



# 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



PLATFORM  
ON DISASTER  
DISPLACEMENT  
FOLLOW-UP TO THE NANSEN INITIATIVE







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Director, Refugee Law Initiative,  
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With the generous support  
of Switzerland



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Federal Department of Foreign Affairs FDFA

# TABLE OF CONTENTS

<b>1</b>	<b>INTRODUCTION</b>	<b>7</b>
1.1	Background to the study	7
1.2	Scope of the study	8
1.3	Other methodological considerations	10
1.4	Structure of the study	11
<b>2</b>	<b>MOVEMENT AND DISASTERS: REGIONAL RESEARCH, EVIDENCE AND DATA</b>	<b>12</b>
2.1	Americas: internal movement linked to disasters and climate	13
2.2	Americas: cross-border movement linked to disasters and climate	13
2.3	Mexico and Central America	14
2.4	South America	16
2.5	Caribbean	17
2.6	Observations and recommendations	19
<b>3</b>	<b>INTERNATIONAL LAW: PROMOTING SYNERGIES</b>	<b>21</b>
3.1	Immigration	21
3.2	International protection	22
3.3	Disaster risk management	26
3.4	Climate change	31
3.5	Observations and recommendations	33
<b>4</b>	<b>CENTRAL AMERICA AND MEXICO: NATIONAL LAW, POLICY AND PRACTICE</b>	<b>34</b>
4.1	Immigration law	35
4.2	International protection law	40
4.3	Disaster risk management law	41
4.4	Climate law and policy	43
4.5	Observations and recommendations	44
<b>5</b>	<b>SOUTH AMERICA: NATIONAL LAW, POLICY AND PRACTICE</b>	<b>45</b>
5.1	Immigration law	46
5.2	International protection law	52
5.3	Disaster risk management law	53
5.4	Climate law and policy	55
5.5	Observations and recommendations	56

6	CARIBBEAN: NATIONAL LAW, POLICY AND PRACTICE	57
6.1	Immigration law	57
6.2	International protection law	63
6.3	Disaster risk management law	66
6.4	Climate law and policy	67
6.5	Observations and recommendations	68
7	CONCLUSION	70
7.1	Global level	70
7.2	Regional/bilateral level	70
7.3	National level	71
ANNEX		720
Annex A	Countries researched for the study	73
Annex B	Internal displacement due to rapid-onset disasters	74
Annex C	Visa requirement for short stay	76
Annex D	Immigration laws by countr	79
Annex E	Refugee laws by country y	102
Annex F	Expert input	114



# INTRODUCTION

# 1

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').<sup>2</sup>

## 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

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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]).

these phenomena may cause in the region'.<sup>3</sup> It highlights 'the need to conduct studies and give more attention to this matter, including by UNHCR'.<sup>4</sup> The accompanying Brazil Plan of Action reiterates this call in its chapter on 'regional cooperation' with a specific request to UNHCR:

- In light of the new challenges posed by climate change and natural disasters, as well as by displacement of persons across borders that these phenomena may generate, UNHCR is requested to prepare a study on the subject with the aim of supporting the adoption of appropriate national and regional measures, tools and guidelines, including response strategies for countries in the region, contingency plans, integrated responses for disaster risk management and humanitarian visa programmes, within the framework of its mandate.<sup>5</sup>

On this basis, UNHCR, in partnership with the Platform on Disaster Displacement (PDD), has commissioned the present study to support the response by governments in Latin America and the Caribbean to cross-border disaster displacement. The study is funded by the Swiss Federal Department of Foreign Affairs.

Through this study, UNHCR carries out its assigned technical role in providing technical support and assistance to governments in the implementation of the 2014 Brazil Declaration and Plan of Action. In this regard, UNHCR draws on a history of engagement on displacement in the context of disasters and climate change that extends back to the 1990s. It aligns with the present strategic key

aim of UNHCR to 'advance legal, policy and practical solutions for the protection of people displaced by the effects of climate change and natural disasters, in recognition of the acute humanitarian needs associated with displacement of this kind, and its relationship to conflict and instability'.<sup>6</sup>

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).<sup>7</sup> 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.

## 1.2

### 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.

6 UNHCR, *Strategic Directions 2017-2021* (2017) <http://www.unhcr.org/5894558d4.pdf>, 18.

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.



(UNFCCC) Cancun Outcome Agreement are: (forced) displacement, (predominantly voluntary) migration and (voluntary or forced) planned relocation.<sup>8</sup> In this typology, the study focuses primarily on the first category of movement from the standpoint of the protection needs of persons displaced across international borders in the context of disasters linked to natural hazards and climate change.<sup>9</sup>

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.<sup>10</sup> Yet the distinction between voluntary and forced movements is important not only because international law sometimes requires such precision,<sup>11</sup> but also because the nature of the movement influences a person's ability to successfully settle at their destination,<sup>12</sup> 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,<sup>13</sup> South America<sup>14</sup> and the Caribbean.<sup>15</sup> 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. In this respect, it is not limited to consideration only of those countries that were present at the adoption of the 2014 Brazil Declaration. The reason for this broader scope is that climatic factors and disasters rarely respect national boundaries, such that many of the challenges (and actual or potential response frameworks) have a strongly regional character.

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

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.

11 W. Kälin, 'Conceptualising Climate-Induced Displacement', in J. McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishers 2012).

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).<sup>16</sup> 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<sup>17</sup> 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);<sup>18</sup> disaster management law; and environmental law, focusing specifically on climate law.<sup>19</sup> 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).<sup>20</sup>

## 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.<sup>21</sup> 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.<sup>22</sup>

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.).

19 For a discussion of the relationship between environmental law and climate law, see for example C. Odozor and K.O. Odeku, ‘Explaining the Similarities and Differences between Climate Law and Environmental Law’ (2014) 45 *Journal of Human Ecology* 127.

20 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.

21 See D.J. Cantor, *Law, Policy and Practice concerning the Humanitarian Protection of Aliens on a Temporary Basis in the context of Disasters* (Nansen Initiative 2015) [https://disasterdisplacement.org/wp-content/uploads/2015/07/150715\\_FINAL\\_BACKGROUND\\_PAPER\\_LATIN\\_AMERICA\\_screen.pdf](https://disasterdisplacement.org/wp-content/uploads/2015/07/150715_FINAL_BACKGROUND_PAPER_LATIN_AMERICA_screen.pdf); W. Kälin and D.J. Cantor, ‘The RCM Guide: A Novel Protection Tool for Cross-Border Disaster-Induced Displacement in the Americas’ (2017) 56 *Forced Migration Review* 58; N. Rodríguez Serna, *Human Mobility in the Context of Natural Hazard-related Disasters in South America* (Nansen Initiative 2015) [https://www.nanseninitiative.org/wp-content/uploads/2015/12/14122015\\_FINAL\\_BACKGROUND\\_PAPER\\_SOUTH\\_AMERICA\\_screen.pdf](https://www.nanseninitiative.org/wp-content/uploads/2015/12/14122015_FINAL_BACKGROUND_PAPER_SOUTH_AMERICA_screen.pdf).

22 See section 2 of the study.

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.<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup>

## 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).

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.

2

# 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.<sup>27</sup> 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.<sup>28</sup> 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

<sup>27</sup> See section 1.1 above.

<sup>28</sup> See, for example, IFRC, *World Disasters Report 2016* (2016) 232-235.

between 9.4 million and 17.1 million persons in Latin America (up to 2.6 percent of the total population of the region).<sup>29</sup> 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.<sup>30</sup> 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).<sup>31</sup> This figure does not give a picture of whether such incidents of movement are repeated,<sup>32</sup> 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.<sup>33</sup>

## 2.2

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

Comparably detailed data tracking population movement across borders in the context of

<sup>29</sup> World Bank Group, ‘Internal Climate Migration in Latin America’, *Groundswell: Preparing for Internal Climate Migration – Policy Note #3*, 2018.

<sup>30</sup> World Bank Group, ‘Internal Climate Migration’.

<sup>31</sup> See Annex B. For comparison, see also the datasets and country site reports on internal disaster displacement produced for certain countries of the Americas by the Displacement Tracking Matrix: <https://displacement.iom.int/>.

<sup>32</sup> For this reason, the term ‘incidents’ is used, as the figures may include repeated displacements by the same individual. For this reason, they cannot simply be read as the number of persons internally displaced during the pertinent period in the three regions.

<sup>33</sup> The data reflect only publicly-reported incidents of displacement.

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,<sup>34</sup> 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:<sup>35</sup>

- 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.<sup>36</sup> In Costa Rica, El Salvador, Mexico, Nicaragua and Panama, repeated or prolonged temperature variability, particularly heat exposure and

<sup>34</sup> Cantor, *Law, Policy and Practice*, 9-15.

<sup>35</sup> *Ibid.*

<sup>36</sup> World Bank Group, 'Internal Climate Migration'.



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.<sup>37</sup> In this context, international mobility dynamics have been documented in the case of movement from Honduras<sup>38</sup> and, particularly, from Mexico to the USA.<sup>39</sup> 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.<sup>40</sup>

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.<sup>41</sup> This figure is relatively

small compared to those for South America and the Caribbean.<sup>42</sup> 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,<sup>43</sup> such as the 1998 Hurricane Mitch,<sup>44</sup> and devastating earthquakes, such as that in 2000 in El Salvador.<sup>45</sup>

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.<sup>46</sup> 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.<sup>47</sup> In general, the increase in international movement from Mexico and Central America

37 J. Baez, G. Caruso, V. Mueller and C. Niu, 'Heat Exposure and Youth Migration in Central America and the Caribbean' (2017) 107 *American Economic Review: Papers and Proceedings* 446; J. Baez, G. Caruso, V. Mueller and C. Niu, 'Droughts Augment Youth Migration in Northern Latin America and the Caribbean' (2017) 140 *Climatic Change* 423; R.J. Nawrotzki, J. DeWaard, M. Bakhtsiyarava and J. Trang Ha, 'Climate Shocks and Rural-Urban Migration on Mexico: Exploring Nonlinearities and Thresholds' (2017) 140 *Climatic Change* 243.

38 D.J. Wrathall, 'Migration Amidst Social-Ecological Regime Shift: The Search for Stability in Garifuna Villages of Northern Honduras' (2012) 40 *Human Ecology* 583.

39 M. Leighton-Schwartz and J. Notini, 'Desertification and Migration: Mexico and the United States' (1994) *U.S. Commission on Immigration Reform Research Paper* <<https://www.utexas.edu/lbj/uscir/respapers/dam-f94.pdf>>; L. Andersen, L. Lund and D. Verner, 'Migration and Climate Change' in D. Verner (ed), *Reducing Poverty, Protecting Livelihoods, and Building Assets in a Changing Climate: Social Implications of Climate Change for Latin America and the Caribbean* (World Bank 2010) 202; S. Alscher, 'Environmental Factors in Mexican Migration: The Cases of Chiapas and Tlaxcala' in T. Afifi and J. Jäger (eds), *Environment, Forced Migration and Social Vulnerability* (Springer 2010) 172; S. Feng, A. Krueger and M. Oppenheimer, 'Linkages Among Climate Change, Crop Yields and Mexico-U.S. Border Migration' (2010) 107 *Proceedings of the National Academy of Sciences of the United States of America* 14257; K. Schmidt-Verkerk, "'Buscando La Vida" – How Do Perceptions of Increasingly Dry Weather Affect Migratory Behaviour in Zacatecas, Mexico?' in T. Afifi and J. Jäger (eds), *Environment, Forced Migration and Social Vulnerability* (Springer 2010); R.J. Nawrotzki, F. Riosmena and L.M. Hunter, 'Do Rainfall Deficits Predict U.S.-Bound Migration from Rural Mexico? Evidence from the Mexican Census' (2013) 32 *Populations Research and Policy Review* 129.

40 I. Chort and M. de la Rupelle, 'Determinants of Mexico-US Outward and Return Migration Flows: A State-Level Panel Data Analysis' (2016) 53 *Demography* 1453; R.J. Nawrotzki, F. Riosmena and L.M. Hunter, 'Do Rainfall Deficits Predict U.S.-Bound Migration from rural Mexico? Evidence from the Mexican Census' (2013) 32 *Population Research and Policy Review* 129.

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.

44 D. Reichmann, 'Honduras: The Perils of Remittance Dependence and Clandestine Migration' (2013) *Migration Policy Institute* <<http://www.migrationpolicy.org/article/honduras-perils-remittance-dependence-and- clandestine-migration>>.

45 M. Attz, 'Natural Disasters and Remittances: Exploring the Linkages between Poverty, Gender, and Disaster Vulnerability in Caribbean SIDS' (2008) 61 *UNU-WIDER Research Paper* 1, 9.

46 P. Mahajan and D. Yang, 'Taken by Storm: Hurricanes, Migrant Networks, and U.S. Immigration' (2017) *Center for Economic Studies Working Papers* 17-50; see also by same authors 'Hurricanes Drive Immigration to the US', *The Conversation*, 15 September 2017, <https://theconversation.com/hurricanes-drive-immigration-to-the-us-83755>; Andrade Aphonso, 'Natural Disasters and Migration'.

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.<sup>48</sup> 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.<sup>49</sup>

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.<sup>50</sup> 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 unviable.<sup>51</sup>

## 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.<sup>52</sup> In rural areas of South America, extreme temperatures have the most consistent link to increased inter-provincial migration/displacement, particularly by

women.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup> 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).<sup>56</sup> 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

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.

49 R.J. Nawrotzki and J. DeWaard, 'Climate Shocks and the Timing of Migration from Mexico' (2016) 38 *Population and Environment* 72.

50 Cantor, *Law, Policy and Practice*, 12.

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

52 G.O. Magrin et al, 'Central and South America' in V.R. Barros et al (eds), *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (CUP 2014).

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.

54 IOM, 'Migraciones, ambiente y cambio climático: Estudios de caso en América del Sur' (IOM 2017) Cuadernos Migratorios, No. 8, 16-17; L. Andersen, L. Lund and D. Verner, 'Migration and Climate Change' in D. Verner (ed), *Reducing Poverty, Protecting Livelihoods, and Building Assets in a Changing Climate: Social Implications of Climate Change for Latin America and the Caribbean* (World Bank 2010), 202; O. Álvarez Gila, A. Ugalde Zaratiegui and V. López de Maturana, 'Migration and Environment in Los Ríos, Ecuador (1997-2008)' (2010) 4 *Journal of Identity and Migration Studies* 136, 152; C.L. Gray, 'Gender, Natural Capital and Migration in the Southern Ecuadorian Andes' (2010) 42 *Environment and Planning* 678; C.L. Gray, 'Environment, and Rural Out-Migration in the Southern Ecuadorian Andes' (2009) 37 *World Development* 457.

