexico

In 2009, within the UNFCCC framework, an official document by Mexico identified as a need for research to evaluate ‘mass migrations scenarios under conditions of climate change’. Subsequent national policy consultations indicated not only that land degradation and other impacts of climate change might incentivise migration but also that such migration would swell irregular settlements in which many migrants lived in conditions of particular vulnerability. In 2012, the need to take the impact of climate change on rural to urban migration in planning and development instruments was highlighted in Mexico’s most recent submission to the UNFCCC process, along with a repeated call for more research on migration due to climate phenomena.

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259 Ibid, Article 2(XIX).

260 Ibid, Article 91. This replicates similar provisions to provide support by those in the rural sector affected by such phenomenon in the Ley de Desarrollo Rural Sustentable (Mexico) 13 November 2001, published in the Diario Oficial de la Federación on 7 December 2001, especially Chapter XII.

261 Reglamento de la Ley de Migración (Mexico) 27 September 2012, published in the Diario Oficial de la Federación on 28 September 2012, Article 63(I1).

262 Ibid, Articles 104(V)(d) and 116.


264 See, for example, Costa Rica, Plan de Acción de la Estrategia Nacional de Cambio Climático (2012).


266 Instituto Nacional de Ecología y Cambio Climático (Mexico), Adaptaón al Cambio Climático en México; vision, elementos y criterios para la toma de decisiones (2012) 71, 75, 77 and 168-169.

267 Mexico, Quinta Comunicación Nacional (2012) 146-147.

268 Ibid, 395. Note, though, that the issues of displacement and migration are not addressed in Mexico’s Intended Nationally Determined Contribution (2015) under the UNFCCC framework.
In 2012, Mexico also adopted a national law on climate change.\textsuperscript{269} Initially, this did not refer to issues of movement. However, two relevant provisions were added to its ‘adaptation’ chapter by a 2016 amendment. The first of these provisions requires authorities at both federal and municipal levels to carry out adaptation actions by elaborating policy and programmes on, \textit{inter alia}, the ‘internal displacement of persons caused by phenomena linked with climate change’.\textsuperscript{270} The second provision requires the implementation of adaptation actions by using the information contained in the ‘risk mappings’ to ‘prevent and attend to the possible internal displacement of persons caused by phenomena linked with climate change’.\textsuperscript{271}

In the amended national law on climate change, the exclusive focus is on internal displacement. Nonetheless, it represents a leading example of how law and policy can link environmental issues, including climate change, with concerns surrounding particular forms of mobility and the challenges that this produces.

4.5

OBSERVATIONS AND RECOMMENDATIONS

In light of the 2014 Brazil Declaration and Plan of Action aim of supporting the adoption of national and regional measures, tools and guidelines to address the challenge of cross-border disaster displacement, relevant points of national law, policy and practice to highlight in Central America and Mexico include:

- This is a leading region in terms of offering a national level response to persons displaced in the context of a disaster or the impact of climate change in their own country
- Short-term travel and entry to States in this region as visitors is largely visa-free (except Mexico) for nationals of Central American (and Mexican), South American and Caribbean countries, except for Cuba, Dominican Republic and Haiti. Among the CA-4 States, access to each other’s territory is particularly straightforward due to a free movement arrangement.
- For longer-term stay, most States apply immigration law favourably to non-nationals affected by a disaster overseas, whether through using immigration discretion to flexibly apply regular migration categories or exceptional migration categories. In several, the law specifies natural disasters as a ground for the application of the latter.
- The application of immigration law by these States in disaster contexts is facilitated by a regionally-harmonised response strategy set out in the RCM Guide, which also helps to clarify the scope of ‘humanitarian circumstances’ in contexts of disaster and climate change. Yet some need a clearer conception in national law of how human rights duties may limit ‘negative’ discretion in these contexts to deny temporary entry or stay to an affected individual.
- Many of these States offer a period of temporary residence, along with pertinent rights, to non-nationals affected by a disaster in their home country. Such measures should be consolidated as durable solutions, particularly in the transition to other forms of status and developing complementary pathways to protection, as per the Brazil Plan of Action.\textsuperscript{272}
- In the two case study countries, DRM and climate change frameworks at the national level lack reference to international movement, which needs to be added. Nonetheless, the Costa Rica-Panama bilateral mechanism for cross-border disaster-displacement is a very useful model of integrated disaster risk management response and contingency planning for and should be considered by other countries in this region and others.

\textsuperscript{269} Ley General de Cambio Climático (Mexico) 19 April 2012, published in Diario Oficial de la Federación on 6 June 2012, last amended on 19 January 2018.

\textsuperscript{270} Article 28(VII).

\textsuperscript{271} Article 30(I).

\textsuperscript{272} Chapter Three.
South America is comprised of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela as well as the non-sovereign territory of French Guiana. Across these thirteen countries, it is a region that experiences certain kinds of international movement in the context of disasters linked to natural hazards and climate change and receives many of the continuing flows from Haiti.273 However, it is also a region in which many countries possess relatively well-developed and liberal law and policy on disasters and on immigration.

The 2014 Brazil Declaration and Plan of Action call for the development of national ‘measures, tools and guidelines’ to address cross-border disaster displacement.274 Against this backdrop, this section reviews how the national frameworks of the countries of South America are used, or could be used, for the protection of affected persons. It focuses on national law, policy and practice in four fields: immigration law – including regular migration categories and exceptional migration categories (section 5.1); international protection law – including refugee law and complementary protection law (section 5.2); disaster risk management law (section 5.3); and climate law (section 5.4).

5.1 IMMIGRATION LAW

Immigration law in the Spanish-speaking countries in South America is rooted in a civil law system derived from continental Europe. Most now have sophisticated and ‘modern’ liberal immigration systems. The same is also true now of Portuguese-speaking Brazil, which is a civil law country that overhauled its immigration laws in 2017. In the laws of the Spanish- and Portuguese-speaking countries, there is generally a strong emphasis on the dignity and human rights of migrants.

The exceptions are three countries on the north coast of South America with immigration systems more closely related to those of Caribbean countries than to those in South America. Suriname is a former Dutch colony with a civil law system and immigration laws based on the pre-independence law of the Netherlands in the territory.275 Guyana is an ‘overseas department’ of France (like Guadeloupe and Martinique in the Caribbean) and French law, including immigration law, usually applies there directly.277

5.1.1 Regular migration categories

National immigration law usually establishes regular migration categories for such purposes as tourism, visiting, studies, employment and family. Such regular migration categories may sometimes offer a basis for travel, entry or stay in a country for persons from a country affected by a disaster linked to natural hazards or climate change. This section examines the provisions relating to regular migration categories in the national law of South American countries for travel for short periods as a visitor (section 5.1.1.1) and for travel and stay for longer periods (section 5.1.1.2).

5.1.1.1 Travel and entry for short periods

For movement within South America, most Spanish- or Portuguese-speaking States in South America allow visa-free travel, entry and stay for periods of at least 30 days as visitors or tourists by nationals of other Spanish- or Portuguese-speaking States in South America and for persons from Guyana.278 A number of South American countries maintain visa requirements both for nationals of Guyana and Suriname.279 On the Caribbean coast, Guiana, Guyana and Suriname require visas for nationals of a few South American States. Whilst Suriname appears to require visas for

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273 See section 2.4 above.
274 See section 1.1 above.
275 See, for comparison, section 6.1 and 6.1.2.4.
276 See, for comparison, section 6.1 and 6.1.2.1.
277 See section 6.1 and 6.1.2.5.
278 For relevant details, see Annex C.
279 They include Bolivia, Chile, Paraguay, Venezuela and Guiana (and Uruguay for nationals of Suriname).
many South American nationalities, nationals of those countries that do not benefit from a visa exemption can in fact straightforwardly acquire a visa for entry on arrival at its borders.

For travel into the region by nationals of Mexico or Central American or Caribbean countries, the majority of South American States maintain visa requirements for nationals of Cuba, the Dominican Republic and Haiti.\footnote{Nationals of the Dominican Republic do not need a visa to travel to Argentina, Chile and Ecuador. In Bolivia and Suriname, nationals of Cuba, the Dominican Republic and Haiti (Bolivia only) can straightforwardly apply for an entry visa on arrival.} However, South America is relatively open to travel as visitors or tourists by nationals of other Caribbean States and territories, who usually require a visa only for a couple of South American States. Indeed, many South American States maintain visa requirements only for one Caribbean nationality or for none at all.\footnote{See, for example, Brazil, Chile, Colombia, Ecuador, Guyana and Peru. Moreover, both Bolivia and Suriname are relatively open in that although they require visas for a number of Caribbean nationalities, nationals of those countries that do not benefit from a visa exemption can in fact straightforwardly acquire a visa for entry on arrival at its borders.} Paraguay is an outlier in that it maintains visa requirements for nationals of almost all Caribbean countries.\footnote{Venezuela also imposes visa requirements for travel by nationals of several Caribbean countries.} South America is also relatively open in this regard to nationals of Central American States, with most maintaining visa requirements only for one Caribbean nationality or for none at all.\footnote{See, for example, Argentina, Brazil, Chile, Colombia, Ecuador and Uruguay. Moreover, both Bolivia and Suriname are relatively open in that although they require visas for a number of Central American nationalities, nationals of those countries that do not benefit from a visa exemption can in fact straightforwardly acquire a visa for entry on arrival at its borders.}

These visa arrangements for travel and entry for short periods are not for the purpose of providing protection to non-nationals fleeing a disaster in their own country. Indeed, they allow travel and entry purely on the basis of nationality rather than individual circumstances. Nonetheless, in practice, the existence of a visa waiver might be used by persons from a disaster-affected country as a basis to travel and stay temporarily in another country. Conversely, where visa requirements are maintained, this may represent an additional obstacle to persons seeking to flee that country. In general, except for Paraguay, South American countries allow visa free travel by nationals of most other countries in South America, Central America, Mexico and the Caribbean, although most require a visa for nationals of Cuba, the Dominican Republic and Haiti, as well as Guyana and Suriname.

### 5.1.1.2 Travel and stay for longer periods

Where persons affected by a disaster in their country of nationality have a sufficient link with the host State to justify travel and/or stay on the basis of a regular migration category stipulated in that country’s national immigration law, this will provide a basis for regular movement in this context. In some South American countries, such categories can be applied flexibly on the basis of immigration discretion. For instance, Colombia reportedly assisted a small number of Haitians arriving after the 2010 earthquake to regularise their status through flexible assimilation to work and student migration categories.\footnote{Cantor, Law, Policy and Practice, 33.}

In addition, such movement may be facilitated by the existence of regional integration arrangements of which both the State of origin and the host State are members. For ‘citizens’ of such supranational entities, principles of free movement often confer on such persons a right to travel to, enter and stay in another member State for reasons such as work or family. Thus, within the Common Market of the South (MERCOSUR),\footnote{Mercado Común del Sur – MERCOSUR.} a ‘MERCOSUR citizenship’ framework has been proposed but not yet implemented.\footnote{MERCOSUR, Estatuto de la Ciudadanía del MERCOSUR: Plan de Acción (2010) Boletín Oficial, 28 April 2011.} In the meantime, a MERCOSUR residence agreement establishes a wide range of rights for migrants under regular migration categories from seven MERCOSUR member and associated States, including freedom of entry, routes to temporary residence and the possibility of transferring to
permanent residence after a period of time.\textsuperscript{287} As such, citizens fleeing a disaster in one of those States should have relatively unimpeded access to the territory of other member States.

5.1.2 Exceptional migration categories

National immigration law often also regulates ‘special cases’ that fall outside the established regular migration categories. For persons affected by a disaster in their home country but who are unable to travel to, enter or stay in the host country on some regular basis (e.g. due to family ties etc.), any national law provisions relating to such exceptional migration categories may be pertinent to their situation. This analysis distinguishes two approaches based on whether the national immigration law deals with such special cases through a broad immigration discretion (section 5.1.2.1) or through a provision that is oriented more specifically towards humanitarian considerations (section 5.1.2.2). These provisions are often based on individual circumstances rather than nationality.

5.1.2.1 Broad discretion

On the entry and stay of non-nationals outside the regular migration categories, there are six States and one territory in South America where the issue is left unaddressed or relatively unregulated.

At one end of the spectrum, it appears that some States simply do not have any immigration provision to address cases outside the regular migration categories. For instance, this is the case for Venezuela.\textsuperscript{288} Suriname also appears to lack any immigration law provision to address such cases,\textsuperscript{289} except in the refugee context.\textsuperscript{290} In Guiana, applicable French law likewise seems to deal with all cases involving humanitarian considerations under the provisions for international protection.\textsuperscript{291} The entry or stay for persons who do not fall within the regular migration categories would thus seem to depend on the ability of officials to exercise an inherent power of discretion in immigration affairs.\textsuperscript{292}

By contrast, in Guyana, immigration law expressly confers a broad general discretionary power on the Minister to, by order, exempt ‘from all or any of the provisions of this Act, any alien, or class of aliens,’\textsuperscript{293} a power that could be used to grant entry or stay to a person. Similar provisions are found in the legislation of many other former British colonies in the Caribbean. In Paraguay, the Director General is likewise attributed with a general discretionary power to ‘carry out other acts necessary for the highest compliance with the ends and objectives of the General Directorate of Migrations’.\textsuperscript{294} A new Paraguayan immigration law, under discussion by the legislature since 2016, expressly aims to address a range of new topics including ‘displacements caused by natural disasters’.\textsuperscript{295}

By contrast, at the other end of the spectrum, immigration law in Chile includes a provision that directly confers on the Ministry of the Interior and the Ministry of External Relations a discretionary power to grant temporary residence to non-nationals who do not fit within the regular migration categories where this may be ‘useful or advantageous’.\textsuperscript{296} This appears to have been used by the Chilean authorities...

\begin{footnotes}
\footnote{287}{See, for example, MERCOSUR, Acuerdo Sobre Residencia Para Nacionales Estados Partes MERCOSUR (2014) Registro Oficial 209, 21 March 2014.}
\footnote{288}{See further below.}
\footnote{289}{Aliens Act concerning the Admission and Expulsion of Aliens (Suriname) 1991, entry into force 16 January 1992. It has not been possible to locate a full and up-to-date version of the Act.}
\footnote{290}{See below}
\footnote{291}{Note, however, that a recently adopted French immigration law provision requires the State to elaborate guidelines for taking ‘climate migrations’ into account. See Assemblée Nationale, Project de loi pour une immigration maîtrisée, un droit d’asile effectif et une intégration réussie (France) 22 April 2018, Article 42.}
\footnote{292}{Unlike Guadeloupe and Martinique, which temporarily suspended removals of Haitians following the earthquake of 2010, Guiana apparently closed its border to Haitians. See P. Weiss Fagen, Receiving Haitian Migrants in the context of the 2010 Earthquake (Nansen Initiative 2013) 14.}
\footnote{293}{Aliens (Immigration and Registration) Act (Guyana), 1947, revised 2012, Chapter 14:03, Section 11.}
\footnote{294}{Ley No. 978 (Paraguay) 27 June 1996, Article 146(6).}
\footnote{296}{Decreto No. 597: Aprueba Nuevo Reglamento de Extranjería (Chile) 14 June 1984, published 24 November 1984, Articles 49-50.}
\end{footnotes}
the regular migration categories, disclose ‘humanitarian’ considerations. Crucially, most of these national laws have been adopted since 2010.301

Finally, a broad inherent discretion in immigration law has been used by South American States to regularise the immigration situation of migrants affected by a disaster in their home country. Thus, following the 2010 earthquake in Haiti, Ecuador adopted a Presidential Decree that implemented a ‘regularisation process’ for Haitians in Ecuador.299 In Venezuela, immigration law appears to lack a provision to address such cases. Even so, following the 2010 earthquake in Haiti, the Venezuelan immigration authorities apparently exercised inherent faculties of discretion to implement a ‘regularisation operation’ that benefitted Haitians irregularly in Venezuela at that point.300

5.1.2.2 Humanitarian provision

Many of the Spanish- or Portuguese-speaking South American States have adopted immigration law provisions that specially recognise and regulate the situation of non-nationals whose cases, whilst falling outside the regular migration categories, disclose ‘humanitarian’ considerations. Crucially, most of these national laws have been adopted since 2010.301

The pertinent provision (or provisions) regulates one or more aspects of the immigration process, i.e. travel to the country,302 entry to the country303 or stay in the country.304 Regardless of the national context, though, the provision almost always applies on the basis of the individual circumstances of the case at hand. The exception is Brazil, where ‘humanitarian reception’ appears to be granted purely on the basis of conditions in the country of origin, without reference to the particular circumstances of the individual.305 The phrasing varies slightly between the immigration law of the different countries.306 However, these differences in phrasing are irrelevant to the basic significance of the concept, which speaks to the existence of pressing humanitarian considerations in the case at hand.

