

ACNUR
Alto Comisionado de las Naciones Unidas para
los Refugiados
Bureau de las Americas

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Ciudad del Saber, Clayton
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18 de diciembre de 2023

RBAC-479-2023

Excelentísimo Señor Secretario,

Reciba un cordial saludo de parte de la Oficina Regional para las Américas del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR).

Acusamos recibo de su carta de fecha 22 de marzo del 2023 (*Ref.: CDH-OC-1-2023/ 112*) mediante la cual se invita al ACNUR, en conformidad con el artículo 73.3 del Reglamento de la Corte Interamericana de Derechos Humanos, a presentar una opinión por escrito, en el contexto de una solicitud de Opinión Consultiva presentada por la República de Chile y la República de Colombia sobre el tema de la “Emergencia Climática y Derechos Humanos” el pasado 9 de enero del 2023.

En seguimiento a nuestra carta de fecha 18 de abril del 2023 adjunta, por la presente me complace compartirle el *Amicus Brief* adjunto, que presenta la opinión de nuestra oficina sobre los puntos que consideramos pertinentes y de acuerdo con el área de experticia y mandato del ACNUR. Presentamos esta Opinión Consultiva como parte de la responsabilidad conferida al ACNUR de supervisar la aplicación de las convenciones internacionales para la protección internacional de personas refugiadas, en virtud del *Estatuto de 1950 de la Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados* y la *Convención de 1951 relativa al Estatuto de los Refugiados y su Protocolo de 1967*.

Agradeciendo nuevamente la oportunidad que nos han brindado para colaborar en la construcción de esta Opinión Consultiva, quedamos a su disposición para cualquier consulta o requerimiento adicional.

Sírvase aceptar, Señor Secretario de la Corte Interamericana de Derechos Humanos, las muestras de mi más alta y distinguida consideración.

José X. Samaniego Egas
Director Regional
Oficina Regional para las Américas



Excelentísimo
Señor Pablo Saavedra Alessandri
Secretario
Corte Interamericana de Derechos Humanos
San José, Costa Rica

c.c. Andrés Eduardo Celis, Representante del ACNUR en Costa Rica



**Amicus Brief of the Office of the United Nations High Commissioner for Refugees
to the Inter-American Court of Human Rights
regarding the
Request for an Advisory Opinion on the Climate Emergency and Human Rights
from the Republic of Colombia and the Republic of Chile**

“The climate crisis is the defining issue of our time.”¹

I. Introduction

1. The Office of the United Nations High Commissioner for Refugees (‘UNHCR’) welcomes the opportunity to submit this *amicus curiae* brief² to the Inter-American Court of Human Rights (‘the Court’ or ‘IACtHR’) following an invitation by the Court to UNHCR to submit its expert opinion in the context of the ‘request for an advisory opinion on the climate emergency and human rights.’³

2. On 9 January 2023, the Republic of Colombia and the Republic of Chile submitted a request for an advisory opinion to the Court seeking clarification of ‘the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet.’⁴ The request seeks guidance from the Court on ‘the development of local, national and international policies and programs – in keeping with the commitments made under the American Convention and other human rights and environmental treaties – that enable them to better address the climate crisis, taking into account the obligations of prevention, guarantee and protection.’⁵

¹ António Guterres, Secretary-General's address to the General Assembly, 20 September 2022:

<https://www.un.org/sg/en/content/sg/speeches/2022-09-20/secretary-generals-address-the-general-assembly>.

² This submission does not constitute a waiver, expressed or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. UNGA, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946: www.refworld.org/docid/3ae6b3902.html.

³ Following the request for an advisory opinion from the Republic of Chile and the Republic of Colombia, the Court formally invited UNHCR to provide a written opinion on 22 March 2023, regarding issues UNHCR deems pertinent, and in accordance with UNHCR’s areas of expertise, interest, and work. The invitation falls under the Court’s prerogative within its advisory jurisdiction pursuant to Art. 73.3 of the Court’s Rules of Procedure, by which the Court may formally request, as in this case, the opinion of international organizations, non-governmental organizations, academics, practitioners, or other experts on matters of particular interest to the request for an advisory opinion. On 18 April 2023, UNHCR confirmed to the Court that it would provide a written opinion.

⁴ Joint Request for an Advisory Opinion submitted by the Republic of Chile and the Republic of Colombia, Inter-American Court of Human Rights (‘the request’): https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf, p. 1.

⁵ *Ibid.*, p. 8.

3. The request for an advisory opinion sets out six subsections of questions in relation to a State's: a) duty of prevention; b) preservation of life; c) obligations related to the rights of children; d) obligations arising from consultation procedures; e) protection of environmental defenders, women, indigenous peoples, and Afro-descendant communities; and f) shared and differentiated responsibilities.

4. Underlying all of the questions, is the question of the scope of States' human rights obligations in relation to mitigation, adaptation and loss and damage in the context of the climate emergency. The request is therefore not limited to the American Convention⁶ but is an opportunity for the Court to set out a broad and comprehensive perspective on how international human rights law, and international refugee law, can be interpreted and referenced as a framework for responses in multiple areas of international law.

5. UNHCR's observations will focus primarily on question F (3), namely:

Considering that one of the impacts of the climate emergency is to intensify the factors that lead to human mobility – migration and forced displacement:

3. What obligations and principles should guide the individual and coordinated measures that the States of the region should adopt to deal with involuntary human mobility, exacerbated by the climate emergency?

6. UNHCR's observations will also briefly address the question relating to the rights of children, and other vulnerable groups, and how they intersect with the impacts of climate change.

7. These observations are divided into 15 parts. Following this section,

Part 2 sets out UNHCR's mandate, interest and expertise in the matter;

Part 3 provides context on the connection between climate change and forced displacement;

Part 4 addresses terminology;

Part 5 highlights the intersection between climate impacts, displacement and human rights;

Part 6 outlines the applicability of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (together '1951 Convention')⁷ to persons displaced in the context of climate change;

Part 7 discusses the applicability of the 1984 Cartagena Declaration refugee definition;⁸

Part 8 recalls the core relevant principles of international refugee and human rights;

Part 9 examines the applicability of other legal stay arrangements or temporary forms of protection under international and regional human rights law;

Part 10 sets out the regional free movement frameworks and integration systems;

Part 11 addresses States' specific obligations regarding internally displaced persons;

⁶ Organization of American States (OAS), *American Convention on Human Rights*, "Pact of San Jose" ('*American Convention*'), Costa Rica, 22 November 1969: www.refworld.org/docid/3ae6b36510.html.

⁷ UN General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951, UNTS, vol. 189: www.refworld.org/docid/3be01b964.html, p. 137; *Protocol Relating to the Status of Refugees*, 31 January 1967, UNTS, vol. 606: www.refworld.org/docid/3ae6b3ae4.html, p. 267.

⁸ *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama* ('*Cartagena Declaration*'), 22 November 1984: www.refworld.org/docid/3ae6b36ec.html.

Part 12 highlights the increased risks of statelessness;
Part 13 outlines the specific risks faced by women and other vulnerable groups;
Part 14 examines the rights of children in the context of climate change; and
Part 15 concludes and summarizes UNHCR's position.

II. UNHCR's mandate, interest, and expertise in this matter

8. UNHCR is a subsidiary organ of the United Nations, entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions for refugees.⁹ UNHCR's mandate is humanitarian and non-political. The 1950 Statute of the Office of the United Nations High Commissioner for Refugees ('Statute') confers responsibility upon UNHCR to supervise the application of international conventions for the protection of refugees.¹⁰ This supervisory responsibility is reiterated in the Preamble of the 1951 Convention, and in Article 35(1) as well as in Article II (1) of the 1967 Protocol which obliges State Parties to cooperate with UNHCR in the exercise of its functions.¹¹ UNHCR's role is also reflected in many regional refugee law instruments.¹²

9. UNHCR has also been mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. UN General Assembly resolutions 3274 (XXIV) and 31/36 designate UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities. In resolutions adopted in 1994 and 1995, the UN General Assembly further entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.¹³ This mandate has continued to evolve as UNHCR's

⁹ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V): www.refworld.org/docid/3ae6b3628.html.

¹⁰ *Ibid.* Article 8(a) of the Statute: 'The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by: (a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto'.

¹¹ 1951 Convention and 1967 Protocol, note 7 above.

¹² See for example, *Cartagena Declaration*, Conclusion II(2), note 8 above; Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* ('OAU Convention'), 10 September 1969, 1001 U.N.T.S. 45: www.refworld.org/docid/3ae6b36018.html, Article 8 (1); and European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast)*, OJ L 337, 20 December 2011: eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095, pp. 9-26, Recital 22; European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (Recast)*, OJ L 180, 26 June 2013: eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032, pp. 60-95, Article 29.

¹³ UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995: UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014: www.refworld.org/docid/53b676aa4.html, p. 4 and pp. 88-93.

Executive Committee¹⁴ conclusions¹⁵ have been adopted and relevant resolutions endorsed by the UN General Assembly.¹⁶ Over time, UNHCR has developed widely recognized expertise and authority on statelessness issues.¹⁷

10. Finally, with regard to internally displaced persons ('IDPs'), UNHCR was first called upon by the UN General Assembly to extend its expertise and assistance to internally displaced populations in 1971. Since then, it has been mandated through various resolutions to provide protection and assistance to IDPs in specific situations, working in coordination with other partners under inter-agency arrangements, including the Global Protection Cluster. This role recognizes the Office's expertise in forced displacement and capacity to adapt and respond to evolving emergencies, and the need to address people displaced within their own countries also as critical to resolving refugee situations.¹⁸

11. UNHCR's supervisory responsibility is exercised in part by regularly providing information to decision-makers and courts of law concerning the proper interpretation and application of provisions of the 1951 Convention and the 1967 Protocol. The Office has a long history of acting as *amicus curiae* and/or as a third party intervener in many national and regional jurisdictions.

12. The Office is often approached directly by courts or other interested parties requesting its opinions, advice or submissions, based on UNHCR's '*unique and unrivalled expertise*'¹⁹ on legal

¹⁴ Executive Committee of the High Commissioner's Programme (ExCom) was established in 1958 and functions as a subsidiary organ of the United Nations General Assembly. It has both executive and advisory functions; the latter includes issuing Conclusions on International Protection - referred to as 'ExCom Conclusions', which are adopted by consensus by the States which are Members of ExCom. At present, 108 States are Members of the Executive Committee: See UNHCR, Executive Committee's membership by year of admission of members: www.unhcr.org/media/executive-committee-s-membership-year-admission-members.

¹⁵ ExCom Conclusion No. 90 (LII), 5 October 2001, para. (q); ExCom Conclusion No. 95 (LIV), 10 October 2003, para. (y); ExCom Conclusion No. 99 (LV), 8 October 2004, para. (aa); ExCom Conclusion No. 102 (LVI), 7 October 2005, para. (y); ExCom Conclusion No. 106 (LVII), 6 October 2006, paras. (f), (h), (i), (j) and (t): *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017* (Conclusion No. 1 – 114), October 2017, HCR/IP/3/Eng/REV. 2017: www.refworld.org/docid/5a2ead6b4.html. On the persuasive value of ExCom Conclusions, see for example, Guy Goodwin Gill and Jane McAdam, *The Refugee in International Law*, 3rd edition, OUP, p 428-9; and J. Hathaway, *The Rights of Refugees under International Law*, Second edition, Cambridge University Press, pp. 56 to 59.

¹⁶ See, UN General Assembly Resolution 50/152 of 1995 which endorsed UNHCR ExCom Conclusion No. 78 (XLVI), *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, 20 October 1995: www.refworld.org/docid/3ae68c443f.html and Resolution 61/137 of 2006, where the General Assembly endorsed ExCom Conclusion No. 106 (LVII), *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*: www.refworld.org/docid/453497302.html; UNHCR, *Handbook on Protection of Stateless Persons*, note 13 above, pp. 88-93.

¹⁷ UNHCR, *Handbook on Protection of Stateless Persons*, note 13 above. See also, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04: www.refworld.org/docid/50d460c72.html; UNHCR, *Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, May 2020, HCR/GS/20/05: www.refworld.org/docid/5ec5640c4.html.

¹⁸ UNGA resolution no. 47/105, 16 December 1992, para. 14 and UNGA resolution no. 48/116, 20 December 1993, para. 12. UNHCR, *Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees*, 6 March 2000: www.refworld.org/docid/3ae6b33a0.html.

¹⁹ *R (on the application of EM (Eritrea)) v. Secretary of State for the Home Department*, [2014] UKSC 12, United Kingdom: Supreme Court, 19 February 2014: www.refworld.org/cases,UK_SC,5304d1354.html, para. 72. See also,

issues relating to the rights of refugees, asylum-seekers, refugee returnees, internally displaced and stateless people. As the international body mandated to supervise the application of refugee instruments, including the 1951 Convention, UNHCR has been granted intervener status in numerous jurisdictions all over the world, including: the European Court of Human Rights; the Court of Justice of the European Union; the Supreme Courts of the United States, the United Kingdom (as well as the former House of Lords) and Canada. It has furthermore submitted legal positions to the German Federal Constitutional Court; the Constitutional Courts of Ecuador and Colombia as well as the Supreme National Court of Justice of Mexico, among others.

13. Notably, UNHCR has also intervened before the IACtHR, and provided a written opinion on the scope and purpose of the right to seek asylum,²⁰ and made oral interventions before the Court on the protection of non-accompanied children in the context of migration,²¹ and in the case of *Pacheco Tineo vs. Bolivia* on the principles of international refugee protection, including the right to seek asylum, the principle of non-refoulement and due process guarantees.²² UNHCR has a long-standing engagement with the Inter-American system of human rights and has provided guidance on several areas relevant to UNHCR's mandate.²³

14. UNHCR has a direct interest in the questions before the Court as the impacts of climate change amplify the drivers of forced displacement within and across borders as well as increase the risks of statelessness. The impacts of climate change also increase the complexity of the search for, and achievement of, durable solutions to displacement. As the UN High Commissioner for Refugees stated at the COP28, '[t]he climate emergency is punishing displaced people three times; it tears them from their homes, it compounds their crisis in exile and destroys their homeland, preventing them from returning. This harsh reality highlights the way the climate emergency exacerbates displacement and human suffering.'²⁴

15. UNHCR's direct interest in climate change has been further affirmed in the *Global Compact on Refugees* ('GCR'), affirmed by an overwhelming majority at the UN General Assembly in 2018, which recognized that while 'not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of

R (on the application of AAA (Syria) and others) v Secretary of State for the Home Department; [2023] UKSC 42, United Kingdom: Supreme Court, 15 November 2023: www.refworld.org/docid/6554d1584.html, para. 65.