55 Evidence of a more complex relationship between adverse environmental conditions and internal movements comes from Bolivia, Ecuador and Peru. See H. Adams, 'Why Populations Persist: Mobility, Place Attachment and Climate Change' (2016) 37 *Population and Environment* 429; V. Koubi, G. Spilker, L. Schaffer and T. Böhmelt, 'The Role of Environmental Perceptions in Migration Decision-Making: Evidence from Both Migrants and Non-Migrants in Five Developing Countries' (2016) 38 *Population and Environment* 134; K. Rao, 'Can Glacial Retreat Lead to Migration? A Critical Discussion of the Impact of Glacier Shrinkage upon Population Mobility in the Bolivian Andes' (2015) 36 *Population and Environment* 480; C. Gray and R. Bilsborrow, 'Environmental Influences on Human Migration in Rural Ecuador' (2013) 50 *Demography* 1217;

56 See Annex B.



increase movement.<sup>57</sup> 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.<sup>58</sup>

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.<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup>

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.<sup>65</sup> 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;<sup>66</sup> the 2010 Haiti earthquake<sup>67</sup>; and the 1995 volcanic eruption on the British overseas territory of

57 V. Koubi, G. Spilker, L. Schaffer and T. Böhmelt, 'The Role of Environmental Perceptions in Migration Decision-Making: Evidence from Both Migrants and Non-Migrants in Five Developing Countries' (2016) 38 *Population and Environment* 134.

58 M.A. Messick, *Natural Disasters in Latin America*.

59 Cantor, *Law, Policy and Practice*, 12.

60 Ibid.

61 L.A. Nurse et al, 'Small Islands', in V.R. Barros et al (eds), *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (CUP 2014).

62 J. Baez, G. Caruso, V. Mueller and C. Niu, 'Heat Exposure and Youth Migration in Central America and the Caribbean' (2017) 107 *American Economic Review: Papers and Proceedings* 446; J. Baez, G. Caruso, V. Mueller and C. Niu, 'Droughts Augment Youth Migration in Northern Latin America and the Caribbean' (2017) 140 *Climatic Change* 423; R.J. Nawrotzki, J. DeWaard, M. Bakhtsiyarava and J. Trang Ha, 'Climate Shocks and Rural-Urban Migration on Mexico: Exploring Nonlinearities and Thresholds' (2017) 140 *Climatic Change* 243; A. Cordero Ulate and G. Lathrop, *Relaciones entre medio ambiente y migraciones en República Dominicana* (IOM 2016)

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

64 S. Alscher, 'Environmental Degradation and Migration on Hispaniola Island' (2011) 49 *International Migration* 164; L. Andersen, L. Lund and D. Verner, 'Migration and Climate Change' in D. Verner (ed), *Reducing Poverty, Protecting Livelihoods, and Building Assets in a Changing Climate: Social Implications of Climate Change for Latin America and the Caribbean* (World Bank 2010), 202.

65 See Annex B.

66 Andrade Afonso, 'Natural Disasters and Migration'.

67 P. Weiss Fagan, 'Receiving Haitian Migrants in the Context of the 2010 Earthquake' (2013) <<http://www.nanseninitiative.org/sites/default/files/Fagan%20Haiti%20Case%20Study%2016%20December%202013.pdf>>.

Montserrat.<sup>68</sup> 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.<sup>69</sup>

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.<sup>70</sup> 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.<sup>71</sup> In general, the increase in international movement from Caribbean countries affected by a severe storm takes place about a year after the event.<sup>72</sup> 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.<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup>

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.<sup>77</sup> Of these, some 50,000 to 75,000 may have settled permanently just in Florida.<sup>78</sup> 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.<sup>79</sup> 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

68 Andrade Afonso, 'Natural Disasters and Migration'.

69 See Alscher, 'Environmental Degradation'.

70 Mahajan and Yang, 'Taken by Storm' and 'Hurricanes Drive Immigration to the US'; Andrade Aphonso, 'Natural Disasters and Migration'. However, in the Andrade study, where countries (such as Jamaica) experience numerous severe storms in consecutive years the individual effect of the storms is not discernible in such studies.

71 Ibid.

72 Ibid.

73 IOM, 'Migration in the Caribbean: Current Trends, Opportunities and Challenges' (2017) Working Papers on Migration, No. 1, 12-14.

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) 14.

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.

77 J. Hinojosa, N. Román, and E. Meléndez, 'Puerto Rican Post-Maria Relocation by States' (March 2018) CUNY Centre for Puerto Rican Studies Research Brief, Centro RB2018-03, <https://centropr.hunter.cuny.edu/sites/default/files/PDF/Schoolenroll-v4-27-2018.pdf>.

78 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>. Other sources suggested initially that as many as 156,000 Puerto Ricans moved to Florida alone. See Miami Herald, 'The Stampede of Puerto Ricans to Florida is Bad News for Trump', 20 November 2017, <http://www.miamiherald.com/news/local/news-columns-blogs/andres-oppenheimer/article184816303.html>.

79 The Inquirer, 'Puerto Rican Hurricane Evacuees in Philadelphia: "No Help at All"', 12 February 2018, <http://www.philly.com/philly/news/politics/puerto-rico-hurricane-evacuees-fema-philadelphia-aid-struggle-20180212.html>.

in the coming years.<sup>80</sup> 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.<sup>81</sup> Thus, the volcanic eruption on Montserrat led to the entire population being evacuated overseas.<sup>82</sup> After the 2010 Haiti earthquake, certain profiles of Haitian nationals were evacuated by Canada, Mexico and the USA.<sup>83</sup> 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.<sup>84</sup> 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<sup>85</sup> and by The Bahamas of its southern islands.<sup>86</sup>

## 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

84 Reuters, ‘Puerto Rico Opens Arms to Refugee from Irma’s Caribbean Chaos’, 13 September 2017, <https://uk.reuters.com/article/us-storm-irma-caribbean/puerto-rico-opens-arms-to-refugees-from-irmas-caribbean-chaos-idUKKCN1BO26P>; The Guardian, ‘US Virgin Islands Refusing Entry to Non-American Irma Evacuees, Survivors Say’, 12 September 2017, <https://www.theguardian.com/world/2017/sep/12/us-british-virgin-islands-hurricane-irma-refused-entry>. This was alongside the measures taken by foreign governments to evacuate their own nationals from the disaster-affected countries. For the response by CARICOM governments, the US, France, Netherlands and China, see The Diplomat, ‘China Evacuates 462 Nationals From Dominica After Hurricane Maria’, 27 September 2017, <https://thediplomat.com/2017/09/china-evacuates-462-nationals-from-dominica-after-hurricane-maria/>; New York Post, ‘US Aids Mass Evacuation of Devastated Caribbean Islands’, 12 September 2017, <https://nypost.com/2017/09/12/us-aids-mass-evacuation-of-devastated-caribbean-islands/>; The Independent, ‘Irma: British Citizens Stranded in Caribbean “Because French Rescue Planes Refuse to Take Refugees from UK”’, 11 September 2017, <https://www.independent.co.uk/news/uk/home-news/irma-british-citizens-caribbean-french-rescue-planes-uk-refugees-st-maarten-caribbean-france-a7940816.html>; BVI Platinum, ‘BVI Gov’t to Help Evacuate Caribbean Nationals’, 13 September 2017, <https://www.bviplatinum.com/news.php?articleId=27926>; Department of Public Information (Guyana), ‘Fifty-five Guyanese Nationals Evacuated to Date’, 12 October 2017, <http://dpi.gov.gy/fifty-five-guyanese-nationals-evacuated-to-date/>.

85 The Guardian, ‘The Night Barbuda Died: How Hurricane Irma Created a Caribbean Ghost Town’, 20 November 2017, <https://www.theguardian.com/global-development/2017/nov/20/the-night-barbuda-died-how-hurricane-irma-created-a-caribbean-ghost-town>.

86 AP, ‘Bahamas to Evacuate Islands in path of “Irma”’, 6 September 2017, <https://www.apnews.com/886e1a39f5a54452b85d78f821afb3bd>.

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 Cantor, *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.<sup>87</sup> 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.

<sup>87</sup> See above, section 2.2, referring to Cantor, *Law, Policy and Practice*.

# INTERNATIONAL LAW: PROMOTING SYNERGIES

## 3

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’.<sup>88</sup> 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.<sup>89</sup>

### 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.

<sup>88</sup> See section 1.1 above.

<sup>89</sup> 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:<sup>90</sup> 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,<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup>

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.<sup>96</sup>

### 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.

90 Nansen Initiative, Protection Agenda, Vol. I, 22-23.

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](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.<sup>97</sup>

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.<sup>98</sup> 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.<sup>99</sup>

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.<sup>100</sup>

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.<sup>101</sup>

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".<sup>102</sup> It also refers to the relevance of disaster risk reduction in refugee contexts.<sup>103</sup> 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".<sup>104</sup>

### 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 as refugees

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).

101 Recent examples of such calls include B. Docherty and T. Giannini, 'Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees' (2009) 33 *Harvard Environmental Law Review* 349; M. Prieur, *Draft Convention on the International Status of Environmentally-Displaced Persons* (2010) 4243 *The Urban Lawyer* 247. See also the critique by J. McAdam, 'Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer' (2011) 23 *International Journal of Refugee Law* 2.

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.<sup>105</sup>

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.<sup>106</sup> 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.<sup>107</sup>

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.<sup>108</sup> 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,<sup>109</sup> 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'.<sup>110</sup>

### 3.2.3. Human rights standards

Human rights law contains prohibitory 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.<sup>111</sup>

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

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.

107 See D.J. Cantor and D. Trimiño Mora, 'A Simple Solution to War Refugees? The Latin American Expanded Definition and its relationship to IHL' in D.J. Cantor and J.F. Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Nijhoff 2014); W. Kälin, 'Conceptualising Climate-Induced Displacement' in J. McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart 2010) 88-89.

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<sup>113</sup> and the 2004/14 EU Qualification Directive (EUQD).<sup>114</sup> It has also been read into the 1950 European Convention on Human Rights (ECHR),<sup>115</sup> the 1966 International Covenant on Civil and Political Rights (ICCPR),<sup>116</sup> the 1969 American Convention on Human Rights (ACHR)<sup>117</sup> and the 1948 American Declaration on the Rights and Duties of Man (ADHR)<sup>118</sup> by the international human rights treaty bodies tasked with interpretation of these and other instruments.<sup>119</sup>

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.<sup>120</sup>

### 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.<sup>121</sup>

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.<sup>122</sup>

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

113 Article 13, fourth paragraph, referring to the context of extradition.

114 Article 15(a)-(b).

115 Article 3, as confirmed by a long line of cases following European Court of Human Rights, *Soering v UK* (1989) 11 EHRR 439.

116 Article 7, as confirmed by the Human Rights Committee in *Chitat Ng v Canada*, Communication No. 469/1991, U.N. Doc. CCPR/C/49/D/469/1991 (1994).

117 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.

118 Article I. See D.J. Cantor and S. Barichello, 'The Inter-American Human Rights System: A New Model for Integrating Refugee and Complementary Protection?' (2013) 17 *International Journal of Human Rights* 689, 692 and at 691 for an explanation of why the ADHR standards are considered binding in this regard.

119 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.

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.

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.

122 Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (2015), Vol. I, 27-28.

'general conditions' as capable of breaching these human rights standards and pointed to the need to take account of individual factors of vulnerability, e.g. gender, age etc., when assessing the rights compatibility of removal or non-admission at the border.<sup>123</sup>

### 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.<sup>124</sup> 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.<sup>125</sup> 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.

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

<sup>124</sup> M. Picard, 'Disaster Management, Risk Reduction and International Disaster Response Law in the Commonwealth' (2016) Senior Officials of Law Ministries Meeting Paper SOLM (16)11, 7.

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

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'.<sup>126</sup> 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.<sup>127</sup> 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.<sup>128</sup> 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.<sup>129</sup>

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

<sup>126</sup> Paragraph 4(ii)(i)

<sup>127</sup> 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.

<sup>128</sup> Paragraph 28(d).

<sup>129</sup> 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 36(vi) 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.<sup>130</sup> 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'.<sup>131</sup>

Another widely-applied non-binding framework is the 2007 Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance,<sup>132</sup> approved by delegates of the Red Cross and Red Crescent Movement<sup>133</sup> and promoted by the UN General Assembly.<sup>134</sup> 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.<sup>135</sup>

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.<sup>136</sup> 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'.<sup>137</sup>

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.<sup>138</sup>

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

130 Paragraph 33(h)

131 Paragraph 33(j).

132 IFRC, Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2007) <https://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/idrl-guidelines-en.pdf>.

133 30<sup>th</sup> International Conference of the Red Cross and Red Crescent Movement, Resolution 4 (30 November 2007) <https://www.icrc.org/eng/assets/files/2011/bluebook-2007-english.pdf>.

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).

promptly issue, ideally without cost, exit or transit visas' to facilitate the movement of personnel of eligible assisting humanitarian organizations towards the territory of the affected State.<sup>139</sup>

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'.<sup>140</sup> 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'<sup>141</sup> 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'.<sup>142</sup>

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.<sup>143</sup> They also emphasise the duty to cooperate, including through 'humanitarian

assistance',<sup>144</sup> and the injunction on the affected State not to arbitrarily withhold consent to external assistance.<sup>145</sup> 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'.<sup>146</sup> 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.<sup>147</sup> 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'.<sup>148</sup>

### 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

139 Guideline 16(2).

140 Guidelines 15.

141 Guideline 7.

142 Guideline 4(3)(a).

143 International Law Commission, Draft Articles on the Protection of Persons in the Event of Disasters (2016) UN Doc. A/71/10, of which the UN General Assembly 'take note' in Resolution 71/141 (19 December 2016), paragraph 2.

144 Articles 7-8.

145 Articles 12-13.

146 Article 15(1)(a).

147 Migrants in Countries in Crisis Initiative, Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster (2016) [https://micinitiative.iom.int/sites/default/files/document/micic\\_guidelines\\_english\\_web\\_13\\_09\\_2016.pdf#page=21](https://micinitiative.iom.int/sites/default/files/document/micic_guidelines_english_web_13_09_2016.pdf#page=21).

148 Ibid, Guideline 13.

does not specifically mention displacement.<sup>149</sup> 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.<sup>150</sup> 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<sup>151</sup> categories but provided no further information.<sup>152</sup> 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,<sup>153</sup> 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.<sup>154</sup>

Relevant treaties aside, the OAS has encouraged member States to incorporate the IFRC Guidelines into their national law.<sup>155</sup> In 2011, within the regional SICA forum, the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPRENAC)<sup>156</sup> 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.<sup>157</sup>

A similar provision exists in the 1991 Agreement establishing the Caribbean Disaster Emergency Response Agency (CDERA; 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.<sup>158</sup> 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.<sup>159</sup> The CDEMA 2013 Model Comprehensive Disaster Management Legislation and Regulations does not address this issue in any further

149 First Meeting of Ministers and High-Level Authorities on the Implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030, Asunción Declaration and 'Guidelines towards a Regional Action Plan for the Implementation of the Sendai Framework 2015-2030' (9 June 2016) <http://eird.org/ran-sendai-2016/docs/declaration-sendai-americas-english.pdf>.

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).

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'.

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.

153 The parties are Colombia, Dominican Republic, Nicaragua, Panama, Peru and Uruguay.

154 Article VII(a).

155 See, for example, OAS General Assembly, Resolution 2750 (4 June 2012) OAS Doc AG/RES. 2750 (XLII-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/50421d7fa5538.pdf>, paragraph 2.2.3.2.