The law of some South American countries affords officials broad discretion in how they interpret the ‘humanitarian considerations’ concept in that it does not offer further guidance on the scope of the concept.307 Yet most laws do provide guidance on its scope in the South American context by reference to three main inter-related factors.308 As can be seen, the national law of a country, or even a single provision of the law, may make reference to more than one of these factors. This is hardly surprising given that the three factors overlap considerably. Moreover, in any event,

302 Bolivia, Brazil, Peru. See Annex D.
303 Argentina, Bolivia, Brazil, Ecuador, Peru, Uruguay. See Annex D.
304 Argentina, Bolivia, Brazil, Ecuador, Peru, Uruguay. See Annex D.
305 Lei No. 13445 (Brazil) 24 May 2017, Article 30; Decreto No. 9199 (Brazil) 20 November 2017, Article 145. The same may also be true for the provisions relating to transitory residence for ‘humanitarian reasons’ in Argentina (Ley No. 25871: Política Migratoria Argentina (Argentina) 17 December 2003, published in Boletín Oficial, 21 January 2004, Article 24(h); Reglamentación de la Ley de Migraciones (Argentina) 3 May 2010, published in Boletín Oficial No. 31898, 6 May 2010, Article 24(h)).
306 For instance: ‘exceptional reasons of a humanitarian character’ (Argentina, Ecuador; Uruguay); ‘humanitarian reasons’ (Argentina, Bolivia, Ecuador); ‘humanitarian reception’ (Brazil); ‘humanitarian residence’ (Peru); ‘humanitarian visa’ (Bolivia, Ecuador); ‘temporary humanitarian stay’ (Bolivia); See Annex D.
307 Argentina – entry; Uruguay – entry and stay. See Annex D.
308 A fourth is the entry of humanitarian workers to the country if affected by a disaster (see below). The concept sometimes also covers the situation of refugees as a basis for stay (e.g. Argentina, Ecuador). See Annex D.
each merely provides an example of how the underlying concept can be interpreted and applied in practice by the national authorities of the country.

The first factor is that the person is a ‘victim’ of serious adverse circumstances. In Argentina, temporary residence for ‘humanitarian reasons’ can be granted to persons ‘that have been victims of trafficking or other modes of slave exploitation and/or victims of the illicit smuggling of migrants’. 309 Similarly, in Bolivia, ‘humanitarian reasons’ for travel, entry or stay can include being a ‘victim of trafficking and smuggling of persons or other modes of exploitation’. 310 In Peru, ‘humanitarian residence’ can be authorised for a person who ‘requires protection due to a serious threat or act violating or affecting his fundamental rights’. 311

The second is that the person finds herself in ‘vulnerable’ circumstances related to their individual condition. In Argentina, temporary residence for ‘humanitarian reasons’ can be granted to persons who ‘invoke health reasons that imply a risk of death if they were obliged to return to their country of origin for lack of medical treatment’. 312 In Peru, ‘humanitarian residence’ can be authorised for a person who ‘would be in a situation of great vulnerability… if he left the territory of Peru’. 313

The third is that the person faces circumstances of serious danger. In some provisions, this is framed by reference to human rights law and the principle of non-refoulement. In Argentina, temporary residence for ‘humanitarian reasons’ can be granted to persons, inter alia, who ‘temporarily cannot return to their countries of origin by reason of the prevailing humanitarian conditions’. 318 In Brazil, ‘humanitarian reception’ can be granted to a person from a country in a situation of, inter alia, ‘a serious or imminent institutional instability [or] armed conflict’. 319 In Peru, ‘humanitarian residence’ as a basis for travel, entry and stay can be authorised for ‘persons who are outside the national territory in exceptional situations of internationally-recognised humanitarian crisis and who seek to come to Peru and obtain protection’. 320

Plainly, each factor can encompass the situation of non-nationals fleeing a disaster. For instance, in 2017, the relevant ‘humanitarian’ provision in the national immigration law of Argentina 321

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309 Ley No. 25871 (Argentina) Article 23(m); Reglamentación de la Ley de Migraciones (Argentina) Article 23(m)(3).
310 Ley No. 370: Ley de Migración (Bolivia) 8 May 2013, Article 30(4); Decreto Supremo No. 1923: Reglamento de la Ley de Migración (Bolivia) 13 March 2014, Article 13(I) (e)(2).
311 Decreto Legislativo No. 1350 (Peru) published 7 January 2017, Article 29(2)(k); Decreto Supremo 007-2017-IN (Peru) 24 March 2017, Article 91.
312 Ley No. 25871 (Argentina) Article 23(m); Reglamentación de la Ley de Migraciones (Argentina) Article 23(m)(4).
313 Decreto Legislativo No. 1350 (Peru) Article 29(2)(k).
314 Ley No. 25871 (Argentina) Article 23(m); Reglamentación de la Ley de Migraciones (Argentina) Article 23(m)(1).
315 Ley No. 370 (Bolivia) Article 21(I)(6); Reglamento de la Ley de Migración (Bolivia) Article 9(I)(d)(1).
316 Decreto Legislativo No. 1350 (Peru) Article 29(2)(k).
317 Lei No. 13445 (Brazil) Article 30; Decreto No. 9199 (Brazil) Article 145.
318 Ley No. 25871 (Argentina) Article 24(h); Reglamentación de la Ley de Migraciones (Argentina) Article 24(h).
319 Lei No. 13445 (Brazil) Article 30; Decreto No. 9199 (Brazil) Article 145.
320 Decreto Legislativo No. 1350 (Peru) Article 29(2)(k).
321 Ley No. 25871 (Argentina), Article 23(m); Reglamentación de la Ley de Migraciones (Argentina) Article 23(m).
was used effectively to create a regularisation programme on a group basis by providing six months of temporary residence to Haitians who had entered Argentina as tourists before 1 March 2017 and could not regularise their situation under a regular migration category. The decree giving effect to this programme states that the broader legal provision applies on the basis of ‘natural disasters and their effects’, specifying the 2010 earthquake in Haiti and the 2016 Hurricane Matthew.

In addition, the law of several South American States explicitly confirms that disasters fall within the scope of the underlying ‘humanitarian considerations’ concept. For instance, in Argentina, transitory residence for ‘humanitarian reasons’ can be granted to persons, inter alia, who ‘temporarily cannot return to their countries of origin… due to the consequences generated by natural or man-made environmental disasters’. In Brazil, ‘humanitarian reception’ can be authorised for a person from ‘any country in a situation of… major calamity [or] environmental disaster’. In Ecuador, ‘persons in protection for humanitarian reasons’ is defined by reference to ‘the existence of exceptional reasons of a humanitarian nature as a victim of natural or environmental disasters’. In Peru, the law confirms that ‘humanitarian residence’ can be authorised for ‘persons who have migrated for reasons of natural and environmental disasters’.

In this regard, Bolivia has also charged its National Council on Migration to ‘coordinate public policies to make viable, as necessary, the admission of populations displaced by climate effects, when a risk or threat to their lives may exist, where those are due to natural causes or environmental, nuclear [or] chemical disasters or hunger’. Along these lines, the law provides a unique definition of ‘Climate Migrants’ as ‘[g]roups of persons who are forced to displaced from one State to another due to climate effects, when a risk or threat to their life may exist, whether due to natural causes, environmental, nuclear [or] chemical disasters or hunger’.

Where stay is authorised on the basis of one of these ‘humanitarian considerations’ provisions, this is always on a temporary basis at the outset. The period granted initially ranges from between six months (e.g. Argentina, Peru) and up to two years (e.g. Argentina, Brazil, Ecuador), usually on a renewable basis. In most cases, the category entitles the recipient to an immigration status of temporary residence, with all of the entitlements to work and services, along with the relevant obligations, specified in the national law of the country concerned.

5.1.3 Regional development

At the regional level, South American forums on immigration showed concern for movement in the context of disasters in the aftermath of the 2010 Haiti earthquake. For instance, the Union of South-American Nations (UNASUR) adopted a decision to ‘[e]xhort those Member States that still have not applied special processes of migratory regularisation for the benefit of Haitian citizens to do so’. From 2015, the South-American Conference on Migration (CSM) has included reference to the theme of migration, environment and climate change in its annual declarations. Following a workshop with PDD on cross-border displacement in the context of disasters and climate change, the most recent CSM annual declaration notes that its members...
will ‘continue working on the principles that emerged from the workshop in order to proceed in preparing [a] guide’, which will presumably be similar to that adopted by the CRM.

5.2

INTERNATIONAL PROTECTION LAW

The sovereign discretion of States to regulate their immigration affairs through the creation and application of national law and policy is circumscribed by each State’s international commitments. At the international level, the law of international protection – comprised by international refugee law and international human rights law – represents one important parameter in this regard. The analysis thus examines national refugee law (section 4.2.1) and other forms of complementary protection in national law (section 4.2.2). In particular, it assesses the extent to which such law is applied, or might be applied, by South American States to provide protection to non-nationals affected by a disaster in their home country based on their individual circumstances.

5.2.1 Refugee law

All South American States except Guyana and Venezuela are parties to the 1951 Convention relating to the Status of Refugees. All South American States except Guyana are parties to the 1967 Protocol and each has incorporated the amended Convention refugee definition and created status determination procedures. Guiana, as a non-sovereign territory, applies French refugee law. In general, South American countries do not treat persons fleeing disasters linked to natural hazards as Convention refugees. Nonetheless, some Haitians applicants were recognised as refugees by Peru based on their well-founded fear of persecution by non-State actors that arose from the vacuum of governmental authority after the 2010 earthquake in Haiti, rather than on the basis of the disaster itself.

Nine South American States (not Guyana, Suriname or Venezuela) have also incorporated into their national law an expanded refugee definition based on that recommended by the 1984 Cartagena Declaration. However, of the five situational elements in the Cartagena definition, national law in Peru does not refer to ‘generalised violence’. By contrast, national law in Brazil refers only to the element of ‘massive violation of human rights’ which it articulates as ‘serious and generalised violation of human rights’. Ecuador recognised a small number of Haitians as refugees under the expanded definition situational element of ‘other circumstances which have seriously disturbed public order’ due to the breakdown in law and order generated by the 2010 earthquake in Haiti.

5.2.2 Other forms of international protection

In South America, within the UN human rights system, all twelve States are parties to the ICCPR and its Optional Protocol. All except Suriname are also parties to the CAT. At the regional level, within the Inter-American system, all are OAS member States (and thus bound by the ADHR). Except for Guyana and Venezuela, all are parties to the ACHR and have accepted the jurisdiction of the Inter-American Court. For Guiana, as a non-sovereign territory, the linked State of France is party to the ICCPR and CAT; it is also an EU member State and party to the ECHR. As such, the ECHR also applies to Guiana, which is subject to the jurisdiction of the European Court of Human Rights.

A number of South American States make provision in their national laws for human

335 CSM, Declaración de Montevideo (2017).
336 See section 4.1.3.
338 Cantor, Law, Policy and Practice, 17.
341 Cantor, Law, Policy and Practice, 18.
343 For the declarations of France, see https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=3IRX4L4P.
rights-based protection against *refoulement*. Refugee law in Chile and Colombia prohibits return of an asylum-seeker ‘where there exist well-founded reasons to believe that she could be subjected to torture or to cruel, inhuman or degrading treatment or punishment’.

Constitutional law also obliges Colombia to consider relevant rules of international law on the protection of migrants and evaluate ‘the risks that [migrants] run if they are expelled from [Colombia] and the concrete situation that they would face in [the other country] if they are returned’. National law on ‘humanitarian considerations’ in several other countries also encompasses the international law principle of *non-refoulement*. To the extent that the circumstances engendered by disasters create such risks, these provisions may offer a source of complementary protection for affected persons fleeing a disaster.

In the non-sovereign territory of Guiana, Article 3 ECHR protection against *refoulement* is applicable and subsidiary protection under the EU Qualification Directive can be granted. In practice, no firm indication exists that France sees human rights protection against *refoulement* as triggered by non-nationals fleeing a disaster overseas. Even so, in the French Antilles and Guiana, over half of all Haitian asylum claims between 2010 and 2015 were given subsidiary protection; between 2010 and 2012, this was principally due to economic, social and security consequences of the earthquake.

The refugee law of several States in South America also has complementary international protection provisions that are not expressly linked to *non-refoulement* standards under human rights law but which may be applied to the benefit of asylum-seekers who are not recognised as refugees. In Chile, refugee law prohibits return where ‘the security of the person would be in danger’. In Suriname, an official has the discretion to grant a residence permit to a rejected asylum-seeker provided that ‘he cannot in the light of the social and political situation in his country of origin and his personal circumstances reasonably be required to return to that country’.

Finally, refugee law in Bolivia, Peru and Venezuela provides for ‘temporary protection’ to be granted in mass influx situations by persons seeking ‘(international) protection’, a concept that may extend the scope of complementary protection beyond existing rules of international refugee and human rights law.

### 5.3 DISASTER RISK MANAGEMENT LAW

All States in South America have adopted national laws on disaster risk management. Most of the laws are relatively well-developed, with a few exceptions (such as Guyana). In terms of mobility in the context of disasters, the national laws of most South American countries are reported to focus principally on internal relocation and evacuation. In relation to the two case study countries, Brazil (section 5.3.1) and Ecuador (section 5.3.2), the study analyses the extent to which such national laws and policies address issues of displacement or

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344 Ley 20430 (Chile) 8 April 2010, published in Diario Oficial on 15 April 2010, Article 4; Decreto No. 2840 (Colombia) 6 December 2013, Article 1(c). Colombia appears to treat the beneficiaries of such protection as ‘refugees’ and thus subject also to the normal exclusion clauses applying to Convention refugees, even though such considerations are irrelevant to the principle of *non-refoulement* under international human rights law.

345 Corte Constitucional (Colombia), Sentencia T-073-2017, expediente número T-5.872.661, 6 February 2017.

346 See section 5.1.2.2, referring to the laws of Argentina, Bolivia, Brazil and Peru.


348 Ley 20430 (Chile) Article 4.


350 Ley No. 251 (Bolivia) 20 June 2012, Article 31; Ley No. 27891 (Peru) Articles 35-36; Reglamento (Peru) 23 December 2002, Articles 35-39; Ley Orgánica sobre Refugiados o Refugiadas y Asilados o Asiladas (Venezuela) 3 September 2001, Article 32; Decreto No. 2491 (Venezuela) 4 July 2003, Articles 21-23. For further discussion of such provisions, see Cantor, Law, Policy and Practice, 19-22.

movement of persons, especially in the cross-border context.

5.3.1 Brazil
In 2010, Brazilian national law defined a disaster as ‘the result of adverse events, natural or man-made, on a vulnerable ecosystem, causing human, materials or environmental damages and negative economic and social consequences’.352 By contrast, a situation of emergency was defined as ‘an abnormal situation, caused by disasters, leading to damages or negative impacts that result in the partial compromising of the response capacity of the public power of the affected entity’.353 Yet this definition has not been replicated in the most recent national law on disaster management, which gives both States and Municipalities the power to declare a situation of emergency.354

There is little reference in the new Brazilian law on disaster risk management to displacement or migration, other than imposing on municipal authorities the duties to facilitate the evacuation of the population from high risk zones.355 In this regard, the Brazilian 2012 Joint National Protocol for the Holistic Protection of Children and Adolescents, the Elderly and Persons with Disability in Situations of Risk and Disasters addresses the protection of these sectors during evacuation and displacement.356 This includes duties on public authorities to collect data on displacement in the disaster context and define modes of attending to displaced and vulnerable persons.357

In practice, in the tri-border area of Brazil that adjoins Bolivia and Peru, where flooding has caused cross-border movements, there is reported to be good articulation between the DRM authorities of the main cities of the three countries, especially in the sharing of monitoring information.

