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FILLING THE PROTECTION GAPS FOR CLIMATE CHANGE AND DISASTER-INDUCED MIGRANTS

*by Kimberly A. Erickson**

INTRODUCTION

The number of global migrants is simultaneously increasing along with the severity of the climate crisis worldwide. Currently, neither international nor regional law addresses the environmental drivers of migration, and there are severe gaps in legal protections for this type of migrants. While the global focus is now shifting towards the drivers for climate and disaster-induced migration with recent collaborative efforts amongst the majority of states and UN initiatives, states must fill the gaps in legal protections for climate and disaster-induced migrants through comprehensive global cooperation and state action.

One potential solution to provide climate migrants with legal protection is redefining the term “refugee” so that climate migrants who cross state borders can qualify for refugee status and international assistance. However, a legal redefinition is unlikely to help most environmentally displaced persons because (1) many will remain internally displaced and unable to access international protection, (2) climate change often has slow-onset effects that do not necessarily force migration, and (3) multiple grounds for refugee status would be difficult to isolate from one another, complicating the status determination process.

Instead of a redefinition, states should implement proactive measures to develop other protected paths of migration. Such measures may include disaster

prevention and preparedness, adaptation to natural hazards, and planned relocation options for environmentally vulnerable populations. Disaster preparation and response plans, sustainable adaptation efforts, and strategic relocation are more easily tailored to individual communities and their respective environmental threats than one universal refugee status that only offers post-crisis protection for external displacements. States can protect climate and disaster-induced migrants by taking steps like these to close the gap between humanitarian and development action.

I. ENVIRONMENTAL DRIVERS OF MIGRATION

A climate-induced migrant generally refers to a person that is driven from their home by sudden or gradual changes in the weather or climate.¹ Rapid onset events are singular, discrete weather events that occur within a matter of days or even hours.² Such events may include earthquakes, floods, hurricanes, landslides, severe storms, tornadoes, tsunamis, volcanic eruptions, and wildfires. Slow-onset events evolve over years from incremental changes or increased frequency or intensity of recurring events.³ Examples include desertification, salinization, temperature increase, land infertility, and rising sea levels.⁴ Migration may be either temporary or permanent and may be caused by seasonal conditions or a singular incident.⁵ This type of human mobility may be voluntary,

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¹ See EMILY WILKINSON ET AL., CLIMATE-INDUCED MIGRATION AND DISPLACEMENT: CLOSING THE POLICY GAP, OVERSEAS DEV. INST. 2 (Oct. 2016), <https://odi.org/en/publications/climate-induced-migration-and-displacement-closing-the-policy-gap/> (For the Report, go to “Climate-induced migration and displacement: closing the policy gap” and click “DOWNLOAD PDF”).

² U.N. Framework Convention on Climate Change, *Slow Onset Events: Technical Paper*, ¶ 20, U.N. Doc. FCCC/TP/2012/7 (Nov. 26, 2012).

³ *Id.*

⁴ *Id.* ¶¶ 26–49.

⁵ Wilkinson et al., *supra* note 1, at 1.

but it is often considered a forced movement in order to survive.⁶

Climate change is causing human suffering in many ways. Natural resources such as potable water and materials for shelter are becoming scarcer in certain areas.⁷ Crops and livestock are not able to withstand deteriorating conditions, such as extreme temperatures and precipitation patterns.⁸ Rising sea levels are pushing coastal communities further inland and sometimes completely out of their submerging homelands.⁹ Declining conditions are rendering survival difficult and economic stability near impossible to maintain.¹⁰ These extreme circumstances can become unbearable for individuals, forcing people to leave

⁶ See *id.* at 3; see also Régis Blanc, *Migration and Forced Displacement: Two Sides of the Same Coin?*, HELVETAS (Dec. 9, 2021), <https://www.helvetas.org/en/switzerland/how-you-can-help/follow-us/blog/Other/Migration-and-Forced-Displacement-Two-Sides-of-the-Same-Coin> (explaining that the voluntary characterization of migration is debatable since the traditional distinction of displacement is rooted more in the context of war rather than environmental influences).

⁷ *Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict*, UNITED NATIONS INTERAGENCY FRAMEWORK TEAM FOR PREVENTIVE ACTION 17 (2012), https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_Renew.pdf.

⁸ *Climate Impacts on Agriculture and Food Supply*, U.S. ENV'T PROT. AGENCY, https://19january2017snapshot.epa.gov/climate-impacts/climate-impacts-agriculture-and-food-supply_.html (last modified Jan. 19, 2017).

⁹ See Nithin Coca, *Balancing Climate, Culture, and Community: Fiji's Relocation Challenge*, DEVEX (Mar. 11, 2021), <https://devex.shorthandstories.com/balancing-climate-culture-and-community-fijis-relocation-challenge/index.html> (providing an example of relocating inland due to rising sea levels in the Fijian village of Korolevu); see *Kiribati, the First Country Rising Sea Levels Will Swallow up as a Result of Climate Change*, IBERDROLA, <https://www.iberdrola.com/sustainability/kiribati-climate-change> (last visited May 16, 2022) (providing an example of relocating inland and initiating emigration due to rising sea levels around the Pacific islands of Kiribati).

¹⁰ See Press Release, Climate Change 'Biggest Threat Modern Humans Have Ever Faced', World-Renowned Naturalist Tells Security Council, Calls for Greater Global Cooperation, U.N. Press Release SC/14445 (Feb. 23, 2021) (referring to threatened access to freshwater, food security, and habitable temperatures along with the destruction of infrastructure and reduced crop harvests).

their homes, which often causes an additional and immense amount of suffering.¹¹ Displacement may compound already existing vulnerabilities and cause additional conflict because of competition over space and resources in new locations.¹² This undermines social unity and community resilience, while also creating new risks such as overpopulation and environmental degradation in the places where displaced persons are taking refuge.¹³

Climate change continues to cause slow-onset transformations that increase the frequency and severity of natural disasters,¹⁴ thus sustaining aggressive growth of disaster and climate-induced migration. In 2018, there were 17.2 million *new* internal displacements

¹¹ EXPLOITATION AND ABUSE OF INTERNATIONAL MIGRANTS, PARTICULARLY THOSE IN AN IRREGULAR SITUATION: A HUMAN RIGHTS APPROACH, GLOB. MIGRATION GRP. 29 (Dec. 2013), https://www.unodc.org/documents/human-trafficking/2013/2013_GMG_Thematic_Paper.pdf (noting that besides facing the loss of one's homeland and difficulty finding legal avenues for permanent residence in a new nation, migrants are often vulnerable to economic hardship, xenophobia, and exploitation).

¹² CLIMATE CHANGE AND DISASTER DISPLACEMENT: HOW TO REDUCE RISK, ADDRESS IMPACTS AND STRENGTHEN RESILIENCE, U.N. HIGH COMM'R FOR REFUGEES 5 (2019), <https://www.unhcr.org/en-us/climate-change-and-disasters.html>.

¹³ U.N. OFF. FOR DISASTER RISK REDUCTION, WORDS INTO ACTIONS: DISASTER DISPLACEMENT: HOW TO REDUCE RISK, ADDRESS IMPACTS AND STRENGTHEN RESILIENCE 5 (2017), https://www.preventionweb.net/files/58821_wiadisasterdisplacement190511webeng.pdf.

¹⁴ Shannon Heyck-Williams, *Climate Change, Natural Disasters, and Wildlife: Climate Change Is Worsening Some Types of Natural Disasters*, NAT'L WILDLIFE FED'N 1 (Nov. 2019), <https://www.nwf.org/-/media/Documents/PDFs/Environmental-Threats/Climate-Change-Natural-Disasters-fact-sheet.ashx>.

associated with natural disasters,¹⁵ and in 2019, there were an additional 24.9 million.¹⁶ New internal disaster-induced displacements amounted to nearly triple the number of internal displacements caused by conflict and violence in 2019.¹⁷ These numbers are likely an underestimate and only reflect displacements that were forced, internal, and results of sudden-onset disasters.¹⁸ Not reflected in the data is the number of migrants who moved across state borders, those who migrated due to slow-onset climate change, and those who were displaced but are unaccounted for by states or organizations.