156 Centro de Coordinación para la Prevención de los Desastres Naturales en América Central – CEPREDENAC.

157 SICA - CEPREDENAC, *Manual Regional de Procedimientos de las Cancillerías en casos de Desastres* (2011)

158 Current States parties are Antigua, Bahamas, Barbados, Belize, Dominican Republic, Grenada, Guyana, Jamaica, St Kitts and Nevis, Santa Lucía, Saint Vincent and the Grenadines and Trinidad and Tobago. The British overseas territories of the British Virgin Islands and Montserrat are also parties.

159 Article 21(2)(c).



detail.<sup>160</sup> However, it does make provision for evacuation,<sup>161</sup> 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.<sup>162</sup>

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'.<sup>163</sup>

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*'.<sup>164</sup>

### 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.<sup>165</sup> 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.

160 CDEMA, Model Comprehensive Disaster Management Legislation and Regulations (2013) [http://www.cdema.org/cris/drm\\_info/Model\\_CDM\\_Legislation\\_and\\_Regulations\\_2013.pdf](http://www.cdema.org/cris/drm_info/Model_CDM_Legislation_and_Regulations_2013.pdf). Note, though, that Clause 72(3)(b) of the model law allows the Minister to make provision 'with respect to privileges and immunities in relation to immigration and customs for the purposes of [international humanitarian assistance]'.

161 Ibid; see Clauses 34 and 35 of the model law as well as the Comprehensive Disaster Management (Evacuation) Regulation set out in Annex 8.

162 SICA - CEPREDENAC, 'Plan Regional de Reducción de Riesgo de Desastres 2014-2019' (December 2014) [http://www.cepredenac.org/application/files/8714/9866/7804/Plan\\_Regional\\_de\\_Reducción\\_de\\_Riesgo\\_de\\_Desastres\\_PRRD\\_2014\\_-\\_2019.pdf](http://www.cepredenac.org/application/files/8714/9866/7804/Plan_Regional_de_Reducción_de_Riesgo_de_Desastres_PRRD_2014_-_2019.pdf), 23, Eje Articulador 5(d). The recognition that disasters in Central America result in 'continuous migratory flows' in the region first appeared in the previous CEPREDENAC 'Plan Regional de Reducción de Riesgo de Desastres 2006-2015' (November 2006) [https://conred.gob.gt/site/documentos/base\\_legal/plan\\_regional\\_2006.pdf](https://conred.gob.gt/site/documentos/base_legal/plan_regional_2006.pdf), 5, 1.1.1.

163 CDEMA, 'Statement by Mr Ronald Jackson, Executive Director of CDEMA on the recognition of International Day for Disaster Reduction' (13 October 2017) [http://www.cdema.org/ED\\_CDEMA\\_Statement\\_IDDR\\_13Oct2017.pdf](http://www.cdema.org/ED_CDEMA_Statement_IDDR_13Oct2017.pdf).

164 Paragraph 16, emphasis added.

165 Guideline 16.

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.<sup>166</sup> 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.<sup>167</sup> Both of these principles are reiterated by the 2015 Sendai Framework.<sup>168</sup> 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.<sup>169</sup> 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.

<sup>166</sup> Guideline 7.

<sup>167</sup> Guideline 4(3)(a).

<sup>168</sup> Paragraphs 28(d) and 30(l).

<sup>169</sup> See, for example, P. Sands and J. Peel, *Principles of International Environmental Law*, 3<sup>rd</sup> edn (CUP 2012) 187-237.

### 3.4.1 International standards on climate change

International climate change law is rooted in the 1992 UN Framework Convention on Climate Change (UNFCCC).<sup>170</sup> 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.<sup>171</sup> The 1992 UNFCCC establishes a Conference of the Parties (COP) that meets regularly to review implementation and which takes decisions to promote effective implementation.<sup>172</sup> Subsequent agreements adopted at these COPs include the 1997 Kyoto Protocol (COP3) and its amendments and the 2015 Paris Agreement (COP21).<sup>173</sup>

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*, ‘[m]easures 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’.<sup>174</sup> 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.<sup>175</sup>

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.<sup>176</sup> This Mechanism was

<sup>170</sup> This treaty has been ratified by all States and territories in the Caribbean, Central and South America.

<sup>171</sup> Articles 4(1)(b), 4(1)(e), 4(3), 4.4. and 4.5

<sup>172</sup> Article 7.

<sup>173</sup> 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.

<sup>174</sup> Decision 1/CP.16, paragraph 14(f).

<sup>175</sup> Decision 3/CP.18, paragraph 7(a)(vi).

<sup>176</sup> 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'.<sup>177</sup>

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.<sup>178</sup>

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.<sup>179</sup> 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.<sup>180</sup>

### 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)<sup>181</sup> 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'.<sup>182</sup>

### 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.<sup>183</sup> 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>.

178 Decision 3/CP.22, paragraph 9.

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:

- 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.
- 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;<sup>184</sup>

<sup>184</sup> 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.

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4

# 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.<sup>185</sup> This includes 'response strategies [...], contingency plans, integrated responses for disaster risk management and humanitarian visa programmes'.<sup>186</sup> 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.<sup>187</sup>

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.<sup>188</sup> However, it is also a region that is known for its relatively advanced law and policy on disasters and on immigration.

<sup>185</sup> See section 1.1 above.

<sup>186</sup> *Ibid.*

<sup>187</sup> 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.

<sup>188</sup> See section 2.3 above.

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.<sup>189</sup> Belize, 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.<sup>190</sup>

#### 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).

<sup>189</sup> 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.

<sup>190</sup> 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.<sup>191</sup> 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.<sup>192</sup> Many also maintain visa requirements for one other nationality from the Caribbean or South America based on particular bilateral considerations.<sup>193</sup> 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.<sup>194</sup>

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),<sup>195</sup> the governments of El Salvador, Honduras, Guatemala and Nicaragua have agreed the free movement of their citizens across borders without checks

<sup>191</sup> For relevant details, see Annex C.

<sup>192</sup> Guatemala and Nicaragua are particularly notable in this regard. See Annex C.

<sup>193</sup> For example, Costa Rica requires visas of Colombian nationals. See Annex C.

<sup>194</sup> Cantor, *Law, Policy and Practice*, 32.

<sup>195</sup> *Sistema de la Integración Centroamericana – SICA*.

or restrictions.<sup>196</sup> 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'.<sup>197</sup> 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.<sup>198</sup> A new immigration law with a stronger focus on human rights remains under discussion by the legislature after being proposed in 2016.<sup>199</sup>

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'.<sup>200</sup> It also confers a power on the Minister to make regulations governing the permits and the conditions on which they shall be issued.<sup>201</sup> 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

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), Article 3. 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 Brizuela, '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.

197 *Decreto No. 2772: Ley de Migración (El Salvador)* 19 December 1958, published 23 December 1958, reformed by *Decreto No. 670, 29 September 1993*, published 8 October 1993, Article 74

198 Cantor, *Law, Policy and Practice*, 43.

199 *Ministerio de Justicia y Seguridad Pública (El Salvador)*, 'Nueva Ley de Migración sustituirá normativa vigente que data de 1958', 19 August 2016, <http://www.seguridad.gob.sv/nueva-ley-de-migracion-sustituira-normativa-vigente-que-data-de-1958/>.

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.<sup>202</sup> By contrast, Mexico exercised its discretion in pledging not to remove Haitians from its territory for a period following the 2010 earthquake in Haiti.<sup>203</sup>

#### 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,<sup>204</sup> entry to the country<sup>205</sup> or stay in the country.<sup>206</sup> 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.<sup>207</sup> 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.<sup>208</sup> Yet most laws do provide guidance on its scope in the context of Central America and Mexico by reference to three inter-related factors.<sup>209</sup> 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, *inter alia*, to persons who 'suffer violations of their human rights and victims of people-trafficking, in particular women and children'.<sup>210</sup> 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.<sup>211</sup>

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';<sup>212</sup> similarly, 'reasons of humanity' for stay are defined as 'a special situation of vulnerability derived from her age, gender, disability, among other conditions'.<sup>213</sup> In Mexico, entry for a 'humanitarian cause' can be

202 Cantor, *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.

210 Ley No. 761: Ley de Migración (Nicaragua) 28 June 2011, published in *La Gaceta*, 6 July 2011, Article 220; Decreto No. 31-2012: Reglamento a la Ley No. 761, Ley General de Migración y Extranjería (Nicaragua) 20 September 2012, published in *La Gaceta* No. 184-186, 27 September-1 October 2012, Articles 6(I) and 61.

211 Reglamento de la Ley de Migración (Mexico) published in *Diario Oficial* on 28 September 2012, Articles 137 and 141.

212 Ley No. 8764: Ley General de Migración y Extranjería (Costa Rica) 19 August 2009, Articles 94(12); Decreto No. 37112-G: Reglamento de Extranjería (Costa Rica) 21 March 2012, published in *La Gaceta Diario Oficial*, No. 95, 17 May 2012, Article 2.

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'.<sup>214</sup> 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'.<sup>215</sup>

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.<sup>216</sup> More broadly, in Guatemala, humanitarian reasons can refer, *inter alia*, to 'reasons of armed conflict'.<sup>217</sup> 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 violence'.<sup>218</sup> 'Humanitarian cause' for entry or stay in Mexico also includes where there is a 'risk' to the person's 'health or life'.<sup>219</sup>

Plainly, each factor can encompass the situation of non-nationals affected by a disaster overseas.<sup>220</sup> 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.<sup>221</sup> 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'<sup>222</sup> or that she is 'victim of a natural catastrophe'.<sup>223</sup>

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'.<sup>224</sup>

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

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).

215 *Decreto Ley No. 3 (Panama)* 22 February 2008, published in *Gaceta Diario Oficial* No. 25986, 26 February 2008, Article 18; *Decreto No. 320 (Panama)* 8 August 2008, published in *Gaceta Diario Oficial* No. 26104, 13 August 2008, Article 171, additional paragraph.

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(I)(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 this '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(I)(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).

224 *Meeting of Central American Presidents, 'Reunión Extraordinaria de Presidentes Centroamericanos: Declaración Conjunta', Comalapa, El Salvador, 9 November 1998' (1998)* 3.

the Dominican Republic<sup>225</sup> These States also agreed that the RCM was ‘an ideal forum for attending to the migratory aspects derived from this natural disaster’.<sup>226</sup> 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’.<sup>227</sup>

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.<sup>228</sup> The approach and definitions adopted largely reflect those contained in the 2015 Nansen Initiative Protection Agenda,<sup>229</sup> 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.<sup>230</sup> This has been built into practice by some RCM member States.<sup>231</sup>

## 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.<sup>232</sup>

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.<sup>233</sup> However, of the five situational elements in the Cartagena definition, national law in Belize does not refer to ‘generalised violence’ or ‘massive

225 See Cantor, *Law, Policy and Practice*, 27-28.

226 *Regional Conference on Migration, ‘Comunicado Conjunto, IV Conferencia Regional sobre Migración, San Salvador, 26-29 January 1999’ (1999)*, third paragraph.

227 *Regional Conference on Migration, Protection for Persons moving across Borders in the Context of Disasters: A Guide to Effective Practices for RCM Member Countries (2016)*.

228 Parts I-III

229 See section 3.1 above.

230 RCM, *Protection Guide*, Part IV.

231 See, for example, section 4.3.1 below.

232 Cantor, *Law, Policy and Practice*, 17.

233 See *Tribunal Contencioso Administrativo - sección cuarta (Costa Rica), Sentencia de las catorce horas del 28 de noviembre de 2014 (voto número 0103-2014 IV) relativa a la definición ampliada de refugiado en Costa Rica, 28 November 2014*, <http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/BDL/2014/9880>. In Guatemala, the definition appeared in the previous immigration law but regulations for the new immigration law have not yet been published to confirm its continued applicability.



violation of human rights'.<sup>234</sup> 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'.<sup>235</sup> 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.<sup>236</sup>

#### 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 ICCPR<sup>237</sup> 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.<sup>238</sup> 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).<sup>239</sup> 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.<sup>240</sup> 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).<sup>241</sup> However, given the interpretation of the *non-refoulement* rule in international human rights law,<sup>242</sup> 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'.<sup>243</sup>

### 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.

234 Refugee Act (Belize) 16 August 1991, revised 2000 and 2016, Section 4(1)(c).

235 *Ley Sobre Refugiados y Protección Complementaria (Mexico) Diario Oficial, 27 January 2011, reformed 30 October 2014, Article 13; Reglamento de la Ley sobre Refugiados y Protección Complementaria (Mexico) Diario Oficial 21 February 2012, reformed 30 October 2014, Article 4(VII) and 4(XI).*

236 Cantor, *Law, Policy and Practice*, 18.

237 Only Belize is not party to the ICCPR Optional Protocol and thus cannot be the subject of individual petitions before the Human Rights Committee.

238 See [https://www.oas.org/dil/treaties\\_b-32\\_american\\_convention\\_on\\_human\\_rights\\_sign.htm](https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm).

239 See Annex E.

240 *Ley sobre Refugiados y Protección Complementaria (Mexico) Articles 2(IV), 27 and 28.*

241 See Annex E.

242 See section 3.2.3.

243 See Annex E.

#### 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...';<sup>244</sup> emergencies, by contrast, are a '[s]tate of crisis caused by the disaster and based in the scale of the damages and losses'.<sup>245</sup> The Executive is given the power to declare a State of Emergency in any part of the national territory.<sup>246</sup> 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'.<sup>247</sup> Nonetheless, official documents obliquely recognise the need to consider issues of displacement and mobility when integrating gender considerations in disaster response and reconstruction.<sup>248</sup> 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.<sup>249</sup>

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'.<sup>250</sup> 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.<sup>251</sup> 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.<sup>252</sup> 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.<sup>253</sup> The SOPs are based heavily on the 2016 RCM Protection Guide.<sup>254</sup> 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.<sup>255</sup>

#### 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'.<sup>256</sup> At the Federal level, the Executive has the responsibility to declare emergencies or disasters.<sup>257</sup>

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.<sup>258</sup>

244 *Ley No. 8488 Ley Nacional de Emergencias y Prevención de Riesgo (Costa Rica) 22 November 2005, published in La Gaceta Diario Oficial No. 8 of 11 January 2006, Article 4.*

245 *Ibid*, Article 4.

246 *Ibid*, Article 29

247 *Ibid*, Articles 30(a) and 34.

248 *Comisión Nacional de Prevención de Riesgos y Atención de Emergencias, Plan Nacional para la Gestión del Riesgo 2010-2015 (January 2010) 68, Annex 1.*

249 *Comisión Nacional de Prevención de Riesgos y Atención de Emergencias. Política Nacional de Gestión del Riesgo 2016-2030 (2015) 42.*

250 *Comisión Nacional de Prevención de Riesgos y Atención de Emergencias, Manual de Procedimientos de Cancillería para la Coordinación de la Asistencia Humanitaria y Técnica en Casos de Desastre (2011) 17.*

251 *Ibid*, 17-18.

252 Platform on Disaster Displacement, 'Costa Rica and Panama Prepare for Cross-Border Disaster-Displacement', 23 August 2017, <https://disasterdisplacement.org/costa-rica-and-panama-prepare-for-cross-border-disaster-displacement>.