5.3.2 Ecuador
The Ecuadorian Constitution sets out the responsibilities of the State in disaster risk management.358 National law allows for the declaration of a state of exception due to a ‘natural disaster’,359 which is encompasses ‘the probability that a territory or the society may be affected by natural phenomena the extent, intensity and duration of which produce negative consequences’.360

However, national policy in Ecuador appears to take a different approach, defining a disaster as:

A serious interruption to the functioning of a community, in some scale, due to the interaction of hazardous events with conditions of exposure and vulnerability that bring losses or impacts of one of the following types: human; material; economic or environmental. Disasters are attended with means and resources of national government entities.361

This is distinguished from ‘catastrophes’, which are disasters where ‘the means and resources of the country are insufficient, making international aid necessary and indispensable to respond to it’.362 The policy also clarifies that the authorities have the power to classify a situation as a disaster by declaring an alert.363

The Ecuadorian policy framework contains no references to displacement and migration

352 Decreto No. 7257 (Brazil) 4 August 2010, published on 5 August 2010, Article 2(Ill)
353 Ibid, Article 2(III).
354 Lei No. 12608 (Brazil) 10 April 2012, published on 11 April 2012, Article 7(VII) and 8(VI).
355 Ibid, Article 8(VII).
357 Ibid, 17 and 24.
other than those relating to evacuation. For instance, the national Comité de Operaciones de Emergencia is specifically tasked with preparing and implementing evacuation plans. Moreover, the new migration law in Ecuador does not specifically provide for the entry of humanitarian personnel to its territory in the context of disasters. However, the absence of a specific migration category for non-nationals in this situation did not prevent the Ecuadorian immigration authorities from granting entry under some broader migration category under the previous migration law.

Moreover, Ecuador has bilateral accords with both Peru and Colombia concerning cooperation on disasters linked to natural hazards in the border zones. The accords with Peru obligate each country to ensure that its attention centres and border control posts provide ‘all necessary facilities’ to the other Party during natural disasters, especially concerning the passage of aid teams and materials. Similar accords have been agreed with Colombia concerning mutual aid in border areas during disasters. Recently, the disaster risk management authorities of Ecuador and Colombia have prepared ‘binational’ action plans, such as in the event of a possible eruption of the Chiles and Cerro Negro volcanos, which include reference to theme of ‘human mobility’.

5.4

CLIMATE LAW AND POLICY

Some States in South America have adopted national laws on climate change. Those few countries that have already adopted National Adaptation Plans reportedly briefly recognise the linkage between migration and climate change. In relation to the two case study countries, Brazil (section 5.4.1) and Ecuador (section 5.4.2), the study analyses the extent to which such national laws and policies address issues of displacement or movement of persons, especially in the cross-border context.

5.4.1 Brazil

In 2009, Brazil adopted by law a national policy on climate change, setting out general principles and objectives. This built on a national plan adopted the previous year, which acknowledged that the need for research on climate change and its effect on migration patterns. Within the UNFCCC process, the National Adaptation Plan adopted by Brazil in 2016 acknowledges that the effects of climate change are likely to increase migration flows, especially to the big cities, ’as entire population groups flee the effects of climate change or seek to adapt to them’, with the principal impact on more socially and economically underprivileged groups.

5.4.2 Ecuador

In 2017, within the UNFCCC framework, an official document by Ecuador noted that the migration of family members was already an observed strategy for adapting to the climate change effects.
effects of climate change in the rural sector.\textsuperscript{373} However, it equally expressed concern that the transmission of epidemics might be linked to ensuing patterns of migration and displacement.\textsuperscript{374} Otherwise, issues of population movement are absent from official documents on climate change,\textsuperscript{375} although they may appear in the National Adaptation Plan that Ecuador has reportedly begun to formulate.\textsuperscript{376}

5.5 OBSERVATIONS AND RECOMMENDATIONS

In light of the 2014 Brazil Declaration and Plan of Action aim of supporting the adoption of national and regional measures, tools and guidelines to address the challenge of cross-border disaster displacement, relevant points of national law, policy and practice to highlight in South America include:

• This is a leading region in terms of integrating into national law a specific concept of disasters as a positive basis for granting entry and stay to displaced persons;

• Short-term travel and entry to States in this region as visitors is largely visa-free (except Paraguay) for nationals of Mexico and Central American, South American and Caribbean countries, except for Cuba, Dominican Republic and Haiti;

• For longer-term stay, most Spanish-speaking States apply immigration law favourably to non-nationals affected by a disaster in their own country, whether through using immigration discretion to flexibly apply regular migration categories or exceptional migration categories. This is the region where the law specifying disasters as a ground for travel, entry or stay is most developed;

• The application of immigration law by these States in disaster contexts should be facilitated in the future by a regionally-harmonised response strategy being developed by the CSM, which would also offer regional guidance on the scope of ‘humanitarian circumstances’ in contexts of disasters and climate change. Yet some need a clearer conception in national law of how human rights duties may limit ‘negative’ discretion in these contexts to deny temporary entry or stay to an affected individual;

• Many of these States offer a period of temporary residence, along with pertinent rights, to non-nationals affected by a disaster in their home country. Such measures should be consolidated as durable solutions, particularly in the transition to other forms of status and developing complementary pathways to protection, as per the Brazil Plan of Action.\textsuperscript{377}

• In the two case study countries, DRM and climate change frameworks at the national level focus on internal movement and lack reference to international movement, which needs to be added. Nonetheless, Ecuador’s bilateral accords on cross-border migration and DRM facilities in disasters offer a useful model of integrated disaster risk management response and contingency planning for other countries in this region and others.

373 Ecuador, Tercera Comunicación Nacional (2017) 467.
374 Ibid, 295.
377 Chapter Three.
The Caribbean is comprised of Antigua and Barbuda, The Bahamas, Barbados, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname and Trinidad and Tobago. It also includes the non-sovereign territories of Anguilla, Aruba, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Curaçao, Guadeloupe, Martinique, Montserrat, Puerto Rico, Saba, Saint Barthélemy, Saint Martin, Sint Eustatius, Sint Maarten, Turks and Caicos Islands and the US Virgin Islands. Across these thirty countries, it is a region that experiences complex cross-border flows in the context of disasters linked to natural hazards and climate change.378

The 2014 Brazil Declaration and Plan of Action calls for the development of national ‘measures, tools and guidelines’ to address cross-border disaster displacement.379 Against this backdrop, this section reviews how the national frameworks of the countries of this region are used, or could be used, for the protection of affected persons. It focuses on national law, policy and practice in four fields: immigration law – including regular migration categories and exceptional migration categories (section 6.1); international protection law – including refugee law and complementary protection law (section 6.2); disaster risk management law (section 6.3); and climate law (section 6.4).

6.1 IMMIGRATION LAW

Immigration law in the territories of the Caribbean reflects both colonial and post-independence legacies in the region. Firstly, among the 13 countries that are sovereign States in their own right, a distinction in legal systems exists between former British colonies and others. The ten English-speaking former British colonies share common law systems and similar immigration laws that are based on British laws applied before independence.

378 See section 2.4 above.
379 See section 1.1 above.
They stand in contrast to the other three States: the former French colony of Haiti and former Spanish colonies of Cuba and the Dominican Republic. All three are civil law systems, but each adopts a distinct approach to immigration law.

Secondly, the Caribbean includes some 17 distinct overseas territories that are not sovereign States. Instead, their international relations and certain aspects of internal governance are connected to sovereign States outside the Caribbean, i.e. France, the Netherlands, the UK and the US. Territories linked to the UK or the US are common law systems, whilst those linked to France or the Netherlands are civil law systems. Yet, the considerable degree of variation in the form of domestic legal relationship between each State and its linked territories means that a spectrum exists as to the extent to which the immigration law of each State applies in its territories.

At one end of this spectrum are the two US territories and the four French Caribbean territories. Thus, Puerto Rico and the US Virgin Islands - as ‘unincorporated territories’ of the US – seem to directly apply US federal law, of which immigration law is a part. In the French Antilles, the legal relationship between the four territories and France is distinct, but the outcome appears similar. Here, the islands of Guadeloupe and Martinique are ‘overseas departments’ of France, whilst those of Saint Barthélemy and Saint Martin are ‘overseas collectivities’ of France. However, regardless of this distinction, French immigration law appears to be directly applicable in all four territories.

The six territories of the Dutch Antilles lie relatively close to this pole of the spectrum. The islands of Aruba, Curaçao and Sint Maarten are (along with the Netherlands) ‘constituent countries’ of the Kingdom of the Netherlands, whereas those of Bonaire, Sint Eustatius and Saba (the ‘BES islands’) are ‘overseas municipalities’ of the Kingdom. Dutch law regulates immigration matters only in Bonaire, Sint Eustatius and Saba, whereas Aruba, Curaçao and Sint Maarten have a more autonomous status and are directly responsible for all migration related matters.

Towards the other end of the spectrum, i.e. the territories showing greater independence from the linked State in immigration law, are the five British ‘overseas territories’ in the Caribbean. They are, respectively, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and the Turks and Caicos Islands. Crucially, each of these territories has its own immigration laws. However, at the same time, these laws are largely based on English common law and the UK has certain systemic constitutional and legal responsibilities towards these territories.

6.1.1 Regular migration categories

National immigration law usually establishes regular migration categories for such purposes as tourism, visiting, studies, employment and family. Such regular migration categories may sometimes offer a basis for travel, entry or stay in a country for persons from a country affected by a disaster linked to natural hazards or climate change. This section examines the provisions relating to regular migration categories in the national law of Caribbean countries for travel for short periods as a visitor (section 6.1.1.1) and for travel and stay for longer periods (section 6.1.1.2).

6.1.1.1 Travel and entry for short periods

For movement within the Caribbean, most States that were formerly British colonies allow visa-free travel, entry and stay as visitors or tourists for at least 30 days by nationals of other former British colonies.\textsuperscript{380} Haiti and the Dominican Republic also tend not to impose visa requirements on nationals of these States. Cuba imposes reciprocal visa restrictions on most English-speaking States, other than those that waive visa requirements for Cubans. Most Caribbean States impose visa requirements on Cuban, Haitian and Dominican Republic nationals. Moreover, whereas the inhabitants of territories linked to France, The Netherlands, the UK or the US benefit from visa-free travel to most Caribbean States (other than Cuba), nationals of Caribbean States usually require a visa for travel to those territories.\textsuperscript{381}

\textsuperscript{380} For relevant details, see Annex C.

\textsuperscript{381} That tendency is particularly pronounced for the US unincorporated territories of Puerto Rico and the US Virgin Islands, for which a visa is usually required for the nationals of other Caribbean countries and territories.
For travel into the region by nationals of Central or South American States, extensive visa regimes are maintained by a few Caribbean States and territories, i.e. Antigua and Barbuda, Cuba, Dominica and the US unincorporated territories (and to a lesser degree Grenada and Saint Lucia). As a result, the Caribbean is the region where the tendency to require visas for cross-regional movement is most evident. However, the tendency is limited since most other Caribbean States and territories do not in fact require visas from more than a small handful of Central or South American nationalities. The maintenance of these visa requirements on the part of those other States appears to reflect particular bilateral considerations in respect of the Central or South American State.

These visa arrangements for travel and entry for short periods are not for the purpose of providing protection to persons fleeing a disaster overseas. Indeed, they allow travel and entry purely on the basis of nationality rather than individual circumstances. Nonetheless, in practice, the existence of a visa waiver might be used by persons from a disaster-affected country as a basis to travel and stay temporarily in another country. Conversely, where visa requirements are maintained, this may represent an additional obstacle to persons seeking to flee that country. In general, most Caribbean States require a visa for nationals of Cuba, the Dominican Republic and Haiti and certain Central or South American States. Relatively extensive visa requirements are maintained by Cuba and the territories linked to France, Netherlands, UK and USA.

6.1.1.2 Travel and stay for longer periods

Where persons affected by a disaster in their country of nationality have a sufficient link with the host State to justify travel and/or stay on the basis of a regular migration category stipulated in that country’s national immigration law, this will provide a basis for regular movement in this context. In some Caribbean countries, such categories can be applied flexibly on the basis of immigration discretion. For instance, Antigua and Barbuda granted visa waivers to Haitians wishing to join close family members already present in the country, so long as the latter could demonstrate the economic capacity to support their relatives. In Dominica, eligibility requirements for Haitians applying for a visa were temporarily relaxed.

In addition, such movement may be facilitated by the existence of regional integration arrangements of which both the State of origin and the host State are members. For ‘citizens’ of such supranational entities, principles of free movement often confer on such persons a right to travel to, enter and stay in another member State for reasons such as work or family. Within the Caribbean Community (CARICOM), the principle of free movement is applied principally in relation to specified categories of workers. Yet, within the Organization of Eastern Caribbean States (OECS), citizens of member States have free movement rights to live and work in other States. As such, citizens fleeing a disaster in one of those States should have unimpeded access to the territory of other OECS States.

6.1.2 Exceptional migration categories

National immigration law often also regulates ‘special cases’ that fall outside the established regular migration categories. For persons affected by a disaster in their home country but who are unable to travel to, enter or stay in the host country on some regular basis (e.g. due to family ties etc.), any national law provisions relating to such exceptional migration categories may be pertinent to their situation. These provisions are often based on individual circumstances rather than nationality.

In contrast to the studies on Central America and Mexico and on South America, the analysis of this aspect of the law in the Caribbean region adopts a system-by-system approach to look at States that are former British

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385 Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union (2010) Article 3(c) and 12.
colonies and current overseas territories (section 6.1.2.1), other States, i.e. Cuba, Haiti and the Dominican Republic (6.1.2.2), US unincorporated territories (6.1.2.3), Dutch Antilles (6.1.2.4) and French Antilles (6.1.2.5).

6.1.2.1
Former British colonies and current overseas territories

Immigration law in former British colonies and current overseas territories is based on the British laws applied in those islands prior to independence. As such, the laws persist in listing categories of ‘prohibited’ non-nationals who must be denied entry. The precise terms of the list (reflecting values of security, public good and morality) vary between laws, but it sometimes includes non-nationals with insufficient funds to support themselves. This criterion might well apply to prevent certain non-nationals who arrive at the territory after fleeing a disaster overseas from being allowed entry.

Yet the laws also confer a degree of discretion on the pertinent authorities to postpone or overlook deciding whether a person is prohibited and instead grant leave to stay for a period or as long as necessary. These discretion-based provisions might be used to allow the entry of disaster victims who might otherwise be deemed ‘undesirable’ due to insufficient funds. Some of the same provisions, and others providing the authorities with discretion in allowing entry or stay to persons or classes of persons, can be used to grant entry or stay, including to non-nationals, regardless of whether or not they are considered ‘prohibited’ immigrants.

In all of the former British colonies and current overseas territories, then, immigration law provides the pertinent authorities with a discretionary power to grant entry and stay to non-nationals, even if they would otherwise be considered ‘prohibited’ immigrants. However, variations exist between the laws in the specific official to whom this power is granted (ranging from an immigration officer to the Minister or even the Cabinet) and the length of stay permitted (ranging from 28 days to as long as is necessary). Moreover, the power is accorded in very broad terms, with little direction given to officials on the relevant parameters for when the discretion should or should not be exercised.

It is notable that the immigration law of the former British colonies and current overseas territories contains scant reference either to humanitarian considerations in general or to disaster-related movement in particular. One notable exception is in Trinidad and Tobago, where the Minister may stay or quash a deportation order (and give leave to remain) either if the person will ‘suffer unusual hardship’ or if there are ‘compassionate or humanitarian considerations… that warrant the granting of special relief’. A limited set of provisions referring to humanitarian considerations appear also in the refugee-related law adopted by a small number of these jurisdictions.

Specifically on non-nationals seeking entry

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386 For example, the Immigration Act (Barbados), 1976, First Schedule, includes among ‘prohibited persons’ those ‘likely to become charges on public funds’ (paragraph 1(a)).

387 States include: Bahamas (Immigration Officer – 28 days); Grenada (Immigration Officer – 12 months); Jamaica (Immigration Officer – 60 days); Saint Vincent and the Grenadines (Immigration Officer – 12 months); Trinidad and Tobago (Minister – 12 months). British overseas territories include: Anguilla (Immigration Officer – 6 months); British Virgin Islands (Chief Immigration Officer – 28 days); Montserrat (Immigration Officer – 6 months, extendable to 12 months). See Annex D.

388 States include: Antigua and Barbuda (Chief Immigration Officer); Barbados (Minister – exemption); Dominica (Minister – temporary permit); Saint Vincent and the Grenadines (Governor-General – temporary permit). British overseas territories include: Anguilla (Chief Immigration Officer – permit); Cayman Islands (Cabinet – permit). See Annex D.