The World Bank has estimated that if no reductive action is taken, there will be 143 million internal climate migrants by 2050 within the regions of Latin America, South Asia, and Sub-Saharan Africa.¹⁹ Although the international community has acknowledged that climate migrants make up a large portion of the world's forcibly displaced population and that the population is expected to grow continuously and rapidly,²⁰ no international response has been agreed upon or implemented. While a majority of these cli-

mate migrants are expected to move internally, there will be displaced persons forced out of their countries of origin as well.²¹ However, it is not one or the other that requires attention but rather the combination of both internal and external displacements that warrants an international response. The World Bank estimates that, with mitigating measures, the world can reduce climate-induced migration by up to eighty percent.²² Therefore, an organized effort to reduce negative human contributions to climate change, improve the resiliency of vulnerable communities, and develop effective response plans is necessary for states to address the climate migration crisis.

II. QUALIFICATIONS FOR REFUGEE STATUS

In international law, there is no formal definition for a climate migrant nor recognition of climate migrants as refugees, which limits their eligibility for international protection.²³ The 1951 UN Convention Relating to the Status of Refugees (1951 Convention) and the corresponding 1967 UN Protocol (1967 Protocol) amendment define a refugee as any person who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.²⁴ To qualify as a refugee, a person must show fear of individualized persecution, not merely generalized

¹⁵ VICENTE ANZELLINI ET AL., INTERNAL DISPLACEMENT MONITORING CTR., GLOBAL REPORT ON INTERNAL DISPLACEMENT 2019 6–7 (May 2019), <https://www.internal-displacement.org/global-report/grid2019/> (To download the report, scroll to the bottom of the page, and click “Download full report”) [hereinafter GLOBAL REPORT ON INTERNAL DISPLACEMENT 2019].

¹⁶ VICENTE ANZELLINI ET AL., INTERNAL DISPLACEMENT MONITORING CTR., GLOBAL REPORT ON INTERNAL DISPLACEMENT 2020, 9–10 (Apr. 2020), <https://www.internal-displacement.org/global-report/grid2020/> (To download the report, scroll to the bottom of the page, and click “Download full report”) [hereinafter GLOBAL REPORT ON INTERNAL DISPLACEMENT 2020].

¹⁷ *Id.* at 1.

¹⁸ GLOBAL REPORT ON INTERNAL DISPLACEMENT 2019, *supra* note 15, at 6–7; GLOBAL REPORT ON INTERNAL DISPLACEMENT 2020, *supra* note 16, at 9–10.

¹⁹ Kanta Kumari Rigaud et al., *Groundswell: Preparing for Internal Climate Migration*, WORLD BANK xix (Mar. 2018), <https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell---preparing-for-internal-climate-migration>.

²⁰ GUY S. GOODWIN-GILL & JANE McADAM, UNHCR & CLIMATE CHANGE, DISASTERS AND DISPLACEMENT, OFF. OF THE U.N. HIGH COMM’R FOR REFUGEES, 5 (2017), <https://www.unhcr.org/596f25467.pdf>.

²¹ Walter Kälin, *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?*, BROOKINGS INST. § II (Oct. 10, 2008), <https://www.brookings.edu/research/displacement-caused-by-the-effects-of-climate-change-who-will-be-affected-and-what-are-the-gaps-in-the-normative-framework-for-their-protection/>.

²² Kumari Rigaud et al., *supra* note 19, at xxv.

²³ Erol Yayboke et al., *A New Framework for U.S. Leadership on Climate Migration*, CTR. FOR STRATEGIC & INT’L STUD. 7 (Oct. 23, 2020), <https://www.csis.org/analysis/new-framework-us-leadership-climate-migration>.

²⁴ Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 art. 1, § (A)(2); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267, art. 1, § (A)(2).

violence, and must be displaced outside of their country of origin.²⁵

Fear of persecution and displacement outside the country of origin may or may not apply to climate migrants. Environmentally displaced persons may experience a fear of persecution in addition to climate or disaster-related issues because there are often several overlapping or intertwining reasons for displacement.²⁶ Attempting to classify a person as a refugee based on one type of persecution can be difficult for organizations and agencies tasked with addressing displacement crises, and even impossible if the person is internally displaced rather than having been forced outside of their nation's borders.²⁷ The inability of a climate migrant to obtain a refugee status may lead to a significant deprivation of international protection.²⁸

In some circumstances, regional law may permit a disaster-displaced person to obtain refugee status. This is usually a result of other threats such as violence and persecution that have become exacerbated by a natural disaster and which a person may use as evidence to qualify as a refugee.²⁹ Some regional laws, such as the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention) and the Declaración de Cartagena Sobre los Refugiados (Cartagena Declaration) in Latin America, include events or circum-

stances that seriously disturb public order and compel a person to flee their home to seek refuge in another state as a basis for refugee status.³⁰ These treaties do not specifically address climate change or natural disasters, but the language creates a possibility that such conditions could be considered when evaluating an externally displaced person's eligibility for refugee status. However, regional laws that grant refugee status to certain displaced persons are not always binding and protections afforded to refugees are limited to particular regions.

III. BROADENING THE DEFINITION OF "REFUGEE" TO ENCOMPASS ENVIRONMENTAL DRIVERS OF MIGRATION

One possible avenue to increase international protection of climate-displaced persons is to officially enumerate climate change and natural disasters as acceptable grounds for refugee status. There are numerous arguments for and against the formal redefinition of "refugee" as stated in the 1951 Convention and the 1967 Protocol,³¹ many of which apply to regional redefinition as well.³² While broadening the definition of "refugee" by amending these UN conventions may be a progressive step, there are valid arguments that it is not a realistic measure, nor will it substantially address the expansion of aid for climate and disaster-induced migrants.

One advantage of amending the currently recognized definitions is to update treaties that are too outdated to appropriately respond to modern challenges, such as climate change,³³ while still retaining established

²⁵ *Asylum & the Rights of Refugees: Who Is a Refugee?*, INT'L JUST. RES. CTR., https://ijrcenter.org/refugee-law/#Who_Is_a_Refugee (last visited May 1, 2022).

²⁶ See SANJULA WEERASINGHE, IN HARM'S WAY: INTERNATIONAL PROTECTION IN THE CONTEXT OF NEXUS DYNAMICS BETWEEN CONFLICT OR VIOLENCE & DISASTER OR CLIMATE CHANGE, U.N. HIGH COMM'R FOR REFUGEES 9 (Dec. 2018), <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/open-docpdf.pdf?reldoc=y&docid=5c4987324>.

²⁷ Dina Ionesco, *Let's Talk About Climate Migrants, Not Climate Refugees*, UN SUSTAINABLE DEV. GOALS (June 6, 2019), <https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/>.

²⁸ See DIGNITY IN MOVEMENT: BORDERS, BODIES AND RIGHTS (Jasmin Lilian Diab ed., 2021).

²⁹ THE NANSSEN INITIATIVE: AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE ¶ 55 (2015).

³⁰ E.g., Convention Governing the Specific Aspects of Refugee Problems in Africa, Organization of African Unity, Sept. 10, 1969, 1001 U.N.T.S. 45, art. 1, ¶ 2; Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama art. 3, ¶ 3, Nov. 22, 1984.

³¹ DIGNITY IN MOVEMENT, *supra* note 28, at 42–44.

³² *Id.* at 44–45.