253 *Government of Costa Rica/Government of Panama, [Borrador de] Procedimientos Operativos para la atención de personas desplazadas a través de fronteras en contextos de desastre (May 2017).*

254 See 4.1.3 above.

255 *Government of Costa Rica/Government of Panama, Ejercicio de simulación binacional Costa Rica – Panamá en materia de protección de personas desplazadas a través de fronteras en contextos desastre (21-22 August 2017).*

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'.<sup>259</sup> 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'.<sup>260</sup> 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'.<sup>261</sup> 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.<sup>262</sup>

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.<sup>263</sup> Moreover, previous national policy on climate change makes no mention of issues of migration or displacement.<sup>264</sup>

#### 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'.<sup>265</sup> 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.<sup>266</sup> 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,<sup>267</sup> along with a repeated call for more research on migration due to climate phenomena.<sup>268</sup>

<sup>259</sup> *Ibid*, Article 2(XIX).

<sup>260</sup> *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.

<sup>261</sup> *Reglamento de la Ley de Migración (Mexico)* 27 September 2012, published in the Diario Oficial de la Federación on 28 September 2012, Article 63(II).

<sup>262</sup> *Ibid*, Articles 104(V)(d) and 116.

<sup>263</sup> GobiernoCR, 'Costa Rica cuenta con política de adaptación al cambio climático', 16 April 2018, <http://gobierno.cr/costa-rica-cuenta-con-politica-de-adaptacion-al-cambio-climatico/>.

<sup>264</sup> See, for example, Costa Rica, *Plan de Acción de la Estrategia Nacional de Cambio Climático* (2012).

<sup>265</sup> Mexico, *Cuarta Comunicación Nacional* (2009) 271.

<sup>266</sup> Instituto Nacional de Ecología y Cambio Climático (Mexico), *Adaptación al Cambio Climático en México: visión, elementos y criterios para la toma de decisiones* (2012) 71, 75, 77 and 168-169.

<sup>267</sup> Mexico, *Quinta Comunicación Nacional* (2012) 146-147.

<sup>268</sup> *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.<sup>269</sup> 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, *inter alia*, the 'internal displacement of persons caused by phenomena linked with climate change'.<sup>270</sup> 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'.<sup>271</sup>

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

<sup>269</sup> *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.*

<sup>270</sup> Article 28(VII).

<sup>271</sup> Article 30(II).

(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.<sup>272</sup>
- 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.

<sup>272</sup> Chapter Three.

5

**SOUTH AMERICA:  
NATIONAL LAW,  
POLICY AND  
PRACTICE**

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.<sup>273</sup> 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.<sup>274</sup> 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

<sup>273</sup> See section 2.4 above.

<sup>274</sup> See section 1.1 above.

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.<sup>275</sup> Guyana is a former British colony with a common law system and its immigration law is built on British law in the territory prior to independence.<sup>276</sup> Guiana is an 'overseas department' of France (like Guadeloupe and Martinique in the Caribbean) and French law, including immigration law, usually applies there directly.<sup>277</sup>

#### 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 Guiana.<sup>278</sup> A number of South American countries maintain visa requirements both for nationals of Guyana and Suriname.<sup>279</sup> 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

<sup>275</sup> See, for comparison, section 6.1 and 6.1.2.4.

<sup>276</sup> See, for comparison, section 6.1 and 6.1.2.1.

<sup>277</sup> See section 6.1 and 6.1.2.5.

<sup>278</sup> For relevant details, see Annex C.

<sup>279</sup> 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.<sup>280</sup> 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.<sup>281</sup> Paraguay is an outlier in that it maintains visa requirements for nationals of almost all Caribbean countries.<sup>282</sup> 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.<sup>283</sup>

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.<sup>284</sup>

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),<sup>285</sup> a 'MERCOSUR citizenship' framework has been proposed but not yet implemented.<sup>286</sup> 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

280 Nationals of the Dominican Republic do not need a visa to travel to Colombia, Ecuador and Guyana. Haitian nationals 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.

281 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.

282 Venezuela also imposes visa requirements for travel by nationals of several Caribbean countries.

283 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. However, Guyana, Peru and Venezuela do impose visa requirements for travel by nationals of several Central American States.

284 Cantor, *Law, Policy and Practice*, 33.

285 *Mercado Común del Sur – MERCOSUR*.

286 *MERCOSUR, Estatuto de la Ciudadanía del MERCOSUR: Plan de Acción (2010) Boletín Oficial, 28 April 2011.*

permanent residence after a period of time.<sup>287</sup> 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.<sup>288</sup> Suriname also appears to lack any immigration law provision to address such cases,<sup>289</sup> except in the refugee context.<sup>290</sup> In Guiana, applicable French law likewise seems to deal with all cases involving humanitarian considerations under

the provisions for international protection.<sup>291</sup> 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.<sup>292</sup>

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',<sup>293</sup> 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'.<sup>294</sup> 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'.<sup>295</sup>

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'.<sup>296</sup> This appears to have been used by the Chilean authorities

287 See, for example, MERCOSUR, *Acuerdo Sobre Residencia Para Nacionales Estados Partes MERCOSUR* (2014) Registro Oficial 209, 21 March 2014.

288 See further below.

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.

290 See below

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.*

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.

293 Aliens (Immigration and Registration) Act (Guyana), 1947, revised 2012, Chapter 14:03, Section 11.

294 Ley No. 978 (Paraguay) 27 June 1996, Article 146(g).

295 Ministerio del Interior – Dirección General de Migraciones (Paraguay), 'Presentan propuesta de reforma de la ley migratoria nacional al Poder Legislativo', 9 August 2016, <http://www.migraciones.gov.py/index.php/noticias/presentan-propuesta-de-reforma-de-la-ley-migratoria-nacional-al-poder-legislativo>.

296 Decreto No. 597: *Aprueba Nuevo Reglamento de Extranjería (Chile) 14 June 1984, published 24 November 1984, Articles 49-50.*

to grant temporary stay to a small number of Haitian nationals after the 2010 earthquake.<sup>297</sup> In Colombia, national law gives a broad power to authorise entry and stay permits, and temporary stay permits, on extraordinary grounds where this is necessary.<sup>298</sup> By analogy with its use to address Venezuelan arrivals in 2017, this power could be exercised in the future for persons fleeing a disaster linked to a natural hazard.

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.<sup>299</sup> 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.<sup>300</sup>

### 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.<sup>301</sup>

The pertinent provision (or provisions) regulates one or more aspects of the immigration process, i.e. travel to the country,<sup>302</sup> entry to the country<sup>303</sup> or stay in the country.<sup>304</sup> 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.<sup>305</sup> The phrasing varies slightly between the immigration law of the different countries.<sup>306</sup> 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.<sup>307</sup> Yet most laws do provide guidance on its scope in the South American context by reference to three main inter-related factors.<sup>308</sup> 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,

297 Cantor, *Law, Policy and Practice*, 43.

298 Decreto 1067 (Colombia) 26 May 2015, as modified by Decreto No. 1325, 12 August 2016, Article 2.2.1.11.2.5. Following the judgment of the Colombian Constitutional Court in *Sentencia T-073-2017, expediente número T-5.872.661*, 6 February 2017, these powers were used to create the Special Stay Permits (Permisos Especiales de Permanencia) for Venezuelans through the Ministerio de Relaciones Exteriores, Resolución 5797 (Colombia) 25 July 2017 and implemented by Migración Colombia – Unidad Especial Administrativa, Resolución 1272 (Colombia) 28 July 2017.

299 Decreto No. 248 (Ecuador) 9 February 2010. See, further, Cantor, *Law, Policy and Practice*, 37-39.

300 Cantor, *Law, Policy and Practice*, 37-39.

301 See, for example, *Argentina (Reglamento)*, *Bolivia, Brazil, Ecuador and Peru* in Annex D.

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'.<sup>309</sup> Similarly, in Bolivia, 'humanitarian reasons' for travel, entry or stay can include being a '[v]ictim of trafficking and smuggling of persons or other modes of exploitation'.<sup>310</sup> 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'.<sup>311</sup>

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'.<sup>312</sup> 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'.<sup>313</sup>

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 who 'are protected by the Principle of Non-Return' or those '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'.<sup>314</sup> In Bolivia, 'humanitarian reasons' for travel, entry or stay include a '[n]eed for international protection sanctified by the principle of non-return'.<sup>315</sup> In Peru – 'humanitarian residence' can be authorised for a person whose 'life would be at risk if he left the territory of Peru or who requires protection due to a serious threat or act violating or affecting his fundamental rights'.<sup>316</sup> In Brazil, 'humanitarian reception' can be granted to a person from a country in a situation of, *inter alia*, 'serious violations of human rights or international humanitarian law'.<sup>317</sup>

In other provisions, the danger is de-coupled from human rights law. Thus, in Argentina, transitory 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'.<sup>318</sup> 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'.<sup>319</sup> 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'.<sup>320</sup>

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<sup>321</sup>

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(II) (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.<sup>322</sup> 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.<sup>323</sup>

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'.<sup>324</sup> In Brazil, 'humanitarian reception' can be authorised for a person from 'any country in a situation of... major calamity [or] environmental disaster'.<sup>325</sup> 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'.<sup>326</sup> In Peru, the law confirms that 'humanitarian residence' can be authorised for 'persons who have migrated for reasons of natural and environmental disasters'.<sup>327</sup>

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'.<sup>328</sup> 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'.<sup>329</sup>

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)<sup>330</sup> 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'.<sup>331</sup> From 2015, the South-American Conference on Migration (CSM)<sup>332</sup> has included reference to the theme of migration, environment and climate change in its annual declarations.<sup>333</sup> Following a workshop with PDD on cross-border displacement in the context of disasters and climate change,<sup>334</sup> the most recent CSM annual declaration notes that its members

322 *Disposición DI-2017-1143-APN-DNM#MI (Argentina) 15 March 2017.*

323 *Ibid.*, preamble.

324 *Ley No. 25871 (Argentina), Article 24(h); Reglamentación de la Ley de Migraciones (Argentina) Article 24(h).*

325 *Lei No. 13445 (Brazil) Article 30; Decreto No. 9199 (Brazil) Article 145.*

326 *Ley Orgánica de Movilidad Humana (Ecuador) 5 January 2017, published in Registro Oficial on 6 February 2017, Article 58 and 66(5); Decreto Ejecutivo No. 111 (Ecuador) 3 August 2017, Article 55.*

327 *Decreto Legislativo No. 1350 (Peru) Article 29(2)(k).*

328 *Ley No. 370 (Bolivia) Article 65.*

329 *Ibid.*, Article 4(16).

330 *Unión de Naciones Suramericanas - UNASUR*

331 *Ibid.*, paragraph 6.

332 *Conferencia Suramericana sobre Migraciones - CSM.*

333 *CSM, Declaración de Santiago (2015).*

334 *CSM/PDD, Informe: Taller regional para el desarrollo de lineamientos y/o guía de prácticas para la protección para personas desplazadas entre fronteras en el contexto de desastres, 30-31 October, Santiago, Chile (2017).*



will 'continue working on the principles that emerged from the workshop in order to proceed in preparing [a] guide',<sup>335</sup> which will presumably be similar to that adopted by the CRM.<sup>336</sup>

## 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.<sup>337</sup> 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.<sup>338</sup>

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'.<sup>339</sup> 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'.<sup>340</sup> 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.<sup>341</sup>

#### 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.<sup>342</sup> 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.<sup>343</sup>

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

<sup>335</sup> CSM, *Declaración de Montevideo* (2017).

<sup>336</sup> See section 4.1.3.

<sup>337</sup> See Ministry of the Interior – General Directorate for Foreign Nationals in France, *Guide for Asylum Seekers in France* (France) November 2015, 11.

<sup>338</sup> Cantor, *Law, Policy and Practice*, 17.

<sup>339</sup> *Ley No. 27891 (Peru) 20 December 2002, published on 22 December 2002, Article 3.*

<sup>340</sup> *Lei No. 9474 (Brazil) 22 July 1997, published on 23 July 1997 in Diário Oficial da União, Article 1(III).*

<sup>341</sup> Cantor, *Law, Policy and Practice*, 18.

<sup>342</sup> See [https://www.oas.org/dil/treaties\\_b-32\\_american\\_convention\\_on\\_human\\_rights\\_sign.htm](https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm).

<sup>343</sup> For the declarations of France, see [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p\\_auth=3tBR4L4P](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=3tBR4L4P).



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'.<sup>344</sup> 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'.<sup>345</sup> National law on 'humanitarian considerations' in several other countries also encompasses the international law principle of *non-refoulement*.<sup>346</sup> 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.<sup>347</sup>

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'.<sup>348</sup> 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'.<sup>349</sup>

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.<sup>350</sup>

### 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.<sup>351</sup> 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

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.

347 C. Audebert, 'The Recent Geodynamics of Haitian Migration in the Americas: Refugees or Economic Migrants?' (2017) 34 *Revista Brasileira de Estudos de População* 55, 61.

348 Ley 20430 (Chile) Article 4.

349 Aliens Act concerning the Admission and Expulsion of Aliens (Suriname) 1991, entry into force 16 January 1992, Article 17.

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.

351 L. Yamamoto, D. Andreola Serraglio and F. de Salles Cavedon-Capdeville, 'Human Mobility in the context of Climate Change and Disasters: A South American Approach' (2018) 10 *International Journal of Climate Change Strategies and Management* 65, 75.

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'.<sup>352</sup> 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'.<sup>353</sup> 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.<sup>354</sup>

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.<sup>355</sup> 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.<sup>356</sup> 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.<sup>357</sup>

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.<sup>358</sup> National law allows for the declaration of a state of exception due to a 'natural disaster',<sup>359</sup> which 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'.<sup>360</sup>

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.<sup>361</sup>

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'.<sup>362</sup> The policy also clarifies that the authorities have the power to classify a situation as a disaster by declaring an alert.<sup>363</sup>

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(II)

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).

356 *Protocolo Nacional Conjunto para Proteção Integral a Crianças e Adolescentes, Pessoas Idosas e Pessoas com Deficiência em Situação de Riscos e Desastres (Brazil) September 2013.*

357 Ibid, 17 and 24.

358 *Constitución de la República (Ecuador) 20 October 2008, Articles 389 and 390.*

359 Ibid, Article 164; *Ley de Seguridad Pública y del Estado (Ecuador) 21 September 2009, published in the Registro Oficial on 28 September 2009 and modified 9 June 2014, Articles 32 and 34.*

360 *Reglamento a la Ley de Seguridad Pública y del Estado (Ecuador) 24 September 2010, published in the Registro Oficial on 30 September 2010 and modified 14 July 2014, Article 17.*

361 *Secretaría de Gestión de Riesgos (Ecuador), Manual del Comité de Operaciones de Emergencia, 2017, <https://www.gestionderiesgos.gob.ec/wp-content/uploads/downloads/2017/09/Manual-del-COE.pdf>, 15.*

362 Ibid, 15.

363 Ibid, 15-24.

other than those relating to evacuation. For instance, the national *Comité de Operaciones de Emergencia* is specifically tasked with preparing and implementing evacuation plans.<sup>364</sup> 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.<sup>365</sup>

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.<sup>366</sup> Similar accords have been agreed with Colombia concerning mutual aid in border areas during disasters.<sup>367</sup> 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'.<sup>368</sup>

## 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.<sup>369</sup> 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.<sup>370</sup> 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.<sup>371</sup> 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.<sup>372</sup>

#### 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

<sup>364</sup> *Ibid*, 20-22.