389 States include: Antigua and Barbuda; Bahamas; Dominica; Grenada; Jamaica; Saint Vincent and the Grenadines; Trinidad and Tobago. British overseas territories include: Anguilla; British Virgin Islands; Cayman Islands; Montserrat.

390 States include: Antigua and Barbuda (Minister – any other persons or classes of persons); Barbados (Minister – person); Jamaica (person or class of person). British overseas territories include: Anguilla; Cayman Islands and possibly Turks and Caicos Islands. See Annex D.

391 The only territory for which this is less clear is the Turks and Caicos Islands.

392 Trinidad and Tobago, Immigration Regulations (1974), Sections 28(1)(b) and 28(2).

393 See below.
due to disasters overseas, as early as 1979, a Trinidad and Tobago Cabinet Decision recognised the potential challenge posed but resolved merely that:

- Cases of refugees from natural disasters be left open and be decided, when the need arises, on the basis of the circumstances prevailing in Trinidad and Tobago at the particular period in time.394

In practice, though, as part of the response to the 2010 earthquake in Haiti, several former British colonies and current overseas territories, including The Bahamas, Jamaica and the Turks and Caicos Islands temporarily suspended the removal of Haitians to their country of origin.395 Moreover, in Dominica, eligibility requirements were relaxed to allow Haitians already in the country to extend their stay automatically for six months, regardless of their immigration status; the application fees were also waived.396 Those measures were lifted by all of the States and territories involved in a relatively short timescale.397 In a more recent example, Saint Lucia housed prisoners from the British Virgin Islands and the Turks and Caicos Islands after Hurricane Irma damaged prisons there.398

6.1.2.2 Other States – Cuba, the Dominican Republic and Haiti

The immigration laws of the four non-English-speaking States in the Caribbean - Cuba, the

Dominican Republic, Haiti, and Suriname – offer distinct perspectives on how to address the arrival of non-nationals who are fleeing a disaster overseas.

Cuba, for example, expressly locates such persons within the concept of refugees requiring protection.399 This direct approach largely obviates the need to consider how immigration law provisions of more general scope might be applied to that situation.

By contrast, immigration law in the Dominican Republic allows the Director General of Migration to permit the entry of non-nationals as temporary residents on an exceptional basis. However, in taking this decision, the law places emphasis squarely upon the envisaged benefits that will accrue to the Dominican Republic as a result of providing residence.400 In practice, though, the Dominican Republic suspended the removal of Haitians and adopted a de facto programme of entry to certain categories of Haitians immediately following the 2010 earthquake in Haiti; these temporary measures were rescinded after a short period.401 Moreover, in the subsequent months, the authorities also granted a number of so-called ‘humanitarian visas’ to allow the relatives of Haitians who had been injured in the earthquake and were receiving medical attention in the Dominican Republic to cross back and forth in order to attend both to their injured family members and to commitments in Haiti.402 The general consensus is that the taking of these humanitarian measures represented the exercise of an intrinsic authority of the Dominican Republic in regulating its immigration affairs.403

Immigration law in Haiti does not specifically address disasters or other humanitarian

394 Cabinet Decision in Minute No. 4809 (Trinidad and Tobago) 16 November 1979.


399 See below.

400 Ley No. 285-04 (Dominican Republic) 2004, Article 35(8); Decreto 631-11 (Dominican Republic) 2011, Article 43.


403 Cantor, Law, Policy and Practice, 43.
grounds for admission. Indeed, it seems to leave the reasons motivating an application to stay in Haiti somewhat open. In principle, then, the fact that a non-national might be motivated to seek entry and stay in Haiti due to a disaster overseas does not appear problematic as a ground for entry. However, the other requirements for stay are more demanding, i.e. an application to a Haitian consulate in advance at which evidence must be adduced of education, means of support and a large sum of available money, alongside the reasons for which entry is sought. There appear to be no further grounds on which discretion could be exercised for cases that fall outside these rules. Moreover, whilst Haitian migration policy includes a chapter on ‘migration, environment and development’, this appears to be concerned principally with Haitian migration rather than with the legal situation of non-nationals who find themselves in Haiti as the result of a disaster in their own country.

6.1.2.3 US unincorporated territories

US immigration law applies in Puerto Rico and the US Virgin Islands. This includes ‘temporary relief measures’ that involve US Citizenship and Immigration Services (USCIS) officials exercising discretion on a case-by-case basis by flexibly applying regular migration categories for non-nationals affected by disasters or other extreme situations. They do not generally offer a standalone basis for entry but focus on such measures as fee waivers, expedited processing of immigration applications and special consideration of status extension or change applications. The last special situation policy published for the Americas was in 2012, but policy notices are not required for this exercise of discretion.

US immigration law also grants the Department of Homeland Security (DHS) Secretary a discretion to designate a foreign State (or part of a foreign State) as a beneficiary of Temporary Protected Status (TPS) based on, inter alia, a severe ‘environmental disaster’ or other ‘extraordinary and temporary conditions’ that prevent the return of nationals of that State from the USA. Following designation, nationals of that State (usually limited to those in the USA at the date of the disaster) can apply for TPS to remain temporarily in the USA due to their nationality rather than individual factors. TPS has not been designated for new disasters in the Americas since the Haiti earthquake of 2010.

Moreover, in practice, other responses have been documented for more recent disasters. For example, in the aftermath of Hurricane Irma in 2017, Puerto Rico granted entry to several thousand affected persons evacuated not only from the US Virgin Islands (i.e. another US territory) but also from the British Virgin Islands, Dutch Sint Maarten and French Saint

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404 Loi sur l’immigration et l’émigration (Haïti) 25 November 1959, Article 17.
405 Politique migratoire d’Haïti 2015-2030: Document de politique (Haïti) 3 August 2015, chapter 3.
408 The most recent disaster in the Americas for which a policy notice was issued was Hurricane Sandy in 2012, which affected the Bahamas, Cuba, Haiti, Jamaica and Puerto Rico, as well as the mainland USA. See https://www.uscis.gov/archive/archive-news/uscis-reminds-individuals-affected-hurricane-sandy-temporary-immigration-relief-measures.
409 Immigration and Nationality Act (USA), Section 244. Most environmental disaster situations are, in practice, designated under the ‘extraordinary and temporary conditions’ criterion rather than that pertaining to ‘environmental disaster’. See Cantor, Law, Policy and Practice, 37-40.
410 Its effect is thus usually akin to a programme for temporarily regularising the situation of nationals of that States already in the USA without a migratory status on the date of the disaster. The TPS re-designation for Haiti in 2011 represented an exception in this regard. See Cantor, Law, Policy and Practice, 37-40.
411 It was used for the following disasters in the Americas: the volcanic eruption on Montserrat in 1997; Hurricane Mitch in Honduras and Nicaragua in 1998; the earthquakes in El Salvador in 2000; and the 2010 earthquake in Haiti (re-designated in 2011). The TPS designation for Montserrat was terminated in 2004 and those for El Salvador and Haiti were terminated in 2018. For a full list of TPS countries, see: http://www.justice.gov/eoir/vll/fedreg/tpsnet.html.
Martin. A number of the evacuees were transferred onwards to other destinations, including the mainland USA and UK. However, the US Virgin Islands reportedly turned back boats of evacuees from the British Virgin Islands, including those with US visitor visas, and only allowed US citizens to enter.

6.1.2.4 Dutch Antilles

At least in the BES islands, applicable Dutch immigration law allows visitors who would not ordinarily require a visa but who lack the required identity document to be issued with a certificate of passage for a short stay in circumstances that include ‘an urgent and valid need for entry’. Crucially, where a BES island official has doubts about refusing entry to a non-national who would ordinarily be refused, the case may be referred to Immigration and Naturalisation (IND) in the Netherlands who can decide to grant entry due to, inter alia, ‘compelling humanitarian reasons’ or ‘international relations’.

Moreover, Dutch immigration law applicable to the BES islands also provides that in the event of exceptional and unforeseen circumstances, including flooding or other serious natural disasters, border checks may be relaxed or traffic diverted to other border checkpoints. However, even in the event of any easing or relaxation of border controls, the law requires that relevant authorities must stamp the travel documents of non-nationals upon entry and exit.

6.1.2.5 French Antilles

French law applicable in the French Antilles appears to deal with all cases involving humanitarian considerations under the provisions for international protection. There do not appear to be other immigration law provisions under which persons who are not French citizens or residents in the French Antilles are admitted on the basis of fleeing a disaster overseas. However, in practice, both Martinique and Guadeloupe temporarily suspended the removal of Haitians to their country of origin following the earthquake of 2010.

6.2 INTERNATIONAL PROTECTION LAW

The sovereign discretion of States to regulate their immigration affairs through the creation and application of national law and policy is circumscribed by each State’s international commitments. At the international level, the law of international protection – comprised by international refugee law and international human rights law – represents one important parameter in this regard. The analysis thus
examines national refugee law (section 6.2.1) and other forms of complementary protection in national law (section 6.2.2). In particular, it assesses the extent to which such law is applied, or might be applied, by Caribbean States to provide protection to non-nationals affected by a disaster in their home country based on their individual circumstances.

### 6.2.1 Refugee law

In many countries of the Caribbean, there is a lack of systematic protection-sensitive entry and referral mechanisms, including protection screening and comprehensive asylum systems. However, particularly since the adoption of the Brazil Plan of Action, an increasing number of Caribbean States and overseas territories have taken steps toward establishing legislation, regulations and policies on refugee protection. Particularly in the framework of the Caribbean Migration Consultations (CMC), States have recognized the importance of developing consistent approaches and balanced migration policies in the context of diverse and complex mixed migratory movements in the Caribbean.

Nine of the 13 Caribbean States are parties to the 1951 Convention relating to the Status of Refugees and only eight are parties to its 1967 Protocol. The six that have not ratified or acceded to the Protocol are Barbados, Cuba, Grenada, Guyana, Saint Kitts and Nevis and Saint Lucia (although Saint Kitts and Nevis is a party to the 1951 Convention). However, of those eight States party to the Protocol, only Belize, and the Dominican Republic have incorporated the refugee definition and status determination procedures into national law. Jamaica and Trinidad and Tobago adopted refugee policies and are in the process of developing refugee legislation. None of the States are signatories to the 1984 Cartagena Declaration nor is its expanded refugee definition applied here, although most Caribbean States adopted the 2014 Brazil Declaration and Plan of Action.

Among the non-sovereign territories in the Caribbean, the linked States of France, the Netherlands, the UK and the USA are all parties to the 1967 Protocol. The US unincorporated territories apply US refugee law, including the credible fear test. The French Antilles likewise apply French refugee law. In the Dutch Antilles, Dutch refugee law is applied in the BES islands, but it appears not to be so straightforwardly applied in the countries of Aruba, Curaçao or Sint Maarten. Similarly, the Cayman Islands and Montserrat have incorporated refugee provisions in their immigration laws but this has not been done by Anguilla or the Turks and Caicos Islands. The situation in the British Virgin Islands is unclear.

In short, some Caribbean States and territories are bound by the 1967 Protocol but others are not. Even among States parties, many have not implemented its provisions in national law. In the non-sovereign territories, refugee law is implemented more widely, although the US territories reflect the distinctive US approach to refugee law in contrast to the European approach in the French, Dutch and British territories. None of the States or territories applies an expanded refugee definition nor are they reported to recognise disasters as a basis for refugee status in practice.

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421 Note, however, that upon its accession to the Protocol on 4 September 1968 the United Kingdom, in accordance with the provisions of the second sentence of Article VII.4, made a declaration extending the application of the Protocol to Saint Lucia, for the international relations of which it was responsible at that time. There may be some debate about whether those obligations continued under the international law after the independence of Saint Lucia on 22 February 1979.

422 The legislation in Belize includes the OAU definition.

423 See footnote to section 1.2.2 above.

424 France, the Netherlands and the UK are also parties to the 1951 Convention but the USA is not.


426 Indeed, it appears that neither Sint Maarten nor Curaçao are bound by the Netherlands obligations under the 1951 Convention or 1967 Protocol, although this is not the case for Aruba.

427 Immigration Law (Cayman Islands) 2003, revised 2015, Sections 84-86, Immigration Act (Montserrat) 1946, revised 2013, Chapter 13:01, Sections 2-(1) and 44-55.

428 In 2016, it was reported that the government of the British Virgin Islands had proposed legislative changes to introduce asylum provisions into the territory’s immigration law (BVI News, Gov’t to Address Asylum, Increase Various Fees, 22 September 2016, http://bvinews.com/new/govt-to-address-asylum-increase-various-fees/). It has not been possible to establish if those changes were approved.
By contrast, in Cuba, which is not a party to the 1951 Convention or the 1967 Protocol, national law includes a sui generis refugee definition. Moreover, these updated 1978 Migration Regulations make direct reference to disasters as a ground for refugee status in Cuba by defining ‘refugees’ as:

... those aliens and persons lacking citizenship whose entry to the national territory is authorised due to leaving their country owing to social or warlike calamity, due to cataclysm or other phenomena of nature and who will remain temporarily in Cuba, until normal conditions are re-established in their country of origin.429

Such refugees are permitted to enter, stay and return to Cuba as ‘temporary residents’ and can be accompanied by their spouses and minor children.430 Reports suggest that this provision was applied to a small group of persons received in Cuba following the 1995 volcanic eruption on Montserrat, but not to Haitians following the 2010 earthquake.431

6.2.2 Other forms of international protection

Of the Caribbean States, within the UN human rights system, ten of the 13 are parties to the ICCPR (not Antigua and Barbuda, Cuba and Saint Kitts and Nevis)432 and four of the 13 are parties to the CAT (The Bahamas, Cuba, Dominican Republic, and Saint Vincent and the Grenadines). At the regional level, within the Inter-American system, all of the 13 except for Cuba are OAS member States (and thus bound by the ADHR) and seven of the 13 are parties to the IACHR (Barbados, Dominica, Dominican Republic, Grenada, Haiti, Jamaica, and Saint Vincent and the Grenadines).433 International human rights treaty law as a buttress against refoulement to human rights violations is thus hardly universal in the Caribbean.

Among the few States that have national asylum procedures, provision for complementary protection appears only in the national refugee policy of Jamaica. However, the pertinent provision makes no reference to human rights standards. Instead, it provides that, where a decision has been made not to recognise an asylum applicant as a refugee, the authorities may grant exceptional leave to remain for three years on the basis ‘humanitarian grounds’.434 This discretion-based humanitarian provision is directly relevant to the situation of non-nationals fleeing disasters, but it appears to be accessible only where an asylum application has been made and then turned down. In practice, it has been applied to Haitians in the aftermath of the 2010 earthquake.

Among the non-sovereign territories in the Caribbean, the linked States of France, the Netherlands, the UK and the US are all parties to the ICCPR and CAT. At the regional level, the US is an OAS member State, whereas France, the Netherlands and the UK are EU member States and parties to the ECHR.435 The ECHR now applies to the French Antilles, the Dutch and the British overseas territories, which are also subject to the jurisdiction of the European Court of Human Rights.436 Human rights treaty law is thus more accepted in these territories than in the Caribbean States.