³³ See Adrienne Millbank, *The Problem with the 1951 Refugee Convention*, PARLIAMENT OF AUSTL. (Sept. 5, 2000), [https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp0001/01rp05#:~:text=The%20crux%20of%20criticism%20is,refugees%20in%20their%20own%20countries.\)](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp0001/01rp05#:~:text=The%20crux%20of%20criticism%20is,refugees%20in%20their%20own%20countries.))

exclusion clauses that prevent suspected criminals from taking advantage of refugee status.³⁴ The UN adopted the 1951 Convention for the purpose of solving migration issues that arose during the post-World War II era.³⁵ Rather than creating novel contemporary problems, acknowledging climate change and its consequences generates awareness of its longstanding effects on vulnerable populations. With international or regional validation as drivers of migration, states can address climate change and natural disasters more directly by specifying protective provisions for forcibly displaced migrants that fall under this category of refugee.

Broadening the definition of “refugee” could make international assistance more accessible for displaced persons presently ineligible for refugee status. However, allowing millions more displaced persons to access refugee channels would likely overwhelm destination states and exhaust their resources.³⁶ Some advocates even believe the guidelines set forth in the 1951 Convention and other regional treaties were too broad to begin with and should be narrowed because the

world already cannot manage the needs of so many refugees.³⁷ However, turning a blind eye to displaced persons merely ignores a problem that will not go away, whether those persons are classified as refugees or otherwise.³⁸

There are other reasons for rejecting the redefinition of “refugee” in the 1951 Convention. The UN High Commissioner for Refugees (UNHCR) argues that the 1951 Convention is the only universal refugee instrument that is still relevant today, filling its role as a united front that offers refuge to persons fleeing persecution.³⁹ But perhaps, instead of trying to fit climate-induced migrants into the same mold, more beneficial solutions could be derived from more specifically tailored agreements. Climate-induced migrants will also not be able to reap the benefit of being put into this definition because they are most often internally displaced, thus disqualifying them from protection.⁴⁰ The 1951 Convention would not be able to offer international protection to displaced persons as long as they remain within their own country (or even if a migrant crossed into a non-signatory state). That obligation would fall squarely on the countries of origin.⁴¹ Many internally displaced persons (IDPs) may not be interested in crossing state borders to seek international aid, instead preferring to remain as close to home as possible due to family or community ties and endeavoring to obtain assistance from their respective states.⁴² Financial barriers may also prevent IDPs from traveling across national borders to seek

³⁴ Convention Relating to the Status of Refugees, *supra* note 24, art. 1, § (F); Protocol Relating to the Status of Refugees, *supra* note 24, art. 1, § (F); Jane McAdam, *Seven Reasons the UN Refugee Convention Should Not Include ‘Climate Refugees’*, SYDNEY MORNING HERALD (June 6, 2017, 11:33 AM), <https://www.smh.com.au/opinion/seven-reasons-the-un-refugee-convention-should-not-include-climate-refugees-20170606-gwl8b4.html>.

³⁵ A ‘Timeless’ Treaty Under Attack, U.N. HIGH COMM’R FOR REFUGEES (June 1, 2001), <https://www.unhcr.org/en-us/news/stories/2001/6/3b4c067ac/a-timeless-treaty-under-attack.html>.

³⁶ Convention Relating to the Status of Refugees, *supra* note 24, art. 33; Protocol Relating to the Status of Refugees, *supra* note 24, art. 33; Spyridoula Katsoni, *The Future of “Climate Refugees” in International Law*, VÖLKERRECHTSBLOG (May 6, 2021), <https://voelkerrechtsblog.org/the-future-of-climate-refugees-in-international-law/> (referencing the principle of *non-refoulement* that prohibits a state from returning any refugee to a territory where his life or freedom would be threatened).

³⁷ *Has the Refugee Convention Outlived Its Usefulness?*, NEW HUMANITARIAN (Mar. 26, 2012), <https://www.thenewhumanitarian.org/analysis/2012/03/26/has-refugee-convention-outlived-its-usefulness> (arguing that *non-refoulement* and status determination procedures are time-consuming, costly, and can be abused by migrants seeking to avoid immigration controls).

³⁸ Kumari Rigaud et al., *supra* note 19, at xiv.

³⁹ Millbank, *supra* note 33, at 18.

⁴⁰ Wilkinson et al., *supra* note 1, at 4.

⁴¹ Sarah Miller, *Internal Displacement: An Agenda for Progress*, REFUGEES INT’L (Aug. 10, 2021), <https://www.refugeesinternational.org/reports/2021/8/6/internal-displacement-an-agenda-for-progress#>.

⁴² *Displaced People: Why Are More Fleeing Home than Ever Before?*, BBC (Sept. 24, 2019), <https://www.bbc.com/news/world-49638793>.

asylum or other types of international protection, such as temporary aid that may be more readily available across borders.⁴³

Since the 1951 Convention bases its classifications on a displaced person's geographic location, it prioritizes mobility over need.⁴⁴ Under this framework, the UNHCR and states give priority to migrants that have been willing and able to arrive in a signatory state over migrants that have found temporary shelter in camps, non-signatory states, or their own countries of origin.⁴⁵ Migrants who are less mobile or those that only have the resources to journey to a camp instead of a port of entry are no less deserving of legal and physical protection than others seeking safety.⁴⁶ The nature of movement caused by slow-onset environmental changes also tends to be gradual as climate conditions deteriorate over time, rather than the "flight" often seen with conventional refugees.⁴⁷

Critics are also concerned that amending the 1951 Convention would be a wasted effort.⁴⁸ First, the nexus dynamics, or the adverse effects of climate change in the refugee context would be very difficult to reflect in a treaty.⁴⁹ The overlapping and entangled drivers of migration complicate a convention's ability to isolate grounds for classifying a person as a refugee.⁵⁰ Broader definitions may even have the ill effect of actually excluding the very class of persons that a convention originally intended to protect. By allowing more people to request refugee status, more time and resources must be devoted to the determination of status

procedures, which could possibly restrict or delay access for those fleeing conflict or violence.⁵¹ A related concern is that the process may be subject to a greater number of abusive claims, so states parties may be more inclined to restrict access to status procedures. In turn, this may block displaced persons who would qualify for refugee status under the current legal framework from achieving that status and gaining the protection that they deserve under a convention.⁵²

Another obstacle to amending the Convention is the general lack of public empathy and understanding of refugees and asylees, especially with nationalist sentiments on the rise recently worldwide.⁵³ Without sufficient media attention and public empathy to drive political agendas, it is unlikely that a significant number of states would be interested in spending the time on negotiations and willing to become signatories to an updated convention.⁵⁴ There are already 148 signatories to the 1951 Convention and the 1967 Protocol,⁵⁵ yet there is not enough state participation to accept all the refugees that fall under the current convention. States parties to international or regional agreements claim to be either at capacity for

⁴³ *Id.*

⁴⁴ Millbank, *supra* note 33, at 14.

⁴⁵ *See id.*

⁴⁶ *See id.* (describing the difficulty experienced by women migrating with children and their exposure and vulnerability to human rights abuses in refugee camps).

⁴⁷ Jane McAdam, *Swimming against the Tide: Why a Climate Change Displacement Treaty Is Not the Answer*, 23 INT'L J. REFUGEE L. 2, 8 (2011).

⁴⁸ *Id.* at 17 (explaining that ratification, implementation, and enforcement would be difficult to compel).

⁴⁹ McAdam, *supra* note 34.

⁵⁰ Millbank, *supra* note 33, at 15.

⁵¹ *Id.* at 10.

⁵² *Id.* at 10, 18.

⁵³ *Id.* at 2, 15 (explaining that because states approach asylum as an issue of immigration control and domestic politics, the public tends to believe that most asylum seekers arriving in western countries are motivated by economic and social reasons rather than the more "obvious" images of refugees driven from destroyed homes, which elicits more cynicism and hostility towards expanded immigration rather than sympathy); McAdam, *supra* note 34.

⁵⁴ Millbank, *supra* note 33, at ii, 15 (alluding to the public becoming suspicious of asylum seekers' motives when lacking sympathy-provoking media coverage of refugees instead of supportive).