<sup>365</sup> H. Cahueñas, *Estudio sobre Preparativos Legales para Asistencia Internacional en Caso de Desastre en Ecuador* (CRE/FICR 2013) 36.

<sup>366</sup> *Acuerdo Amplio Ecuatoriano-Peruano, 1999, Article 60; Acuerdo entre Peru y Ecuador sobre Desastres Naturales, 7 February 1997, Article 5.*

<sup>367</sup> *Acuerdo entre Colombia y Ecuador sobre Desastres Naturales, 18 April 1990, Article 5; Convenio entre Colombia y Ecuador sobre Tránsito de Personas, Vehículos, Embarcaciones Fluviales y Marítimas y Aeronaves, 11 December 2012 (replacing an earlier Convenio from 1990), Article 42.*

<sup>368</sup> *Secretaría de Gestión de Riesgo (Ecuador), 'Ecuador y Colombia preparan plan de acción ante posible erupción de volcanes Chiles y Cerro Negro', 28 November 2014, <https://www.gestionderiesgos.gob.ec/ecuador-y-colombia-preparan-plan-de-accion-ante-posible-erupcion-de-volcanes-chiles-y-cerro-negro/>.*

<sup>369</sup> L. Yamamoto, D. Andreola Serraglio and F. de Salles Cavedon-Capdeville, 'Human Mobility in the context of Climate Change and Disasters: A South American Approach' (2018) 10 *International Journal of Climate Change Strategies and Management* 65, 77.

<sup>370</sup> Lei No. 12187 (Brazil) 29 December 2009, published on 30 December 2009.

<sup>371</sup> *Comitê Interministerial Sobre Mudança Do Clima (Brazil), Plano Nacional Sobre Mudança Do Clima (2008) 90 and 109.*

<sup>372</sup> Brazil, National Adaptation Plan to Climate Change: General Strategy (2016) 6 and 10; National Adaptation Plan to Climate Change: Sectoral and Thematic Strategies (2016) 62, 123 and 131-132.

effects of climate change in the rural sector.<sup>373</sup> However, it equally expressed concern that the transmission of epidemics might be linked to ensuing patterns of migration and displacement.<sup>374</sup> Otherwise, issues of population movement are absent from official documents on climate change,<sup>375</sup> although they may appear in the National Adaptation Plan that Ecuador has reportedly begun to formulate.<sup>376</sup>

## 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.<sup>377</sup>
- 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.

375 See, for example, *Gobierno Nacional – Ministerio del Ambiente (Ecuador), Plan Nacional de Cambio Climático 2015-2018* (2015).

376 UNDP, 'Ecuador Begins Formulation of its National Adaptation Plan', 10 April 2017, <http://adaptation-undp.org/naps-gsp-ecuador-update>.

377 Chapter Three.

# CARIBBEAN: NATIONAL LAW, POLICY AND PRACTICE

## 6

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.<sup>378</sup>

The 2014 Brazil Declaration and Plan of Action calls for the development of national ‘measures, tools and guidelines’ to address cross-border disaster displacement.<sup>379</sup> 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.

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<sup>378</sup> See section 2.4 above.

<sup>379</sup> 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.<sup>380</sup> 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.<sup>381</sup>

<sup>380</sup> For relevant details, see Annex C.

<sup>381</sup> 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.<sup>382</sup> In Dominica, eligibility requirements for Haitians applying for a visa were temporarily relaxed.<sup>383</sup>

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.<sup>384</sup> Yet, within the Organization of Eastern Caribbean States (OECS), citizens of member States have free movement rights to live and work in other States.<sup>385</sup> 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

382 Caribbean 360, 'Antigua Accepting Limited Haitians', 5 February 2010, <http://www.caribbean360.com/news/antigua-accepting-limited-haitians>.

383 Dominica News Online, 'CARICOM Welcome: Region Relaxes Visa Requirements for Haitians', 16 January 2010, <http://goo.gl/ros9uo>.

384 Revised Treaty of Chaguaramas Establishing the Caribbean Community including The Caricom Single Market and Economy (2001) Article 45.

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.<sup>386</sup> 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<sup>387</sup> or as long as necessary.<sup>388</sup> 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,<sup>389</sup> and others providing the authorities with discretion in allowing entry or stay to persons or classes of persons,<sup>390</sup> 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.<sup>391</sup> 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'.<sup>392</sup> A limited set of provisions referring to humanitarian considerations appear also in the refugee-related law adopted by a small number of these jurisdictions.<sup>393</sup>

#### Specifically on non-nationals seeking entry

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.<sup>394</sup>

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.<sup>395</sup> 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.<sup>396</sup> Those measures were lifted by all of the States and territories involved in a relatively short timescale.<sup>397</sup> 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.<sup>398</sup>

#### 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.<sup>399</sup> 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.<sup>400</sup> 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.<sup>401</sup> 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.<sup>402</sup> 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.<sup>403</sup>

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.

395 United Nations Human Rights Council, ‘Reports of the Independent Expert on the Situation of Human Rights in Haiti, Michel Forst, Addendum, Forced Returns of Haitians from Third States’, UN Doc A/HRC/20/35/Add.1, 4 June 2012, 6-12.

396 Dominica News Online, ‘Caricom Welcome: Region Relaxes Visa Requirements for Haitians’, 16 January 2010, <http://goo.gl/ros9uo>; Caribbean 360, *Caribbean Islands Prepare to Take in Haitian Refugees*, 15 January 2010, <http://www.caribbean360.com/news/caribbean-islands-prepare-to-take-in-haitian-refugees>.

397 United Nations Human Rights Council, ‘Reports of the Independent Expert on the Situation of Human Rights in Haiti, Michel Forst, Addendum, Forced Returns of Haitians from Third States’, UN Doc A/HRC/20/35/Add.1, 4 June 2012, 6-12.

398 Reuters, *Puerto Rico Opens Arms to Refugee from Irma’s Caribbean Chaos*, 13 September 2017, <https://uk.reuters.com/article/us-storm-irma-caribbean/puerto-rico-opens-arms-to-refugees-from-irmas-caribbean-chaos-idUKKCN1BO26P>.

399 See below.

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

401 United Nations Human Rights Council, ‘Reports of the Independent Expert on the Situation of Human Rights in Haiti, Michel Forst, Addendum, Forced Returns of Haitians from Third States’, UN Doc A/HRC/20/35/Add.1, 4 June 2012, 6-12.

402 UNHCR, ‘Dominican Republic Visa Programme Helps Haitian Quake Victims’, 27 May 2010, <http://www.unhcr.org/4bfe8c9d0.html>.

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.<sup>404</sup> 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.<sup>405</sup>

### 6.1.2.3

#### US unincorporated territories

US immigration law applies in Puerto Rico and the US Virgin Islands.<sup>406</sup> 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.<sup>407</sup> The last special situation policy published for the

Americas was in 2012;<sup>408</sup> 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.<sup>409</sup> 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.<sup>410</sup> TPS has not been designated for new disasters in the Americas since the Haiti earthquake of 2010.<sup>411</sup>

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

404 *Loi sur l'immigration et l'emigration (Haiti)* 25 November 1959, Article 17.

405 *Politique migratoire d'Haiti 2015-2030: Document de politique* (Haiti) 3 August 2015, chapter 3.

406 See, for example, *Estado Libre Asociado de Puerto Rico – Departamento de Estado, Guía para visitantes (Puerto Rico) 2014*, <https://estado.pr.gov/wp-content/uploads/2014/12/Guia-para-visitantes-12-17-Final.pdf>.

407 D.J. Cantor, *Law, Policy and Practice concerning the Humanitarian Protection of Aliens on a Temporary Basis in the context of Disasters* (Nansen Initiative 2015) <[https://disasterdisplacement.org/wp-content/uploads/2015/07/150715\\_FINAL\\_BACKGROUND\\_PAPER\\_LATIN\\_AMERICA\\_screen.pdf](https://disasterdisplacement.org/wp-content/uploads/2015/07/150715_FINAL_BACKGROUND_PAPER_LATIN_AMERICA_screen.pdf)> 34-35.

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.<sup>412</sup> A number of the evacuees were transferred onwards to other destinations, including the mainland USA and UK.<sup>413</sup> 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.<sup>414</sup>

#### 6.1.2.4

##### Dutch Antilles

At least in the BES<sup>415</sup> 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'.<sup>416</sup> 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'.<sup>417</sup> Both provisions could be used as a basis for granting entry to persons fleeing disaster overseas.

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.<sup>418</sup>

#### 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.<sup>419</sup>

## 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

412 Reuters, *Puerto Rico Opens Arms to Refugee from Irma's Caribbean Chaos*, 13 September 2017, <https://uk.reuters.com/article/us-storm-irma-caribbean/puerto-rico-opens-arms-to-refugees-from-irmas-caribbean-chaos-idUKKCN1BO26P>; The Guardian, *US Virgin Islands Refusing Entry to Non-American Irma Evacuees, Survivors Say*, 12 September 2017, <https://www.theguardian.com/world/2017/sep/12/us-british-virgin-islands-hurricane-irma-refused-entry>.

413 Fox News, *Puerto Rico Helps Evacuate US Citizens from Neighbouring Caribbean Islands*, 10 September 2017, <http://fox2now.com/2017/09/10/puerto-rico-helps-evacuate-us-citizens-from-neighboring-caribbean-islands/>. In one fascinating example, the UK granted entry and temporary stay to over 700 students and staff evacuated to Puerto Rico from the American University of the Caribbean (AUC) School of Medicine on devastated Dutch Sint Maarten in order to continue their studies at the University of Central Lancashire (UCLan). This followed a request to the UK authorities by the UCLan and the local National Health Service Trust trust drawing attention to the strong links between the two universities. See The Guardian, *'Welcome to Sunny Preston': City Welcomes Students Displaced by Irma*, 20 November 2017, <https://www.theguardian.com/world/2017/nov/20/welcome-to-sunny-preston-city-welcomes-students-displaced-by-irma>; The Guardian, *Students Displaced by Hurricane Irma Make Preston Their New Home*, 2 October 2017, <https://www.theguardian.com/uk-news/2017/oct/02/st-maarten-students-displaced-hurricane-irma-move-university-central-lancashire>.

414 The Guardian, *US Virgin Islands Refusing Entry to Non-American Irma Evacuees, Survivors Say*, 12 September 2017, <https://www.theguardian.com/world/2017/sep/12/us-british-virgin-islands-hurricane-irma-refused-entry>.

415 Bonaire, Sint Eustasius and Saba

416 Circulaire toelating en uitzetting Bonaire, Sint Eustasius en Saba Rijksdienst Caribisch Nederland Immigratie- en Naturalisatiedienst Oktober 2010 Afkortingenlijst CTU-BES (Netherlands) October 2010, Section 2.3.1.

417 Ibid, Section 2.3.6.

418 Ibid, Section 3.4.

419 United Nations Human Rights Council, 'Reports of the Independent Expert on the Situation of Human Rights in Haiti, Michel Forst, Addendum, Forced Returns of Haitians from Third States', UN Doc A/HRC/20/35/Add.1, 4 June 2012, 6-12.



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.<sup>420</sup> 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).<sup>421</sup> 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,<sup>422</sup> although most Caribbean States adopted the 2014 Brazil Declaration and Plan of Action.<sup>423</sup>

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.<sup>424</sup> The US unincorporated territories apply US refugee law, including the credible fear test. The French Antilles likewise apply French refugee law.<sup>425</sup> 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.<sup>426</sup> 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.<sup>427</sup> The situation in the British Virgin Islands is unclear.<sup>428</sup>

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.

420 As of 1 May 2018, see [https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=\\_en](https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en).

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.

425 See Ministry of the Interior – General Directorate for Foreign Nationals in France, *Guide for Asylum Seekers in France* (France) November 2015, 11.

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://bvnews.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.<sup>429</sup>

Such refugees are permitted to enter, stay and return to Cuba as 'temporary residents' and can be accompanied by their spouses and minor children.<sup>430</sup> 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.<sup>431</sup>

### 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)<sup>432</sup> 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).<sup>433</sup> 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'.<sup>434</sup> 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.<sup>435</sup> 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.<sup>436</sup> 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.<sup>437</sup> 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

429 Edición actualizada del Decreto No. 26, Regalmento 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\\_b-32\\_american\\_convention\\_on\\_human\\_rights\\_sign.htm](https://www.oas.org/dil/treaties_b-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](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.<sup>438</sup> 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.<sup>439</sup>

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, *inter alia*, 'compelling humanitarian reasons' or 'international relations'.<sup>440</sup> 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'.<sup>441</sup> Such provisions might well be relevant to persons fleeing disasters.

## 6.3

### DISASTER RISK MANAGEMENT LAW

National disaster risk management laws have been adopted by all Caribbean States, although the sophistication of the legal and policy frameworks varies between countries. In relation to the two case study countries, Antigua

and Barbuda (section 6.3.1) and the Dominican Republic (section 6.3.2), 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. Nonetheless, there is the recognition among some DRM authorities in the Caribbean that protocols for cross-border evacuation before or after a disaster need to be developed within the region.

#### 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'.<sup>442</sup>

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'.<sup>443</sup> Any mandatory evacuation is based on powers conferred under the law relating to states of emergency,<sup>444</sup> 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.<sup>445</sup>

Recent official documents on disaster risk reduction acknowledge that past storms have led to the evacuation and displacement of

438 Immigration Act (Montserrat) 1946, revised 2013, Chapter 13:01, Section 2(1).

439 C. Audebert, 'The Recent Geodynamics of Haitian Migration in the Americas: Refugees or Economic Migrants?' (2017) 34 *Revista Brasileira de Estudos de População* 55, 61.

440 Circulaire toelating en uitzetting Bonaire, Sint Eustatius en Saba Rijksdienst Caribisch Nederland Immigratie- en Naturalisatiedienst Oktober 2010 Afkortingenlijst CTU-BES (Netherlands) October 2010, Section 3..6.1. Compare to Section 2.3.6 above.

441 Immigration Law (Cayman Islands) 2003, revised 2015, Section 84(8); Immigration Act (Montserrat) 1946, revised 2013, Chapter 13:01, Section 45(5).

442 Disaster Management Act (Antigua and Barbuda) No. 13 of 2002, 10 September 2002, entered into force 3 October 2002, Section 2. The Emergency Powers (Hurricane, Earthquake, Fire or Flood) Act (Antigua and Barbuda) Cap. 148, 21 May 1957, Section 2(1) provides that: 'It shall be lawful for the Cabinet after the occurrence in Antigua and Barbuda of any hurricane, earthquake, fire or flood, to declare by proclamation in the Gazette that a state of emergency exists'

443 *Ibid*, Section 8(2)(m).