²⁰ UNHCR Submissions to the Inter-American Court of Human Rights in the framework of the request for an Advisory Opinion on the scope and purpose of the right to asylum, April 2017: www.refworld.org/docid/5c87ee77c.html.

²¹ UNHCR letter to the Inter-American Court of Human Rights in the framework of request for an Advisory Opinion on Migrant Children presented by MERCOSUR, 17 February 2012: www.refworld.org/docid/4f4c959f2.html; and UNHCR's Oral Statement to the Inter-American Court, 7 October 2013: www.refworld.org/docid/52a09fff4.html.

²² UNHCR's Expert Witness Testimony before the Inter-American Court of Human Rights Hearing in the case of *Pacheco Tineo vs. Bolivia*, Case 12.474, 18-21 March 2013: www.refworld.org/docid/516e58704.html.

²³ UNHCR contributed to the recent Inter-American Commission of Human Rights guide on family unity and family reunification in the context of human mobility, due process on RSD procedures and complementary protection, and on international protection and regularization. The Office has also contributed to the *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking*.

²⁴ Press releases: UNHCR calls for urgent global action at COP28, highlighting climate change's impact on the displacement crisis, 04 December 2023: <https://www.unhcr.org/news/press-releases/unhcr-calls-urgent-global-action-cop28-highlighting-climate-change-s-impact>.

refugee movements.’²⁵ Effectively addressing the whole range of climate change impacts requires international cooperation and responsibility-sharing.²⁶

16. UNHCR submits these observations to assist the Court and as the Court itself has recognized, to assist ‘OAS Member States and organs to comply fully and effectively with their relevant international obligations, and to define and implement public policies to protect human rights.’²⁷

III. Context

17. The effects of climate change and human displacement are increasingly interconnected, with the adverse effects of climate change and disasters contributing to human mobility.²⁸ According to the Internal Displacement Monitoring Centre, climate-related disasters triggered more than half of reported internal displacements in 2022.²⁹ Each year since 2008, it is estimated that an average of 24.5 million displacements have been triggered by weather-related sudden onset hazards, such as floods, storms, wildfires, and extreme temperatures.³⁰ Almost two-thirds of all newly displaced asylum-seekers and refugees in 2022 originate from 15 countries that are highly vulnerable to the impacts of climate change.³¹ Further, nearly 60 per cent of refugees and people internally displaced by conflict now live in countries that are among those most vulnerable to climate change.³²

18. Many displaced persons are living in precarious situations, without access to life-saving information and support to strengthen their resilience and preparedness for further shocks. These highly exposed populations often have fewer resources and support to adapt to an increasingly hostile environment. Displaced populations are often forced to live on land in degraded or

²⁵ UNHCR, *Global Compact on Refugees*, 17 December 2018: www.refworld.org/docid/63b43eaa4.html, para. 8.

²⁶ In line with the Global Compact on Refugees which calls for all ‘stakeholders with relevant mandates and expertise [to] provide guidance and support for measures to address [...] protection and humanitarian challenges’ in a way ‘which avoids protection gaps.’ *Ibid.*, paras 63 and 61. Climate change as a driving force of migration was also explicitly acknowledged in the *Global Compact for Safe, Orderly and Regular Migration*: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/451/99/PDF/N1845199.pdf?OpenElement>. See also, UNHCR, Climate change and disaster displacement in the Global Compact on Refugees: <https://www.unhcr.org/5c9e13297.pdf>.

²⁷ IACtHR, *Advisory Opinion OC-23/17, Requested by the Republic of Colombia: The Environment and Human Rights*, (‘Advisory Opinion OC-23/17 - Environment’), 15 November 2017:

www.refworld.org/cases/IACRTHR_5e67c7744.html, para. 24. See also, IACtHR, *Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, (‘Advisory Opinion OC-21/14 – Children’), 19 August 2014, www.refworld.org/docid/54206c744.html, para. 29.

²⁸ Human mobility is an overarching umbrella term that refers to three forms of population movement: i) ‘displacement’ – the primarily forced movement of persons; ii) ‘migration’ – the primarily voluntary movement of persons, and iii) ‘planned relocation’ – process of settling persons or communities to a new location. Agenda for the Protection of Cross Border Displaced Persons in the Context of Disasters and Climate Change (volume 1, pages 16 and 17): https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_low_res.pdf.

²⁹ In 2022, the Internal Displacement Monitoring Centre (IDMC), reported that there were 32.6 million internal displacements by disasters and 28.3 million by conflict and violence. IDMC, *Global Report on Internal Displacement 2023*: <https://www.internal-displacement.org/global-report/grid2023/>, p. 2.

³⁰ IDMC, *Internal displacement in a changing climate, Grid 2021*: [grid2021_idmc.pdf](https://www.internal-displacement.org/grid2021_idmc.pdf) ([internal-displacement.org](https://www.internal-displacement.org)).

³¹ Afghanistan; Burundi; Central African Republic; Democratic Republic of Congo; Eritrea; Ethiopia; Honduras; Myanmar; Nicaragua; Nigeria; Somalia; South Sudan; Sudan; Syria and Venezuela.

³² UNHCR, *Climate change and displacement: the myths and the facts*, 15 November 2023: <https://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts>.

peripheral locations, in overcrowded camps or informal settlements, with limited access to basic services or resilient infrastructure and which are highly exposed and vulnerable to climate impacts. While resilience is being severely eroded, authorities in these contexts often lack the capacity or willingness to protect the most vulnerable, and financial and other support remains scarce relative to escalating needs.

19. The effects of climate change also pose an obstacle for safe and durable solutions as the ‘scope for people safely and sustainably to return to highly climate-vulnerable countries and communities is also reducing, as climate-sensitive livelihoods are rendered untenable, exposure to extreme weather and degraded environments makes conditions in some areas unlivable, and competition over depleted ecosystem services such as food, water and land prolongs conflict and instability.’³³ Nine in every ten conflict-displaced returnees returned to highly climate vulnerable countries or situations.³⁴

Context in the Americas

20. The Republic of Colombia and the Republic of Chile continue to experience challenges in dealing with the consequences of the climate emergency, such as droughts, torrential rains, floods, landslides, and fires which have a significant impact on human rights and as highlighted in the request, create an enormous risk of jeopardizing the human rights of future generations.³⁵

21. ‘Despite the fact that Latin America and the Caribbean have the largest freshwater resources per capita, a third of the region's population is cut off from sustained access to drinking water.’³⁶ According to a 2022 World Bank report, ‘[a]ccess to safely managed water supply services is still missing for 166 million people; and 24 million still do not have access to even basic services.’³⁷ Moreover, rising temperatures, erratic rainfall patterns, and extreme weather events continues to disrupt agricultural systems throughout the region, leading to crop failures and reduced food productions.

‘The region is under constant threat of floods and droughts. In the Caribbean region, at least one country is hit by a strong hurricane on an annual basis. The Central America Dry Corridor - a region covering parts of Costa Rica, El Salvador,

³³ UNHCR, *Overview of Strategic Plan for Climate Action 2024–2030*, updated November 2023: <https://reporting.unhcr.org/climate-action-overview-strategic-plan-20242030>, p. 2.

³⁴ UNHCR, *Call to Action at COP27*, November 2022: <https://www.unhcr.org/media/calls-action-cop27>.

³⁵ See IDMC Country page on Chile: <https://www.internal-displacement.org/countries/chile> and on Colombia: <https://www.internal-displacement.org/countries/colombia>. See further on Colombia, Sanjula Weerasinghe. *Bridging the Divide in Approaches to Conflict and Disaster Displacement: Norms, Institutions and Coordination in Afghanistan, Colombia, the Niger, the Philippines and Somalia*, (2021), UNHCR and IOM: <https://www.unhcr.org/media/bridging-divide-approaches-conflict-and-disaster-displacement-norms-institutions-and>.

³⁶ Emilio Sempris, *Climate Change and Freshwater in Latin America and the Caribbean*: <https://www.un.org/en/chronicle/article/climate-change-and-freshwater-latin-america-and-caribbean>.

³⁷ ‘Most of these people are located in rural areas, which are clearly falling behind. Access to water services is inequitable, with service access lagging for marginalized groups such as Indigenous people, who comprise 60 percent of the poor population, and Afro-descendants, who comprise 50 percent of the extreme poor in Brazil, Uruguay, Panama, Ecuador, and Colombia combined.’ World Bank, *Water Matters: Resilient, Inclusive and Green Growth through Water Security in Latin America*, 2022: <https://openknowledge.worldbank.org/entities/publication/cf66ba5a-a223-550e-8d7a-40cd4124cbec>, p. 9, para. 4.

Guatemala, Honduras, Nicaragua, and Panama - is affected on a yearly basis by severe droughts.’³⁸

22. Vulnerable populations therefore continue to face the specter of malnutrition and starvation as a direct consequence of climate-induced food scarcity.³⁹ The region has also been affected by the diminishing availability and access to habitable and agriculture land as well as potable water sources.⁴⁰ ‘The 160 million people without access to a safely managed water supply and the 350 million without access to safe sanitation are highly vulnerable to increases in vector-borne diseases’⁴¹ such as diarrhoea, malaria, typhoid fever and *Dengue*,⁴² thereby placing the right to health in jeopardy.⁴³ As a direct consequence of phenomena such as desertification, sea-level rise, and freshwater scarcity, the right to an adequate standard of living and adequate housing which form part of the right to health under the *American Declaration of the Rights and Duties of Man* (‘*American Declaration*’) are also directly threatened.⁴⁴

IV. Terminology

23. ‘Climate refugees’ is a phrase often used in the media to describe people who are forced to move from their homes due to climate-related events, but it is not a term recognized in international law and engenders confusion about the notion of refugee, a normative category that has served to protect millions of people in need of asylum since the 1951 Refugee Convention was adopted. Most climate-related displacement occurs within countries, whereas the 1951 Refugee Convention offers protection only to those fleeing across an international border to find safety. Although displacement in the context of climate change or disasters is not explicitly covered by the 1951 Convention or regional refugee law instruments, (as outlined in section VI below) the Convention and other refugee law instruments can apply, including when an individual’s risk of persecution is related to the effects of climate change.

24. ‘Natural’ disasters is also a misnomer, as there is always a human dimension to how the impacts of a disaster or the effects of climate change are managed in a society. UNHCR and others recognize that disasters ‘are not “natural” but rather are the combined result of exposure to a natural hazard with an affected community’s adaptive capacity based on their pre-existing

³⁸ *Ibid.*, World Bank, *Water Matters*, p. 19.

³⁹ IDMC 2023 Global Report found that ‘75% of the countries assessed as facing crisis levels of food security have IDPs.’ See also, section on the Americas at p. 71-79. IDMC, Global report 2023, note 29 above.

⁴⁰ World Bank, *Water Matters*, note 37 above, p. 67-68.

⁴¹ The World Bank, *Promoting Climate Change Action in Latin America and the Caribbean*, April 14, 2021: <https://www.worldbank.org/en/results/2021/04/14/promoting-climate-change-action-in-latin-america-and-the-caribbean>. See also, Emilio Sempris, *Climate Change and Freshwater in Latin America and the Caribbean*, note 36 above.

⁴² World Health Organization, *Dengue – the Region of the Americas*, 19 July 2023: <https://www.who.int/emergencies/disease-outbreak-news/item/2023-DON475>.

⁴³ For a discussion on the content of the right to health in international human rights law and regional laws in the Americas, see IACtHR, *Case of Poblete Vilches et al. v Chile*, Judgment of March 8, 2018 (Merits, reparations and costs): https://corteidh.or.cr/docs/casos/articulos/seriec_349_ing.pdf. On the right to adequate housing, see also, UN General Assembly, *The right to adequate housing: note by the Secretary-General*, 6 August 2009, A/64/255: www.refworld.org/docid/4aa762e10.html, paras 26, 37 and 44.

⁴⁴ OAS, *American Declaration of the Rights and Duties of Man*; adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948: www.refworld.org/docid/3ae6b3710.html, Article XI.

vulnerabilities.’⁴⁵ The UN Office for Disaster Risk Reduction (UNDRR) defines a disaster as a ‘serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts’.⁴⁶ The International Law Commission’s draft articles on the protection of persons in the event of disasters define disaster to mean: ‘a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or largescale material or environmental damage, thereby seriously disrupting the functioning of society.’⁴⁷

V. Climate impacts, displacement and human rights

25. The adverse impacts of climate change and disasters have diverse consequences on States and communities, as well as the well-being and enjoyment of rights by individuals, as articulated by various judicial outcomes.⁴⁸

26. All human rights are grounded in the concept of human dignity which underpins the *Universal Declaration of Human Rights* (‘UDHR’),⁴⁹ the *International Covenant on Civil and Political Rights*⁵⁰, and the *International Covenant on Economic, Social and Cultural Rights*.⁵¹ The duty to respect and protect dignity is affirmed in the *American Declaration*⁵² and is also recognized in the *American Convention*.⁵³ It is stated in numerous regional conventions and

⁴⁵ UNHCR, *Key Concepts: On Climate Change and Disaster Displacement*: <http://www.unhcr.org/protection/environment/5943aea97/keyconcepts-climate-change-disaster-displacement.html>, p. 1.

⁴⁶ UN Office for Disaster Risk Reduction, ‘Terminology: Disaster’: <https://www.undrr.org/terminology/disaster>.

⁴⁷ International Law Commission, ‘Draft Articles on the Protection of Persons in the Event of Disasters, with Commentaries’, Vol II, Part Two Yearbook of the International Law Commission, 2016, https://legal.un.org/ilc/texts/instruments/english/commentaries/6_3_2016.pdf, Draft Article 3(a).