⁵⁵ U.N. HIGH COMM'R FOR REFUGEES, STATES PARTIES TO THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND THE 1967 PROTOCOL 1 (Apr. 2015), <https://www.unhcr.org/en-us/protection/basic/3b73b0d63/States-parties-1951-convention-its-1967-protocol.html>.

accepting refugees or unwilling to comply with their obligations.⁵⁶ Directing the 1951 Convention towards even more displaced persons, even if on distinct grounds

of climate or disaster displacement, is unlikely to facilitate the protection of environmental migrants. Already, there are more people that qualify as refugees than can or will be helped by states parties to existing migration agreements.⁵⁷ A more appropriate and encompassing response to expanding aid for displaced persons will look away from the legal definitions of the term refugee and towards environmental adaptation and measures relating to disaster prevention, preparedness, and response.

IV. THE UN'S ROLE IN PROTECTION OF ENVIRONMENTALLY DISPLACED PERSONS

There is no singular UN agency responsible for managing climate or disaster-induced internal displacements. However, in 1991 the UN emphasized the importance of providing humanitarian assistance to victims of natural disasters, both in terms of immediate recovery and sustainable development,⁵⁸ in addition to promoting prevention and preparedness efforts.⁵⁹ Resolution 46/182 resulted in specific endeavors to advocate for inter-agency coordination of humanitarian responses, such as the creation of the Inter-Agency Standing Committee and the Office for the Coordination of Humanitarian Affairs (OCHA).⁶⁰

⁵⁶ Seyla Benhabib, *The End of the 1951 Refugee Convention? Dilemmas of Sovereignty, Territoriality, and Human Rights*, 2 JUS COGENS 75, 95 (2020) (explaining that international human rights law recognizes state sovereignty, providing a loophole that excuses non-cooperation and non-compliance).

⁵⁷ *Trends at a Glance: Forced Displacement in 2018*, U.N. HIGH COMM'R FOR REFUGEES 2 (June 20, 2019), <https://www.unhcr.org/5d08d7ee7.pdf> (statistics demonstrating that 70.8 million persons were forcibly displaced at the end of 2018, yet only 25.9 million had been granted refugee status and 3.5 million were awaiting decisions on their asylum applications).

⁵⁸ G.A. Res. 46/182, ¶¶ 1, 9 (Dec. 19, 1991).

⁵⁹ *Id.* ¶ 8.

⁶⁰ *Resolution 46/182, Which Created the Humanitarian System*, Turns 25, OCHA (Dec. 19, 2016), <https://www.unocha.org/story/resolution-46182-which-created-humanitarian-system-turns-twenty-five>.

After some structural reform in the 1990s, the UN designated the Emergency Relief Coordinator as the centralized leader with regard to internal displacement.⁶¹ The Coordinator has prioritized strengthening assistance and protections for disaster victims and for internally displaced persons, encompassing the environmentally displaced persons that remain within their home countries.⁶² One year later, the Guiding Principles on Internal Displacement were endorsed by the UN Commission on Human Rights.⁶³ While not legally binding, the Guiding Principles have become well-recognized by heads of states as an authoritative framework for the protection of internally displaced persons,⁶⁴ including those “forced or obliged to flee their homes . . . as a result of or in order to avoid the effects of . . . natural or human-made disasters.”⁶⁵

Although it does not recognize climate migrants as refugees,⁶⁶ the UNHCR has been asked by the UN General Assembly to take a pioneering role in addressing disaster-related displacement.⁶⁷ In 2007, the then-High Commissioner for Refugees, António Guterres, urged states to address forced migration caused by environmental degradation and climate change.⁶⁸ He stressed that the UNHCR has a duty to alert states of issues that hamper progressive develop-

⁶¹ G.A. Res. 70/165, ¶ 27 (Dec. 17, 2015).

⁶² G.A. Res. 55/82, ¶ 109 (May 30, 2000).

⁶³ GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT, U.N. OFF. COORDINATION HUMANITARIAN AFF. 1 ¶¶ 1–2 (1998).

⁶⁴ G.A. Res. 60/1, ¶ 132 (Oct. 24, 2005) (as recognized by the heads of state in attendance at the 2005 World Summit in New York).

⁶⁵ GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT, *supra* note 63, at 1.

⁶⁶ José Riera, Senior Advisor to the Dir. of Int'l Prot., U.N. High Comm'r for Refugees, Int'l Conf. on “Millions of People without Protection: Climate Change Induced Displacement in Developing Countries”: Challenges Relating to Climate Change Induced Displacement 4 (Berlin, Jan. 29, 2013).

⁶⁷ *New York Declaration for Refugees and Migrants*, U.N. HIGH COMM'R FOR REFUGEES, <https://www.unhcr.org/en-us/new-york-declaration-for-refugees-and-migrants.html> (last visited May 1, 2022).

⁶⁸ António Guterres, U.N. High Comm'r for Refugees, Statement to the Third Comm. of the United Nations Gen. Assembly, 62nd Session (New York, Nov. 8, 2007).

ment, along with the responsibility to find solutions to such challenges.⁶⁹ The High Commissioner for Refugees created an internal task force on climate change, which monitors fluctuations in climate-induced migration and offers input to the Inter-Agency Standing Committee (IASC) task force on climate change.⁷⁰ Through its involvement and leadership in the IASC sub-group on migration and displacement, the UNHCR developed a humanitarian advocacy strategy and began to submit joint policy papers to the annual United Nations Framework Convention on Climate Change (UNFCCC) Conferences of the Parties.⁷¹

The UN General Assembly adopted the New York Declaration for Refugees and Migrants (New York Declaration) in 2016, providing member states the opportunity to reaffirm their commitment to protecting migrants and refugees.⁷² The New York Declaration acknowledges climate change, natural disasters, and other environmental factors as drivers of migration.⁷³ Member states committed to addressing all drivers that create or exacerbate large movements of people.⁷⁴ Accordingly, they also pledged to combat environmental degradation and ensure effective responses to natural disasters and the adverse impacts of climate change.⁷⁵ Lastly, member states agreed to assist migrants experiencing natural disasters on a needs-basis in coordination with the relevant national authorities.⁷⁶ The New York Declaration “mark[ed] a political commitment of unprecedented force and

resonance,”⁷⁷ paving the way for future covenants that focus on environment-induced migrants.⁷⁸

Building upon the New York Declaration is the 2018 Global Compact on Refugees, which recognizes that “climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements.”⁷⁹ The UN appreciates the gravity of the effect that climate change and natural disasters have on forcibly displaced persons that qualify for refugee status.⁸⁰ Therefore, the UNHCR’s work protecting and supporting refugees also extends to persons both internally and externally displaced by disasters and climate change. The UNHCR offers direct assistance by providing legal advice, guidance, and development of norms to enhance the protection of rights for displaced persons.⁸¹ The UNHCR also conducts research and promotes policy coherence relating to disaster displacement.⁸²

UNHCR field-based activities are aimed to address internal and external displacement by ensuring sustainable responses, promoting risk reduction, and reducing the environmental impact of refugee settlements.⁸³ The agency plays a leading role in the Global Protection Cluster, which assists and protects displaced persons affected by natural disasters and conflict.⁸⁴ When needed, the UNHCR deploys emergency teams to provide services that include registration,

⁶⁹ GOODWIN-GILL & MCADAM, *supra* note 20, at 15.

⁷⁰ *Id.* at 15.

⁷¹ *Id.*

⁷² *New York Declaration for Refugees and Migrants*, U.N. HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/en-us/new-york-declaration-for-refugees-and-migrants.html> (last visited May 1, 2022).

⁷³ G.A. Res. 71/1, ¶ 1 (Sept. 19, 2016).

⁷⁴ *Id.* ¶ 43.

⁷⁵ *Id.*

⁷⁶ *Id.* ¶ 50.

⁷⁷ Filippo Grandi (@Refugees), TWITTER (Sept. 19, 2016, 9:03 AM), <https://twitter.com/Refugees/status/777855627800510464>.

⁷⁸ *New York Declaration for Refugees and Migrants*, *supra* note 72.

⁷⁹ G.A. Res. 73/12, ¶ 8 (Nov. 26, 2018).