As a result, in the US unincorporated territories, US national law protections against refoulement to torture apply as on the mainland.437 In the French Antilles and the Dutch Antilles, Article 3 ECHR protection against refoulement is applicable and subsidiary protection under the EU Qualification Directive can be granted. In the British overseas territories, only the

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429 Edición actualizada del Decreto No. 26, Reglamento de la Ley de Migración de 19 de Julio de 1978 (Cuba) in the Gaceta Oficial, No. 44, 16 October 2012, 1373-1387, Article 80.
430 Ibid, Articles 80 and 85.
431 Cantor, Law, Policy and Practice, 18.
432 However, the Bahamas, Dominica, Grenada, Jamaica, Saint Lucia and Trinidad and Tobago are not parties to ICCPR Protocol and thus cannot be the subject of individual petitions before the Human Rights Committee.
433 However, Dominica, Grenada and Jamaica have not accepted the jurisdiction of the Inter-American Court of Human Rights. See https://www.oas.org/dil/treaties_lj-32_american_convention_on_human_rights_sign.htm.
434 Refugee Policy (Jamaica) 2009, paragraphs 12(a)(iii) and 13(f).
435 The UK has given notice of its intention to leave the EU in March 2019 by triggering Article 50 of the Treaty of Lisbon.
436 In the case of the Netherlands, the provisions relating to free legal assistance in Article 6(3)(c) do not apply to the Dutch Antilles. For the declarations of France, the Netherlands and the UK, see https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=3tBR4L4P.
437 Code of Federal Regulations (USA), Title 8, Sections 208.16-18 and 1208.16-18.
law in Montserrat expressly recognises the applicability of Article 3 ECHR in the asylum context.\textsuperscript{438} In practice, there is no firm indication that these territories see human rights protection against refoulement as triggered by non-nationals fleeing a disaster overseas. Even so, in the French Antilles and Guiana, over half of all Haitian asylum claims between 2010 and 2015 were given subsidiary protection; between 2010 and 2012, this was principally due to economic, social and security consequences of the earthquake.\textsuperscript{439}

In addition, several non-sovereign territories also have broader complementary legal provisions that might be pertinent to the entry and stay of asylum claimants fleeing a disaster. For instance, in the BES islands, any decision to refuse an asylum claim must be referred back to IND Netherlands for a decision on whether to grant entry due to, \textit{inter alia}, ‘compelling humanitarian reasons’ or ‘international relations’.\textsuperscript{440} Similarly, in the laws of both the Cayman Islands and Montserrat, as British overseas territories, a Chief Immigration Officer shall grant exceptional leave to remain to an applicant who made his claim for asylum ‘as soon as reasonably practicable’ and for whom ‘obvious and compelling reasons exist [why he] cannot be returned to his country of origin or nationality’.\textsuperscript{441} Such provisions might well be relevant to persons fleeing disasters.

6.3.1 Antigua and Barbuda

The national law on disaster management in Antigua and Barbuda defines a ‘disaster emergency’ as ‘a public emergency declared under section 20 of the Constitution or a state of emergency declared under section 2 of The Emergency Powers (Hurricane, Earthquake, Fire or Flood) Act... on account of the threat or occurrence of a disaster’.\textsuperscript{442}

The only reference to issues of displacement or migration in its national law concerns evacuation. It stipulates that the National Disaster Preparedness Response Plan must include ‘procedures to apply in the event that the evacuation of all the residents of any area is considered to be desirable in the event of a disaster emergency’.\textsuperscript{443} Any mandatory evacuation is based on powers conferred under the law relating to states of emergency,\textsuperscript{444} under which the 2017 Mandatory Evacuation Order requiring the Minister for Public Safety to ‘take immediate and appropriate steps to evacuate, in whole or in part, the inhabitants of the island of Barbuda to places of safety in the island of Antigua’ was issued for Hurricane Irma.\textsuperscript{445}

Recent official documents on disaster risk reduction acknowledge that past storms have led to the evacuation and displacement of
thousands of people in Antigua and Barbuda. They also recognise that ‘environmental threats such as natural hazards and climate change’ have the potential to produce the displacement of families in low-lying coastal areas, a situation that may lead to conflict fuelled by displaced populations facing shortages in essential items such as food and water. There is no mention or consideration, though, of either evacuation or displacement across national boundaries in the context of such disasters.

6.3.2 Dominican Republic

National law on disaster risk management in the Dominican Republic defines a disaster as a ‘social situation or process… that, on encountering suitable conditions of vulnerability in a community, causes intense alterations in the normal functioning of society…’. There is no requirement that national capacity be overwhelmed. Following a recommendation by the National Emergency Commission, the President is mandated to decree the existence of a disaster that he must classify according to its scale and effects as of ‘national, provincial or municipal’ character. Such a declaration can take place up to three months after the event.

The national law obliquely acknowledges the need to organise and plan actions such as evacuation as part of the task of disaster risk preparation. However, neither the law nor its regulations provide any further detail on evacuation or other forms of movement. Nonetheless, apparently under wider emergency powers conferred by the Constitution, the Dominican authorities ordered the obligatory preventative evacuation of vulnerable zones of provinces that had been declared vulnerable to the impact of Hurricane Irma in 2017. As a matter of unwritten policy, priority in evacuation is reportedly given to women and children.

The Dominican Republic reportedly lacks national procedures to authorise a request for international assistance as well as specific legal provision for authorising the entry of humanitarian personnel to its territory in the context of disasters.

6.4

CLIMATE LAW AND POLICY

It is reported that very few NDCs directly discuss current or future migration or displacement. Some States in the Caribbean have adopted national laws on climate change. In relation to the two case study countries, Antigua and Barbuda (section 6.4.1) and the Dominican Republic (section 6.4.2), the study analyses the extent to which such national laws and policies address issues of displacement or movement of persons, especially in the cross-border context.

6.4.1 Antigua and Barbuda

In 2009, within the UNFCCC framework, an official document by Antigua and Barbuda recognised that the impacts of climate change on the coastal zone could lead to greater out-migration of skilled and semi-skilled professionals, a ‘brain drain’ that will eventually affect the country’s productive capacity. It also recognised squatter settlements, comprised mainly of migrants from neighbouring islands, as

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447 Ibid, 78.
448 Ley No. 147-02: Sobre Gestión de Riesgos (Dominican Republic) 22 September 2002, Article 4(4).
449 Ibid, Article 23.
450 Ibid, Article 23, paragraph I.
451 Ibid, Article 4(16).
452 Reglamento No. 932-03 (Dominican Republic) 13 September 2003.
453 See Constitución (Dominican Republic) 26 January 2010, published in Gaceta Oficial No. 10561 of 26 January 2010, Title XIII.
455 UNDP, Aumentando la visibilidad de género en la gestión del riesgo de desastres y el cambio climático en el Caribe Evaluación de República Dominicana (2009) 19.
458 Antigua and Barbuda, Second National Communication on Climate Change (2009) 133.
particularly vulnerable to flooding. There is no specific mention of displacement or movement in other documents.

6.4.2 Dominican Republic

In official documents prepared for the UNFCCC process, the Dominican Republic mostly frames displacement and migration as a form of pressure on the environment. In the cross-border context, it highlights strong migratory currents from Haiti as a pressure on the environment in the Dominican Republic and a vector for disease transmission. Otherwise, there is no mention of displacement in national policy on climate change.

6.5 OBSERVATIONS AND RECOMMENDATIONS

In light of the 2014 Brazil Declaration and Plan of Action aim of supporting the adoption of national and regional measures, tools and guidelines to address the challenge of cross-border disaster displacement, relevant points of national law, policy and practice to highlight in the Caribbean include:

- This is the region where national law and policy appears to be least developed in terms of providing of response to persons displaced by disasters, although some countries frame mobility as a possible adaptation strategy to climate change;

- Short-term travel and entry to States in this region as visitors is often less straightforward than for the other two regions, although they join them in mostly imposing visa restrictions on nationals of Cuba, Dominican Republic and Haiti. Access to the non-sovereign territories linked to France, Netherlands, US and UK is most restricted. However, among former British colonies and some current British territories, travel is largely visa-free and longer-term stay is facilitated by regional freedom of movement arrangements. There is a need to develop protocols on cross-border evacuation in the disaster context;

- For longer-term stay, national law relevant to non-nationals affected by a disaster overseas is most developed in the non-sovereign territories (and in Cuba). By contrast, for most States in this region, identifying the contours of immigration discretion is more complex. However, most national laws contain provision for discretion that could benefit from regional guidance on its application to disaster-displaced persons which would also offer regional guidance on the scope of ‘humanitarian circumstances’ in contexts of disasters and climate change. None yet exists. They also need a clearer conception in national law of how human rights duties may limit ‘negative’ discretion in these contexts to deny temporary entry or stay to an affected individual;

- Few of these States offer a period of temporary residence, along with pertinent rights, to non-nationals affected by a disaster in their home country. Such measures should be developed as durable solutions, particularly in the transition to other forms of status and creating complementary pathways to protection, as per the Brazil Plan of Action.

- At the national level, States should consider how to facilitate enhanced open access to legislation and policies relevant to disaster displacement, particularly in the fields of immigration and international protection;

- At the regional level, the newly-established Caribbean Migration Consultations (CMC) could play a similar role to the RCM and SACM in developing a regional and harmonised approach to the challenge of cross-border disaster displacement;

460 See, for example, Antigua and Barbuda, Intended Nationally Determined Contribution (15 October 2015).
461 See, for example, Dominican Republic, Segunda Comunicación Nacional (2009), 126.
463 See, most recently, Dominican Republic, Plan Nacional de Adaptación para el Cambio Climático 2015-2030 (2016); and also the Política Nacional de Cambio Climático (2016).

464 Chapter Three.
465 The difficulties of obtaining such materials were noted in the preparation of the present study.
466 The Caribbean Migration Consultations (CMC) was established by States in 2016 as a Regional Consultative Process for the Caribbean on refugee protection and migration. The CMC provides a regional platform for Caribbean countries to discuss common challenges and promote consistent approaches towards migration, including the situation of vulnerable migrants, refugees and stateless persons.
In the two case study countries, DRM and climate change frameworks at the national level lack reference to international movement, which needs to be added. There is the potential to develop regional or bilateral accords or protocols on response to disaster-displaced persons based on practices of cross-border evacuation etc., including by building on the DRM mechanisms established by regional bodies such as CARICOM.

The 2014 Brazil Declaration and Plan of Action emphasises the ‘new challenges’ that cross-border disaster displacement poses to Latin America and the Caribbean. The study amply substantiates these challenges for the countries of Central America and Mexico, South America and the Caribbean. Indeed, it shows that this is not some remote futuristic scenario but rather a process that is already well advanced for some of their citizens, even as the impact of climate change will likely exacerbate such challenges for a wider spread of these sectors of the population in coming years.

Yet the study highlights that the response by these regions to disaster displacement is among the most highly-developed of any part of the world. Particularly in the field of immigration law and policy, there are numerous positive examples of national and regional approaches by States that recognise and respond to some part of these dynamics. Even those countries which do not have specific legal provisions relating to disaster displacement mostly contain discretion-based provisions in their immigration law that would allow such concerns to be integrated with some support.

At the same time, the development of guidance on how such provisions of national immigration law, and international protection law, is a process that has only just begun at the regional level (within the CRM and the SRM). Further work is needed in this regard, including in the Caribbean and possibly in the context of the Caribbean Migration Consultations (CMC). Moreover, based on a small sample of national practice, the new challenge of displacement is integrated only marginally by

467 See section 1.1.
the respective national frameworks in these three regions on DRM and on climate change. Here, there is a greater distance to travel in promoting an integrated response to cross-border disaster displacement.

As such, in response to the call by the 2014 Brazil Plan of Action, and building on the analysis and recommendations developed herein, the study proposes ‘national and regional measures, tools and guidelines’ to be developed by States.468 These proposals and recommendations are presented in turn in correspondence to processes at the global, regional and national levels, reflecting a keen interaction between multiple levels that is intrinsic to the Brazil Plan of Action itself.

7.1 GLOBAL LEVEL

The findings of this study are relevant to several global processes that are currently ongoing. In particular, it is recommended that Latin American and Caribbean States should:

• Consider the potential application to contexts of disaster displacement of relevant components of the GCR and GCM frameworks, including their contribution to reinforcing measures taken at the regional and national levels;

• Feed the findings of the study into the work of the UNFCCC Task Force on Displacement as a model of current and future responses to cross-border disaster-displacement; and conversely, look at how to feed findings of TFD work-plan into further shaping of their approaches at the regional and national levels.

7.2 REGIONAL/BILATERAL LEVEL

The need for a concerted regional response is strongly indicated by the forms of displacement generated by disasters in Central America and Mexico, South America and the Caribbean. A firm precedent exists in regional bodies in each region for promoting harmonised temporary solutions by States to the regional displacement impact of disasters. Through such regional bodies as the RCM, SCM and CMC and their respective technical working groups, States in each region should thus consider and promote international cooperation to develop:

• Collective understanding of such movements via data-collection and -sharing by governments through regional arrangements and on a bilateral basis (see also below);

• Regional or bilateral visa waiver arrangements for the short-term travel and entry of certain specified vulnerable categories of person in the case of a disaster in their country of origin, including the involvement of countries with extensive visa requirements;

• Regionally-harmonised guidance on how immigration law discretion at the national level should be exercised for the temporary stay of non-nationals affected by a disaster, and clarifying the application of international protection law (e.g. RCM Guide as example);

• Consideration of how disaster displacement concerns can be integrated within the future development of free movement and/or residency arrangements by integration processes based on regional or sub-regional identity or other forms of identity (e.g. Commonwealth);

• Regional guidance on how the specific challenges of disaster displacement in each region can be integrated in DRM and climate change frameworks at the national level, including on framing cross-border mobility as a possible adaptation strategy to climate change;

• Regional consensus on how to interpret DRM law and policy on humanitarian assistance in rapid-onset disaster contexts in the context of a right/duty among assisting States to also assist persons who flee the disaster-affected country;

468 Ibid.
• Regional and/or bilateral approaches to prevent and address disaster displacement through transboundary preparedness and contingency mechanisms that integrate DRM, immigration, refugee and climate concerns (e.g. Costa Rica–Panama and Ecuador-Colombia accords);

• In the Caribbean, regional or bilateral DRM accords or protocols on international evacuation in rapid-onset disaster contexts, building on existing evacuation practices in the region;

• A focus on disaster displacement within the 2014 Brazil Declaration and Plan of Action triannual review process (2014-2024) building to Cartagena+40 in order to reinforce, at the level of Latin America and the Caribbean, measures taken in each of the three regional contexts.

7.3 NATIONAL LEVEL

A diverse range of State law, policy and practice on responding to disaster displacement exists at the national level in the three regions, with the national frameworks of some regions and countries more developed than those of others. Even so, there are important commonalities that run through the provisions surveyed in the different national contexts. Alongside the regional measures outlined above, States in each region should thus consider developing national measures to:

• Gather more precise and standardised forms of official data on (i) the scale of the movements involved and (ii) their dynamics, including, in the disaster and climate change context, the relationship between internal and international movement;

• Integrate planning/response to cross-border displacement in the context of disasters and climate change across the diverse fields of law and policy, including immigration, disaster risk management and climate change action;

• Promote appropriate use of positive discretion in applying ‘regular’ migration categories and tools in immigration law, including visa schemes, and exceptional’ categories, including but not limited to those based on ‘humanitarian reasons’, to respond flexibly to disaster displacement and other non-nationals affected by a disaster in their own country;

• Clarify the scope of such positive exercise of immigration discretion in relation to disaster displacement, drawing on regionally-harmonised approaches, as well as applicable humanitarian principles from the field of disaster risk management (see above);

• Ensure that any negative exercise of discretion in immigration law is circumscribed by wider international obligations from the fields of refugee protection, human rights and disaster risk management (and, potentially, climate change) for disaster-displaced persons;

• Develop durable solutions for disaster-affected persons, particularly in the transition to other forms of status and creating complementary pathways to protection, as per the Brazil Plan of Action;

• In Caribbean countries, facilitate enhanced open access to legislation and policies relevant to disaster displacement, particularly in the fields of immigration, international protection.