444 Emergency Powers (Hurricane, Earthquake, Fire or Flood) Act (Antigua and Barbuda) Cap. 148, 21 May 1957.

445 Emergency Powers (Mandatory Evacuation) Order 2017 (Antigua and Barbuda) No. 60 of 2017, 7 September 2017.

thousands of people in Antigua and Barbuda.<sup>446</sup> 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.<sup>447</sup> 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...’.<sup>448</sup> 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.<sup>449</sup> Such a declaration can take place up to three months after the event.<sup>450</sup>

The national law obliquely acknowledges the need to organise and plan actions such as evacuation as part of the task of disaster risk preparation.<sup>451</sup> However, neither the law nor its regulations provide any further detail on evacuation or other forms of movement.<sup>452</sup> Nonetheless, apparently under wider emergency powers conferred by the Constitution,<sup>453</sup> 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.<sup>454</sup> As a matter of unwritten policy, priority in evacuation is reportedly given to women and children.<sup>455</sup>

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.<sup>456</sup>

## 6.4

### CLIMATE LAW AND POLICY

It is reported that very few NDCs directly discuss current or future migration or displacement.<sup>457</sup> 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’.<sup>458</sup> It also recognised squatter settlements, comprised mainly of migrants from neighbouring islands, as

446 National Office of Disaster Services, *Country Document for Disaster Risk Reduction: Antigua and Barbuda*, 2016 (February 2017) 127.

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 1.

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.

454 *Diario Libre*, ‘El COE ordena evacuación obligatoria en zonas vulnerables por huracán Irma’, 6 September 2017, <https://www.diariolibre.com/noticias/el-coe-ordena-evacuacion-obligatoria-en-zonas-vulnerables-por-huracan-irma-KX8099279>

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.

456 IFRC and Dominican Republic Red Cross, ‘Study on Legal Preparedness for International Assistance in the Event of Disasters’ (2015) 9.

457 A. Thomas and L. Benjamin, ‘Policies and Mechanisms to Address Climate-induced Migration and Displacement in Pacific and Caribbean Small Islands Developing States’ (2018) 10 *International Journal of Climate Change Strategies and Management* 86, 93.

458 Antigua and Barbuda, *Second National Communication on Climate Change* (2009) 133.

particularly vulnerable to flooding.<sup>459</sup> There is no specific mention of displacement or movement in other documents.<sup>460</sup>

#### 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.<sup>461</sup> 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.<sup>462</sup> Otherwise, there is no mention of displacement in national policy on climate change.<sup>463</sup>

### 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.<sup>464</sup>
- 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;<sup>465</sup>
- At the regional level, the newly-established Caribbean Migration Consultations (CMC)<sup>466</sup> 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;

459 Ibid, 215.

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.

462 Dominican Republic, *Tercera Comunicación Nacional 2014-2017 (2017)*, 149 and 208.

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.

# 7

# CONCLUSION

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.<sup>467</sup> 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 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

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<sup>467</sup> 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.<sup>468</sup> 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;

<sup>468</sup> 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.<sup>469</sup>

469 See UNISDR, *Words into Action Guidelines - Disaster Displacement: How to reduce risk, address impacts and strengthen resilience* (2018) <https://www.preventionweb.net/publications/view/58821>.

# ANNEX

# Annex A:

## COUNTRIES RESEARCHED FOR THE STUDY

(\*TIED IN TO CARIBBEAN DYNAMIC)

Central America and Mexico	South America	South American non-sovereign territories	Caribbean	Caribbean non-sovereign territories
Belize*	Argentina	Guiana* (French overseas department)	Antigua and Barbuda	Anguilla (British Overseas Territory)
Costa Rica	Bolivia		Bahamas	Aruba (country of the Kingdom of the Netherlands)
El Salvador	Brazil		Barbados	Bermuda (British Overseas Territory)
Guatemala	Chile		Cuba	Bonaire (special municipality of the Kingdom of the Netherlands)
Honduras	Colombia		Dominica	British Virgin Islands (British Overseas Territory)
Mexico	Ecuador		Dominican Republic	Cayman Islands (British Overseas Territory)
Nicaragua	Guyana*		Grenada	Curaçao (country of the Kingdom of the Netherlands)
Panama	Paraguay		Haiti	Guadeloupe (French overseas department)
	Peru		Jamaica	Martinique (French overseas department)
	Suriname*		St. Kitts and Nevis	Montserrat (British Overseas Territory)
	Uruguay		Saint Lucia	Puerto Rico (US unincorporated territory)
	Venezuela		Saint Vincent and the Grenadines	Saba (special municipality of the Kingdom of the Netherlands)
			Trinidad and Tobago	Saint Barthélemy (French overseas collectivity)
				Saint Martin (French overseas collectivity)
			US Virgin Islands (US unincorporated territory)	Sint Eustatius (special municipality of the Kingdom of the Netherlands)
				Sint Maarten (country of the Kingdom of the Netherlands)
				Turks and Caicos Islands (British Overseas Territory)
				US Virgin Islands (US unincorporated territory)

# Annex B:

## INTERNAL DISPLACEMENT DUE TO RAPID-ONSET DISASTERS

(IDMC FIGURES)

No of persons displaced by disaster per year																		
Origin	Year											Total	Total by region					
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2017							
BEL	400					130						250				780		
COS	12000	2400		2100	2000	65						1100	5800	11000		36465		
ELS	95	15000	16000	60000		2300	22					2000	480	390		96287		
GUA	18000	990	163000	29000	64000	80	10000					2900	1700	45000		334670		
HON	70000	2300	8000	12000			2500					2000	890			97690		
MEX	13000	375000	900000	547000	6500	158000	18000					91000	12000	195000		2315500		
NIC	19000		61000	10000		160	35000					1100	18000	20000		164260		
PAN					3400	1700	320					100	1100	300		6920		
																		3052572
ARG	640				2000	6900	32000					36000	12000	27000		116540		
BOL		630	100000	11000	9000	4700	190000					11000	7000	3100		336430		
BRA	309000	523000	230000	170000	35000	82000	150000					59000	14000	71000		1643000		
CHL	43000	700	2000000	4000	7300	3600	985000					1047000	16000	8300		4114900		
COL		9100	3000000	149000	71000	11000	20000					4600	31000			3295700		
ECU	14000		500		4800	7500	570					1900	289000	3000		321270		
GUY														200		200		
FRG																		
PAR	60					28000	84000					171000	3600	5200		291860		
PER	45000	46000	10000	2700	184000	28000	950					8400	17000	295000		637050		
SUR						300								6000		6300		
URU						1000	4900					24000	12000	9100		51000		
VEN	4700		102000		1000							45000	230			152930		
																		10967180

## No of persons displaced by disaster per year

Origin	Year											Total	Total by region		
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018				
ANT	45												1400	1445	
BAH	500							2800		3500			1600	8400	
BAR										90				90	
BOT	720									50			6060	6830	
CUB	1014000				352000			2000		1079000			1738000	4185000	
DOM				96		18		710					35000	35824	
DOR	8900			17000	43000	14000	11000	28000		52000			69000	242900	
F.A.													11000	11000	
GRE													150	150	
HAI	139000	9900	1573000	500	86000	1100	6500	1500		180000			15000	2012500	
JAM	1500				2000					3500			29	7029	
N.A.													13000	13000	
PUE													86000	86000	
SKN													33	33	
SLU										1200			130	1330	
SVG			100			2300				340			20	2760	
T&T						29								29	
USV													2300	2300	
															6616620
															20636372
															<b>Total</b>

# Annex C:

## VISA REQUIREMENT FOR SHORT STAY<sup>470</sup>

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(AT LEAST 30 DAYS)

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

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<sup>470</sup> 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.



## Destination

Origin	CA												SA												CR															
	BEL	COS	ELS	GUA	HON	MEX	NIC	PAN	ARG	BOL	BRA	CHL	COL	ECU	GUY	FRG	PAR	PER	SUR	URU	VEN	ANT	BAH	BAR	BOT	CUB	DOM	DOR	F.A.	GRE	HAI	JAM	N.A.	SKN	SLU	SVG	T&T	US		
Central America and Mexico	BEL		N	N	N	N	N	Y**	Y	Y**	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	Y		
	COS	N		N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y**	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	ELS	N	N		N	Y	N	N	N	Y**	N	N	N	N	Y	N	N	N	Y	Y**	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	Y	
	GUA	N	N	N		Y	N	N	N	Y**	N	N	N	N	N	N	N	Y	Y**	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	Y	
	HON	N	N	N	N		Y	N	N	Y**	N	N	N	N	N	Y	N	N	Y	Y**	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	Y	
	MEX	N	N	N	N	N		Y**	N	N	N	N	N	N	N	Y	N	N	N	Y**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	NIC	N	N	N	N	N	Y	N	N	N	Y**	N	N	Y	N	Y	N	N	Y	Y**	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	Y	
	PAN	N	N	N	N	N	N		N	N	N	N	N	N	N	N	N	N	N	N	Y**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y
South America	ARG	N	N	N	N	N	N	N		N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	BOL	N	N	Y	N	N	Y	N	N		N	N	N	N	Y	N	N	N	Y**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	BRA	N	N	N	N	N	N	N	N	N		N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y
	CHL	N	N	N	N	N	N	N	N	N	N		N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
	COL	N	Y	N	Y	N	N	Y	N	N	N	N		N	Y	Y	N	N	N	Y**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	ECU	Y	Y	N	Y	N	Y	Y	N	N	N	N	N	N		N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	GUY	N	N	Y	Y	Y	Y	Y**	N	N	N	Y	N	N	N		Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	FRG	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	PAR	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	PER	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	SUR	N	N	Y	Y	Y	Y	Y**	Y	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
	URU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	
VEN	N	N	Y	N	N	N	N	Y**	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y		



# Annex D:

## IMMIGRATION LAWS BY COUNTRY

### 1 CENTRAL AMERICA

Country	Scenario	Concept	Definition	Status	Source
<b>Belize</b>	Entry or remain		<p>'(1) 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- [gives grounds]'</p> <p>AND</p> <p>'The Minister may make regulations- ... (d) governing the permits and the certificates which may be issued under this Act, the conditions upon which they shall be issued...'</p>	Remain temporarily	Immigration Act, Chapter 156 (revised 2000), section 18 and 39
<b>Costa Rica</b>	One-off regularisation (Hurricane Mitch)	Regularisation	Central American nationals who 'currently reside [irregularly] in the country and entered before 9 November 1998'	Temporary residence, 1 and then 2 years (renewable)	Decreto No. 27457-G-RE (1999)

Country	Scenario	Concept	Definition	Status	Source
<b>Costa Rica</b>	Entry or stay (latter only for 'reasons of humanity')	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')	Temporary stay, 1 year (renewable)	Ley No. 87/64 (2009), Articles 93-96; Decreto No. 37112-G (2012), Articles 2, 135-136
<b>El Salvador</b>	Any	Discretionary Power	'interpret and resolve by analogy, or founded in consideration of good sense and natural reasons, cases that are expressly contemplated in the present Law'	-	Decreto No. 2772 (1958, reformed 1993), Article 74
<b>Guatemala (prior)</b>	Any	Discretionary Power	resolve 'unforeseen cases'	-	Ministerio de Gobernación, Acuerdo Gubernativo No. 529-99 (1999), Article 108.
<b>Guatemala</b>	Entry	Humanitarian Reasons	'Foreigners can enter the country for the following humanitarian reasons: (a) Due to a natural catastrophe in neighbouring countries, which obliges persons or a group of persons to save their lives (b) Due to medical emergencies... (c) For reasons of armed conflicts, in accordance with international law...'	'Estatus extraordinario de permanencia' (Art 81) includes 'Estatus de permanencia por razón humanitaria' (Art 85) – treatment equated to refugees	Decreto 44-2016 (2016), Article 68
<b>Honduras</b>	Entry	Entry Without a Visa	'humanitarian motives'	-	Reglamento de la Ley de Migración y Extranjería (2004), Article 110(3)
<b>Honduras</b>	Stay	Special Residence Permit	'humanitarian reasons'	Temporary residence, up to 5 years (renewable)	Decreto No. 208-2003 (2004), Article 39(13).

Country	Scenario	Concept	Definition	Status	Source
Mexico	Entry and stay	Entry for Humanitarian cause	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...'	Stay as a visitor for humanitarian reasons	Ley de Migración (2011, reformed 2013), Article 37(III)(e) and Article 42; Reglamento de la Ley de Migración (2012), Article 63(III)
Mexico	Stay	Stay for Humanitarian Reasons	'humanitarian reasons' defined as certain specified classes of person, including: victims or witnesses of crimes committed in Mexico; unaccompanied alien children; and asylum-seekers	Stay as a visitor for humanitarian reasons	Ley de Migración (2011, reformed 2013), Article 52
Mexico	Stay	Stay for Humanitarian Cause	'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'	Stay as a visitor for humanitarian reasons	Reglamento de la Ley de Migración (2012), Articles 137 and 141
Mexico	Travel	Humanitarian Visa	'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'	-	Ley de Migración (2011, reformed 2013), Articles 41, 116; Lineamientos Generales (2014), eighteenth general provision, procedure 9
Nicaragua	Stay	Extension	'humanitarian reasons'	-	Decreto No. 31-2012 (2012), Article 50
Nicaragua	One-off regularisation (Hurricane Mitch)	Regularisation	Central American nationals who entered the country before 15 November 1998	Temporary residence	Decreto No. 94-98 (1998)
Nicaragua	Travel, entry or stay?	Humanitarian Visa	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'	Temporary residence, 1 year (renewable)	Ley No. 761 (2011), Article 220; Decreto No. 31-2012 (2012), Articles 6(0), 61

Country	Scenario	Concept	Definition	Status	Source
Panama	One-off Regularisation (Hurricane Mitch)	Regularisation	Nicaraguan nationals living irregularly in the country and who entered before 31 December 1994	Temporary residence, one year (after which apply for permanent residence)	Decreto No. 34 (1999)
Panama	Stay	Stay for Humanitarian Reasons	<p>'exceptional humanitarian reasons', among which the following need evaluation: '1. Proved to be suffering a disease or disability that requires medical attention and makes her return to her country of origin or residence impossible;</p> <p>2. Proved to suffer from a permanent serious disability;</p> <p>3. Being more than 85 years old, demonstrates that cannot care for herself or is in a state of abandonment;</p> <p>4. Finds herself in conditions of obvious indigence (extreme poverty) and has spent more than five (5) years in the national territory at the moment when [regulations] enter into force;</p> <p>5. Being a minor who suffers some degree of disability, in finds [sic] undocumented or in a vulnerable situation.'</p>	Temporary residence, up to 6 years	Decreto Ley No. 3 (2008), Article 18; Decreto No. 320 (2008), Articles 171-174