⁸⁰ See *UN Human Rights Committee Decision on Climate Change Is a Wake-up Call, According to UNHCR*, U.N. HIGH COMM’R FOR REFUGEES (Jan. 24, 2020), <https://www.unhcr.org/en-us/news/briefing/2020/1/5e2ab8ae4/un-human-rights-committee-decision-climate-change-wake-up-call-according.html>.

⁸¹ GOODWIN-GILL & MCADAM, *supra* note 20, at 26.

⁸² *Id.*

⁸³ *Id.* at 27.

⁸⁴ *Id.* at 10; *Who We Are*, GLOB. PROT. CLUSTER, <https://www.globalprotectioncluster.org/about-us/who-we-are/> (last visited May 1, 2022).

documentation, family reunification, shelter, hygiene, and nutrition.⁸⁵ The UNHCR has also created guidance for planned relocation to provide states with a preparative alternate to forced displacement.⁸⁶

The 2018 Global Compact for Safe, Orderly, and Regular Migration (Global Compact) is the first migration policy that identified climate change as a direct driver of migration.⁸⁷ The Global Compact encourages multilateral agreements as a means to address the root causes of climate change along with developing adaptation measures in vulnerable countries to prevent further forced displacement.⁸⁸ Although the Global Compact is not legally binding, it builds upon a framework of commitments from member states in the New York Declaration, fostering international cooperation while upholding the sovereignty of states.⁸⁹ Member states commit to “create conducive . . . environmental conditions for people to lead peaceful, productive and sustainable lives in their own country . . . while ensuring that desperation and deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration.”⁹⁰

The Global Compact, although lacking any enforcement mechanisms, includes many recommendations to achieve this goal, such as identifying the needs of victims of slow-onset disasters and corresponding solutions,⁹¹ sharing data and information on migra-

tion movements amongst all member states,⁹² and developing adaptation and resilience strategies to combat both sudden and slow-onset disasters and environmental degradation.⁹³ The Global Compact also supports minimizing all adverse drivers that compel people to leave their countries of origin and investing in programs with sustainable development goals.⁹⁴ It is important for states to create and improve programs that focus on disaster resilience, disaster risk reduction, climate change mitigation and adaptation, and displacement preparation and response.⁹⁵ The last step requires monitoring and anticipating disaster risks and threats that might trigger migration movements, strengthening early warning systems, developing emergency procedures, and supporting post-emergency recovery.⁹⁶

V. THE NANSEN INITIATIVE AND THE AGENDA'S ROLE IN PROMOTING PROTECTION OF ENVIRONMENTALLY DISPLACED PERSONS

International organizations besides the UN have taken action to facilitate cooperation amongst states to expand protections for climate and disaster-displaced persons. The Nansen Initiative is a state-led process aimed at building consensus on methods to address protecting and assisting externally displaced persons in the context of disasters and climate change.⁹⁷ While the the Nansen Initiative is originally based on a bilateral agreement between Switzerland and Norway, it encourages other interested states to get involved and develop effective practices on a nonbinding basis.⁹⁸ In 2015, the Nansen Initiative produced and endorsed

⁸⁵ *Climate Change and Disaster Displacement*, *supra* note 3; *What We Do*, GLOB. PROT. CLUSTER, <https://www.globalprotectioncluster.org/about-us/what-we-do/> (last visited May 1, 2022).

⁸⁶ See Elizabeth Ferris, *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation*, BROOKINGS INST., GEO. UNIV. & U.N. HIGH COMM'R FOR REFUGEES (Oct. 7, 2015), <https://www.unhcr.org/protection/environment/562f798d9/planned-relocation-guidance-october-2015.html>.

⁸⁷ Carolyn Beeler, *UN Compact Recognizes Climate Change as Driver of Migration for First Time*, THE WORLD (Dec. 11, 2018, 6:30 PM), <https://www.pri.org/stories/2018-12-11/un-compact-recognizes-climate-change-driver-migration-first-time>.

⁸⁸ See G.A. Res. 73/195 (Dec. 19, 2018).

⁸⁹ G.A. Res. 73/195, ¶ 7 (Dec. 19, 2018).

⁹⁰ *Id.* ¶ 18.

⁹¹ *Id.* ¶ 21(h).

⁹² *Id.* ¶ 18(h).

⁹³ *Id.* ¶ 18(i).

⁹⁴ G.A. Res. 73/195, ¶ 18(b) (Dec. 19, 2018) (These programs would attempt to empower countries of origin to address: poverty, food security, health and sanitation, education, inclusive economic growth, employment, gender equality, infrastructure, urban and rural development, violence, discrimination, good governance, human rights, resilience and disaster risk reduction, and climate change mitigation and adaptation.).

⁹⁵ *Id.* ¶ 18(b)–(c).

⁹⁶ *Id.* ¶ 18(c).

⁹⁷ THE NANSEN INITIATIVE, *supra* note 29, at 6.

⁹⁸ *Id.*

an Agenda with guidelines for protecting displaced persons, reducing disaster risk, building resiliency, and preparing relocation plans and disaster responses.⁹⁹ The Agenda calls for solidarity and cooperation amongst states, regional organizations, and the international community, because potentially any and every state may encounter disaster displacement as a country of origin, transit, or destination.¹⁰⁰

To protect displaced persons, member states must take measures to both prevent and respond to disaster displacement and its causes. For prevention and preparation, the Agenda recommends mapping historical cross-border displacement movements to identify communities at risk of future displacement, amending existing policies to include procedures for identifying and admitting disaster-displaced persons, and increasing the capacity of border and immigration authorities to implement such amended policies.¹⁰¹ For response, the Agenda outlines effective practices that receiving states can follow.¹⁰² At the very least, destination states should consider granting entry and temporary stay to disaster-displaced persons, as well as streamlining the visa and refugee processing system.¹⁰³ These steps, in addition to suspending documentation requirements, would expedite migration processing of displaced person and facilitate cross-border movement for pastoralists and livestock through transhumance agreements, especially in times of drought.¹⁰⁴

The Nansen Initiative Agenda also recommends that receiving states ensure displaced persons enjoy full human rights, have access to assistance to meet basic needs, and receive personal documentation indicating their status and right to stay.¹⁰⁵ During this time of stay, destination states should consider providing humanitarian protection measures for climate-displaced persons. Measures such as suspending depor-

tation and extending or changing migration statuses would prevent displaced persons from being returned to extreme hardship or a state of disaster that cannot support returning citizens.¹⁰⁶ These measures can also apply to foreigners who were already abroad when a disaster-affected their country of origin.¹⁰⁷ Granting protection from return to a state of disaster shields the individual migrant, but the Agenda also encourages states to allow those migrants to remain in order to send remittances to support family members in the disaster-affected country of origin as a measure of solidarity.¹⁰⁸ Regulation of admission of foreigners is an inherent right of all states, and the Nansen Initiative is careful to recognize states' sovereignty and broad discretion when it provides guidelines for migration in the context of environmental drivers.¹⁰⁹

VI. PLANNED RELOCATION TO SHIFT IRREGULAR, UNPROTECTED MIGRATION TO STRATEGIC, PROTECTED MIGRATION

Focusing efforts on preventing and managing irregular migration rather than on subsequent, reactive protections may reduce unplanned and unprotected displacements. Instead of viewing migration as a failure to stay in place and adapt, it should be regarded as a proactive adaptation strategy, especially in the early stages of environmental degradation.¹¹⁰ Providing migrants with safer, planned pathways for reducing reliance on the changing environment and moving out of harm's way is a strategic management solution that allows individuals and governments the ability to respond to gradual climate change in a dignified, informed, and controlled manner.

⁹⁹ *Id.* at 7.

¹⁰⁰ *Id.* at 6.

¹⁰¹ *Id.* ¶ 43.

¹⁰² *Id.* ¶ 47.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* ¶ 61.

¹⁰⁶ *Id.* ¶ 65.

¹⁰⁷ *Id.* ¶ 66.

¹⁰⁸ *Id.* ¶¶ 67–68.