⁴⁸ IACtHR, *Advisory Opinion OC-23/17 - Environment*, note 27 above, para. 47; IACtHR, *Kawas-Fernández v. Honduras*, 3 April 2009: www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf, para. 148; UN Human Rights Committee, *Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 7 January 2020: www.refworld.org/cases/HRC.5e26f7134.html, paras. 9.4 to 9.14; ECtHR, *Cordella and Others v. Italy* (24 January 2019): www.refworld.org/cases/ECHR.5e67caf54.html, para. 157; ECtHR, *Özel and others v. Turkey* (17 November 2015): www.refworld.org/cases/ECHR.5e67cb9f4.html, para. 171; *AC (Tuvalu)*, [2014] NZIPT 800517-520, New Zealand: Immigration and Protection Tribunal, 4 June 2014: www.refworld.org/cases/NZ_IPT.585151694.html; para. 59. See also, Report of the Special Rapporteur on Extreme Poverty and Human Rights: *Climate Change and Poverty*, UN A/HRC/41/39, 17 July 2019, www.undocs.org/A/HRC/41/39. See further, Sanjula Weerasinghe, *In Harm’s Way: International Protection in the Context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change*, UNHCR 2018: www.refworld.org/docid/5c2f54fe4.html.

⁴⁹ UN General Assembly, *Universal Declaration of Human Rights* (‘UDHR’), 10 December 1948, 217 A (III): www.refworld.org/docid/3ae6b3712c.html.

⁵⁰ UN General Assembly, *International Covenant on Civil and Political Rights* (‘ICCPR’), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171: www.refworld.org/docid/3ae6b3aa0.html.

⁵¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, (‘ICESCR’) 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3: www.refworld.org/docid/3ae6b36c0.html.

⁵² *American Declaration*, note 44 above, preamble.

⁵³ ‘Everyone has the right to have his honor respected and his dignity recognized.’ Article 11 (1), *American Convention*, note 6 above.

declarations,⁵⁴ as well as national constitutions and charters of rights.⁵⁵ In the Americas, the link between human dignity and the environment was explicitly acknowledged twenty years ago by the OAS General Assembly, in the preamble of the Resolution ‘Human Rights and the Environment in the Americas’, which states that there is ‘a growing awareness of the need to manage the environment in a sustainable manner to promote human dignity and well-being.’⁵⁶

27. The ‘undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights’⁵⁷ has been affirmed by this Court. The Court recalled the preamble to the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*,⁵⁸ which ‘emphasizes the close relationship between the exercise of economic, social and cultural rights – which include the right to a healthy environment – and of civil and political rights, and indicates that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human being.’⁵⁹

28. UNHCR highlights that a landmark decision of the Human Rights Committee and several decisions of this Court affirm the phenomenon of climate change and disasters as an incontrovertible challenge to the enjoyment of human rights, encompassing a spectrum of consequences, which extend to public health affectations, access to land, water and other natural resources and human exploitation and abuse.⁶⁰

29. Climate change also contributes to food insecurity and famines, infringing upon the right to food, as recognized under international and Inter-American human rights instruments. The right to adequate food has been formally recognized in Article 25 of the *UDHR* which establishes food as a vital element for an adequate standard of living, health and well-being of people, while Article

⁵⁴ OAU, *African Charter on Human and Peoples’ Rights*, 27 June 1981, CAB/LEG/67/3 rev. 5: www.refworld.org/docid/3ae6b3630.html, Article 5; *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02: www.refworld.org/docid/3ae6b3b70.html, Article 1; *Treaty on the European Union Consolidated version*, 26 October 2012: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF, Articles 2 and 21.

⁵⁵ *Constitution of the Federative Republic of Brazil*, 5 October 1988: https://www.stf.jus.br/arquivo/cms/legislacaoConstituicao/anexo/brazil_federal_constitution.pdf, Article 1(III); *Constitution of Colombia*, 20 July 1991: <http://secretariassenado.gov.co/constitucion-politica>, Article 21; *The Political Constitution of the Mexican United States*, 5 February 1917, *Constitution of South Africa*, 8 May 1996: <https://www.gov.za/documents/constitution/chapter-2-bill-rights#10>, Article 10; *Spanish Constitution*, 29 December 1978: <https://www.senado.es/web/conocersenado/normas/constitucion/detalleconstitucioncompleta/index.html#t1c2>, Article 10.

⁵⁶ OAS, General Assembly Resolution entitled ‘*Human Rights and the Environment in the Americas*’, adopted at the fourth plenary session held on June 10, 2003, AG/RES. 1926 (XXXIII-O/03): <https://www.oas.org/consejo/GENERAL%20ASSEMBLY/Resoluciones-Declaraciones.asp>.

⁵⁷ IACtHR, *Advisory Opinion OC-23/17 - Environment*, note 27 above, para. 47.

⁵⁸ OAS, *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (“Protocol of San Salvador”), 16 November 1999, A-52: www.refworld.org/docid/3ae6b3b90.html.

⁵⁹ *Advisory Opinion OC-23/17 - Environment*, note 27 above, para. 47.

⁶⁰ See for example, *Teitiota v. New Zealand*, UN HRC, note 48 above. See also Article 5, International Law Commission, *Draft Articles on the Protection of Persons in the Event of Disasters*, 2016: www.refworld.org/docid/5f64dbd54.html.

11 of the *American Declaration*⁶¹ recognizes the right to food as an integral part of the right to health and well-being.

30. In the short-term, the adverse effects of climate change and disasters may be more evident, including material, environmental, and human losses, as well as increased risk of trafficking and exploitation. In the long-term however, the detriments of climate change and disasters may intersect with and exacerbate socio-economic inequality, preexisting vulnerabilities and specific needs, marginalization of specific groups, poverty, discrimination, xenophobia, political and religious dynamics, and poor governance among others.

31. Such vulnerabilities and social characteristics may affect access to a broad array of human rights, as well as State capacity, ability and willingness to respect, protect, promote and fulfill these rights. Ultimately, both immediate and long-term consequences of climate change and disasters may exacerbate risks of human rights violations that could amount to persecution and compel people to leave their country of origin to seek international protection.

VI. Applicability of the 1951 Convention relating to the Status of Refugees

32. As stated above, while the majority of people forced to flee due to the impacts of climate change move within their own countries, there are circumstances when persons are compelled to leave their country of origin or of habitual residence. In 2020, UNHCR issued its *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*⁶² clarifying that people compelled to cross international borders in the context of disasters or events linked to climate change may fall within the international legal definition of a refugee under the 1951 Convention.⁶³

33. No special rules exist for determining refugee claims made in the context of the adverse effects of climate change and disasters. However, the assessment of claims for international protection, as conducted by national asylum authorities,⁶⁴ should not be limited to, nor focus narrowly on the climate change event or disaster as solely or primarily natural hazards. Such a narrow focus might fail to recognize the social and political elements contributing to or being exacerbated by the effects of climate change or the impacts of disasters or their interaction with other drivers of displacement, including conflict or discrimination.⁶⁵ It is important to examine how natural hazards were (or are) handled by State entities, and what effects the response, as well

⁶¹ *American Declaration of the Rights and Duties of Man*; note 44 above.

⁶² UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1 October 2020: www.refworld.org/docid/5f75f2734.html.

⁶³ *Ibid.*, See also, Nansen Initiative, *Protection Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, 2015: https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_low_res.pdf, paras 55- 56, which was endorsed by 109 States in October 2015.

⁶⁴ As set out by this Court, '[t]he right to seek and to receive asylum established in Article 22(7) of the American Convention on Human Rights, read in conjunction with Articles 8 and 25 of this instrument, ensures that the person applying for refugee status must be heard by the State to which he applies, with due guarantees and in the corresponding proceeding.' IACtHR, *Pacheco Tineo Family Case v. Bolivia* ('*Pacheco Tineo*'), Preliminary Exceptions, Merits, Reparations and Costs, Judgment of November 25, 2013. Series C No. 272: www.refworld.org/cases/IACRTHR.53ce2cee4.html, para. 154.

⁶⁵ UNHCR, *Legal considerations*, note 62 above, para. 5.

as the hazard itself, have on society and the well-being and enjoyment of human rights of its people and communities to determine if it amounts to persecution. ‘If a narrow view is taken of the effects of climate change and disasters, there is a risk that decision-makers may decide that refugee law is inapplicable and deny access to refugee status determination (RSD).’⁶⁶

34. Like any other asylum claim, one made in the context of climate change or a disaster must show that the claimant meets the criteria set out in Article 1A(2) of the 1951 Convention.⁶⁷ In accordance with the ordinary meaning to be given to the terms of Article 1A(2) in their context, as well as the object and purpose of the 1951 Convention,⁶⁸ the refugee definition requires a well-founded fear of being persecuted for one or more grounds, from which the authorities of the country of origin are unable or unwilling to provide protection.⁶⁹

35. In relation to the assessment of claims for international protection under the 1951 Convention, all constituent elements of the refugee definition must be considered. These constituent elements are examined separately below. Their application should nevertheless be considered together as the refugee definition comprises one holistic test.⁷⁰

Well-founded fear of being persecuted

36. Climate change and disasters may affect the enjoyment of human rights because of human exposure and vulnerability to their impacts, as well as State capacity, ability, and willingness to provide protection.⁷¹ Climate change and disasters may limit access to and control over land, natural resources, livelihoods, individual rights, freedoms, and lives, which may threaten, among others, the enjoyment of the right to life; physical integrity; an adequate standard of living; health, water and sanitation; and self-determination and development.⁷² Populations may be gradually or immediately affected or suffer longer-term diminutions in their enjoyment of human rights. Both in the short and longer-term, affected populations may be exposed to a risk of human rights violations that amount to persecution within the meaning of the 1951 Convention.⁷³

⁶⁶ UNHCR, *Legal considerations*, note 62 above, para. 5.

⁶⁷ UNHCR, *Legal considerations*, note 62 above, para. 6.

⁶⁸ *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331: www.refworld.org/docid/3ae6b3a10.html, Article 31(1).

⁶⁹ Article 1A(2) of the 1951 Convention states: [T]he term "refugee" shall apply to any 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... 1951 Convention, note 7 above.

⁷⁰ UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001: www.refworld.org/docid/3b20a3914.html, para. 7.

⁷¹ Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches*, February 2012, PPLA/2012/01; www.refworld.org/docid/4f38a9422.html, p. 64. IACtHR, *Advisory Opinion OC-23/17 - Environment*, note 27 above, para. 47. IACtHR, *Kawas-Fernández v. Honduras*, note 48 above, para. 148.

⁷² Special Rapporteur on Extreme Poverty and Human Rights, note 48 above; *Teitiota v. New Zealand*, note 48 above, paras. 9.4 to 9.14. See also, M. Foster, *International Refugee Law and Socio-Economic Rights*, CUP 2007, outlining that ‘persecution’ within the meaning of Article 1A(2) of the 1951 Convention encompasses a wide range of claims related to economic and social rights.

⁷³ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/1P/4/ENG/REV. 4: www.refworld.org/docid/5cb474b27.html, paras 51-55.

living and working in rural areas (*campesinos*) relying on natural resources for their livelihoods, will be especially at risk.⁸¹

40. A well-founded fear of being persecuted may also arise for environmental defenders, activists, community leaders, or journalists who are targeted for defending, conserving and reporting on ecosystems and resources⁸² or on government responses to climate change and disasters, which may be considered a political stance. For example, a Guatemalan environmental activist threatened by authorities was granted protection in the US after being forced to flee.⁸³ The Inter-American Commission on Human Rights (IACHR) has detailed the human rights situation and the risks faced by environmental defenders in Northern Central America. Their report highlights the heightened dangers faced by defenders in areas where there is exploitation of natural resources in connection with mining, energy projects, agriculture, excessive and/or illegal logging, and tourism or real-estate development.⁸⁴

41. Further, during disaster risk reduction and preparedness phases (before a disaster occurs), or in the aftermath of a disaster, particular populations or groups may be willfully neglected or left out, leading to some being disproportionately affected or even targeted for mistreatment. As a result, members of such populations or specific groups may have a well-founded fear of being persecuted, for example, due to discriminatory resource usage and depletion or denial of access to resources.⁸⁵

42. The adverse effects of climate change and disasters may give rise to social, economic or political pressures. Thus, it is important to also consider the capacity and will of a State to prevent or respond adequately to the adverse consequences of climate change and impacts of disasters. This may vary for distinct demographic groups or geographical areas, depending or based on distinctions in race, ethnicity, religion, politics, gender or any other social categorization. These disparities can encompass instances where authorities abstain from or assigns lower priority to safeguarding specific populations, something that can be manifested in the denial of relief assistance, the politicization of post-disaster relief or reconstruction efforts or negligence in the face of environmental degradation or diminished natural resources – including water, land and other considered essential for the well-being or survival of affected communities.

⁸¹ Committee on the Elimination of Discrimination Against Women ('CEDAW'), *General Recommendation No. 37 (2018) on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change*, CEDAW/C/GC/37, 13 March 2018: www.undocs.org/CEDAW/C/GC/37.

⁸² IUCN, *Gender-based violence and Environment linkages*, note 80 above, chapter 5.

⁸³ US, *Pena-Lojo v. Attorney General*, WL 5149759, 2021. See also, Australia RRTA *Case No. 0903555*, 2010, in which an individual involved in relief efforts following Cyclone Nargis was subjected to government extortion and threats because of their ethnic, religious and/or political characteristics.

⁸⁴ Inter-American Commission on Human Rights, *Report on the Situation of Environmental Human Rights Defenders in the Northern Central American Countries*, OEA/Ser.L/V/II, Doc. 400/22, 16 December 2022: https://www.oas.org/es/cidh/informes/pdfs/2023/NorteCentroamerica_MedioAmbiente_ES.pdf.

⁸⁵ In *AF (Kiribati)*, the tribunal noted that '[s]tudies conducted in the aftermath of famine and other natural disasters provide evidence of a political weighting of state response in which the recovery needs of marginalised groups are sometimes not met.' *AF (Kiribati)*, note 75 above, para. 58. See also, Matthew Scott, who articulates an approach to understanding disasters as deeply social events within which existing patterns of discrimination and marginalisation are exacerbated. M. Scott, *Finding Agency in Adversity: Applying the Refugee Convention in the Context of Disasters and Climate Change*, *Refugee Survey Quarterly*, Volume 35, Issue 4, December 2016, pages 26–57: https://www.researchgate.net/publication/319349270_Finding_Agency_in_Adversity_Applying_the_Refugee_Convention_in_the_Context_of_Disasters_and_Climate_Change.