2 South America

Country	Scenario	Concept	Definition	Status	Source
<b>Argentina</b>	Entry	Entry Without A Visa	'exceptional reasons of a humanitarian character'	-	Ley No. 25871 (2003), Article 34
<b>Argentina</b>	Entry or stay	Stay for Humanitarian Reasons	'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'	Transitory residence, 6 months (renewable)	See Ley No. 25871 (2003), Article 24(h); Reglamentación de la Ley de Migraciones (2010), Article 24(h)
<b>Argentina</b>	Entry or stay	Stay for Humanitarian Reasons	<p>'humanitarian reasons', for which the following situations are to be 'taken especially into account', implying equally that the list is not exhaustive:</p> <ol style="list-style-type: none"> <li>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].</li> <li>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.</li> <li>3. Persons that have been victims of trafficking or other modes of slave exploitation and/or victims of the illicit smuggling of migrants.</li> <li>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.</li> <li>5. Stateless persons and refugees that have lived in the country for a period greater than three years and had their condition ceased.'</li> </ol>	Temporary residence, 2 years (renewable)	Ley No. 25871 (2003), Article 23(m); Reglamentación de la Ley de Migraciones (2010), Article 23(m)

Country	Scenario	Concept	Definition	Status	Source
Bolivia	Entry		<p>'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 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.</p> <p>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))</p>		<p>Ley No. 370 (2013), Article 65 (Migration due to Climate Change)</p>
Bolivia	Stay	Temporary Humanitarian Stay	<p>applies to persons who 'for reasons of force majeure, beyond their control and duly justified cannot comply with the requirements for temporary residence established [in migration law]', understood as '1. Need for international protection sanctified by the principle of non-return; [or] 2. Victim of trafficking and smuggling of persons or other modes of exploitation; [or] 3. Accompanying a sick person that requires medical treatment</p>	<p>Temporary humanitarian residence, 1 year</p>	<p>Ley No. 370 (2013), Articles 13(I)(e), 30(4)</p>
Bolivia	Travel or entry?	Humanitarian Visa	<p>'humanitarian reasons', understood as '1. Need for international protection sanctified by the principle of non-return; [or] 2. Victim of trafficking and smuggling of persons or other modes of exploitation; [or] 3. Accompanying a sick person that requires medical treatment'</p>	-	<p>Ley No. 370 (2013), Articles 9(I)(d), 21(I)(6)</p>

Country	Scenario	Concept	Definition	Status	Source
<b>Brazil (prior)</b>	Travel, entry or stay	Special Situations and Unforeseen Cases	'humanitarian reasons'	Temporary residence, 5 years	Conselho Nacional de Imigração (2006), Resolução Recomendad No. 08, Article 1, and first paragraph
<b>Brazil</b>	Entry	Humanitarian Visa	'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: ... I (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.'	Temporary visa	Lei No. 13445 (2017), Article 14; Decreto No. 9199 (2017), Article 36

Country	Scenario	Concept	Definition	Status	Source
Brazil	Stay	Humanitarian Residence	<p>'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.'</p> <p>'Art. 142. The authorisation of temporary residence can be based on the following grounds: I – residence that has as purpose: ... c) humanitarian reception. ...</p> <p>§ 2 Temporary residence that is authorised on grounds "a", "c", "e", "g", "h" and "j", in line I ... can be granted initially for a period up to two years.</p> <p>§ 3 On the expiry of the residence period determined in paragraph [2 above], the institution that granted the initial authorization of residence can, upon a request from the immigrant, renew the initial period for more two years or grant residence for an indefinite period.'</p> <p>'Art. 145. Authorization of temporary residence for the purpose of humanitarian reception can be granted to a stateless person or a national from any country in a situation of: I - Serious or imminent institutional instability II - Armed conflict III - Major calamity IV - Environmental disaster, or V - Serious violations of human rights or international humanitarian law.</p> <p>... § 1 A joint decision of the Justice and Public Security Minister, the Foreign Affairs Minister and the Labour Minister will establish the requirements for authorising residence based on the humanitarian reception ground, for renewal of the residence period and for its extension for an indefinite period.'</p>	Residence (two years, renewable)	Lei No. 13445 (2017), Article 30; Decreto No. 9199 (2017), Articles 142 and 145

Country	Scenario	Concept	Definition	Status	Source
Chile	Travel, entry or stay	Discretionary Power	residence of persons is 'useful or advantageous, or their activities are of interest for the country'	Temporary residence	Decreto No. 597 (1984), Articles 49-50
Colombia			<p>'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'</p> <p>AND</p> <p>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"</p>		<p>Decreto 1067 de 2015, Article 2.2.1.11.2.5, as modified by Decreto 1325 de 2016, Article 2. (Also talks about Colombians affected by a disaster overseas)</p> <p>And Corte Constitucional, Sentencia T-073-2017 de 6 de febrero de 2017, expediente número T-5.872.661, Magistrado Ponente: doctor Jorge Iván Palacio Palacio.</p> <p>By analogy with powers used in MRE Resolución 5797 (2017)</p>
Ecuador	One-off regularisation (Haiti earthquake)	Regularisation	Haitian nationals who entered Ecuador by 31 January 2010	Lawful visitor (non-immigrant), 5 years	Decreto No. 248 (2010)

Country	Scenario	Concept	Definition	Status	Source
Ecuador	Entry or stay?	Persons protected for humanitarian reasons	<p>'Art 58. Persons in protection for humanitarian reasons. This is a foreign person who, without meeting the requirements established in the present Law for access to a migratory status, 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.</p> <p>If the reasons for which he sought the humanitarian visa persist after this time, the visa can be extended until the grounds that gave rise to the granting of the visa have ceased. This is without prejudice to [the person] accessing to another migratory status at any time and in accordance with the requirements set out in this Law.'</p> <p>'Art 66. Types of visa. Foreign persons who wish to enter and stay in the territory of Ecuador must opt for one of the following types of visa: ... (5) Humanitarian visa: This is the authorisation to stay in Ecuador granted by the highest authority within [Human Mobility department] to persons seeking international protection until their claim is resolved or to persons in protection for humanitarian reasons for a period of up to two years in conformity with this Law. This visa will have no cost.</p> <p>'Art 55. The humanitarian visa will be granted without any cost to those persons seeking refugee or stateless person status and to those persons who demonstrate the existence of exceptional reasons of a humanitarian character as victims of natural or environmental disasters.'</p>	Status not clear (probably not temporary resident) – up to two years and then extension?	Ley Orgánica de Movilidad Humana (2017), Article 58 and 66(5); Decreto Ejecutivo No. 111 (2017), Article 55



Country	Scenario	Concept	Definition	Status	Source
<b>Guyana</b>			'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'		1947 Aliens (Immigration and Registration) Act, Chapter 14:03 (revised 2012), section 11
<b>Paraguay</b>			'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.'		Ley No. 978 (1996), Article 142(9) and 146(g)

Country	Scenario	Concept	Definition	Status	Source
Peru	Entry or stay; in some cases, travel		<p>'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: ...</p> <p>(k) Humanitarian. For the foreigner who, finding himself in the national territory [of Peru] and without meeting the requirements for asylee or refugee status, would be in a situation of great vulnerability or his life would be at risk if he left the territory of Peru or who requires protection due to a serious threat or act violating or affecting his fundamental rights. In the same way, it will be applicable to asylum-seekers or persons who have migrated for reasons of natural and environmental disasters... It will also apply to 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. It allows [work]. It is granted by the Ministry of Foreign Relations. The period of stay is 183 days and can be maintained whilst the conditions of vulnerability that led to the granting of this migratory category are maintained.</p> <p>Regs apply to (Art '91.1.c) 'Foreign persons affected by natural or environmental disasters', also refugee exclusion clauses apply (Art 91.3)</p>	6-month resident; but renewable	Decreto Legislativo No. 1350 (2017), Article 29.2(k); Decreto Supremo 007-2017-IN, Article 91.
Peru	Regularisation	Regularisation	<p>In exceptional cases, the migration authorities can implement mass and individual regularisation programmes, including for 'foreign persons in a state of vulnerability...; 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.'</p>	Temporary stay – to be determined by authorities	Decreto Legislativo No. 1350 (2017), Article 36; Decreto Supremo 007-2017-IN, Article 91.

Country	Scenario	Concept	Definition	Status	Source
<b>Suriname</b>	Stay		'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.'	Residence permit	Aliens Act (1992), Article 17
<b>Uruguay</b>	Entry	Entry Without a Visa	'persons who do not meet the requirements established in the present law, and its regulations, when exceptional reasons exist of a humanitarian character'	Temporary resident	Ley No. 18250 (2008), Article 44 (and Article 34B on residency)
<b>Venezuela</b>	One-off regularisation (Haiti earthquake)	Regularisation	Haitian nationals in who entered Venezuela by 12 January 2010 and living irregularly in country	Social temporary resident	Official discretion, internal directives

3 Caribbean

Country	Scenario	Concept	Definition	Status	Source
Antigua and Barbuda	Remain/Entry	Discretionary	<p>'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 Officer considers necessary'</p> <p>AND</p> <p>'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'</p>	None: discretionary	Immigration and Passport Act (2014), section 64 and 14  Regs?
Bahamas	Entry	Discretionary	<p>'Where any person is not granted leave to land in The Bahamas by an Immigration Officer by reason of the provisions of section 22 the Director of Immigration may in his discretion, notwithstanding any other provisions of this Act, permit such person in writing to land and remain in The Bahamas for such period and subject to such conditions as may be prescribed or as the Director may deem fit to impose.'</p> <p>'(1) A special permit shall be in Form IX in the First Schedule and shall be valid for such period expressed in the permit not exceeding twenty-eight days as the Director of Immigration may decide'</p>	None: Discretionary for up to 28 days	Immigration Act (1967), Section 23; Immigration (General) Regulations (1969), section 12.

Country	Scenario	Concept	Definition	Status	Source
<b>Barbados</b>	Entry	Discretionary	<p>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)</p> <p>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))</p>	Discretionary.	Immigration Act (1976), Section 8(2)-(3); Section 13(7)
<b>Cuba</b>					Not under immigration categories – treat as refugees
<b>Dominica</b>	Entry	Discretionary	<p>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'.</p> <p>'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'.</p> <p>'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.'</p>	Discretionary	Immigration and Passport Act (1941), Section 30(1)
<b>Dominican Republic</b>				Not really applicable but speaks to innate discretion?	<p>Ley No. 285-04 (2004), Article 35(8); Decreto 631-11 (2011), Article 43.</p> <p>Also regularisation of irregular non-nationals through Decreto 327-13, based in Ley No. 285-04, Article 151.</p>

Country	Scenario	Concept	Definition	Status	Source
Grenada	Stay	Discretionary	<p>'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.'</p> <p>'The temporary permit which may be issued to an immigrant under sections 14 and 23 of the Act shall be in Form 7 annexed hereto and subject to the conditions set out in the said form and in regulation 10 hereof and shall entitle such person to enter or pass through the State to some destination beyond or to reside temporarily in the State for some approved purpose.'</p>	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).
Haiti			<p>'8. 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'</p> <p>AND</p> <p>'Article 17. - L'étranger désirant bénéficier d'un visa de non immigrant ou de résident devra produire une demande au Consulat Haïtien de sa juridiction ou à celui le plus proche de sa résidence. Le consul percevra à cet effet une taxe de soixante quinze gourdes. Cette demande sera faite en triplicata et devra contenir les renseignements suivants : ...j) Les raisons pour lesquelles il désire entrer en Haïti.</p> <p>k) Le temps qu'il compte y séjourner.</p> <p>l) Son capital, ses moyens d'existence, ses revenus, ses références bancaires. Il devra justifier d'un dépôt minimum de dix mille dollars dans une Banque établie en Haïti ou exciper d'un affidavit délivré par un citoyen Haïtien capable de le prendre en charge le cas échéant.</p> <p>m) Les certificats ou diplômes de connaissances techniques ou tout contrat passé en vue de louer ses services.</p> <p>n) Les personnes qu'il connaît en Haïti et depuis quand, il indiquera également les Associations dont il fait ou a fait partie et fournira en outre tous les autres renseignements sur sa personne.</p>		Loi du 19 septembre 1953 sur l'immigration et l'emigration, Article 8; Loi du 25 novembre 1959 sur l'immigration et l'emigration, Article 17.



Country	Scenario	Concept	Definition	Status	Source
<b>Jamaica</b>			<p>'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.'</p> <p>AND</p> <p>'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'</p> <p>AND</p> <p>'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.'</p>	Discretionary. Up to 60 days.	Immigration Restriction (Commonwealth Citizens) Act (1945, revised 1988), section 10, 21(1) and 36
<b>Jamaica</b>	Stay	-	'humanitarian grounds'	Exceptional Leave to Remain, 3 years (renewable for same or indefinitely)	Refugee Policy (2009), Article 12(a)(iii) and Article 13(f) [can only be accessed if a defensive asylum claim is made?]
<b>St Kitts and Nevis</b>			ASSUME SIMILAR TO SVG		
<b>Saint Lucia</b>			ASSUME SIMILAR TO SVG		Immigration Act 2001; chapter 76?

Country	Scenario	Concept	Definition	Status	Source
Saint Vincent and the Grenadines			<p>'Visitors and passengers in transit: (1) 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.'</p> <p>28. Power to exempt. Notwithstanding anything to the contrary in this Act contained, the Governor-General may exempt any person from the provisions of sections 4(1) (a), (b), (c), (d), (e), (g) and (h), or may authorise the issue of a temporary permit to any prohibited immigrant to enter and reside in Saint Vincent and the Grenadines upon such conditions as may be lawfully imposed by regulation.'</p>	Temporary Stay, up to 12 months	Immigration (Restriction) Act (1939, revised 2009), Section 18(1) and 28; Immigration (Restriction) Regulations (1938, 2009), Section 9 (duration in section 10).
Trinidad and Tobago			<p>'18... (3) Unless the examining immigration officer is of the opinion that it would or may be contrary to a provision of this Act or the regulations to admit a person examined by him, he shall, after such examination, immediately grant admission to such person'</p> <p>AND</p> <p>'10 (1) The Minister may issue a written permit authorising any person to enter Trinidad and Tobago or, being in Trinidad and Tobago, to remain therein.</p> <p>(2) A permit shall be expressed to be in force for a specified period not exceeding twelve months, and during the time that it is in force such permit stays the execution of any deportation order that may have been made against the person concerned.</p> <p>(3) Subject to subsection (4) and without prejudice to the generality of his powers under this section, the Minister may issue a permit to the following persons [lists]...'</p>		Immigration Act, Chapter 18:01 (1969, 1995), section 18 and 10

Country	Scenario	Concept	Definition	Status	Source
Trinidad and Tobago	Stay of execution of deportation	Humanitarian considerations	<p>'(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:-</p> <p>...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:-</p> <p>(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</p> <p>(ii) the existence of compassionate or humanitarian considerations that in the opinion of the Minister warrant the granting of special relief,</p> <p>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.</p> <p>(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.'</p>	Discretion	Immigration Regulations (1974), section 28
Trinidad and 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)