• In DRM and climate change frameworks, integrate planning/responses that consider the specific challenges of disaster displacement by own nationals and arriving non-nationals, including on cross-border mobility as a possible adaptation strategy to climate change, and drawing on the Words into Action Guidelines on Disaster Displacement.469

## Annex A:

### COUNTRIES RESEARCHED FOR THE STUDY

(*TIED IN TO CARIBBEAN DYNAMIC*)

<table>
<thead>
<tr>
<th>Central America and Mexico</th>
<th>South America</th>
<th>South American non-sovereign territories</th>
<th>Caribbean</th>
<th>Caribbean non-sovereign territories</th>
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<tbody>
<tr>
<td>Belize*</td>
<td>Argentina</td>
<td>Guiana* (French overseas department)</td>
<td>Antigua and Barbuda</td>
<td>Anguilla (British Overseas Territory)</td>
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<td>Costa Rica</td>
<td>Bolivia</td>
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<td>Bahamas</td>
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<td>El Salvador</td>
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<td>Guatemala</td>
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<td>Bonaire (special municipality of the Kingdom of the Netherlands)</td>
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<td>Honduras</td>
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<td>Dominica</td>
<td>British Virgin Islands (British Overseas Territory)</td>
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### Annex B:

**INTERNAL DISPLACEMENT DUE TO RAPID-ONSET DISASTERS**

(IDMC FIGURES)

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**Annex B:**

**INTERNAL DISPLACEMENT DUE TO RAPID-ONSET DISASTERS**

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Total 6616620

Total 20636372
Annex C:

VISA REQUIREMENT FOR SHORT STAY\textsuperscript{470}

(AT LEAST 30 DAYS)

$Y^*$ = grants tourist visa upon arrival at an international airport

\textsuperscript{470} This information is drawn principally from official website of the countries involved on a review by the author in February 2018. However, the data contained in this table should be viewed as indicative rather than definitive on the subject matter, as a number of the most recent publicly-accessible sources appeared to contain potentially dated information.
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Central America and Mexico

South America

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|-----------|-------------|----|----|----|-----|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
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| T&T       | N           | N  | N  | N  | N   | N   | N   | N   | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  |
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| SLU       | N           | N  | N  | N  | N   | N   | N   | N   | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  |
| SKN       | N           | N  | N  | N  | N   | N   | N   | N   | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  |
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| HAI       | N           | N  | N  | N  | N   | N   | N   | N   | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  |
| GRE       | N           | N  | N  | N  | N   | N   | N   | N   | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  |
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| PER        | N           | N  | N  | N  | N   | N   | N   | N   | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  |
| SUR        | N           | N  | N  | N  | N   | N   | N   | N   | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  |
| VEN        | N           | N  | N  | N  | N   | N   | N   | N   | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  | N  |
## Annex D:

### IMMIGRATION LAWS BY COUNTRY

<table>
<thead>
<tr>
<th>Country</th>
<th>Scenario</th>
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<th>Definition</th>
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<tbody>
<tr>
<td>Belize</td>
<td>Entry or remain</td>
<td>One-off regularisation</td>
<td>A special permit may be issued by the Director of Immigration and Nationality Services to any person if he considers the issue of such a permit desirable.</td>
<td>Temporary, renewable</td>
<td>Immigration Act, Chapter 156 (revised 2000), section 18 and 39</td>
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<tr>
<td>Country</td>
<td>Scenario Concept</td>
<td>Definition</td>
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<tr>
<td>Costa Rica</td>
<td>Entry or stay (latter only for 'reasons of humanity')</td>
<td>Special Migratory Category 'humanitarian reason', understood as a '[c]ircumstance in which a foreign national with a high degree of vulnerability finds herself to the detriment of her condition as a human person' (for stay, more closely defined as 'a special situation of vulnerability derived from her age, gender, disability, among other conditions, that makes regularising her migratory situation necessary to attend to that situation')</td>
<td>Temporary stay, 1 year (renewable)</td>
<td>Ley No. 8764 (2009), Articles 93-96; Decreto No. 37112-G (2012), Articles 2, 135-136</td>
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<tr>
<td>El Salvador</td>
<td>Any Discretionary Power</td>
<td>'interpret and resolve by analogy, or founded in consideration of good sense and natural reasons, cases that are expressly contemplated in the present Law'</td>
<td>-</td>
<td>Decreto No. 2772 (1958, reformed 1993), Article 74</td>
<td></td>
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<tr>
<td>Guatemala</td>
<td>Entry Humanitarian Reasons</td>
<td>'Foreigners can enter the country for the following humanitarian reasons: (a) Due to a natural catastrophe in a neighboring country, which obliges persons or a group of persons to save their lives, (b) Due to a natural catastrophe to the detriment of their condition as a human person (Art 81) includes 'Estatus de permanencia por razón humanitaria' (Art 85) – treatment equated to refugees</td>
<td>-</td>
<td>Decreto 44-2016 (2016), Article 68</td>
<td></td>
</tr>
<tr>
<td>Honduras</td>
<td>Entry Without a Visa Humanitarian motives</td>
<td>Special Residence Permit 'humanitarian reasons'</td>
<td>-</td>
<td>Decreto No. 208-2003 (2004), Article 110(3)</td>
<td></td>
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</tbody>
</table>

**Source:**
- Ley No. 8764 (2009), Articles 93-96
- Decreto No. 37112-G (2012), Articles 2, 135-136
- Decreto No. 2772 (1958, reformed 1993), Article 74
- Decreto 44-2016 (2016), Article 68
- Decreto No. 208-2003 (2004), Article 110(3)
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<th>Country</th>
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<tbody>
<tr>
<td>Mexico</td>
<td>Entry and stay</td>
<td>Entry for Humanitarian cause</td>
<td>'a person ‘... who due to a risk to her own health or life, or due to her situation of vulnerability cannot be returned to her country of origin, or cannot continue with her journey...’”</td>
<td>Stay as a visitor for humanitarian reasons</td>
<td>Ley de Migración (2011, reformed 2013), Article 37(III)(e) and Article 42; Reglamento de la Ley de Migración (2012), Article 63(III)</td>
</tr>
<tr>
<td>Mexico</td>
<td>Stay</td>
<td>Stay for Humanitarian Reasons</td>
<td>‘humanitarian reasons’ defined as certain specified classes of person, including: victims or witnesses of crimes committed in Mexico; unaccompanied alien children; and asylum-seekers</td>
<td>Stay as a visitor for humanitarian reasons</td>
<td>Ley de Migración (2011, reformed 2013), Article 52</td>
</tr>
<tr>
<td>Mexico</td>
<td>Stay</td>
<td>Stay for Humanitarian Cause</td>
<td>‘humanitarian cause’ defined in terms of: needing to assist a seriously-ill family member in Mexico; recovering the body of a family member or authorising medical attention to a family member who is in the custody of the Mexican State; or when ‘a risk to the person’s own health or life exists and requires them to remain in the national territory’</td>
<td>Stay as a visitor for humanitarian reasons</td>
<td>Reglamento de la Ley de Migración (2012), Articles 137 and 141</td>
</tr>
<tr>
<td>Mexico</td>
<td>Travel</td>
<td>Humanitarian Visa</td>
<td>‘humanitarian reasons’, understood as meaning that the person ‘finds herself in a situation of danger to her life or integrity owing to violence or a duly accredited natural disaster’ or ‘is victim of a natural catastrophe’</td>
<td>-</td>
<td>Ley de Migración (2011, reformed 2013), Articles 41, 116; Lineamientos Generales (2014), eighteenth general provision, procedure 9</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>Stay</td>
<td>Extension</td>
<td>‘humanitarian reasons’</td>
<td>-</td>
<td>Decreto No. 31-2012 (2012), Article 50</td>
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<tr>
<td>Nicaragua</td>
<td>One-off regularisation (Hurricane Mitch)</td>
<td>Regularisation</td>
<td>Central American nationals who entered the country before 15 November 1998</td>
<td>Temporary residence</td>
<td>Decreto No. 94-98 (1998)</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>Travel, entry or stay?</td>
<td>Humanitarian Visa</td>
<td>applies ‘in conformity with international human rights instruments’ to those persons who ‘suffer violations of their human rights and victims of people-trafficking, in particular women and children’</td>
<td>Temporary residence, 1 year (renewable)</td>
<td>Ley No. 761 (2011), Article 220; Decreto No. 31-2012 (2012), Articles 6(f), 61</td>
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<td>Country</td>
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<tr>
<td>Panama</td>
<td>One-off Regularisation (Hurricane Mitch)</td>
<td>Permanent residence, one year</td>
<td>RegularisationNicaraguan nationals living irregularly in the country and who entered before 31 December 1994</td>
<td>Stay</td>
<td>Decreto No. 3 (2008)</td>
</tr>
<tr>
<td>Panama</td>
<td>Temporary residence, up to 6 years</td>
<td>Exceptional humanitarian reasons</td>
<td>Stay for Humanitarian reasons 'exceptional humanitarian reasons', among which the following need evaluation: ‘1. Proved to be suffering a disease or disability that requires medical attention and makes the return to the country of origin or deportee impossible; 2. Proved to suffer from a permanent serious disability; 3. Being more than 65 years old, demonstrates residence impossible; and makes the return to the country of origin or deportee impossible; 4. Being a minor who suffers some degree of disability in kind (sic) and has spent more than five (5) years in the national territory at the moment when (extreme poverty) and finds herself or in a state of abandonment; 5. Being a minor who suffers some degree of disability in kind (sic) and who entered before 31 December 1994'</td>
<td>Decreto Ley No. 3 (2008), Article 18; Decreto No. 320 (2008), Articles 171-174</td>
<td></td>
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<tr>
<td>Panama</td>
<td>Temporary residence, up to 6 years</td>
<td>One-off Regularisation</td>
<td>RegularisationNicaraguan nationals living irregularly in the country</td>
<td>Stay</td>
<td>Decreto No. 3 (1999)</td>
</tr>
<tr>
<td>Country</td>
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<tr>
<td>Argentina</td>
<td>Entry</td>
<td>Entry Without A Visa</td>
<td>‘exceptional reasons of a humanitarian character’</td>
<td>-</td>
<td>Ley No. 25871 (2003), Article 34</td>
</tr>
<tr>
<td>Argentina</td>
<td>Entry or stay</td>
<td>Stay for Humanitarian Reasons</td>
<td>‘persons who, despite not requiring international protection, temporarily cannot return to their countries of origin by reason of the prevailing humanitarian conditions or due to the consequences generated by natural or man-made environmental disasters’</td>
<td>Transitory residence, 6 months (renewable)</td>
<td>See Ley No. 25871 (2003), Article 24(h); Reglamentación de la Ley de Migraciones (2010), Article 24(h)</td>
</tr>
<tr>
<td>Argentina</td>
<td>Entry or stay</td>
<td>Stay for Humanitarian Reasons</td>
<td>‘humanitarian reasons’, for which the following situations are to be ‘taken especially into account’, implying equally that the list is not exhaustive: 1. Persons needing international protection that, although not refugees or asylees in the terms of the applicable legislation, are protected by the Principle of Non-Return (sic.) and cannot regularize their migratory situation through the other criteria established in [migration law]. 2. Persons whom it is presumed likely that, if they were obliged to return to their country of origin, would be subjected to violations of human rights recognized in international instruments of constitutional status. 3. Persons that have been victims of trafficking or other modes of slave exploitation and/or victims of the illicit smuggling of migrants. 4. Persons that invoke health reasons that imply a risk of death if they were obliged to return to their country of origin for lack of medical treatment. 5. Stateless persons and refugees that have lived in the country for a period greater than three years and had their condition ceased.’</td>
<td>Temporary residence, 2 years (renewable)</td>
<td>Ley No. 25871 (2003), Article 23(m); Reglamentación de la Ley de Migraciones (2010), Article 23(m)</td>
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<tr>
<td>Bolivia</td>
<td>Entry</td>
<td>Humanitarian Visa</td>
<td>'Art 65. The National Council on Migration will promote the signing of international treaties and accords on environmental themes and climate change with different States for the protection of affected Bolivians. Furthermore, it will coordinate public policies to make viable, as necessary, the admission of populations displaced by the effects of climate change and natural disasters, where those are due to environmental, climatic, or chemical factors or hunger.'</td>
<td>Travel or entry?</td>
<td>Ley No. 370 (2013), Article 65 (Migration due to Climate Change)</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Stay</td>
<td>Temporary Residence</td>
<td>'Temporary humanitarian residence, 1 year'</td>
<td>Temporary Stay</td>
<td>Ley No. 370 (2013), Articles 13(I)(6), 30(4)</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Entry</td>
<td>Humanitarian Visa</td>
<td>'humanitarian reasons', understood as '1. Need for international protection sanctioned by the principle of non-refoulement; [or] 2. Victim of trafficking and smuggling of persons; [or] 3. Accompanying a sick person that requires medical treatment'</td>
<td>Travel or entry?</td>
<td>Ley No. 370 (2013), Articles 9(I)(d), 21(I)(6)</td>
</tr>
</tbody>
</table>

Definition: ‘Climate Migrants. Groups of persons who are forced to displaced from one State to another due to climate effects, when a risk or threat to their life may exist, whether due to natural causes, environmental, nuclear [or] chemical disasters or hunger’ (Art 4(16))
<table>
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<tr>
<td>Brazil (prior)</td>
<td>Travel, entry or stay</td>
<td>Special Situations and Unforeseen Cases</td>
<td>'humanitarian reasons'</td>
<td>Temporary residence, 5 years</td>
<td>Conselho Nacional de Imigração (2006), Resolução Recomendação No. 08, Article 1, and first paragraph</td>
</tr>
<tr>
<td>Brazil</td>
<td>Entry</td>
<td>Humanitarian Visa</td>
<td>14. A temporary visa can be granted to an immigrant who comes to Brazil with the intention of establishing residence for a specified period and on one of the following grounds: … (c) humanitarian reception. … § 3 The temporary visa for humanitarian reception can be granted to a stateless person or a national from any country in a situation of a serious or imminent institutional instability, armed conflict, major calamity, environmental disaster or serious violations of human rights or international humanitarian law, or on other grounds specified in the regulations.'</td>
<td>Temporary visa</td>
<td>Lei No. 13445 (2017), Article 14; Decreto No. 9199 (2017), Article 36</td>
</tr>
<tr>
<td>Country</td>
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<tr>
<td>Brazil</td>
<td>Stay Humanitarian</td>
<td>Residence</td>
<td>Art. 30. Residence can be authorized, upon registration, to an immigrant, border resident, or visitor whose situation corresponds with one of the following grounds: I – residence that has as its purpose: … c) humanitarian reception.</td>
<td>Art. 142. The authorisation of temporary residence can be based on the following grounds: I – residence that has as purpose: … c) humanitarian reception. § 2. On the expiry of the residence period determined in paragraph [2 above], the institution that granted the initial authorization of temporary residence can, upon a request from the immigrant, renew the initial period for more two years or grant residence for an indefinite period.</td>
<td>Residence (two years, renewable)</td>
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<td>Country</td>
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<tr>
<td>Chile</td>
<td>Travel, entry or stay</td>
<td>Discretionary Power</td>
<td>residence of persons is 'useful or advantageous, or their activities are of interest for the country'</td>
<td>Temporary residence</td>
<td>Decreto No. 597 (1984), Articles 49-50</td>
</tr>
<tr>
<td>Colombia</td>
<td>One-off regularisation (Haiti earthquake)</td>
<td>Regularisation</td>
<td>Haitian nationals who entered Ecuador by 31 January 2010</td>
<td>Lawful visitor (non-immigrant), 5 years</td>
<td>Decreto No. 248 (2010)</td>
</tr>
<tr>
<td>Ecuador</td>
<td>One-off regularisation (Haiti earthquake)</td>
<td>Regularisation</td>
<td>Haitian nationals who entered Ecuador by 31 January 2010</td>
<td>Lawful visitor (non-immigrant), 5 years</td>
<td>Decreto No. 248 (2010)</td>
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</tbody>
</table>

Colombia: ARTÍCULO 2.2.1.11.2.5 De Los Permisos. La Unidad Administrativa Especial Migración Colombia desarrollará mediante acto administrativo, lo concerniente a los tipos, características y requisitos para el otorgamiento de los Permisos de Ingreso y Permanencia, Permisos Temporales de Permanencia a los visitantes extranjeros que no requieran visa y que ingresen al territorio nacional sin el ánimo de establecerse en él, y los Permisos de Ingreso de Grupo en Tránsito

AND

Corte Constitucional: "el Estado colombiano no puede desconocer las normas internacionales en materia de protección de migrantes, por más que estas personas se encuentren de forma ilegal en nuestro territorio. Se deben valorar las razones por las que decidieron venir a Colombia, los riesgos que corren si son expulsadas del país y la situación concreta que enfrentarían en Venezuela en caso de ser devueltas. En consecuencia, Migración Colombia, la Defensoría del Pueblo y cualquier autoridad con competencia en el asunto deben procurar que los migrantes sean protegidos de forma plena, que puedan ejercer sus derechos, obtener la documentación para permanecer en el territorio colombiano"

By analogy with powers used in MRE Resolución 5797 (2017)
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<tr>
<th>Country</th>
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<tbody>
<tr>
<td>Ecuador</td>
<td>Entry or stay?</td>
<td>Persons protected for humanitarian reasons for a period of up to two years in conformity with the Law. They will be granted the humanitarian visa if the reasons for which they seek humanitarian status are of exceptional nature.</td>
<td>Article 58. Persons in protection for humanitarian reasons. This is a foreign person who, without meeting the requirements established in the present Law, demonstrates the existence of exceptional reasons of a humanitarian nature as a victim of natural or environmental disasters. The person can gain access to a humanitarian visa for a period of up to two years in accordance with the regulations for this Law, so long as they are not considered a threat or risk to domestic security, according to the information held by the Ecuadorian State. If the reasons for which they sought the humanitarian visa persist after this time, the visa can be extended until the grounds that gave rise to it cease. This is without prejudice to the person accessing to another migratory status at any time and in accordance with the requirements established in this Law.</td>
</tr>
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</table>