43. It could also include situations in which a government withholds or deprioritizes protection by denying relief aid to specific populations;⁸⁶ where post-disaster relief is politicized;⁸⁷ or where the environment, its natural resources or ancestral lands are deliberately destroyed to persecute particular populations; for example, promoting or deliberately failing to prevent environmental degradation ‘as a direct weapon of oppression against an entire section of the population.’⁸⁸ Further, where the adverse effects of climate change or disasters lead to food insecurity or famine⁸⁹ and where the State is unwilling or unable to ensure non-discriminatory access to food for certain groups, the risk of persecution for those groups may arise.⁹⁰

44. Also relevant are situations where a government does not establish appropriate measures for preventing disasters, with the result that a particular population is disproportionately affected.⁹¹ For example, the European Court of Human Rights (‘ECtHR’) found violations of the right to life (Article 3 ECHR) where the State was aware, and indeed warned, of environmental risks - namely, a methane explosion in Turkey⁹² and mudslides in Russia⁹³ - but had failed to take any preventative measures. The ECtHR affirmed that the right to life ‘does not solely concern deaths resulting from the use of force by agents of the State but also [...] lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction’ and stressed that ‘[t]his positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective

⁸⁶ UNHCR, Summary of Deliberations on Climate Change and Displacement, April 2011: www.refworld.org/docid/4d9f22b32.html, para. 8. See also, J. C. Hathaway and M. Foster, who note that if in the aftermath of a flood or earthquake, a government ‘chose to limit its relief efforts to those victims who were members of the majority race, forcing a minority group to flee to another country in order to avoid starvation or exposure, a claim to refugee status should succeed because the harm feared is serious, bespeaks a failure of state protection, and the requisite linkage to civil or political status is present.’ *The Law of Refugee Status*, 2nd ed. Cambridge University Press, 2014. p. 176.

⁸⁷ In *Refugee Appeal No. 76374*, refugee status was granted to a woman engaged in disaster-relief work following Cyclone Nargis in Burma in May 2008 on the basis that the ‘regime will in all probability impute a negative political opinion to the appellant for her independent facilitation of disaster-relief activity as it has done with others.’ *Refugee Appeal No. 76374*, New Zealand Refugee Status Appeals Authority, 28 October 2009: www.refworld.org/cases,NZL_RSAA,4afc31da2.html. See also: *AF (Kiribati)*, note 75 above, para. 69.

⁸⁸ *AF (Kiribati)*, note 75 above, para. 59, referring to the situation of Iraqi Marsh Arabs following the first Gulf War. See also, J. McAdam, *Climate Change, Forced Migration and International Law*, Oxford University Press, 2012, p. 48.

⁸⁹ People displaced solely by famine in many cases are not refugees under the 1951 Convention. However, where famine is linked to situations of armed conflict and violence, people would fall within the refugee criteria of the 1951 Convention. UNHCR, *Legal considerations on refugee protection for people fleeing conflict and famine affected countries*, 5 April 2017: www.refworld.org/docid/5906e0824.html.

⁹⁰ See for example, being denied food aid provided to ruling party supporters following the collapse of the economy in Zimbabwe on the basis of the applicant’s ethnicity and gender: *Refugee Appeal No. 76237*, No. 76237, New Zealand: Refugee Status Appeals Authority, 15 December 2008: www.refworld.org/cases,NZL_RSAA,49632bda2.html. Similarly, in the UK the tribunal found that excluding a person from accessing food aid on the basis of a political opinion or imputed political opinion amounted to persecution and granted the applicant refugee status: *RN (Returnees) Zimbabwe v. Secretary of State for the Home Department*, [2008] UKAIT 00083, United Kingdom: Asylum and Immigration Tribunal, 19 November 2008: [https://www.refworld.org/cases,GBR_AIT,49243bcb2.html](http://www.refworld.org/cases,GBR_AIT,49243bcb2.html).

⁹¹ McAdam, note 88 above, p. 48.

⁹² ECtHR, *Öneryildiz v. Turkey*, Application 48939/99, judgment of 30 November 2004: <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D,%22itemid%22:%5B%22001-67614%22%5D%7D>.

⁹³ ECtHR, *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008: <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2215339/02%22%2C%2215343/02%22%2C%2220058/02%22%2C%2221166/02%22%2C%2211673/02%22%5D,%22itemid%22:%5B%22001-85436%22%5D%7D>.

deterrence against threats to the right to life.’⁹⁴ It is important to recall that ‘primary responsibility lies with States for preventing displacement when possible and, when it cannot be avoided, for protecting displaced people as well as finding durable solutions for their displacement.’⁹⁵

Interaction with conflict and/or violence

45. Many countries are affected by both conflict and disaster that interact and overlap as triggers and drivers of displacement. The connection between the adverse effects of climate change and other drivers of displacement is, therefore, complex and manifests in context-specific ways. People fleeing conflict or violence which may be caused or exacerbated by the effects of climate change and disaster, rendering the State unable or unwilling to protect the victims and leaving them at risk of persecution.⁹⁶

46. Climate change may in some cases act as a ‘threat multiplier’, exacerbating tensions over depleted resources or interacting with elements of conflict or violence. Climate change is amplifying extreme weather events, exacerbating the vulnerability of subsistence livelihoods and food systems, and testing peaceful coexistence. Tensions between communities already living on the edge risk being aggravated by climate stress on water, food, pasture, forests and other resources key to their survival, sometimes leading to violence.⁹⁷

VII. Applicability of the 1984 Cartagena Declaration refugee definition

47. According to the broader refugee criteria contained in the *1984 Cartagena Declaration on Refugees* (‘*Cartagena Declaration*’):⁹⁸

[T]he definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression,

⁹⁴ *Ibid.*, paras 128-129.

⁹⁵ UNHCR and Inter-Parliamentary Union, *A guide to international refugee protection and building state asylum systems*, 2017, Handbook for Parliamentarians N° 27: www.refworld.org/docid/5a9d57554.html, p. 150.

⁹⁶ For example, people displaced by conflict in Sudan and South Sudan in 2019, where control of natural resources, including fertile land, was a strategic objective of both warring sides in the context of desertification and other climate change effects in the region. See *The Independent*, ‘South Sudan, where a water crisis is leading to child kidnappings and rape’, <https://www.independent.co.uk/news/world/africa/south-sudan-water-crisis-war-conflict-women-a8853176.html>, 2019; Humanitarian Practice Network: *Environmental degradation and conflict in Darfur: implications for peace and recovery*, <https://odihpn.org/publication/environmental-degradation-and-conflict-in-darfur-implications-for-peace-and-recovery/>, 2018.

⁹⁷ For example, in northern Cameroon in 2021, hundreds of people were killed and tens of thousands fled to safety within Cameroon and to neighbouring Chad following violence between herders and fishermen that was sparked by dwindling water resources linked to climate change. See, UNHCR, *Climate change fuels clashes in Cameroon that force thousands to flee*, 9 September 2021: <https://www.unhcr.org/news/stories/climate-change-fuels-clashes-cameroon-force-thousands-flee>.

⁹⁸ *Cartagena Declaration*, note 8 above.

internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.⁹⁹

48. While not a treaty, the Cartagena refugee definition has attained a particular standing in the Americas region, not least through its incorporation into national laws and its application in practice.¹⁰⁰ States in the Americas have recognized its value through regional instruments such as the *San Jose Declaration on Refugees and Displaced Persons* (1994)¹⁰¹, the *Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America* (2004),¹⁰² the *Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas* (2011),¹⁰³ the *Brazil Declaration and Plan of Action* (2014)¹⁰⁴ and the *100 Points of Brasilia* (2018).¹⁰⁵

49. The legal value of the Cartagena refugee definition and its application has also been recognized by this Court¹⁰⁶ and the Inter-American Commission of Human Rights.¹⁰⁷ Its interpretation is to be informed by international and regional law, especially the standards of the *American Declaration*, the *American Convention*, and the evolving case law of the Inter-American human rights bodies.¹⁰⁸ The authority of the regional refugee definition has also been reaffirmed by the Group of Latin-American and Caribbean countries (GRULAC)¹⁰⁹ and the General Assembly of the Organization of American States (OAS).¹¹⁰ Moreover, this Court has found that

⁹⁹ *Ibid.*, para. III(3). The expanded definition in the *Cartagena Declaration* is similar to that found in the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. Article I (2) provides refugee protection to, inter alia, “every person who, owing to ... events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

¹⁰⁰ Fifteen countries have incorporated the regional definition into their national legislation, and it has been applied in practice in situations of large-scale movements even in countries where the definition has not been incorporated into their domestic legislation. Higher courts have also acknowledged the fundamental value of the Cartagena Declaration.

¹⁰¹ *San José Declaration on Refugees and Displaced Persons*, 7 December 1994:

www.refworld.org/docid/4a54bc3fd.html.

¹⁰² *Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America*, 16 November 2004: https://www.oas.org/dil/mexico_declaration_plan_of_action_16nov2004.pdf.

¹⁰³ *Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas*, 11 November 2010: www.refworld.org/docid/4cdd44582.html.

¹⁰⁴ *Brazil Declaration and Plan of Action*, 3 December 2014: www.refworld.org/docid/5487065b4.html.

¹⁰⁵ *The 100 Points of Brasilia: Inputs from Latin America and the Caribbean to the Global Compact on Refugees*, 22 February 2018, <https://www.acnur.org/fileadmin/Documentos/BDL/2018/11590.pdf>.

¹⁰⁶ See, IACtHR, *Advisory Opinion OC-21/14 - Children*, note 27 above, paras 76, 77, 79 and 249; IACtHR, *Advisory Opinion OC-25/18, The Institution of Asylum, and its Recognition as a Human Right under the Inter-American System of Protection (Interpretation and Scope of Articles 5, 22(7) and 22(8) in Relation to Article 1(1) of the American Convention on Human Rights)*, (‘*Advisory Opinion OC-25/18 - Institution of Asylum*’), 30 May 2018: www.refworld.org/cases,IACRTHR,5c87ec454.html, para. 132.

¹⁰⁷ IACHR, *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless People, and Victims of Trafficking in Persons*, note 23 above.

¹⁰⁸ UNHCR, *Guidelines on International Protection No. 12*, note 74 above, para. 64.

¹⁰⁹ GRULAC, *Persons Covered by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees* (Submitted by the African Group and the Latin American Group), 6 April 1992: www.unhcr.org/refworld/docid/3ae68cd214.html.

¹¹⁰ OAS General Assembly, Resolutions AG/RES. 774 (XV-O/85) (1985); AG/RES. 838 (XVI-O/86) (1986); AG/RES. 891 (XVII-O/87) (1987); AG/RES. 951 (XVIII-O/88) (1988); AG/RES. 1021 (XIX-O/89) (1989); AG/RES/1040 (XX-O/90) (1990); AG/RES. 1170 (XXII-O/92) (1992); AG/RES. 1214 (XXIII-O/93) (1993); AG/RES 1273 (XXIV-O/94) (1994); AG/RES. 1336 (XXV-O/95) (1995); AG/RES. 1416 (XXVI-O/96) (1996); AG/RES. 1504 (XXVII-O/97) (1997); AG/RES. 1602 (XVIII-O/98) (1998); AG/RES. 1693 (XXIX-O/99) (1999); AG/RES. 1762 (XXX-O/00) (2000); AG/RES. 1.832 (XXXI-O/01) (2001); AG/RES 1892 (XXXII-O/02) (2002); AG/RES. 1971 (XXXIII-

‘in light of the progressive development of international law, the Court has considered that the obligations deriving from the right to seek and receive asylum are operative with respect to those persons who meet the requirements of the expanded definition of the Cartagena Declaration.’

Circumstances which have seriously disturbed public order

50. While the Cartagena Declaration does not provide a legal definition for the concept of “disturbing public order,” in UNHCR’s view, the broad scope of the language can encompass climate or environmental disasters.

51. The UN has defined a disaster as “[a] serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts”.¹¹¹ Further, “[t]he effect of the disaster can be immediate and localized, but is often widespread and could last for a long period of time. The effect may test or exceed the capacity of a community or society to cope, using its own resources, and therefore may require assistance from external sources, which could include neighbouring jurisdictions, or those at the national or international levels”.¹¹²

52. The concept of “public order” does not have a single meaning under international law. In the context of the *Cartagena Declaration* (and the *1969 OAU Convention*), and in light of the humanitarian and protection oriented purpose of the Convention,¹¹³ it encompasses the prevailing level of the administrative, social, political and moral order as assessed according to the effective functioning of the State in relation to its population and based on respect for the rule of law and human dignity to such an extent that the life, security and freedom of people are protected.¹¹⁴ A “disturbance” to public order occurs when there is a disruption to the effective, normal and stable functioning of this order.

53. As one academic expert has noted in the context of the refugee definition in the *OAU Convention* ‘public order’ refers to:

“the maintenance of societal stability, demonstrated by a predominant state of public peace, public safety and public security, and underpinned by the effective operation of the rule of law and the protection of individuals’ rights and freedoms within the

O/03) (2003); AG/RES. 2047 (XXXIV-O/04) (2004); AG/RES. 2232 (XXXVI-O/06) (2006); AG/RES. 2296 (XXXVII-O/07) (2007); AG/RES. 2402 (XXXVIII-O/08) (2008); AG/RES. 2511 (XXXIX-O/09) (2009); AG/RES. 2597 (XL-O/10) (2010); AG/RES. 2826 (XLIV-O/14) (2014); AG/RES. 2887 (XLVI-O/16) (2016); AG/RES. 2908 (XLVII-O/17) (2017); AG/RES. 2941 (XLIX-O/19) (2019); AG/CG/doc.2 (L-O/20) rev. 1 (2020); AG/RES. 2976 (LI-O/21) (2021).

¹¹¹ UNDRR, Terminology: Disaster, note 46 above. See also, UNHCR, Key Concepts on Climate Change and Disaster Displacement: www.unhcr.org/protection/environment/5943aea97/key-concepts-climate-change-disaster-displacement.html.

¹¹² UNDRR, Terminology: Disaster, note 46 above.

¹¹³ UNHCR, *Guidelines on International Protection No. 12*, note 74 above, para. 46, and regarding the *Cartagena Declaration*, para. 65.