¹⁰⁹ *Id.* ¶¶ 38–39.

¹¹⁰ See INT'L ORG. FOR MIGRATION, MIGRATION, CLIMATE CHANGE AND THE ENVIRONMENT 2 (May 2009), https://www.iom.int/sites/default/files/our_work/ICP/IDM/iom_policy-brief_may09_en.pdf.

States should allow some flexibility on a case-specific basis when displaced persons are prepared to return to their country or region of origin.¹¹¹ With the goal of sustainable reintegration to avoid recurrent displacement if a community has deteriorated to the point of uninhabitability, displaced persons may consider returning to their country and resettling in a different location.¹¹² Deterioration at this level may include significant destruction of residences, businesses, and infrastructure, land infertility, and risk of exposure to recurrent disasters.¹¹³ By assisting climate-induced migrants to return to a new residence within their countries of origin, receiving states will shift their responsibility back to the countries of origin. If this is not practical, then receiving states should facilitate long-term or permanent authorization to stay.¹¹⁴ As suggested by the Nansen Initiative Agenda, bilateral or regional agreements on regular migration may be the most effective facilitators of a planned relocation.¹¹⁵ Arrangements to support climate-induced migrants may be based on any number of grounds depending on states' or regions' needs, but most frequently they are created to support labor, family unification, or humanitarian assistance.¹¹⁶ Migration agreements for seasonal work can assuage displacements caused by cyclical natural disasters, such as hurricanes, tsunamis, tornados, flooding, and wildfires.¹¹⁷ Pastoralists¹¹⁸ regularly migrate to accommodate their animals' dietary needs, but environmental stress that reduces the quality or quantity of grass

and potable water force pastoralists to use increased or varied migration to cope.¹¹⁹ Permitting pastoral migration across state borders helps herders maintain their way of life and adjust migration routes according to environmental changes.¹²⁰

Expanded bilateral or regional labor agreements may be another method to assist individuals in at-risk communities plan for relocation. Labor agreements, while subject to the parties' discretion, often provide new skills, education, or jobs to migrants, thereby producing employment opportunities in safer locations and the opportunity to send remittances to vulnerable communities of origin.¹²¹ Individual participants that take advantage of labor agreements will have more reliable migration pathways if permanent relocation is ever required due to substantial climate change causing inhabitability.¹²² These pathways can be especially important for small island states, arctic communities, and other countries experiencing significant loss of territory from climate change.¹²³ Facilitating migration may also ease population pressure on fragile regions suffering substantial environmental degradation.¹²⁴

When negotiating agreements, states must be aware of the risk of exploitation of migrants and should therefore promote and enforce human rights.¹²⁵ Host states may also be wary of migrants themselves exploiting agreements and taking advantage of state resources, but it is important to consider that long-term and permanent relocation is often a last resort for many people.¹²⁶ Because of cultural ties, identity, and connection to the land, many people do not

¹¹¹ See THE NANSEN INITIATIVE, *supra* note 29, ¶ 72.

¹¹² *Id.* ¶ 72.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* ¶ 88.

¹¹⁶ *Movement Assistance*, INT'L ORG. FOR MIGRATION, <https://www.iom.int/movement-assistance> (last visited May 1, 2022).

¹¹⁷ THE NANSEN INITIATIVE, *supra* note 29, ¶ 88; Ionesco, *supra* note 56.

¹¹⁸ *Pastoralists*, LUMEN, <https://courses.lumenlearning.com/culturalanthropology/chapter/pastoralists/> (last visited May 1, 2022) (defining "pastoralists" as those engaged in a subsistence strategy dependent on the herding of animals and characterized by a nomadic lifestyle and extensive land use, i.e., moving to temporary pastures seasonally or as needed).

¹¹⁹ THE NANSEN INITIATIVE, *supra* note 29, ¶ 87.

¹²⁰ *Id.* ¶ 88.

¹²¹ *Id.* ¶ 89.

¹²² *Id.* ¶ 90.

¹²³ *Id.*; INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE 384 (Hans-Otto Pörtner et al. eds., 2019), https://www.ipcc.ch/site/assets/uploads/sites/3/2019/12/SROCC_FullReport_FINAL.pdf.

¹²⁴ THE NANSEN INITIATIVE, *supra* note 29, ¶ 89.

¹²⁵ *Id.* ¶ 91.

¹²⁶ *Id.* ¶ 94.

consider relocation to be an appropriate option unless absolutely necessary for survival.¹²⁷ Several small Pacific Island nations are now seriously considering regional migration plans involving permanent relocation as their “only reasonable and sustainable option,” according to Dr. Melchior Matakai, who serves as the

Solomon Islands’ Secretary of the Ministry of Environment and Chair of the National Disaster Council.¹²⁸ Many islands are experiencing severe erosion, relentless flooding, and salinization of farmland from rising sea levels.¹²⁹ Ocean temperatures are rising, marine life and coral reefs are fading, terrestrial wildlife is seeking higher elevation, and droughts and natural disasters are becoming more severe.¹³⁰ Despite all the adverse effects of climate change, many native Pacific Islanders are reluctant to leave their homes permanently,¹³¹ knowing that as they leave, it is unlikely anyone will ever return and some of the islands may no longer exist above sea level within a few decades.¹³²

¹²⁷ THE NANSEN INITIATIVE, *supra* note 29, ¶ 94.

¹²⁸ Ashley Westerman, ‘We Need Support’: Pacific Islands Seek Help and Unity to Fight Climate Change, NPR (Oct. 5, 2019, 11:56 AM), <https://www.npr.org/2019/10/05/764570478/we-need-support-pacific-islands-seek-help-and-unity-to-fight-climate-change>.

¹²⁹ John Campbell & Olivia Warrick, *Climate Change and Migration Issues in the Pacific*, ECON. & SOCIAL COMM’N FOR ASIA & THE PAC. 2 (Aug. 2014), <https://www.ilo.org/dyn/migpractice/docs/261/Pacific.pdf>.

¹³⁰ *Id.* at 6–7, 15–16, 18.

¹³¹ *Id.* at 10, 21, 24 (explaining the importance of Pacific Islanders’ connection with their homeland for purposes of community, traditions, and identity).

¹³² *Legal Implications of Sea Level Rise for Small Island States Explored in New World Bank Study*, WORLD BANK (Oct. 6, 2021), <https://www.worldbank.org/en/news/press-release/2021/10/05/legal-implications-of-sea-level-rise-for-small-island-states-explored-in-new-world-bank-study> (explaining that loss of land due to sea level rise is a clear threat to the very existence of Pacific States and puts entire islands at risk of becoming uninhabitable); *Adapting to Rising Sea Levels in Marshall Islands*, WORLD BANK (Oct. 22, 2021), <https://storymaps.arcgis.com/stories/8c715dcc5781421ebff46f35ef34a04d> (explaining that the Marshall Islands will be one of the first nations to experience sea level rise as a genuine existential threat without mitigating measures).

VII. ADAPTATION EFFORTS TO SUPPORT ENVIRONMENTALLY VULNERABLE COMMUNITIES AVOID DISPLACEMENT

If planned relocation is not the most feasible solution to the deterioration of the natural environment, implementing adaptation measures can improve a community’s quality of life, economic stability, and safety of individuals. Investing in more resilient infrastructure and housing can reduce human displacements and the cost of rebuilding after a natural disaster strikes or as poor climate conditions progress.¹³³ Natural hazards, in addition to weak infrastructure, can prevent residents from accessing healthcare, employment, and education.¹³⁴ In low and middle-income countries, natural hazard disruptions can result in yearly losses of \$390 billion or more.¹³⁵ Examples of adaptive infrastructure include earthquake-resistant buildings and sea walls, dams, and dikes to reduce the destruction caused by flooding, landslides, and glacial melts.¹³⁶ Communities can invest in natural terrestrial defenses as well by planting vegetation along coastlines to prevent erosion, flooding, and salinization of soil and freshwater sources.¹³⁷ This can be an especially useful method when there is limited or unstable ground for building upon.¹³⁸

Additional adaptation measures include spatial adjustments, like relocating vulnerable buildings and infrastructure further inland to protect from rising sea levels, erosion, or frequent coastal disasters.¹³⁹ Further measures may include modifying agricultural practices, planting more resilient crops, and finding alternate livelihoods.¹⁴⁰ For an example, coastal residents that rely heavily on fishing practices for income

¹³³ THE NANSEN INITIATIVE, *supra* note 29, ¶ 78.