**Source:** Ley Orgánica de Movilidad Humana (2017), Article 58 and 66(5); Decreto Ejecutivo No. 111 (2017), Article 55
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<tr>
<td>Guyana</td>
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<td>‘The Minister may by order exempt, from all or any of the provisions of this Act, any alien, or class of aliens, and such exemption may be general or subject to such conditions, restrictions, limitations or exceptions as are specified in the order’</td>
<td></td>
<td>1947 Aliens (Immigration and Registration) Act, Chapter 14:03 (revised 2012), section 11</td>
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<tr>
<td>Paraguay</td>
<td></td>
<td></td>
<td>‘La Dirección General de Migraciones tendrá las siguientes funciones: ... 9) Regularizar la situación migratoria de los migrantes ilegales cuando así corresponda;’ AND ‘Son atribuciones y obligaciones del Director General: ... g) Realizar los demás actos necesarios para el mejor cumplimiento de los fines y objetivos de la Dirección General de Migraciones.’</td>
<td></td>
<td>Ley No. 978 (1996), Article 142(9) and 146(g)</td>
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<td>Country</td>
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<td>Peru</td>
<td>Entry or stay; in some cases, travel</td>
<td>Art 29.2 Residence. Authorises the entry and/or stay in the territory of the Republic. These Migration Categories are extendable and permit multiple entries. The Immigration Categories of Residence are the following: …</td>
<td>In exceptional cases, the migration authorities can implement mass and individual regularisation programmes, including for &quot;foreign persons in a state of vulnerability...&quot; or in protection of other fundamental rights recognised in the Political Constitution and in the international treaties and conventions to which Peru is a party. Vulnerable foreigners include: '(l) Desplazados forzados' [Forcibly Displaced Persons] and '(q) Others who require protection due to their fundamental rights being affected or seriously threatened.'</td>
<td>Permanence</td>
<td>Regulations</td>
</tr>
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*Decree Legislativo No. 1350 (2017), Article 29.2(k); Decreto Supremo 007-2017-IN, Article 91.*
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<tr>
<td>Suriname</td>
<td>Stay</td>
<td></td>
<td>‘If an alien who is not a refugee in the sense of article 16 subsection 1, does not qualify for the issuance of a residence permit in application of the provisions of, or by virtue of this law, he may nonetheless be granted such permit provided he cannot in the light of the social and political situation in his country of origin and his personal circumstances reasonably be required to return to that country.’</td>
<td>Residence permit</td>
<td>Aliens Act (1992), Article 17</td>
</tr>
<tr>
<td>Uruguay</td>
<td>Entry</td>
<td>Entry Without a Visa</td>
<td>‘persons who do not meet the requirements established in the present law, and its regulations, when exceptional reasons exist of a humanitarian character’</td>
<td>Temporary resident</td>
<td>Ley No. 18250 (2008), Article 44 (and Article 34B on residency)</td>
</tr>
<tr>
<td>Venezuela</td>
<td>One-off regularisation (Haiti earthquake)</td>
<td>Regularisation</td>
<td>Haitian nationals in who entered Venezuela by 12 January 2010 and living irregularly in country</td>
<td>Social temporary resident</td>
<td>Official discretion, internal directives</td>
</tr>
<tr>
<td>Country</td>
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<tr>
<td>Antigua and Barbuda</td>
<td>Remain/Entry Discretionary</td>
<td>64(1) Where -... (c) the Chief Immigration Officer postpones deciding whether a person is a prohibited immigrant; ... the Chief Immigration Officer may grant a permit for the immigrant to remain in Antigua and Barbuda for so long as the Chief Immigration Office considers necessary...</td>
<td>10 to 28 days discretionary for up to 28 days</td>
<td>Immigration and Passport Act (2014), section 64 and 14</td>
<td></td>
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<tr>
<td>Bahamas</td>
<td>Remain/Entry Discretionary</td>
<td>14. The following persons or classes of persons have the right of entry and landing in Antigua and Barbuda - (b) subject to this Act ... (viii) any other persons or class of persons to whom this section may be applied by Order made by the Minister</td>
<td>None discretionary</td>
<td>Immigration Act (1967), section 23; Immigration and General Regulations (1969), section 12</td>
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<td>Country</td>
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<td>Barbados</td>
<td>Entry</td>
<td>Discretionary</td>
<td>Prohibited persons: ‘(2) The Minister may, in writing under his hand or the hand of a person designated by him, exempt from the operation of subsection (1) [i.e. entry of prohibited persons as defined in First Schedule]- … (b) a person described in paragraph 1(a) of the First Schedule, if the Minister is satisfied that that person is a member of a family already lawfully in Barbados and another member of that family gives security satisfactory to the Minister against that person becoming a charge on public funds; … (3) An exemption under subsection (2) may be granted subject to such conditions as the Minister thinks fit…’ (Section 8)</td>
<td>Discretionary</td>
<td>Immigration Act (1976), Section 8(2)-(3); Section 13(7)</td>
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<td>Permitted entrants: ‘Without limiting or affecting the operation of this section, the Minister may grant to a person special permission to remain in Barbados on such terms and conditions as he thinks fit.’ (section 13(7))</td>
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<td>Cuba</td>
<td></td>
<td></td>
<td>Power to Exempt. ‘Notwithstanding anything to the contrary contained in this Act, the Minister may exempt any person from the provisions of [lists] or may authorise the issue of a temporary permit to any prohibited immigrant to enter and reside in the State upon such conditions as may lawfully be imposed by Regulations’.</td>
<td>Not under immigration categories – treat as refugees</td>
<td></td>
</tr>
<tr>
<td>Dominica</td>
<td>Entry</td>
<td>Discretionary</td>
<td>Power to Exempt. ‘Notwithstanding anything to the contrary contained in this Act, the Minister may exempt any person from the provisions of [lists] or may authorise the issue of a temporary permit to any prohibited immigrant to enter and reside in the State upon such conditions as may lawfully be imposed by Regulations’.</td>
<td>Discretionary</td>
<td>Immigration and Passport Act (1941), Section 30(1)</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td></td>
<td></td>
<td>‘Art 35. Foreigners that qualify within the following subcategories are admitted as Temporary Residents … 8. Those foreigners that, without fitting exactly within the preceding [sub-categories], were exceptional authorised by the Director General of Migration, taking into account the activity to be undertaken by them and the benefit that this could generate for the country’.</td>
<td>Not really applicable but speaks to innate discretion?</td>
<td>Ley No. 285-04 (2004), Article 35(8); Decreto 631-11 (2011), Article 43.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>‘Art 43 … The exceptional authorisation that the DGM may make for admission of one or various foreigners as Temporary Residents, on evaluating the activity and the benefit that each particular case could generate, must be undertaken on an individual basis. Each authorisation constitutes a sui generis case; it does not constitute a reference point or a binding precedent.’</td>
<td></td>
<td>Also regularisation of irregular non-nationals through Decreto 327-13, based in Ley No. 285-04, Article 151.</td>
</tr>
<tr>
<td>Country</td>
<td>Scenario</td>
<td>Concept</td>
<td>Definition</td>
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<td></td>
</tr>
<tr>
<td>Grenada</td>
<td>Stay</td>
<td>Discretionary</td>
<td>Visitors and passengers in transit. (1) Where a person desires to remain in Grenada as a visitor or passenger in transit for a period not exceeding twelve months, an immigration officer may, if so requested, without deciding whether that person is or is not a prohibited alien, grant him or her a permit to remain in Grenada for such period not exceeding twelve months as may be specified in the permit.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Haiti</td>
<td>Temporary</td>
<td>Stay</td>
<td>Le visa de résidence est celui qui donne droit à un séjour illimité en Haïti, sans préjudice des mesures d’expulsion susceptibles d’être prises contre l’étranger bénéficiaire de ce visa.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Notes:**
- **Temporary** remain / residence, up to 1 month (CIO) or 12 months (Minister) - Immigration Act (1969), Section 14; Immigration (Restriction) Regulations (1938, 1968), Section 9 (duration in section 10).
<table>
<thead>
<tr>
<th>Country</th>
<th>Scenario</th>
<th>Concept</th>
<th>Definition</th>
<th>Status</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jamaica</td>
<td></td>
<td></td>
<td>‘10. An immigration officer may (a) grant leave for an immigrant to land without prejudice to the question of whether he is a prohibited immigrant; (b) for the purpose of making further enquiry, postpone deciding whether a Commonwealth citizen is a prohibited immigrant for a period not exceeding sixty days.’ AND ‘21(1) Whenever - …(b) an immigration officer postpones deciding whether a person is a prohibited immigrant … the immigration officer may grant leave to remain in the Island for so long as the immigration officer considers necessary’ AND ‘36 The Minister may direct that any Commonwealth citizen or class of Commonwealth citizen shall be exempt, either unconditionally or subject to such conditions as the Minister may impose, from all or any of the provisions of this Act.’</td>
<td>Discretionary. Up to 60 days.</td>
<td>Immigration Restriction (Commonwealth Citizens) Act (1945, revised 1988), section 10, 21(1) and 36</td>
</tr>
<tr>
<td>Jamaica</td>
<td>Stay</td>
<td></td>
<td>‘humanitarian grounds’</td>
<td>Exceptional Leave to Remain, 3 years (renewable for same or indefinitely)</td>
<td>Refugee Policy (2009), Article 12(a)(iii) and Article 13(f) [can only be accessed if a defensive asylum claim is made?]</td>
</tr>
<tr>
<td>St Kitts and Nevis</td>
<td></td>
<td></td>
<td>ASSUME SIMILAR TO SVG</td>
<td></td>
<td>Immigration Act 2001; chapter 76?</td>
</tr>
<tr>
<td>Saint Lucia</td>
<td></td>
<td></td>
<td>ASSUME SIMILAR TO SVG</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Scenario</td>
<td>Concept</td>
<td>Definition</td>
<td>Status</td>
<td>Source</td>
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<td>-------------------------</td>
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<td>-----------------------------------------------------------------------------------------------</td>
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<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Saint Vincent and the Grenadines</td>
<td>Temporary Stay, up to 12 months</td>
<td>Immigration Act (Restriction) 1939, Section 18(1) and 28; Immigration (Restriction) Regulations 1938, Section 9 (duration in section 10)</td>
<td>Where a person desires to remain in Saint Vincent and the Grenadines as a visitor or passenger in transit for a period not exceeding twelve months, an immigration officer may, if so requested and without deciding whether that person is or is not a prohibited alien, grant him a permit to remain in Saint Vincent and the Grenadines for such period, not exceeding twelve months, as may be specified in the permit.</td>
<td></td>
<td>Annex</td>
</tr>
</tbody>
</table>

**Trinidad and Tobago**

`18... (3) Unless the examining immigration officer is of the opinion that it would or may be contrary to any provision of this Act or the regulations to admit a person examined by him, he shall, after such examination, admit such person to such purpose as may be specified in the section 10 permit. AND

**Annex**

[Temporary Stay, up to 12 months](#)
<table>
<thead>
<tr>
<th>Country</th>
<th>Scenario</th>
<th>Concept</th>
<th>Definition</th>
<th>Status</th>
<th>Source</th>
</tr>
</thead>
</table>
| Trinidad     | Stay of execution of     | Humanitarian          | '(1) Where the Minister dismisses an appeal against a deportation order pursuant to any provision of the Act, he shall direct that the order be executed as soon as practicable, except that:-
...or(b) in the case of any other person who was not a resident at the time of the making of the order of deportation, having regard to:-
(i) the existence of reasonable grounds for believing that if execution of the order is carried out the person concerned will be punished for activities of a political character or will suffer unusual hardship; or
(ii) the existence of compassionate or humanitarian considerations that in the opinion of the Minister warrant the granting of special relief,
the Minister may direct that the execution of the deportation order be stayed, or may quash the order and direct the entry of the person against whom the order was made.
(2) Where, pursuant to subregulation (1)(a) or (b), the Minister directs that execution of a deportation order be stayed, he shall allow the person concerned to come into or remain in Trinidad and Tobago under such terms and conditions as he may prescribe and shall review the case from time to time as he considers necessary or advisable.' | Discretion | Immigration Regulations (1974), section 28 |
<p>| Tobago       |                           |                       |                                                                                                                                                                                                            |         | Cases of refugees from natural disasters be left open and be decided, when needs arises, on the basis of the circumstances prevailing in Trinidad and Tobago at the particular period in time | Cabinet Decision in Minute No. 4809 (16 November 1979) |</p>
<table>
<thead>
<tr>
<th>Country</th>
<th>Source</th>
<th>Status</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anguilla</td>
<td>BOT British Virgin Islands</td>
<td>Can be revoked</td>
<td>22(1)(p) 15 Section 11 Anguilla’s Revised Immigration Act 1979, Revised 2010’s Revised Immigration Act.</td>
</tr>
<tr>
<td>Anguilla</td>
<td>BOT British Virgin Islands</td>
<td>Cannot be revoked</td>
<td>22(1)(q) 22(1)(r) 15 Section 12 Anguilla’s Revised Immigration Act 1979, Revised 2010’s Revised Immigration Act.</td>
</tr>
</tbody>
</table>

Any person who is not a prohibited immigrant, may be granted permission to land and to remain or reside in Anguilla for a period of up to 6 months, subject to extension from time to time for further periods not exceeding a total of 6 months, on application to the Chief Immigration Officer.

A person who is not a prohibited immigrant may be granted a permit to remain in Anguilla for so long as he may consider necessary.

Where a person desires to remain in Anguilla as a visitor for a period not exceeding 6 months, an immigration officer may, without deciding whether that person is or is not a prohibited immigrant, grant him a permit to remain in Anguilla for such period not exceeding 6 months as may be specified in the permit.

For the purposes of this section, the expression “visitor” shall not include a person who enters Anguilla for the purposes of employment and is in possession of a valid work permit.

Special leave to land. Where any person is not granted leave to land in Anguilla in accordance with section 23 the Chief Immigration Officer may, in his discretion, notwithstanding any other provisions of this Ordinance, permit such person in writing to land and to remain in Anguilla for such period and subject to such conditions as may be prescribed or as the Chief Immigration Officer may deem fit to impose.

A special permit shall be in Form VI, and shall be granted subject to the condition that the same may be cancelled at the discretion of the Chief Immigration Officer.
<table>
<thead>
<tr>
<th>Country</th>
<th>Scenario</th>
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<th>Definition</th>
<th>Status</th>
<th>Source</th>
</tr>
</thead>
</table>
| BOT: Cayman Islands |          |         | '67. (1) Persons other than those referred to in section 66, and who are not prohibited immigrants, may be granted permission to land in the Islands as visitors for a period of up to six months, subject to extension, from time to time, for further periods not exceeding six months on each occasion upon application made to the Chief Immigration Officer in the prescribed manner.'  

'63. Notwithstanding anything contained in this Part, the Cabinet may issue a permit for the landing of any person to the Islands, and such person shall be admitted accordingly upon such terms as may be specified in the said permit.'  

'22. Unless a person arriving in the Islands is exempted from the requirements of the Law, he may be refused permission to land by an immigration officer if- (a) he is without a passport, visa or other appropriate travel documents; (b) upon his arrival, he provides false or misleading information to an immigration officer; (c) he fails to provide information required by an immigration officer for the purpose of deciding whether entry should be allowed and on what terms; (d) he has in the past- (i) obtained a benefit by way of grant from the immigration authorities by fraud or deception; or (ii) failed to observe a condition attaching to an immigration grant; (e) he is a prohibited immigrant; (f) he fails to satisfy the immigration officer that he will be admitted to another country after his stay in the Islands; (g) his sponsor is unwilling to give, if requested to do so, an undertaking to be responsible for his maintenance and accommodation during the period of any leave granted; (h) the immigration officer has information to the effect that- (i) it will be conducive to the public good to refuse him leave to enter; or (ii) he does not intend to leave the Islands at the end of the period of his visit; (i) he intends, unlawfully, to engage in gainful occupation in the Islands; (j) he has in his possession a forged, altered or irregular passport or other travel document; (k) he intends, without having obtained the necessary student visa, to engage in formal studies in the Islands; or (l) he has insufficient funds- (i) to adequately maintain himself and his dependants without recourse to taking up employment; or (ii) to meet the cost of the return or onward journey.' |        | Immigration Law (2003, revised 2015), Section 63, 67(1); Immigration Regulations (2017 revision), Regulation 22. |
BOT:

Montserrat

\(\text{(1)}\) Where a person desires to remain in Montserrat as a visitor or as a passenger in transit for a period not exceeding six months, an immigration officer may, if so requested and without deciding whether that person is or is not a prohibited immigrant, grant him a permit to remain in Montserrat for such period not exceeding six months as may be specified in the permit.