¹¹⁴ UNHCR, *Guidelines on International Protection No. 12*, note 74 above, paras 56 and 78; A. Edwards, “*Refugee Status Determination in Africa*”, *African Journal of International and Comparative Law* (2006) 14, pp. 204-233, at p. 220; M. Sharpe, *The Regional Law of Refugee Protection in Africa*, OUP 2018, p. 49. UN Economic and Social Council, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, www.refworld.org/docid/4672bc122.html, para. 22.

society, including the right to enjoy a life of dignity. When these public order elements are undermined, there will be a *disturbance* to public order. These elements therefore represent the yardsticks by which a public order disturbance can be measured.”¹¹⁵

54. The “serious” threshold may embrace quantitative and qualitative dimensions and must be assessed on a case-by-case basis, taking account of the nature and duration of the disruption and its consequences for the security and stability of the State and society.¹¹⁶ The seriousness of a disturbance to public order should be assessed according to the nature, extent and duration of the disturbance. A disturbance to public order will meet the threshold of “serious” where it involves a widespread or generalised threat to the rights to life, physical integrity and/or liberty of individuals in a society, such that the disturbance can be said to affect society at large, and the state is unable or unwilling to restore public order.¹¹⁷ A serious disturbance of public order may either be prompted by one-off acts, incidents, or events or a series of such. Events of a systematic or cumulative nature may directly or indirectly create a serious disturbance to public order to which the state is either unwilling or unable to provide protection.¹¹⁸

55. Whether a disturbance to public order stems from human or other causes is not determinative for concluding a serious disturbance of public order;¹¹⁹ the central concern is the effect of a given situation. Accordingly, the principal inquiry at the time of assessing a claim for refugee status is whether a serious disturbance to public order exists as a matter of fact, based on an assessment of available evidence.¹²⁰ Requiring a refugee decision maker to distinguish between categories of “natural” or “human-made” events, as opposed to focusing on the factual indicators of a disturbance to public order regardless of its cause, could therefore undermine the effectiveness of the definition in practice.¹²¹ As a result, ‘the phrase “events seriously disturbing public order” should be interpreted as requiring a factual determining of a disturbance, regardless of whether any identifiable cause is due to predominantly human or “natural” factors.’¹²²

56. In practice, the expanded definition in the *Cartagena Declaration* has been applied to a number of Haitians impacted by the 2010 Haitian earthquake ‘based on the consequences of the

¹¹⁵ Cleo Hansen Lohrey, *Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change*, (Assessing serious disturbances’), 27 September 2023, PPLA/2023/01: www.refworld.org/docid/651422634.html, p. 51.

¹¹⁶ UNHCR, *Guidelines on International Protection No. 12*, note 74 above, para. 56, with para. 59 including several factual indicators such as a declared state of emergency, the closure of schools, and a lack of food and vital services.

¹¹⁷ Cleo Hansen Lohrey, *Assessing serious disturbances*, note 115 above, p. 51.

¹¹⁸ UNHCR, *Guidelines on International Protection No. 12*, note 74 above, para. 57.

¹¹⁹ T. Wood, ‘Who is a Refugee in Africa? A Principled Framework for Interpreting and Applying Africa’s Expanded Refugee Definition’, (2019) 31 *International Journal of Refugee Law*, pp. 311-313, <https://academic.oup.com/ijrl/issue/31/2>, p. 307.

¹²⁰ UNHCR *Guidelines on International Protection No. 12*, note 74 above, para. 59 lists a number of factual indicators for events seriously disturbing public order.

¹²¹ Cleo Hansen Lohrey, *Assessing serious disturbances*, note 115 above, p. 28.

¹²² *Ibid.*, p. 29.

disaster, such as heightened political instability and insecurity’ by some countries in the region, namely, Ecuador, Panama, Colombia, Peru,¹²³ and Mexico.¹²⁴

VIII. Relevant principles of international refugee and human rights law

The right to seek and enjoy asylum

57. Under international law, states have the sovereign power to regulate the entry of foreigners into their territory. However, international law also provides that measures to this effect may not prevent foreigners from seeking and enjoying asylum from persecution. The right to seek and enjoy asylum is a basic human right which derives from Article 14(1) of the *Universal Declaration of Human Rights*¹²⁵ and is supported in particular by the legal framework established by the 1951 Convention.

58. The right is further cemented in Article XXVII of the *American Declaration* which states:¹²⁶

Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.

59. This right has also been recognized in Article 22(7) of the *American Convention on Human Rights*¹²⁷ and other regional instruments.¹²⁸ Seeking asylum is not an unlawful act.¹²⁹

60. The IACtHR has recognized that both Article 22(7) of the *American Convention* and Article XXVII of the *American Declaration* have enshrined the subjective right of all persons to seek and receive asylum, thereby overcoming the historical understanding of this mechanism as a “mere State prerogative” under various inter-American conventions on asylum.¹³⁰

The principle of non-refoulement under Refugee Law

¹²³ Ama Francis, *Global Governance of Environmental Mobility: Latin America & the Caribbean*, Sabin Center for Climate Change Law, Columbia Law School, May 2021:

https://scholarship.law.columbia.edu/sabin_climate_change/36/, p. 10, cited in the Center for Gender & Refugee Studies, Practice advisory - Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters, p. 8, fn, 33.

¹²⁴ See also, Ana Martin Gil et al., *How Can We Protect Climate Refugees?*, Rice University Baker Institute for Public Policy, 13 October 2022: <https://www.bakerinstitute.org/research/how-can-we-protect-climate-refugees>.

¹²⁵ Article 14.1: Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. *UDHR*, note 49 above.

¹²⁶ *American Declaration of the Rights and Duties of Man*, note 44 above.

¹²⁷ *American Convention*, note 6 above.

¹²⁸ Article 18 *Charter of Fundamental Rights of the European Union*, note 54 above, and Article 12.3: OAU, *African Charter on Human and Peoples' Rights*, 54 note above.

¹²⁹ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 1, para. 11: www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html. As António Guterres, the UN Secretary General and former UN High Commissioner for Refugees has stated: ‘[i]t is not a crime to cross a border to seek asylum’: www.unhcr.org/news/press/2015/9/55f9a70a6/unhcr-urges-europe-change-course-refugee-crisis.html.

¹³⁰ IACtHR, *Advisory Opinion OC-21/14 - Children*, note 27 above, para. 73; IACtHR, *Pacheco Tineo*, note 64 above, paras 154, 155.

61. Central to the exercise of the right to seek asylum is the obligation of States not to expel or return (*refouler*) a person to territories where his or her life or freedom would be threatened. The principle of *non-refoulement* constitutes the cornerstone of international refugee protection¹³¹ and is most prominently expressed in Article 33(1) of the 1951 Convention which states:

No Contracting State shall expel or return (*refouler*) a refugee¹³² in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.¹³³

62. The principle of non-refoulement constitutes an essential binding and non-derogable component of international refugee protection,¹³⁴ has been restated in international¹³⁵ and regional human rights instruments¹³⁶ and has been reaffirmed by the ExCom in numerous Conclusions.¹³⁷

63. The principle of non-refoulement is a norm of customary international law¹³⁸ as recognized in the *Cartagena Declaration* which states:

¹³¹ IACtHR, *Pacheco Tineo*, note 64 above, para. 151, IACtHR, *Advisory Opinion OC-21/14 - Children*, note 27 above, para. 209.

¹³² 'In view of the declarative nature of the determination of refugee status, the protection provided by the principle of *non-refoulement* applies to all refugees, even if they have not yet been deemed refugees by authorities based on the requirements of the definition of Article 1 of the 1951 Convention and its 1967 Protocol or by domestic legislation. [...] This necessarily means that such persons may not be rejected at the border or expelled without an adequate and individualized examination of their requests.' IACtHR, *Advisory Opinion OC-21/14 - Children*, note 27 above, para. 210. See also, UNHCR, *Handbook*, note 73 above, para. 28.

¹³³ Article 33 (1) of the *1951 Convention*, note 7 above.

¹³⁴ Article 42(1) of the *1951 Convention* and Article VII(1) of the *1967 Protocol*, list Article 33 as one of the provisions of the 1951 Convention to which no reservations are permitted.

¹³⁵ An explicit refoulement provision is contained in Article 3 of the *1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations, Treaty Series, vol. 1465, p. 85, art. 3: www.refworld.org/docid/3ae6b3a94.html. The *International Covenant on Civil and Political Rights*, note 50 above, as interpreted by the UN Human Rights Committee also encompasses the obligation not to extradite, deport, expel or otherwise remove a person from a State's territory where there are substantial grounds for believing that there is a real risk of irreparable harm.

¹³⁶ In the Americas, the principle of non-refoulement is enshrined in Article 22(8) of the *American Convention on Human Rights*, which provides that 'in no case may an alien be deported or returned to a country, regardless of whether or not it is country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.' The European Court of Human Rights has held that *non-refoulement* is an inherent obligation under Article 3 of the *European Convention on Human Rights* which states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.' See for example, the Court's judgment in *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, 23 February 2012, para. 114: www.refworld.org/docid/4f4507942.html.

¹³⁷ See ExCom Conclusions No. 29 1983, para. (c); No. 50 1988, para. (g); No. 52 1988, para. (5); No. 55 1989, para. (d); No. 62 1990, para. (a) (iii); No. 65 1991, para. (c); No. 68 1992, para. (e); 71 1993, para. (g); 74 1994, para. (g); 77 1995, para. (a); 81 1997, para. (h); 82 1997, para. (d)(i); No. 85 1998, para. (q); No. 91 2001, para. (a); No. 94 2002, para. (c)(i); No. 99 2004, para. (1); No. 103 2005, para. (m); and No. 108 2008, para. (a): UNHCR, *Conclusions on International Protection*, note 15 above.

¹³⁸ For an overview of the principle of non-refoulement as a norm of customary law, see UNHCR, *Note on the Principle of Non-Refoulement*, November 1997: www.refworld.org/docid/438c6d972.html; and Elihu Lauterpacht, Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement*, in Feller, Turk and Nicholson (eds.), *Refugee protection in international law: UNHCR's global consultations on international protection* (Cambridge University Press, 2003): www.refworld.org/docid/470a33af0.html, paras 193-253; and UNHCR, Declaration of States Parties to the 1951 Convention and or its 1967 Protocol relating to the Status of Refugees, 16 January 2002, HCR/MMSP/2001/09, preamble para. 4: www.unhcr.org/refworld/docid/3d60f5557.html.

the importance and meaning of the principle of non-refoulement (including the prohibition of rejection at the frontier) as a cornerstone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of *jus cogens*.¹³⁹

64. This Court has also affirmed that the principle of *non-refoulement* constitutes a norm of customary international law¹⁴⁰ and is, consequently, binding for all States, whether or not they are parties to the 1951 Convention. This Court has also established that the principle of non-refoulement ‘is not only fundamental to the right to asylum, but also as a guarantee of various non-derogable human rights, since it is precisely a measure aimed at preserving the life, liberty or integrity of the protected person.’¹⁴¹

The principle of non-refoulement under Human Rights Law

65. Under human rights law, people at risk of serious human rights violations linked to the effects of climate change and disasters may be recognized as needing international protection under non-refoulement obligations. If there is a real risk of being subjected to serious harm, that person may be protected from return in accordance with prohibitions on refoulement, including the right to be protected from irreparable harm by Articles 6 (right to life)¹⁴² and 7 (prohibition of torture and cruel, inhuman or degrading treatment or punishment) of the *International Covenant on Civil and Political Rights*. The adverse effects of climate change and disasters can pose a serious threat to the enjoyment of the right to life, for example, because of increased scarcity of habitable land, limited access to potable water and the lack of alternatives to subsistence livelihoods.

66. In the landmark 2020 *Teitiota v New Zealand* case, the UN Human Rights Committee held that persons whose right to life is threatened because of climate change impacts affecting habitable land, livelihoods and potable water, including due to rising sea levels could be entitled to international protection. The Committee observed that ‘without robust national and international efforts, the effects of climate change in [the state of origin] may expose individuals to a violation of their right under... the [ICCPR], thereby triggering the non-refoulement obligations of sending states.’¹⁴³

67. The Italian Supreme Court of Cassation granted humanitarian protection to a man from the Niger Delta in Nigeria on the grounds that climate change impacts had resulted in threats to

¹³⁹ *Cartagena Declaration*, note 8 above, Conclusion III(5).

¹⁴⁰ IACtHR, *Advisory Opinion OC-25/18 - Institution of Asylum*, note 106 above, para. 181. See also the Inter-American Commission on Human Rights, *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System*, 31 December 2015, OEA/Ser.L/V/II.;Doc. 46/15, p. 207-208: www.refworld.org/docid/5821c778b.html.

¹⁴¹ IACtHR, *Advisory Opinion OC-25/18 - Institution of Asylum*, note 106 above, para. 180.

¹⁴² The UN Human Rights Committee has recognized that the ‘obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.’ UN Human Rights Committee, *General Comment No. 36, Article 6: Right to Life*, 3 September 2019, www.refworld.org/docid/5e5e75e04.html, para. 62.

¹⁴³ *Teitiota v. New Zealand*, note 48 above, para 9.11.

life and dignified existence in the region. The decision establishes that the assessment carried out for the purpose of granting humanitarian protection should consider not only armed conflict scenarios but also situations of social, environmental or climate degradation, and situations in which natural resources are subjected to unsustainable exploitation in the country of origin. It clarifies that humanitarian protection must be granted when, according to the assessment, the situation in the country of origin does not allow for a minimum essential limit of guarantee for the right to life of the individual.¹⁴⁴

The Inter-American System on Human Rights

68. The request recalls the Court's 2017 *Advisory Opinion on the Environment and Human Rights (OC-23-17)*. In *Opinion OC-23-17*, the Court recognized the right to a healthy environment as an individual and autonomous human right, referring to the adverse effects of climate change.¹⁴⁵ The Opinion points to the relevance of the human right to a healthy environment¹⁴⁶ and its close relationship to a series of substantive and procedural rights that have an impact on the life, survival, and development of present and future generations. It recognizes that the American Convention and numerous inter-American and universal human rights and environmental treaties provide a necessary perspective from which to assess the consequences of the climate emergency, and their relevance as essential tools to seek solutions that are considered opportune, just, equitable, and sustainable.

69. The Inter-American System of Human Rights has provided guidance on applicable standards in the context of climate change. In 2019, the Inter-American Commission of Human Rights adopted Resolution 04/19 on *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Trafficking in Persons*, where it recognizes that 'migratory movements require differentiated and individualized forms of protection to treat persons at all stages of international displacement, including those who migrate for humanitarian reasons, economic or environmental (...).'¹⁴⁷ Additionally, in 2021, Resolution 03/21 '*Climate Emergency: Scope and Inter-American Human Rights Obligations*' urged States to guarantee human rights, such as the safeguard of non-refoulement, of people who are mobilized for reasons directly or indirectly associated with climate change.¹⁴⁸

IX. Legal Stay Arrangements or Temporary Protection

70. Without prejudice to the applicability of international and regional refugee and human rights law to claims for international protection made in the context of the adverse effects of

¹⁴⁴ Supreme Court of Cassation, *I.L. v. Italian Ministry of the Interior and Attorney General at the Court of Appeal of Ancona* N. 5022/2021, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210224_Ordinance-N.-50222021-of-the-Italian-Corte-Suprema-di-Cassazione-Sez.-II-Civile_decision.pdf, 2021.