Country	Scenario	Concept	Definition	Status	Source
BOT: Anguilla			<p>'12 ... (2) A 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.'</p> <p>22. (1) Whenever- ... (d) the Chief Immigration Officer postpones deciding whether a person is or is not a prohibited immigrant; the Chief Immigration Officer may grant a permit for the immigrant to remain in Anguilla for so long as he may consider necessary.'</p> <p>'23 (1) 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. ... (5) 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'</p>		<p>Immigration and Passport Act (2010), Revised Statutes of Anguilla, Chapter 15, Section 12(2), 22(1)(d), 23(1)</p> <p>Cannot be printed</p>
BOT: British Virgin Islands			<p>'24. Special leave to land. Where any person is not granted leave to land in the Territory by an immigration officer under 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 remain in the Territory for such period and subject to such conditions as may be prescribed or as the Chief Immigration Officer may deem fit to impose.'</p> <p>'13. Special Permits. (1) ... a special permit shall be in Form VII... and shall be valid for such period expressed in the permit not exceeding twenty-eight days as the Chief Immigration Officer may decide. (2) Every special permit shall be granted subject to the condition that the same may be cancelled at any time by the Governor without assigning any reason.'</p>		<p>Immigration and Passport Act (1977, revised 1991), Section 24; Immigration Regulations (1969, in 1991 edition), Regulation 13.</p> <p>Cannot find revised (2016/17) Immigration and Passport Act</p>

Country	Scenario	Concept	Definition	Status	Source
<p><b>BOT:</b> Cayman Islands</p>			<p>'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.'</p> <p>'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.'</p> <p>'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.'</p>		<p>Immigration Law (2003, revised 2015), Section 63, 67(1); Immigration Regulations (2017 revision), Regulation 22.</p>

Country	Scenario	Concept	Definition	Status	Source
BOT: Montserrat			<p>'22. (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.</p> <p>(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.'</p> <p>'9. (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 state thereon and such endorsement shall be in such form as the Chief Immigration Officer may from time to time determine.' [10 - requires security, unless waived]</p>		<p>Immigration Act (1946, revised 2013), Chapter 13:01, Section 22(1); Immigration (Asylum Appeals) Rules, Regulation 9.</p>
TCI			<p>'7. (1) Subject to this Ordinance, upon being satisfied that a person complies with the general entry requirements set out in the Schedule [include good character etc. and capable of supporting self and dependants], an immigration officer may give leave to any person to enter and remain in the Islands ... (2) The period for which an immigration officer may give to any person leave to remain in the Islands under subsection (1) shall be - ... (b) where a person does not produce to the immigration officer a permit and is a bona fide visitor, a period not exceeding 90 days which may be extended, on application to the Director, for a further period or periods not exceeding six months in aggregate from the date of the most recent entry;....'</p>		<p>Immigration Ordinance (1992, revised 2014), Section 7</p>



Country	Scenario	Concept	Definition	Status	Source
NA			<p>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.</p> <p>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 Caribbean 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.</p> <p>3.4 (Easing of Border Controls): 'On the basis of Article 2u 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'.</p>		<p>Circulaire toelating en uitzetting Bonaire, Sint Eustatius en Saba</p> <p>Rijksdienst Caribisch Nederland</p> <p>Immigratie- en Naturalisatiedienst Oktober 2010</p> <p>Afkortingenlijst CTU-BES (October 2010), section 2.3.1, 2.3.6, 3.4</p> <p>Ordinance on Admittance and Expulsion? Landsverordening Toelating en Uitzending (LTU) (Curacao / Sint Maarten) or WTU (Bonaire, Sint Eustatius and Saba)</p>

# Annex E:

## REFUGEE LAWS BY COUNTRY Y

Country	Scenario	Concept	Definition	Status	Source
<b>International</b>	Qualification	Refugee	'[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...'	Variable, depending on domestic law of country, usually temporary	Convention relating to the Status of Refugees (1951 and 1967 Protocol), Article 1A(2)
<b>International</b>	Qualification	Refugee	'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'.	Variable, depending on domestic law of country, usually temporary	Cartagena Declaration on Refugees (1984), Conclusion III

\* State not party to 1951 CSR or 1967 Protocol  
*Italicised – immigration-based provision*

## 1 CENTRAL AMERICA

Country	CSR in NL	CD in NL	Other				Source
			Scenario	Concept	Definition	Status	
<b>Belize</b>	Y	Y (PO)					Refugee Act, Chapter 165 (2000)
<b>Costa Rica</b>	Y	N	Unspecified (mass influx)	Temporary Protection	'mass influx, or imminent risk of mass influx, to the country by persons needing international protection'	Unspecified	Decreto No. 36831-G (2011), Article 145
			Entry or stay	Special Migratory Category	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)	Temporary stay, 1 year (renewable)	Ley No. 8764 (2009), Articles 6, 93-96; Decreto No. 37112-G (2012), Articles 2, 135-136
<b>El Salvador</b>	Y	Y (HR/PO)					Decreto No. 918 (2002)
<b>Guatemala</b>	Y	Y (prior)					Decreto No. 44 (2016); still awaiting regulation on issue of refugees etc.
			Unspecified	Unspecified	'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)	Unspecified	Decreto No. 44 (2016), Article 12

Country	CSR in NL	CD in NL	Other					Source
			Scenario	Concept	Definition	Status		
Honduras	Y	Y (HR)	Stay	Political Asylum	'Existence of a well-founded fear of violations of human and citizenship rights for political reasons' (Article 52(2))	Temporary residence, up to 5 years (renewable)	Decreto 208-2003 (2004), Article 39(f) (3), 52(2)	
Mexico	Y	Y (HR – due to a 'determined policy') (PO - 'result of acts attributable to man') (Art 4)	Entry, stay, non-return	Complementary Protection	For a person not recognised as refugee but who cannot be returned to a country where 'her life would be threatened or she would find herself in danger of being submitted to torture or to other cruel, inhuman or degrading treatment or punishment' (Art 21(V)); refugee exclusion clauses apply (Arts 27 and 28)	Permanent residence	Ley sobre Refugiados y Protección Complementaria (2011), Article 21(V), 27, 28, 48; Reglamento (2012), Art. 4; Ley de Migración (2011, reformed 2013), Article 37(e) (entry), 52(V) 54(l) (residence)	
Nicaragua	Y	Y (HR/PO)	Non-return	Non-return	Where the exception to the non-refoulement rule in Art 33(2) CSR is applied, 'the State must consider the international obligations derived from other human rights treaties in force in Nicaragua' (Art 8)	Unspecified	Ley No. 655 (2008), Article 8	
			Unspecified	Complementary Protection / Humanitarian Visa	Applies 'in conformity with international human rights instruments' to those persons who 'suffer violations of their human rights'	Temporary residence, 1 year (renewable)	Ley No. 761 (2011), Article 220; Decreto No. 31-2012 (2012), Articles 6(l), 61	
Panama	Y	N					Decreto Ejecutivo No. 5 (2018)	

## 2. SOUTH AMERICA

Country	CSR in NL	CD in NL	Other				Source
			Scenario	Concept	Definition	Status	
Argentina	Y	Y (HR/PO)			<p>humanitarian reasons', for which the following situations are to be 'taken especially into account':</p> <p>'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].</p> <p>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. ...</p> <p>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.'</p> <p>(Art 23(m))</p>	Temporary residence, 2 year (renewable)	Ley No. 26165 (2006)
Bolivia	Y	Y (HR/PO)	Entry or stay	Stay for Humanitarian Reasons / Complementary Protection		Unspecified	Ley No. 25871 (2003), Article 23(m); Reglamentación de la Ley de Migraciones (2010), Article 23(m)
Brazil	Y	Y (HR)	Unspecified (mass influx)	Temporary Protection	'mass influx, or imminent risk of mass influx, to the country by persons needing international protection' (Art 31)	Unspecified	Ley No. 251 (2012), Article 31
			Travel, entry and stay	Humanitarian Reception	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	Temporary visa or Residence,	Lei No. 9474 (1997)
							Lei No. 13445 (2017), Article 14, 30; Decreto No. 9199 (2017), Article 36, 142, 145

Country	CSR in NL	CD in NL	Other				Source
			Scenario	Concept	Definition	Status	
<b>Chile</b>	Y	Y (HR/PO)	Entry, non-return and stay	Non-return	Return to a country where 'the security of the person would be in danger or where there exist well-founded reasons to believe that she could be subjected to torture or to cruel, inhuman or degrading treatment or punishment'; in the determination, take into account pertinent considerations including the existence of a persistent situation of manifest, patent or massive violations of human rights.' (Art 4)	Can request a stay permit? (Art 4)	Ley No. 20430 (2010), Article 4
<b>Colombia</b>	Y	Y (HR/PO)	Entry and stay	Refugee	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' in country of nationality or (for stateless persons) habitual residence (Art 1(c)); normal refugee exclusion clauses apply	Temporary Visa, 5 years	Decreto No. 2840 (2013), Article 1(c); visa in Decreto No. 834 (2014), Article 7 (TP-9),  Corte Constitucional, Sentencia T-073-2017 de 6 de febrero de 2017, expediente número T-5.872.661, Magistrado Ponente: doctor Jorge Iván Palacio Palacio.
					Colombia cannot disregard rules of international law on the protection of migrants and must evaluate 'the risks that they run if they are expelled from the country and the concrete situation that they would face in [in the other country] if they are returned'.		

Country	CSR in NL	CD in NL	Other				Source
			Scenario	Concept	Definition	Status	
<b>Ecuador</b>	Y	Y (HR/PO)	Entry due to forced displacement	Special Procedures	Special procedures applied to 'entry of a person or a group of persons because of forced displacement'; apply emergency protocols to provide humanitarian assistance; register and facilitate access to 'international protection' (same status as for refugees) (Art 92). Forced displacement defined as 'Son los hechos o acontecimientos que obligan a una persona o grupo de personas a abandonar su lugar de residencia como resultado de un conflicto armado, situaciones de violencia generalizada o violación de los derechos humanos de conformidad con los instrumentos internacionales.' (Art 3(3))	IP allows for temporary residence	Ley Orgánica de Movilidad Humana (2017), Article 92; Decreto Ejecutivo No. 111 (2017), Article 111 Decreto Ejecutivo No. 5 (2018)
<b>Guyana*</b>	N	N					
<b>Paraguay</b>	Y	Y (HR/PO)					Ley No. 1938 (2002)
<b>Peru</b>	Y	Y (HR/PO)	Entry, stay and non-return (mass influx)	Temporary Protection	'mass influx in an illegal or irregular manner by persons seeking protection'	Temporary protection status (admission and non-return)	Ley No. 27891 (2002), Article 35-36; Reglamento (2002), Articles 35-39
			Stay	Humanitarian Category	For a person who does not meet the criteria for recognition as a refugee or asylee and requires protection in relation to a 'grave threat or act that violates or affects her fundamental rights' (Art 29(2)(k))	Residency for 6 months, but renewable	Decreto Legislativo No. 1350 (2017), Article 29.2(k); Decreto Supremo 007-2017-IN, Article 91



Country	CSR in NL	CD in NL	Other				Source
			Scenario	Concept	Definition	Status	
Suriname*	Y	N			Perhaps implicit complementary protection in that State must guarantee to refugees and asylum-seekers 'enjoyment and exercise of civil, economic, social, cultural and other rights inherent in the human person recognised for inhabitants of the Republic, in international human rights instruments agreed to by the State, as well as in its internal norms' (Art 20); direct application of IHRL (including declarations) to topic of the law confirmed (Art 47)		Aliens Act (1992); CSR extended to Suriname while still under colonial rule
Uruguay	Y	Y (HR/PO)			groups of persons in need of protection that are fleeing from the same country, making it difficult to immediately determine the reasons that caused their movement', particularly: 'persons who wish to claim asylum as refugees in Venezuela', or 'persons that use the national territory as a transit point to enter again the territory from which they came' or 'persons that wish to remain temporarily in Venezuelan territory and who do not wish to claim asylum as refugees'.	Temporary protection status (admission and non-return), 90 days (renewable)	Ley No. 18076 (2006)
Venezuela	Y	N	Entry, stay and non-return (mass influx)	Temporary Protection			Ley Orgánica sobre Refugiados o Refugiadas y Asilados o Asiladas (2001), Article 32; Decreto No. 2491 (2003), Articles 21-23

## 3. CARIBBEAN

Country	CSR in NL	CD in NL	Other				Status	Source
			Scenario	Concept	Definition			
Antigua and Barbuda	N	N						
Bahamas	N	N						
Barbados*	N	N						
Cuba*	N	N	Entry and stay	Refugee	'...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'	Temporary residence	Decree No. 26 (1978), Article 80	
Dominica	N	N						
Dominican Republic	Y	N					Decreto No. 2330 (1984)	
Grenada*	N	N						
Haiti	N	N						

Other							
Country	CSR in NL	CD in NL	Scenario	Concept	Definition	Status	Source
Jamaica	Y	N	Stay	-	<p>'a) After considering the application, the Committee may recommend that the Permanent Secretary in the Ministry responsible for immigration matters: ... (iii) not recognise the applicant as a refugee but may grant the applicant exceptional leave to remain in Jamaica for a limited period.</p> <p>(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)</p> <p>'In those circumstances where the Permanent Secretary has decided not to recognise the applicant as a refugee but has decided that the individual be granted leave to remain in Jamaica on humanitarian grounds, the Permanent Secretary shall communicate that decision to the applicant along with the relevant terms and conditions associated with such leave.' (paragraph 13(f))</p>	<p>Exceptional Leave to Remain, 3 years (renewable for same or indefinitely)</p>	<p>Refugee Policy (2009), paragraph 12(a)(iii) and paragraph 13(f)</p>
St Kitts and Nevis*	N	N					
Saint Lucia* (UK extend)	N	N					
Saint Vincent and the Grenadines	N	N					
Trinidad and Tobago	N	N					

Country	CSR in NL	CD in NL	Other				Status	Source
			Scenario	Concept	Definition			
BOT: Anguilla	N	N						
BOT: British Virgin Islands	?	N			Newspaper reports refer to it as having introduced asylum provisions in 2016			
BOT: Cayman Islands	Y	N			<p>'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.</p> <p>(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.'</p>		Immigration Law (2003, revised 2015), Section 84(8)	

Other							
Country	CSR in NL	CD in NL	Scenario	Concept	Definition	Status	Source
BOT: Montserrat	Y	N	Non-return and stay	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' (section 2(1))  '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; and (b) make arrangements for his support, accommodation and upkeep'	Exceptional Leave to Remain	Immigration Act (1946, revised 2013), Chapter 13:01, section 2(1), 45(5); Immigration (Asylum Appeals) Rules
BOT: Turks and Caicos Islands	N	N					
KN: Aruba	N	N			ECHR applies in all KN countries and territories		
KN: Curacao*	N	N			ECHR applies in all KN countries and territories		

Country	CSR in NL	CD in NL	Other				Source
			Scenario	Concept	Definition	Status	
KN: Sint Maarten*	N	N			ECHR applies in all KN countries and territories		
KN: Bonaire	Y	N			<p>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).</p> <p>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'</p>		<p>Circulaire toelating en uitzetting Bonaire, Sint Eustatius en Saba</p> <p>Rijksdienst Caribisch Nederland Immigratie- en Naturalisatiedienst Oktober 2010</p> <p>Afkortingenlijst CTU-BES (October 2010), section 3.6.1</p>
KN: Saba	Y	N			As above		
KN: Sint Eustatius	Y	N			As above		

# 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 Officer, UNHCR Regional Legal Unit in Costa Rica (info by email)
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[disasterdisplacement.org](https://disasterdisplacement.org)