\(\text{(2)}\) The period granted under subsection \((1)\) may be extended from time to time by the Chief Immigration Officer up to a maximum of twelve months from the date of entry.

TCI

\(\text{(1)}\) The temporary permit which may be issued to an immigrant under sections \(13, 19\) and \(22\) of the Act shall be in the Form “G” in the Schedule and subject to the conditions set out in the said Form and in regulation \(10\), and shall entitle such person to enter or pass through Montserrat to some destination beyond or to reside temporarily in Montserrat for some approved purpose. Every permit shall contain such particulars and marks together with any fingerprints as may be deemed necessary for purposes of identification. (2) Notwithstanding the provisions of subregulation \((1)\), an immigration officer may endorse on the passport or other travel document of a visitor or passenger in transit permission to remain in Montserrat for such period and on such terms and conditions as he may determine, provided that the number of persons so allowed shall not exceed \(10\) unless waived.

Immigration Act (1946, revised 2013), Chapter \(13:01\), Section \(22(1)\); Immigration (Asylum Appeals) Rules, Regulation \(9\).
<table>
<thead>
<tr>
<th>Country</th>
<th>Scenario</th>
<th>Concept</th>
<th>Definition</th>
<th>Status</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>NA</td>
<td></td>
<td></td>
<td>2.3.1. A foreign national who does not come from a country from which visitors ordinarily require a visa and who is not in possession of the required document for crossing the border may be issued with a certificate of passage for a short stay under certain circumstances, one of which is demonstrating an urgent and valid need for entry.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>2.3.6. If a foreigner who is registered as someone who would ordinarily be refused entry to the country is seeking access and the official has doubts about refusal of entry, they can contact IND (Immigration and Naturalisation) unit Caribbeen Netherlands to bring the case to their attention. They can make the decision about giving the foreigner access in the event of compelling humanitarian reasons, or in the interests of the country, or for international relations purposes.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>3.4 (Easing of Border Controls): ‘On the basis of Article 2v WTU-BES, border checks at the border can be relaxed in the event of exceptional and unforeseen circumstances. These exceptional and unforeseen circumstances may for example include flooding or other serious natural disasters which hinders the crossing of the border at other checkpoints, so that traffic flows from different checkpoints/crossing points are diverted to only one border crossing point. Even in the event of relaxation of border controls, the official in charge of border control must stamp the travel documents of foreigners on entry and exit. This is laid down in Article 2v WTU-BES’</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Circulaire toelating en uitzetting Bonaire, Sint Eustatius en Saba
Rijksdienst Caribisch Nederland
Immigratie- en Naturalisatiedienst
Oktober 2010
Afkortingenlijst CTU-BES (October 2010), section 2.3.1, 2.3.6, 3.4
Ordinante on Admittance and Expulsion?
Landsverordening Toelating en Uitzending (LTU) (Curacao / Sint Maarten) or WTU (Bonaire, Sint Eustatius and Saba)
### Annex E: REFUGEE LAWS BY COUNTRY

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Concept</th>
<th>Definition</th>
<th>Status</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Qualification Refugee</td>
<td></td>
<td>'A person who] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country…'</td>
<td>Variable, depending on domestic law of country, usually temporary</td>
<td>Convention relating to the Status of Refugees (1951) and 1967 Protocol, Article 1A(2)</td>
</tr>
<tr>
<td>International Qualification Refugee</td>
<td></td>
<td>'Persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order, are unable or, because of such threat, unwilling to return to their country…'</td>
<td>Variable, depending on domestic law of country, usually temporary</td>
<td>Cartagena Declaration on Refugees (1984), Conclusion III</td>
</tr>
</tbody>
</table>

*State not party to 1951 CSR or 1967 Protocol*
## CENTRAL AMERICA

<table>
<thead>
<tr>
<th>Country</th>
<th>CSR in NL</th>
<th>CD in NL</th>
<th>Scenario</th>
<th>Concept</th>
<th>Definition</th>
<th>Status</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belize</td>
<td>Y</td>
<td>Y (PO)</td>
<td></td>
<td></td>
<td>'mass influx, or imminent risk of mass influx, to the country by persons</td>
<td>Unspecified</td>
<td>Refugee Act, Chapter 165 (2000)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>needing international protection'</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Y</td>
<td>N</td>
<td>Unspecified (mass influx)</td>
<td>Temporary Protection</td>
<td>'Guarantee asylum to every person who ‘faces a risk of being submitted to torture or cannot return to another country... where her life may be at risk, in conformity with ratified international and regional instruments’ (Art 6) Among the ‘special categories’ are ‘humanitarian reasons, in conformity with international human rights instruments’ (Art 94)</td>
<td>Unspecified</td>
<td>Decreto No. 36331-G (2011), Article 145</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Entry or stay</td>
<td>Special Migratory Category</td>
<td></td>
<td></td>
</tr>
<tr>
<td>El Salvador</td>
<td>Y</td>
<td>Y (HR/PO)</td>
<td></td>
<td></td>
<td>'Guarantee the dignity and rights of migrants in the national territory, ensuring that they are not submitted to any form of violence, nor to torture or to cruel inhuman or degrading treatment’ (Art 12)</td>
<td>Unspecified</td>
<td>Decreto No. 918 (2002)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Y</td>
<td>Y (prior)</td>
<td></td>
<td></td>
<td></td>
<td>Unspecified</td>
<td>Decreto No. 44 (2016); still awaiting regulation on issue of refugees etc.</td>
</tr>
</tbody>
</table>

### Notes:
- **CSR in NL**: Consideration of State Responsibility
- **CD in NL**: Consideration of Denial of State Responsibility
- **Scenario**: Unspecified
- **Concept**: 'Temporary Protection'
- **Definition**: 'Guarantee asylum to every person who ‘faces a risk of being submitted to torture or cannot return to another country... where her life may be at risk, in conformity with ratified international and regional instruments’ (Art 6) Among the ‘special categories’ are ‘humanitarian reasons, in conformity with international human rights instruments’ (Art 94)
- **Status**: Unspecified
- **Source**: Various legislative documents and decrees.
<table>
<thead>
<tr>
<th>Country</th>
<th>Source</th>
<th>Status</th>
<th>Definition</th>
<th>Concept</th>
<th>Scenario</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Honduras</td>
<td>Decreto Ejecutivo No. 5 (2018)</td>
<td>Temporary</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>Ley No. 655 (2008), Decreto Ejecutivo No. 5 (2018)</td>
<td>Non-refusal</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td></td>
</tr>
<tr>
<td>Nicaragua</td>
<td>Ley No. 655 (2008), Decreto Ejecutivo No. 5 (2018)</td>
<td>Non-refusal</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td></td>
</tr>
<tr>
<td>Panama</td>
<td>Decreto Ejecutivo No. 5 (2018)</td>
<td>Temporary</td>
<td>...</td>
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</table>
## 2. SOUTH AMERICA

<table>
<thead>
<tr>
<th>Country</th>
<th>CSR in NL</th>
<th>CD in NL</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scenario</td>
<td>Concept</td>
<td>Definition</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Argentina</td>
<td>Y</td>
<td>Y (HR/PO)</td>
<td>Stay for Humanitarian Reasons / Complementary Protection</td>
</tr>
<tr>
<td></td>
<td>Entry or stay</td>
<td></td>
<td>humanitarian reasons, for which the following situations are to be ‘taken especially into account’: ’1. Persons needing international protection that, although not refugees or asylees in the terms of the applicable legislation, are protected by the Principle of Non-Return and cannot regularize their migratory situation through the other criteria established in [migration law]. 2. Persons whom it is presumed likely that, if they were obliged to return to their country of origin, would be subjected to violations of human rights recognized in international instruments of constitutional status. … 4. Persons that invoke health reasons that imply a risk of death if they were obliged to return to their country of origin for lack of medical treatment.’ (Art 23(m))</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Temporary residence, 2 year (renewable)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ley No. 26165 (2006)</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Y</td>
<td>Y (HR/PO)</td>
<td>Unspecified (mass influx)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>‘mass influx, or imminent risk of mass influx, to the country by persons needing international protection’ (Art 31)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unspecified</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ley No. 251 (2012), Article 31</td>
</tr>
<tr>
<td>Brazil</td>
<td>Y</td>
<td>Y (HR)</td>
<td>Travel, entry and stay</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>For reasons of ‘humanitarian reception’, including but not limited to nationals of ‘any country in a situation of… grave violations of human rights or international humanitarian law’, exclusion for criminal activity</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Temporary visa or Residence,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Lei No. 9474 (1997)</td>
</tr>
</tbody>
</table>

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**Notes:**
- CSR: Conditional Stay Rights
- CD: Conditional Disability
- NL: National Legislation
- Other: Additional information or references.
<table>
<thead>
<tr>
<th>Country</th>
<th>Scenario</th>
<th>Concept</th>
<th>Status</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>Y (HR/PO)</td>
<td>Non-return</td>
<td>Entry and stay</td>
<td>A person from whom there are well-founded reasons to believe that the return to a country where the security of the person would be in danger or where there exist well-founded reasons to believe that the person would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment; in country of nationality or habitual residence (Art 1(c)); normal returnee exclusion clauses apply (Art 4)</td>
</tr>
<tr>
<td>Colombia</td>
<td>Y (HR/PO)</td>
<td>Temporary Visa</td>
<td>Entry, non-return and stay</td>
<td>Includes a person for whom there are well-founded reasons to believe that she would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment (Art 1(c)); normal returnee exclusion clauses apply (Art 4)</td>
</tr>
</tbody>
</table>

*Source: Ley No. 20.430 (2010), Article 4*
<table>
<thead>
<tr>
<th>Country</th>
<th>CSR in NL</th>
<th>CD in NL</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scenario</td>
<td>Concept</td>
<td>Definition</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Y</td>
<td>Y (HR/PO)</td>
<td>Entry due to forced displacement</td>
</tr>
<tr>
<td>Guyana*</td>
<td>N</td>
<td>N</td>
<td></td>
</tr>
<tr>
<td>Paraguay</td>
<td>Y</td>
<td>Y (HR/PO)</td>
<td>Entry, stay and non-return (mass influx)</td>
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<td>Suriname</td>
<td>Entry, stay and non-return (mass influx)</td>
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<td>Ley Orgánica sobre el fuero y competencia en materia de homologación (7/93)</td>
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<td>Temporary protection</td>
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<td>Ley No. 1876 (2006)</td>
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<td>Temporary protection status (admission and non-return), 90 days (renewable)</td>
<td>Y</td>
<td>Ley Orgánica sobre Refugiados o Refugiadas y Asilados o Asiladas (2001), Article 32; Decreto No. 2491 (2003), Articles 21-23</td>
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### CARIBBEAN

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<td>Cuba*</td>
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<td>Entry and stay</td>
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<td>‘...those aliens and persons lacking citizenship whose entry to the national territory is authorised due to leaving their country owing to social or warlike calamity, due to cataclysm or other phenomena of nature and who will remain temporarily in Cuba, until normal conditions are re-established in their country of origin’</td>
<td>Temporary residence</td>
<td>Decreto No. 26 (1978), Article 80</td>
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a) After considering the application, the Committee may recommend that the Permanent Secretary in the Ministry responsible for immigration matters:

1. Not recognise the applicant as a refugee but may grant the applicant exceptional leave to remain in Jamaica for a limited period.

b) The limited period contemplated in paragraph 12(a) iii above shall be for a period of three years in the first instance (paragraph 12). The Permanent Secretary may extend such leave for a period of three years in the first instance (paragraph 12) if he determines that the applicant is unable to return to his country of origin for reasons associated with such leave and conditions associated with such leave are in the applicant’s best interests. The Permanent Secretary shall communicate that decision to the applicant in writing and inform the applicant of the reasons associated with such leave. The Permanent Secretary may, in exceptional circumstances where the applicant is found to be a refugee, extend such leave for a period of three years in the first instance (paragraph 12) if he determines that the applicant is unable to return to his country of origin for reasons associated with such leave and conditions associated with such leave are in the applicant’s best interests. The Permanent Secretary shall communicate that decision to the applicant in writing and inform the applicant of the reasons associated with such leave.
<table>
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<td>BOT: British Virgin Islands</td>
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<td>Newspaper reports refer to it as having introduced asylum provisions in 2016</td>
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<tr>
<td>BOT: Cayman Islands</td>
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<td>'84. ... (8) Where an application is made for asylum, it shall be recorded by the Chief Immigration Officer who, if satisfied that the application was made as soon as reasonably practicable after the applicant’s arrival in the Islands, shall- (a) on being satisfied that for obvious and compelling reasons the applicant cannot be returned to his country of origin or nationality, grant him exceptional leave to remain in the Islands; and (b) make arrangements for his support, accommodation and upkeep. (9) The grant of exceptional leave under this section - (a) does not confer on the grantee any right to gainful occupation in the Islands; and (b) may be revoked, varied or modified by the Chief Immigration Officer.'</td>
<td></td>
<td>Immigration Law (2003, revised 2015), Section 84(8)</td>
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<td>KN: Aruba</td>
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### Asylum Claim

Asylum claim is understood not only as a claim for recognition as a refugee but also as Article 3 ECHR grounds or 'section 4 of the Constitution of Montserrat protecting a person from being subject to torture, or to inhuman or degrading treatment or punishment'.

45(5) Where an asylum claim is made, it shall be recorded by the Chief Immigration Officer who, if satisfied that the claim was made as soon as reasonably practicable after the applicant’s arrival in Montserrat, shall—

(a) on being satisfied that for obvious and compelling reasons the applicant cannot be returned to his country of origin or nationality, grant him exceptional leave to remain in Montserrat or subject him to immigration control by means of an immigration order, or suspend his removal or deportation for reasonable grounds of immunity or non-deportability,

(b) make arrangements for his support, accommodation and upkeep,

(c) subject him to immigration control by means of an immigration order, or

(d) subject him to deportation.
<table>
<thead>
<tr>
<th>Country</th>
<th>CSR in NL</th>
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<tr>
<td>KN: Sint Maarten*</td>
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<td>N</td>
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<td>ECHR applies in all KN countries and territories</td>
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<tr>
<td>KN: Bonaire</td>
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<td>N</td>
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<td></td>
<td>Chapter 16 details the circumstances under which people may claim asylum, which is only under conditions laid down through the Refugee Convention or ECHR (EVRM is the Dutch acronym).</td>
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<td>Under 3.6.1, where border control officials are intending to deny access to foreigners who belong to a particular category, they must contact the IND unit Caribbean Netherlands. These categories include where a foreigner has claimed they require protection. This subsection then refers back to Chapter 16 and to Article 2r No.3 of the Law of Admission and Expulsion which simply states: 'The official with responsibility for border control refuses entry to foreigners who are listed as being denied entry, unless Our Minister deems entry necessary on the grounds of compelling humanitarian reasons, in the interests of the country or international relations'</td>
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<td>KN: Saba</td>
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Annex F:

EXPERT INPUT

**Governmental sources**

- Tracey A. Blackwood, Minister-Counsellor, Jamaican High Commission in UK (info by email)
- José Laurent, Director, Legal Aid and Advice Centre, Ministry of Justice and Legal Affairs, Antigua and Barbuda
- Victor Marchezini, Director, Centro de Monitoreo de Desastres Naturales (CEMADEN), Brazil
- Melissa Meade, Director of Disaster Management Department, Anguilla
- Philmore Mullin, Director, National Office of Disaster Services, Antigua and Barbuda
- Oscar Zepeda, Director of Analysis, Centro Nacional de Prevención de Desastres (CENAPRED), Mexico

**Non-governmental sources**

- Brendan Tarnay, Focal Point for the Caribbean, IOM Regional Office in Costa Rica
- Gabriela Rodríguez, Project Coordinator, IOM Regional Office in Costa Rica
- Marco Formisano, Senior Legal Office, UNHCR Regional Legal Unit in Costa Rica (info by email)