¹³⁴ *3 Things You Need to Know About Adaptation and Resilience*, WORLD BANK (June 1, 2020), <https://www.worldbank.org/en/topic/climatechange/brief/3-things-you-need-to-know-about-adaptation-and-resilience>.

¹³⁵ *Id.*

¹³⁶ THE NANSEN INITIATIVE, *supra* note 29, ¶ 78.

¹³⁷ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 123, at 383.

¹³⁸ *Id.* at 384.

¹³⁹ *Id.* at 384–85.

¹⁴⁰ THE NANSEN INITIATIVE, *supra* note 29, ¶ 78.

may need to shift to a more sustainable occupation when rising sea temperatures or salinization have caused the ecosystem to become prohibitive for the preferred aquatic catch.¹⁴¹ Local communities may also need to alter their diet when nutrition sources, whether flora or fauna, become scarce or completely unavailable.¹⁴² Adaptation measures of any kind not only bolster the community that is directly affected by a disaster or climate change, but in the event that displacements do occur despite these measures, other communities are more resilient and prepared to host displaced persons.¹⁴³

A major cooperative adaption effort that resulted from the twenty-first session of the Conference of the Parties (COP21) to the UN Framework Convention on Climate Change (UNFCCC) is the Paris Agreement. Ratified by 189 states,¹⁴⁴ the Agreement seeks to guide a global response to the threat of climate change and reduce climate-induced displacements by encouraging mitigation and adaptation strategies.¹⁴⁵ The central goal is to limit the planet's rise in temperature during the twenty-first century by reducing greenhouse gas emissions, but it also urges states parties to increase resiliency to climate change.¹⁴⁶ Parties to the Agreement must report their achievements every five years with transparency and accuracy, and each communication is expected to reflect progress beyond the previous one.¹⁴⁷ The Paris Agreement encourages each country to contribute to these global

objectives at its highest level of ambition to effectuate worldwide change.¹⁴⁸ Suggestions for advancement include national adaptation plans, updated periodically, comprised of individual state needs, priorities, plans, and actions.¹⁴⁹

An essential tool in pursuing resiliency and creating migration agreements is space for regional, bilateral, and international dialogue.¹⁵⁰ Forum members generally emphasize sustainability, resiliency, and elevation of migrants' voices.¹⁵¹ International and regional organizations for migration and conservation have developed several such dialogue forums in the past two decades, such as the International Dialogue on Migration,¹⁵² the Global Island Partnership,¹⁵³ the Pacific Islands Forum,¹⁵⁴ the regional Migration Dialogues for Africa,¹⁵⁵ the Euro-African Dialogue on Migration and Development,¹⁵⁶ the Asia Dialogue on Forced Migration,¹⁵⁷ the Central America—North America

¹⁴¹ See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 123, at 26.

¹⁴² *Id.* at 259.

¹⁴³ THE NANSSEN INITIATIVE, *supra* note 29, ¶ 80.

¹⁴⁴ UNFCCC, PARIS AGREEMENT – STATUS OF RATIFICATION, <https://unfccc.int/process/the-paris-agreement/status-of-ratification> (last visited May 1, 2022).

¹⁴⁵ See Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, art. 2 [hereinafter Paris Agreement]; *Human Mobility in the Context of Climate Change UNFCCC – Paris COP-21*, ADVISORY GRP. ON CLIMATE CHANGE & HUM. MOBILITY 3 (Nov. 2015), <https://www.unhcr.org/uk/565b21bd9.pdf>.

¹⁴⁶ See Paris Agreement, *supra* note 145, at art. 2, § 1.

¹⁴⁷ *Id.* at art. 4, ¶¶ 2, 3, 8, 9.

¹⁴⁸ *Id.* at art. 4, ¶ 3.

¹⁴⁹ *Id.* at art. 7, ¶¶ 9–11.

¹⁵⁰ G.A. Res. 73/195, ¶ 19 (Dec. 19, 2018); THE NANSSEN INITIATIVE, *supra* note 29, at ¶ 125.

¹⁵¹ E.g., INT'L ORG. FOR MIGRATION, *International Dialogue on Migration* 14, 40, 51–53 (2012), https://publications.iom.int/system/files/pdf/rb18_eng_web.pdf.

¹⁵² INT'L ORG. FOR MIGRATION, *International Dialogue on Migration* (2012), https://publications.iom.int/system/files/pdf/rb18_eng_web.pdf.

¹⁵³ GLISPA 2030 STRATEGY, GLOB. ISLAND P'SHIP (2020), <http://www.glispa.org/images/GLISPA-2030-Strategy-Short.pdf>; *About Our Global Island Partnership*, GLOB. ISLAND P'SHIP, <http://www.glispa.org/about> (last visited May 1, 2022).

¹⁵⁴ G.A. Res. 73/332 (Aug. 1, 2019).

¹⁵⁵ INT'L ORG. FOR MIGRATION, *Migration Dialogue for Central African States* (2020), <https://www.iom.int/migration-dialogue-central-african-states-midcas>; INT'L ORG. FOR MIGRATION, *Migration Dialogue for Southern Africa* (2020), <https://www.iom.int/migration-dialogue-southern-africa-midsa>; INT'L ORG. FOR MIGRATION, *Migration Dialogue for West Africa* (2020), <https://www.iom.int/midwa>.

¹⁵⁶ INT'L ORG. FOR MIGRATION, *Euro-African Dialogue on Migration and Development (Rabat Process)* 2020, [https://www.iom.int/euro-african-dialogue-migration-and-development-rabat-process#:~:text=The%20Euro%2DAfrican%20Dialogue%20on,States%20\(ECOWAS\)%%2C%20to%20tackle](https://www.iom.int/euro-african-dialogue-migration-and-development-rabat-process#:~:text=The%20Euro%2DAfrican%20Dialogue%20on,States%20(ECOWAS)%%2C%20to%20tackle).

¹⁵⁷ *Asia Dialogue on Forced Migration*, CTR. FOR POL'Y DEV., <https://cpd.org.au/intergenerational-wellbeing/asia-dialogue-on-forced-migration/> (last visited May 1, 2022).

Migration Dialogue,¹⁵⁸ and specific programs within the Inter-American Dialogue.¹⁵⁹ The European Union (EU) has also structured a variety of bi-regional dialogues concerning migration and development.¹⁶⁰

VIII. PREPARATION AND RESPONSE EFFORTS TO IMPROVE RESILIENCY OF ENVIRONMENTALLY VULNERABLE COMMUNITIES

In addition to environmental adaptation and planned migration options, vulnerable communities can benefit significantly from disaster preparation and improved response tactics, leading to risk reduction in the future.¹⁶¹ Monitoring environmental changes, such as rainfall, soil saturation, sea levels, wind patterns, geothermic activity, and frequency and severity of natural disasters, helps communities to anticipate future destruction and hardships.¹⁶² In turn, this assists with disaster preparation, such as reinforcement of infrastructure and storage of survival resources, as well as disaster response plans that often include early warning signals, shelter-in-place instructions,

evacuation routes, identification and location of victims, and administration of aid.¹⁶³

While disaster preparation is vital for all regions around the world, it is especially crucial for less developed countries where there is a high potential for a natural hazard to develop into a disaster and result in mass displacement.¹⁶⁴ Low or uneven concentrations of development tend to contribute to heightened vulnerability in the context of natural disasters because economically unstable communities are the most likely to experience destruction and displacement.¹⁶⁵ In addition, they are less likely to have the resources or governance to disburse benefits to aid regrowth, or even survival, for affected persons and businesses. Communities that are unable to implement preparation strategies through reinforcing infrastructure and stockpiling emergency supplies remain susceptible to environmental hazards and will continue to lack the resiliency necessary to bolster themselves against disasters.