¹⁴⁵ IACtHR, *Advisory Opinion OC-23/17 – Environment*, note 27 above, paras 47, 96, 126.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Trafficking in Persons*, note 23 above, p. 2.

¹⁴⁸ IACHR, *Climate Emergency Scope of Inter-American Human Rights Obligations*, Resolution 3/2021: https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf, para 20.

climate change and disasters¹⁴⁹, a pragmatic way to provide protection for those displaced from the impacts of such are temporary protection or legal stay arrangements ('TPSAs'). TPSAs are a time limited form of protection that provides immediate protection from refoulement and standards of treatment akin to international protection status. They are solutions-oriented, with standards of treatment to be improved if stay is prolonged. In all circumstances, such arrangements must adhere to minimum standards, including legality, accessibility, and access to basic rights.¹⁵⁰

71. TPSAs can contribute to a better managed global response to humanitarian crises or disasters and are particularly useful after a sudden onset disaster or where the situation in the country of origin is fluid or unclear. For example, in the immediate aftermath of a sudden-onset disaster when that country is mobilizing resources, including international assistance, a host country may provide temporary protection. TPSAs may also be used where the host country is experiencing a large-scale influx following a disaster and individual refugee status determination is either not applicable or feasible. As illustrated below, several countries in the Americas have extended such arrangements to benefit those displaced by climate change and disasters.

State Practice in the Americas

72. National laws have been a source of protection for persons unable to return home in the aftermath of a disaster. While barriers and challenges remain in responding to climate change and disasters, a number of States in the Americas have made efforts in recent years to adapt their national policies and legislation to address cross-border displacement caused by the impacts of climate change and disaster, particularly in regard to offering temporary protection or legal stay arrangements. Such mechanisms (described below) vary in scope, nature, access to rights, minimum safeguards and guarantees, and access to a durable solution. Nevertheless, in some countries, displaced populations often face barriers to access these mechanisms due to cumbersome or strict application procedures.

73. In May 2022, the National Migration Directorate of Argentina adopted a '*Special Humanitarian Visa Program for Nationals and Residents in the United States of Mexico, Central America and the Caribbean Displaced by Socio-Natural Disasters*', which authorizes entry permits and visas for persons affected and displaced by sudden-onset 'socio-natural' disasters,

¹⁴⁹ 'People are entitled to have their claims for refugee status anxiously scrutinised to determine eligibility before other mechanisms are considered as, in addition to the prohibition on refoulement, recognition also entails important status rights that are not expressly built into other forms of protection.' Matthew Scott, '*Finding Agency in Adversity*', note 85 above, p. 30.

¹⁵⁰ Such standards include: appropriate reception arrangements; recognized and documented permission to stay; protection against arbitrary or prolonged detention; access to housing, education, health care and other basic services; freedom of movement, except as may be warranted by national security, public order or public health considerations; the registration of births, deaths and marriages; physical security, including protection against sexual and gender-based violence and exploitation; special care for separated and unaccompanied children, guided by the best interests of the child; respect for family unity and tracing, and opportunities for reunification with separated family members; particular attention and special arrangements for persons with special needs, including persons with disabilities; self-sufficiency or work opportunities; and access to UNHCR and, as appropriate, other relevant international organizations and non-governmental organizations and civil society. See UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, www.refworld.org/docid/52fba2404.html, in particular paras 13, 16-18.

through a sponsorship mechanism.¹⁵¹ The conditional nature of the sponsorship program presents significant barriers, particularly in the contexts of sudden-onset disasters which usually trigger urgent and abrupt displacement. Nonetheless, the initiative provides a prospective durable solution: persons are issued a three-year temporary residence permit with the possibility of applying for permanent residence thereafter. While the program has not yet been invoked, it presents an opportunity to address barriers and bolster its processes to include identification and referral pathways of persons in need of international protection. Though the visa does not provide protection from refoulement it does not limit or bar the individual right to seek and obtain asylum.

74. In Brazil, immigration legislation provides the prospect of *humanitarian visas and temporary residence* for various situations, including ‘situations of climate and environmental disaster’.¹⁵² To be applied, an inter-ministerial resolution must be adopted, defining the particular circumstances and processes. Thus far, the humanitarian program has only been applied to four global situations involving persons in need of international protection mainly due to conflict and violence such as Syrians, Afghans, and Ukrainians. Significantly, the program was applied to Haitians in the aftermath of the earthquake in Haiti in early 2010 which had severely impacted the country.¹⁵³ This humanitarian program provides temporary visas, and thereafter, residency permits for Haitian nationals and stateless persons affected by ‘a major calamity, environmental disaster, or situation of institutional instability.’¹⁵⁴ The temporary visa component is valid only for a period of one year and must be granted exclusively by the Brazilian embassy in Haiti. Upon entering Brazilian territory, permit holders may apply for a two-year temporary residency, and permanent residence is accessible thereafter. The application process, which must be completed before departing the country of origin, may present significant barriers in the contexts of sudden-onset disasters which typically do not provide displaced persons with sufficient time to undertake extensive visa application procedures. This program does not include protection from refoulement nor other protection safeguards. However, the program does not impose any restriction on the individual’s right to seek and obtain asylum in Brazil.

75. The United States of America has provisions for affording *temporary protection status* (‘TPS’) to those who are unable to return home due to ‘an earthquake, flood, drought, epidemic or other environmental disaster’. The disaster must have disrupted living conditions, the home State must be temporarily unable to adequately handle the return of individuals and must have asked the United States to allow their citizens to remain.¹⁵⁵ TPS has already been extended to nationals of Honduras, Nicaragua, and El Salvador following sudden-onset disasters, such as hurricanes and earthquakes. However, TPS has its limits in that it only offers temporary protection

¹⁵¹ National Migration Directorate Disposition of Argentina, No. 891/2022, May 2022, <https://www.argentina.gob.ar/normativa/nacional/disposici%C3%B3n-891-2022-364999>.

¹⁵² Ministry of Foreign Affairs of Brazil, *Immigration Legislation*, N° 13.445: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113445.htm.

¹⁵³ Ministry of Justice of Brazil, Haiti Inter-ministerial Visa and Residence, MJSP/MRE N° 37: https://portaldeimigracao.mj.gov.br/images/portarias/2023/PORTARIA_INTERMINISTERIAL_MJSP.MRE_N%C2%BA_37_DE_30_DE_MAR%C3%87O_DE_2023.pdf.

¹⁵⁴ *Ibid.*

¹⁵⁵ United States Congress, *Immigration and Nationality Act*, 27 June 1952: <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>, Article 8 USC 1254a (b) 1.

in increments of up to 18 months and is only available to nationals who are already physically present in the United States.

76. Several countries also have humanitarian and compassionate criteria for permitting foreigners to enter or remain in circumstances where they do not meet the formal refugee criteria. Canada has used such provisions¹⁵⁶ for those affected by the 1998 Turkish¹⁵⁷ earthquake, the 2004 Asian tsunami¹⁵⁸, the 2010 Haiti¹⁵⁹ earthquake and the 2013 typhoon in the Philippines.¹⁶⁰ Similarly, following the devastation of Hurricane Mitch in 1998, several Central American States regularized the immigration status of affected migrants.¹⁶¹

77. A flexible humanitarian category is also applied by several other States' laws granting entry visas or residence permits, including Ecuador, Mexico, and Costa Rica.¹⁶² Throughout the region, these are predominantly provisions or stay arrangements already established in national legislation that do not refer *explicitly* to persons displaced by climate change or disasters, but rather vulnerable persons. Nevertheless, these programs may be applicable to persons displaced across borders due to climate change and disasters. While most States' humanitarian-based programs call for flexibility in entry requirements for vulnerable persons, in practice, humanitarian visas are granted on exceptional grounds, and in the case of Ecuador, has not been granted thus far. Regarding length of stays permitted, Ecuador's humanitarian visa stipulates a two-year stay, Costa Rica a one-year stay, and Mexico a six-month stay. In the case of Costa Rica, the humanitarian program refers to flexibility in stay permits for vulnerable persons already in the country, which would not consider the need for admission to territory. With respects to access to

¹⁵⁶ Section 25 of the *Immigration and Refugee Protection Act* allows foreign nationals who are inadmissible or who are ineligible to apply in an immigration class, to apply for permanent residence, or for an exemption from a requirement of the Act, based on humanitarian and compassionate considerations: Canada, SC 2001, c. 27, 1 November 2001: [https://laws-lois.justice.gc.ca/eng/acts/i-2.5/section-25.html#:~:text=25%20\(1\)%20Subject%20to%20subsection,a%20foreign%20national%20outside%20Canada](https://laws-lois.justice.gc.ca/eng/acts/i-2.5/section-25.html#:~:text=25%20(1)%20Subject%20to%20subsection,a%20foreign%20national%20outside%20Canada).

¹⁵⁷ Immigration and Refugee Board of Canada, *Turkey/Canada: Whether Canada instituted any kind of a programme to facilitate the issuance of visas to Turkish nationals who were victims of the August 1999 earthquake*, 20 November 2000, ZZZ35789.E: www.refworld.org/docid/3df4bed214.html.

¹⁵⁸ 'Update – Citizenship and Immigration Canada's Response to the Tsunami Disaster of December 26, 2004, Helps bring more than 350 people to Canada', 7 June 2005: <https://www.canada.ca/en/news/archive/2005/06/update-citizenship-immigration-canada-response-tsunami-disaster-december-26-2004-helps-bring-more-than-350-people-canada.html>

¹⁵⁹ 'Government of Canada introduces special immigration measures in response to the earthquake in Haiti', 16 January 2010, available at: <https://www.canada.ca/en/news/archive/2010/01/government-canada-introduces-special-immigration-measures-response-earthquake-haiti.html>. Canada placed a moratorium on removals to Haiti, expedited family reunification, and those in Canada who did not have status could apply for permanent residence on humanitarian and compassionate grounds.

¹⁶⁰ 'Immigration measures in support of the Government's response to Typhoon Haiyan', 13 November 2013: <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/notice-immigration-measures-support-government-response-typhoon-haiyan.html>.

¹⁶¹ Nansen Initiative, *Disasters and Cross-Border Displacement in Central America: Emerging Needs, New Responses* Outcome Report of the Nansen Initiative Central America Regional Consultation, San José, Costa Rica, 2-4 December 2013, : https://disasterdisplacement.org/wp-content/uploads/2015/02/FINAL_Outcome_Report_Central_America_EN.pdf, p. 16.

¹⁶² Costa Rica Alien Regulations: http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=72489, Article 135. National Assembly of the Republic of Ecuador, Organic Law of Human Mobility, February 2017, <https://www.acnur.org/fileadmin/Documentos/BDL/2017/10973.pdf>. Presidency of the Republic of Mexico, Regulation Law of Migration, May 2014: <http://www.ordenjuridico.gob.mx/Documentos/Federal/pdf/wo88430.pdf>, Art. 104 Section V, Art. 116 b, Art. 144 section IV.

rights, in Ecuador, the humanitarian visa guarantees access to rights in a general manner, including the right to work. On the other hand, Costa Rica and Mexico's program have limited access to basic rights, including restrictions on the right to work in Mexico. Some national laws contemplate longer-term solutions, including legal residence in the case of Mexico, though the conditions for such residence are often difficult to meet and unspecified, for instance 'the degree of vulnerability makes their deportation or assisted return difficult or impossible.'¹⁶³

78. Several States in the Americas have undertaken various other initiatives, including the formalization of a definition for climate migrants (Bolivia),¹⁶⁴ the inclusion of disaster displacement within national migration law (Paraguay)¹⁶⁵ or asylum systems and provisions (Peru¹⁶⁶ and Cuba¹⁶⁷), and the adoption of disaster as a criterion to facilitate admission to territory (Guatemala¹⁶⁸ and Honduras¹⁶⁹) or stay permits (El Salvador).¹⁷⁰

X. Regional Frameworks and Integration Systems

79. States in the Americas have made laudable efforts to include climate change and disaster displacement policies within existing regional and institutional frameworks, although they vary in the protection offered, their nature and duration. Provisions within free movement agreements that form part of sub-regional economic integration schemes within the Americas have been used to facilitate entry and temporary residence of nationals from disaster-affected countries.

80. During the 2017 Hurricane Season, three hurricanes displaced over three million people in the Caribbean, during which the Caribbean Integration Community Movement ('CARICOM'), and Organization of Eastern Caribbean States' ('OECS') frameworks served as important tools to host the forcibly displaced nationals of Caribbean countries. CARICOM, which is comprised of twenty member and associated States, permits free movements of goods, capital and labour.¹⁷¹ Through its waiver of travel documentation as well as six-month temporary visas, CARICOM has proven effective in responding to sudden-onset disasters linked to natural hazards, albeit limited

¹⁶³ *Ibid.*, Presidency of the Republic of Mexico, Regulation Law of Migration.

¹⁶⁴ Bolivian Migration Law Article 4(16): "*Climate Migrants: Groups of people who are forced to move from one State to another due to climatic effects, when there is a risk or threat to their lives, whether from natural, environmental, nuclear, chemical or famine causes*". Equally, Article 65 confers to the Bolivian National Migration Council a coordination role on public policies enabling the admission into Bolivia of populations displaced by climatic effects in instances of a risk or threat to their life due to natural causes or environmental, nuclear, chemical or famine disaster situations. Bolivian Migration Law N° 370, 8 May 2013: <https://www.acnur.org/fileadmin/Documentos/BDL/2014/9556.pdf>.

¹⁶⁵ Congress of Paraguay Migration Law no. 6984, 2022: <https://www.gacetarioficial.gov.py/index/getDocumento/78999>.

¹⁶⁶ Legislative Migration Decree, 2017 of Peru: <https://www.acnur.org/fileadmin/Documentos/BDL/2017/10995.pdf>.

¹⁶⁷ Cuba, although not a party to the 1951 Convention has established for several decades that refugees include among others, persons fleeing cataclysms or other natural phenomena: *Regulation of the Migration Law of Cuba*, 1978: https://www.minjus.gob.cu/sites/default/files/archivos/publicacion/2019-11/ley_de_migracion.pdf, D-5 (b) Article 80.

¹⁶⁸ Migration Code, Decree number 44-2016 of the Congress of the Republic of Guatemala, 18 October 2016: https://www.congreso.gob.gt/buscador_decretos/codigo_de_migracion.

¹⁶⁹ Regulation of the Migration and Foreigners Law of Honduras, 3 May 2004: [https://www.tsc.gob.hn/web/leyes/Reglamento%20de%20la%20Ley%20Migraci%C3%B3n%20\(07\).pdf](https://www.tsc.gob.hn/web/leyes/Reglamento%20de%20la%20Ley%20Migraci%C3%B3n%20(07).pdf), Art. 76

¹⁷⁰ Decree No. 35, Regulations of the Special Law on Migration and Foreigners San Salvador, 28 May 2019: <https://www.transparencia.gob.sv/institutions/dgme/documents/reglamento-de-la-ley-principal>, Article 181.

¹⁷¹ CARICOM, *Revised Treaty of Chaguaramas establishing the Caribbean community including the Caricom single Market and Economy*, 2021: <https://perma.cc/8HRR-QBC6>, Articles 45 and 46.

to citizens of member states. In 2017, Trinidad and Tobago applied the CARICOM free movement agreements to assist Dominicans affected by Hurricane Maria. Similar efforts were made by Antigua, Grenada, St. Lucia and St. Vincent within the OECS' free movement regime. The OECS free movement regime has been used to respond to displacement in climate change and disaster contexts, including through the adoption of the *Treaty of Basseterre* in 1981, which specifically facilitates mobility after sudden-onset disasters.¹⁷²

81. Regional frameworks outside the Caribbean may also facilitate disaster or climate change cross-border displacement, including the 'CA-4 permit' in Central America which is a free trade and movement agreement between El Salvador, Guatemala, Honduras and Nicaragua.¹⁷³ The CA-4 permit was established within the framework of the Central American Integration System (SICA) in 2006. It only applies to citizens of its member states, and grants them a permit that is limited to 90-day stays, which oftentimes is well before their country of origin would have entered the rehabilitation stage after an emergency. Additionally, a *Regional Mechanism for Humanitarian Assistance in the Event of Disasters* (Mec-Reg SICA) was developed 'as a mechanism to respond in an agile, expeditious and urgent manner, in the event of an emergency situation or disaster, and that requires international humanitarian aid and assistance from its members.' Among its many initiatives, it has served as a technical support and coordination platform amongst SICA member States.¹⁷⁴ As a result, two regional manuals have been developed, *Regional Manual of Procedures for Foreign Ministries in Event of Disasters* and the *Regional Plan for Disaster Reduction*.¹⁷⁵

82. Similarly, *MERCOSUR* citizens have the right to free movement, residence and employment throughout the member states and the associated countries (Argentina, Brazil, Paraguay, Uruguay, Bolivia, Chile, Colombia, Ecuador, Guyana, and Peru).¹⁷⁶ While the regulations within *MERCOSUR*'s freedom of movement do not explicitly refer to disaster or climate change, they could be adapted to facilitate movement and entry within this context. Additionally, *MERCOSUR* comprises both a *Forum of National Refugee Commissions* (CONARES) and, a *Migratory Specialized Forum* (FEM) which is responsible for studying the impacts of migration, with the aim of developing regional regulations and agreements. While gaps in policies to respond to disasters and climate change have been recognized as a priority by the FEM, the forum has not yet finalized any regulations or programs to address displacement in this context.

83. In the migration context, the Regional Conference on Migration (RCM) and the South American Conference on Migration (CSM) have also made commitments to developing regional

¹⁷² OECS, *Revised Treaty of Basseterre*, 2010: <https://perma.cc/U9ER-HA4H>.

¹⁷³ CA4 Bloc in Central America, *Acuerdo regional de procedimientos migratorios ca 4 para la extension de la visa unica centroamericana alcances del tratado marco y la movilidad de personas en la region*, July 2005: <https://reddhmigrantes.files.wordpress.com/2014/06/acuerdo-regional-ca4.pdf>.

¹⁷⁴ SICA, Regional mechanisms for humanitarian assistance in the event of disasters and for the facilitation of relief shipments: <https://www.sica.int/iniciativas/mecreg>.

¹⁷⁵ SICA, Regional Mechanism for Humanitarian Assistance in the Context of Natural Disasters, 20 October 2016: https://www.sica.int/documentos/mecanismo-regional-de-asistencia-humanitaria-ante-desastres-del-sistema-de-la-integracion-centroamericana-mecreg-sica-octubre-2016_1118556.html.

¹⁷⁶ *MERCOSUR, Estatuto de la Ciudadanía del MERCOSUR*: <http://redpo.mercosur.int/wp-%20content/uploads/2021/03/estatuto-ciudadania-mercosur-es-final-v2.pdf>.

policies and regulations which respond to increased needs of climate change and disasters, as well as serving as a technical support platform to advise member states on best practices and responsibilities. In 2015 the CSM specifically extended its mandate to include ‘migration, environment and climate change’ and later developed Guidance on protection of persons displaced by disasters.¹⁷⁷ In 2016, the RCM countries, made up of Central and North American countries,¹⁷⁸ adopted a ‘*Guide to Effective Practices for RCM Member Countries: Protection for persons moving across borders in the context of disasters*’.¹⁷⁹ The RCM Guide, along with the CSM Guide, identifies good practices and provides guidance tailored to the region on risk reduction, admission, temporary stay arrangements and durable solutions for those who cannot return to their respective countries of origin.

84. These efforts were preceded by the 2015 Nansen Initiative, ‘*Agenda for the Protection of Persons Displaced Across Borders in the Context of Disasters and Climate Change*,’ which was endorsed by 17 Latin American and Caribbean countries, alongside many others from other regions. In seeking to address cross-border movements, the agenda provides examples of practices by States, including humanitarian admission and stay programs, focusing among others on enhanced humanitarian and migration measures for cross-border displacement.¹⁸⁰

85. Equally, in the context of the regional commemorative process of the 30th anniversary of the 1984 Cartagena Declaration on Refugees, the Brazil Declaration (2014) recognizes the challenges posed by climate change and disasters and the consequent internal and cross-border displacement that may take place in the region. In 2018, in response to a request that emerged from Brazil Plan of Action (2014-2024), UNHCR, together with the Platform on Disaster Displacement (PDD), released a study on *Cross-Border Displacement, Climate Change and Disasters: Latin America and the Caribbean*¹⁸¹ which assesses and provides guidance to States in the region on responding to cross-border displacement in the context of disasters linked to natural hazards and climate change. The report comprehensively examines the international legal frameworks, as well as national laws, policies and practices in Central America and Mexico, in South America and the Caribbean, and concludes by providing comprehensive recommendations at the regional and national levels.

XI. Internal displacement

86. As stated above, most people displaced in the context of climate change and disasters remain inside their own country and are internally displaced.¹⁸² According to the IDMC in 2022,

¹⁷⁷ SACM, Regional Guideline on Protection and assistance of cross-border displaced persons and migrants in countries affected by disasters: https://csmigraciones.org/sites/default/files/2022-01/CSM_Lineamientos%20Regionales_ENG.pdf.

¹⁷⁸ Namely, Belize, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States of America.

¹⁷⁹ RCM, Guide on Protection for persons moving across borders in the context of disasters, 2017: https://refugeesmigrants.un.org/sites/default/files/pv_guide_rcm.pdf.

¹⁸⁰ Nansen Initiative, Protection Agenda, note 63 above.

¹⁸¹ *Cross-Border Displacement, Climate Change and Disasters: Latin America and the Caribbean*. Study prepared for UNHCR and PDD at the request of governments participating in the 2014 Brazil Declaration and Plan of Action, July 2018: <https://www.unhcr.org/media/cross-border-displacement-climate-change-and-disasters-latin-america-and-caribbean>.

¹⁸² See Part III above.

there were 2,097,000 internal displacements by disasters in the Americas alone.¹⁸³ In line with the *United Nations Guiding Principles on Internal Displacement* ('*Guiding Principles*'), the main international framework of reference for the protection of internally displaced persons adopted in 1998, national authorities have the primary duty and responsibility to protect, promote and fulfil the human rights of internally displaced people within their territory without discrimination (Principle 3).¹⁸⁴

87. Although there is no legal definition of who constitutes an 'internally displaced person' in international law, the *Guiding Principles* set out the following:

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or **natural or human-made disasters** and who have not crossed an internationally recognized State border.¹⁸⁵
[emphasis added]

88. This definition is meant to be descriptive rather than normative, drawing attention to the characteristics of IDPs that make them inherently vulnerable, and specifically acknowledges and includes persons internally displaced in the context of disasters and the adverse effects of climate change.

89. A fundamental tenet underlying the *Guiding Principles* is that the state obligation to protect and assist the internally displaced is based on existing international law, including settled rules of international human rights law and, in situations of armed conflict, international humanitarian law. As noted in the 2022 *Global Report on Law and Policy on Internal Displacement* co-published by UNHCR and the Global Protection Cluster ('GPC')¹⁸⁶ addressing internal displacement in the context of disasters and climate change lies at the intersection of various legal fields, from international human rights law to international environmental law among others (including international humanitarian law in the many contexts where internal displacement associated with conflict and disasters coexist), as well as policy fields such as disaster risk reduction and IDP protection.

90. Therefore, addressing disaster displacement through effective legal and policy interventions at the national level requires concerted and coherent action across different policy areas, which can be translated into different types of laws and policies. These can be broadly divided into two main categories:

¹⁸³ IDMC 2023 Global Report, note 27 above, p. 2.

¹⁸⁴ UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, 11 February 1998, E/CN.4/1998/53/Add.2: www.refworld.org/docid/3d4f95e11.html.

¹⁸⁵ *Ibid.*, para. 2.

¹⁸⁶ UNHCR-GPC, *Global Report on Law and Policy on Internal Displacement*, December 2022: <https://www.unhcr.org/media/global-report-law-and-policy-internal-displacement>, p. 117-126.

- (1) Stand-alone legal and policy frameworks on internal displacement, whether exclusively dedicated to disaster displacement or to internal displacement more generally; and
- (2) Legal and policy frameworks relating to disasters and climate change that also address human mobility, including internal displacement.¹⁸⁷

91. In both cases, measures may relate to the prevention of and preparedness for displacement, protection during displacement (including during evacuation), and facilitation of durable solutions with particular attention to situations of protracted displacement. One of the most common myths is that people who have been uprooted from their homes by a disaster, pre-emptively or spontaneously evacuated, return quickly to reconstruct their houses and rebuild their lives. Unfortunately, in many cases this is not true, as people remain displaced for months or even years.¹⁸⁸ It should be emphasized that the approaches leading to the development, adoption and implementation of these different frameworks are not mutually exclusive. On the contrary, depending on the context, such approaches can be complementary and mutually reinforcing.

State Practice

92. The above-mentioned *Global Report on Law and Policy* provides several country examples of good practices of how this has been successfully done, in both the thematic chapter dedicated to this topic as well as in the ‘Regional trends’ chapters.¹⁸⁹ In the Americas, four countries in the region have adopted instruments specifically dedicated to internal displacement at the national level: Colombia; Peru; El Salvador and Honduras. At the sub-national level, four States in Mexico also adopted laws to prevent and address internal displacement at the state level: Chiapas; Guerrero; Sinaloa and Zacatecas.¹⁹⁰ However, it is important to recall that the development of these laws and policies respond primarily to situations of displacement in the context of conflict and violence, and do not specifically address situations of internal displacement in the context of disasters and climate change. Thus, in countries with IDP laws in place, the response to internal displacement as a result of disasters and the adverse effects of climate change is usually regulated through well-established national legal, policy and institutional systems related specifically or exclusively to disasters and climate change.

93. This is also true of all other countries in the Americas whose legal instruments and policies only deal with disasters and not disaster displacement. Hence, further efforts are needed to adequately integrate human mobility, including disaster displacement, in respective national

¹⁸⁷ *Ibid.*, p. 120.

¹⁸⁸ IDMC has been busting myths around displacement linked with climate change and disasters since 2008, 22 October 2020: <https://www.internal-displacement.org/media-centres/idmc-has-been-busting-myths-around-displacement-linked-with-climate-change-and>, Myth 1. See also, J. McAdam who notes that there is ‘mounting evidence that significant numbers of evacuees end up being displaced for long periods of time.’: Maui After Fire Illustrates Need to Plan for Longer-Term Disaster Displacement, 5 September 2023: <https://www.justsecurity.org/87978/maui-after-fire-illustrates-need-to-plan-for-longer-term-disaster-displacement/>.

¹⁸⁹ UNHCR has developed an interactive dashboard that contains IDP law and policy instruments which includes information on countries that have adopted IDP-specific instruments addressing displacement in the context of disaster and climate change, as well as those who have adopted disaster and climate change related instruments addressing internal displacement. The dashboard is available here: <https://app.powerbi.com/view?r=eyJrIjoieVhYzhkMzItNDQ3MC00MGQyLTlhMjltYzZmZDdkZjQ0ZTA2IiwidCI6ImU1YzZmOTgxLTkyNjQtNDZlNC04YTBlTYlINDNkMmFmODBiZSIsImMiOjE9>.

¹⁹⁰ UNHCR-GPC, *Global Report on Law and Policy on Internal Displacement*, note 186 above, pp. 72-75.

instruments related to disasters. Some countries have already taken positive steps to integrate human mobility related to disasters and climate change into respective national instruments related to disaster and climate change including Costa Rica (through the adoption of a National Risk Management Plan 2016- 2020); Guatemala (a National Climate Change Action Plan in 2018) and Mexico (with a National Law on Climate Change in 2012). In Colombia, a new bill has been introduced to Parliament proposing that the Colombian government ‘recognize the existence of forced internal displacement due to causes associated with climate change and environmental degradation’.¹⁹¹

94. Planned relocation is considered one of the three forms of human mobility associated with disasters and climate change together with displacement and migration.¹⁹² While it may be necessary under certain circumstances, planned relocation also carries significant risks for those it is intended to benefit, such as the disruption of social, economic or cultural networks, and therefore should be considered a measure of last resort for when adaptation and mitigation measures are no longer feasible.¹⁹³ Planned relocations tend to be State-led processes.¹⁹⁴ As a result, national authorities bear responsibility for ensuring that relocations are carefully planned; follow the principles of necessity and proportionality; include the active participation of the affected population; and that those who move can do so safely and in dignity. Badly planned relocations can have severe negative impacts on the affected population and may amount to arbitrary displacement under certain circumstances, in line with the *Guiding Principles on Internal Displacement*.¹⁹⁵

95. Though planned relocations have already taken place in many different countries of the world, there is no international or regional legal framework or principles explicitly dedicated to planned relocation. In the absence of an overarching international or regional framework on this, the most immediate opportunities for addressing planned relocation in the context of disasters and climate change are found within national legal and policy frameworks. Those relating to climate change and disaster risk reduction may be especially useful, although planned relocation may be regulated in several other fields such as those related to development or resettlement, internal displacement or zoning and planning instruments.