Building policies to ensure rapid and effective responses to natural disasters can alleviate many displacements.¹⁶⁶ Access to sufficient shelter, food, clean water, and other survival resources is key to providing the means for residents to maintain their physical presence in or near their communities or home countries.¹⁶⁷ Even with slow-onset climate changes, if living conditions deteriorate towards an unbearable level, individuals will often turn to migration as a solution to avoid the oncoming crisis.¹⁶⁸ Improving local and national resiliency and reducing reliance on migration are the most effective methods to curb displacements. Response policies can also be strengthened by transboundary cooperation among countries that share ecosystems, such as along coastlines, fault lines, and river banks.¹⁶⁹

¹⁵⁸ *Central America – North America Migration Dialogue*, CIE-SAS OCCIDENTE, <http://www.canamid.org/en/site/canamid> (last visited May 1, 2022).

¹⁵⁹ *Migration, Remittances & Development*, INTER-AMERICAN DIALOGUE, <https://www.thedialogue.org/programs/programs/remittances/> (last visited May 1, 2022); *Energy, Climate Change & Extractive Industries*, INTER-AMERICAN DIALOGUE, <https://www.thedialogue.org/programs/programs/energy/> (last visited May 1, 2022).

¹⁶⁰ *Africa-EU Partnership on Migration, Mobility, and Employment (MME)*, INT'L ORG. FOR MIGRATION, <https://www.iom.int/africa-eu-partnership-migration-mobility-and-employment-mme> (last visited May 1, 2022); *EU – CELAC Structured and Comprehensive Bi-regional Dialogue on Migration*, INT'L ORG. FOR MIGRATION, <https://www.iom.int/eu-celac-structured-and-comprehensive-bi-regional-dialogue-migration> (last visited May 1, 2022).

¹⁶¹ *Preparedness for Climate Change*, INT'L FED'N OF RED CROSS & RED CRESCENT SOC'Y, 9–10 (Jan. 10, 2003), https://www.icrc.org/en/doc/assets/files/other/climatechange_report_final_eng.pdf.

¹⁶² INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *MANAGING THE RISKS OF EXTREME EVENTS AND DISASTERS TO ADVANCE CLIMATE CHANGE ADAPTATION* 17 (Christopher B. Field et al. eds., 2012), https://www.ipcc.ch/site/assets/uploads/2018/03/SREX_Full_Report-1.pdf.

¹⁶³ THE NANSSEN INITIATIVE, *supra* note 29, ¶ 78.

¹⁶⁴ *Id.* ¶ 79.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* ¶ 81.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* ¶ 87.

¹⁶⁹ *Id.* ¶ 81.

Providing specific protections for IDPs in response to a disaster not supports not only individuals but also whole communities.¹⁷⁰ Internal assistance for displaced persons dissuades those individuals from seeking support and opportunities across borders and consequently converting to external displacements.¹⁷¹ Preserving and protecting those who are internally displaced equips countries with the human resources to aid and speed their own rehabilitation efforts. Some effective ways to support these kinds of post-disaster reestablishment efforts is to develop incentivizing and sustainable methods for internal protections.¹⁷² Such methods may include voluntary return and reintegration at or nearby the place of origin, integration in places of refuge, or resettlement elsewhere within the country.¹⁷³ These solutions apply both to displaced persons that have already crossed borders and those that have remained within their country of origin.¹⁷⁴

Only a small number of states and regions currently have policies that address responses and protections relating to internal displacement resulting from natural disasters.¹⁷⁵ Even where such policies have been adopted, there is sometimes confusion regarding accountability for protecting internally displaced persons.¹⁷⁶ Responsibility can fluctuate amongst state

institutions and even between the state, regional, and international levels.¹⁷⁷ Operational discrepancies aside, sustainable and functional approaches to reintegration, whether taking place in the same locality or elsewhere, are necessary to fill the protection gap that many displaced persons experience during the period between the initial disaster and subsequent reconstruction.¹⁷⁸

Preventive measures are another key to reducing the impact of natural disasters and climate change on vulnerable and even well-prepared communities. The Paris Agreement is the most direct, comprehensive multilateral attempt to implement methods for the reasonable prevention or reduction of environmental impacts around the world.¹⁷⁹ Decreasing the negative human-generated contributions to climate change will prevent unnecessarily advancing environmental destruction of people's homes and livelihoods.¹⁸⁰ Global cooperation will produce the greatest success and synergy for an efficient agenda to address the aspects of climate change caused or accelerated by human activity.¹⁸¹ The most identifiable prevention tactic at this time is the reduction of greenhouse gas emissions.¹⁸² By curbing emissions, the Agreement aims to prevent the global average temperature from rising more than two degrees Celsius, with the intended impact of reducing the risk and impacts of climate change.¹⁸³

¹⁷⁰ *Id.* ¶ 74.

¹⁷¹ *See id.* ¶ 99.

¹⁷² *See id.* ¶ 101.

¹⁷³ *Id.* ¶ 102; BROOKINGS INST., INTER-AGENCY STANDING COMMITTEE FRAMEWORK ON DURABLE SOLUTIONS FOR INTERNALLY DISPLACED PERSONS 5 (Apr. 2010), <https://interagencystandingcommittee.org/system/files/2021-03/IASC%20Framework%20on%20Durable%20Solutions%20for%20Internally%20Displaced%20Persons%2C%20April%202010.pdf>.

¹⁷⁴ THE NANSSEN INITIATIVE, *supra* note 29, ¶ 102.

¹⁷⁵ *Id.* ¶ 103; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Oct. 2, 2009, 52 I.L.M. 397 (entered into force Dec. 6, 2012); Int'l Conference on the Great Lakes Region, Great Lakes Region Protocol on the Protection and Assistance to Internally Displaced Persons, Nov. 30, 2006.

¹⁷⁶ THE NANSSEN INITIATIVE, *supra* note 29, ¶ 104.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* ¶ 105.

¹⁷⁹ *See, e.g., The Paris Agreement*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> (last visited May 1, 2022) (providing clear guidance to states on how to curb greenhouse gas emissions).

¹⁸⁰ *Climate Change Around the World: A View From The UN Regional Commissions*, U.N. CHRONICLE <https://www.un.org/en/chronicle/article/climate-change-around-world-view-un-regional-commissions> (last visited May 1, 2022) (describing how steps such as avoiding deforestation, controlling greenhouse gas emissions, and improving energy efficiency can help prevent air pollution, increased global temperatures, and associated risks of increased extreme weather events).

¹⁸¹ *Id.*

¹⁸² Heyck-Williams, *supra* note 14, at 8.

¹⁸³ Paris Agreement, *supra* note 145, at art. 2, § 1.

CONCLUSION

Since the existing barriers to increasing the legal protections for climate-induced migrants persist, focusing on a legal redefinition of refugees is unlikely to help those environmentally displaced persons most at risk. Many of these individuals will remain internally displaced and unable to access international protection since climate change often has slow-onset effects that do not necessarily force migration. Grounds for refugee status under a new definition would also be difficult to isolate from one another, complicating the status determination process. Instead of relying so heavily on the reactive nature of the 1951 Convention, worldwide attention should turn towards proactive measures to develop protected and dignified paths for migration.

Providing alternative methods of preemptive protection is likely to better serve at-risk communities by strengthening disaster preparedness and improving resiliency. Adaptation efforts, disaster response plans, and strategic relocation are more easily tailored to individual communities and their environmental threats than one universal definition for legal status that only offers post-crisis protection for external displacements. Key features of success in these types of programs consider migrants' rights to dignity, safety, and active participation. Natural disasters and climate change causing irregular, unprotected migration can be reduced when states take steps like these to close the gap between humanitarian action and development action.