IDPs and the Inter-American Human Rights System

¹⁹¹ El Pais, Colombia considers first law on climate refugees in Latin America, 7 April 2023: <https://english.elpais.com/international/2023-04-07/colombia-considers-first-law-on-climate-refugees-in-latin-america.html>.

¹⁹² See note 27 above.

¹⁹³ UNHCR, *Guidance on Protecting People From Disasters and Environmental Change Through Planned Relocation*, 7 October 2015: www.refworld.org/docid/596f15284.html, p 10.

¹⁹⁴ See, report commissioned by the Platform on Disaster Displacement which includes a global mapping presenting a dataset of over 300 planned relocation cases worldwide with several in-depth case studies, including in the Americas. Bower, E. & Weerasinghe, S. (2021). *Leaving Place, Restoring Home: Enhancing the Evidence Base on Planned Relocation Cases in the Context of Hazards, Disasters, and Climate Change*. Platform on Disaster Displacement (PDD) and Andrew & Renata Kaldor Centre for International Refugee Law: <https://www.unsw.edu.au/content/dam/pdfs/unsw-adobe-websites/kaldor-centre/2023-05-data/2023-07-enhancing-the-evidence-base-planned-relocation.pdf>.

¹⁹⁵ ‘Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. 2. The prohibition of arbitrary displacement includes displacement: ... (d) In cases of disasters, unless the safety and health of those affected requires their evacuation.’ *Guiding Principles*, Principle 6, note 184 above.

96. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have played an essential role in monitoring, promoting and protecting the rights of internally displaced persons at the regional level, including by promoting the establishment of national legal and policy frameworks on internal displacement. The Commission, for example has published a report on *Internal Displacement in the Northern Triangle of Central America*¹⁹⁶ as well as practical *Guidelines for the formulation of public policies on internal displacement*.¹⁹⁷ The guidelines provide specific steps for States' executive, legislative, and judicial branches to create frameworks capable of achieving effective solutions for the protection of internally displaced persons, recognizing internal displacement as a human rights problem and implementing prevention measures to mitigate it.¹⁹⁸ It also emphasizes the need for a gender and diversity perspective when addressing internal displacement, and calls on States to 'ensure the inclusion of an intersectional and intercultural perspective that takes into consideration the possible aggravation and frequency of human rights violations due to factors such as race, ethnicity, age, country of birth, and/or economic position' and noting specifically the historical discrimination impacting internally displaced women, girls, and LGBT individuals.¹⁹⁹

97. This Court has developed extensive jurisprudence on internal displacement, as reflected in the 2022 update of the '*Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 3: Personas en situación de desplazamiento*.'²⁰⁰ The Court recognised that internal displacement is a state of *de facto* vulnerability with regard to the rest of the population, due to the wide range of rights affected, and identified a number of obligations for states regarding protection from displacement, protection and assistance, as well as durable solutions for IDPs. Although the Court's judgments related to IDPs' rights in the context of internal displacement due to conflict and violence, UNHCR is of the view that by analogy, many of the IACtHR decisions are also relevant to the protection of IDPs in the context of disaster and climate change.

XII. Statelessness

98. In situations of climate change and displacement, the risks of statelessness may arise under several circumstances. Those displaced may be unable to prove their nationality due to the lack or loss of documentation, for example, birth certificates and identity documents, or obtain replacement documentation due to challenges in accessing civil registration (for example, where

¹⁹⁶ IACHR, *Internal Displacement in the Northern Triangle of Central America: Public Policy Guidelines* (2018): <https://www.oas.org/en/iachr/reports/pdfs/InternalDisplacement.pdf>.

¹⁹⁷ IACHR, *Practical Guide: Guidelines for the formulation of public policies on internal displacement*, <http://oea.org/en/iachr/reports/pdfs/Guide-InternalDisplacement.pdf>.

¹⁹⁸ *Ibid.*, pp. 9-20.

¹⁹⁹ *Ibid.*, pp. 21-23 on gender; and pp. 24-26 on the protection of groups that have traditionally been victims of discrimination.

²⁰⁰ Cuadernillos de Jurisprudencia de la Corte Interamericana de Derechos Humanos, *Personas en situación de desplazamiento*, 2022, (available in Spanish only): https://biblioteca.corteidh.or.cr/engine/download/blob/cidh/168/2022/49/68694_2022.pdf?app=cidh&class=2&id=38873&field=168.

civil registration offices or records have been destroyed by a disaster) or accessing consular services.²⁰¹

99. The lack of proof of nationality may increase the risk of statelessness in particular for certain groups, such as those belonging to border communities or minority groups who have real or perceived links to more than one country. '[P]rotracted or permanent displacement outside of one's country can sometimes result in passive loss of citizenship.'²⁰²

100. Risk of statelessness may also arise or be compounded in a situation of displacement by nationality laws which do not comply with international standards on prevention of statelessness. Lack of safeguards to grant nationality to foundlings (abandoned children of unknown parentage) and in cross-border displacement situations, lack of safeguards to grant nationality to children born in the territory of the host country who would otherwise be stateless, can cause statelessness.

101. The risk of statelessness due to gender discrimination in nationality laws can also be exacerbated in the context of climate change impacts. For example, 24 countries maintain nationality laws that prevent women from conferring their nationality to their children on an equal basis as men. In these situations, if the father cannot transmit his nationality either or is not present to testify to his paternity (due to family separation in the displacement context), the child will be rendered stateless.²⁰³

102. Disasters further have the potential to exacerbate the vulnerabilities of stateless people who, as non-citizens, risk loss of livelihoods and exclusion from disaster relief, health care and governments' climate change mitigation and adaption plans. 'Being stateless or undocumented implies that people may not be able to enjoy access to food, water, medical services or any support or subsidies provided by the Government.'²⁰⁴ Stateless people affected by climate change and displacement may face specific and heightened risks because of pre-existing vulnerabilities and potential exclusion from protective measures. Specific efforts are needed to reduce statelessness risks and to include stateless persons in disaster and emergency responses. This includes measures to prevent statelessness and mitigate risks of statelessness²⁰⁵, support pathways to nationality for those who are stateless as well as ensure protection measures in line with the 1954 Convention on the Status of Stateless Persons.²⁰⁶

XIII. Protection of Women and vulnerable groups

²⁰¹ UNHCR, *Statelessness and Climate Change*, 29 October 2021: www.refworld.org/docid/617c01da4.html. See also, Report of the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, 'Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation' (UN Special Rapporteur on Climate - A/77/226), 26 July 2022, A/77/226: <https://www.ohchr.org/en/documents/thematic-reports/a77226-promotion-and-protection-human-rights-context-climate-change>, para. 65.

²⁰² *Ibid.*

²⁰³ UNHCR, *Background Note on Gender Discrimination in Nationality Laws and Statelessness*, 20 October 2021: www.refworld.org/docid/616fda104.html.

²⁰⁴ UN Special Rapporteur on Climate - A/77/226, note 201 above, para. 65.

²⁰⁵ IACtHR, *Advisory Opinion OC-21/14 - Children*, where the court 'reiterates that statelessness results in a condition of extreme vulnerability' and the duty of States 'to identify, prevent and reduce statelessness, as well as protect' stateless persons: note 27 above, para 94.

²⁰⁶ UNHCR, *Statelessness and Climate Change*, note 201 above.

103. As the request for the advisory opinion recognizes, ‘the international community does not experience the effects of climate change uniformly.’²⁰⁷

In addition, the adverse effects of climate change are felt more acutely by those segments of the population that are already in vulnerable situations owing to factors such as geography – rural and coastal areas - poverty, gender, age, indigenous or minority status, national or social origin, birth or other status, and disability. For example, in a report of July 2022, the UN Special Rapporteur on the rights of migrants underscored that 80 per cent of people currently displaced by climate-related events are women and girls. Moreover, the adverse impacts of climate change are exacerbating migration with differentiated effects for members of indigenous peoples and Afro-descendant communities. This confirms the need to adopt an intersectional approach in this matter.²⁰⁸

104. The request thus recognizes that persons belonging to particular groups, such as children, the elderly,²⁰⁹ individuals with disabilities, as well as women in some circumstances, disproportionately suffer the greatest impact of climate change, compounded by pre-existing discrimination or vulnerabilities.²¹⁰ UNHCR recalls that non-discrimination and equality are core human rights principles reflected in the ICCPR, ICESCR, the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*²¹¹ and the *Convention on the Elimination of All Forms of Racial Discrimination (CERD)*²¹² as well as regional human rights instruments such as the *American Declaration*. Therefore, States must take assess and address the differentiated needs and vulnerabilities of those individuals most affected by climate change.

105. ‘In total, 80 per cent of people displaced by climate disasters are women.’²¹³ Moreover, women are not only more likely to be displaced, but they are also ‘several times more likely to die from climate disasters than men, and the greater the gender and economic inequality, the greater the disparity.’²¹⁴ In many low and middle-income countries, women are heavily reliant on agriculture, one of the sectors most impacted by climate change, impeding their ability to take care of their families.²¹⁵ For vulnerable households with minimal economic buffers, climate-

²⁰⁷ Request, note 4 above, p. 1.

²⁰⁸ Request, note 4 above, p. 5, internal references removed.

²⁰⁹ The *Inter-American Convention on Protecting the Human Rights of Older Persons*, recognizes the right of older persons ‘to live in a healthy environment with access to basic public services’. Article 25: https://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-70_human_rights_older_persons.pdf.

²¹⁰ IUCN, *Gender-based violence and Environment linkages*, note 80 above, chapter 5. Nellemann, C., Verma, R., and Hislop, L. (eds), *Women at the frontline of climate change: Gender risks and hopes. A Rapid Response Assessment* (2011) United Nations Environment Programme.

²¹¹ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13: www.refworld.org/docid/3ae6b3970.html.

²¹² UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195: www.refworld.org/docid/3ae6b3940.html.

²¹³ *UN Special Rapporteur on Climate - A/77/226*, note 201 above, para. 44.

²¹⁴ *Ibid.* See also, Office of the United Nations High Commissioner for Human Rights (OHCHR), *Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women*, (‘Gender-responsive climate action’), A/HRC/41/26, 1 May 2019: <https://www.ohchr.org/en/documents/reports/analytical-study-gender-responsive-climate-action-full-and-effective-enjoyment>, para. 9.

²¹⁵ UNHCR and Potsdam Institute for Climate Impact Research, *Gender, Displacement and Climate Change*, November 2022: <https://www.unhcr.org/sites/default/files/legacy-pdf/5f21565b4.pdf>, p. 1.

induced loss of or damage to homes, land, crops, food or livelihoods can push people into spiraling poverty and destitution.²¹⁶

106. The fact that forcibly displaced persons will most often have left their sources of livelihood behind forces many to live in substandard conditions and unable to maintain an adequate standard of living which amplifies their susceptibility to higher risks of sexual and gender-based violence, forced labour, exploitation, abuse and human trafficking.²¹⁷ There are clear links between poverty, which climate change deepens, and sexual and gender-based violence.²¹⁸

107. Women are vulnerable to sexual and gender-based violence at every stage of displacement, in shelters or camp settings, on the move, or after disasters when law enforcement may be less effective due to strained resources. For example, in the aftermath of the impact of the earthquake in Haiti in early 2010, there was considerable evidence that some police stations were damaged, and while others remained nominally operational, they did not have adequate facilities for women to file complaints safely and confidentially. Thus, the ‘protection mechanisms for woman and girl victims of sexual violence [that] were deficient before the earthquake, [were now] totally absent.’ This evidence was considered by the Federal Court of Canada²¹⁹ and the Immigration and Refugee Board in the context of asylum claims by women on the basis of their fear of sexual violence. The Federal Court relied on evidence that indicated that since the earthquake, ‘women in Haiti have become even more vulnerable to rape, kidnapping, and other criminal acts’ and that ‘women appear to be bearing the brunt of the serious problems and unrest in Haiti following the earthquake.’²²⁰

108. In UNHCR’s view, in light of these vulnerabilities, States have a responsibility to enact gender sensitive strategies to respond to the climate change emergency and to ensure that gender is considered in all contexts, be it refugee status determination, support to IDPs, or gender-mainstreaming in disaster management plans and policies. ‘Adopting a “gender” lens allows us to

²¹⁶ *UN Special Rapporteur on Climate - A/77/226*, note 201 above, para. 44. See also, Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, who has highlighted that due to ‘gender roles and the unequal distribution of resources, women and girls are particularly vulnerable to the adverse effects of climate change and at higher risk of violence during displacement.’ *Report on internal displacement in the context of the slow-onset adverse effects of climate change*, 21 July 2020, A/75/207: <https://www.ohchr.org/en/documents/thematic-reports/a75207-report-internal-displacement-context-slow-onset-adverse-effects>, para. 32.

²¹⁷ The link between a person’s vulnerability to trafficking and climate change disaster displacement was explicitly recognized by the Tribunale Ordinario di Firenze in Italy. The applicant from Pakistan was granted refugee status as member of a particular social group as a person who has a common history with that of victims of trafficking for the purpose of labour exploitation. The Court recognized his extreme vulnerability to disasters and climate change as a factor amplifying his vulnerability to the phenomenon of human trafficking. Italy, *Tribunale Ordinario di Firenze, N.R.G. 6142/2019*, 1 May 2023.

²¹⁸ OHCHR, Gender-responsive climate action, (A/HRC/41/26), note 214 above, para. 16.

²¹⁹ In *Josile v. Canada*, the Federal Court stated the following in allowing the judicial review: ‘The impugned decision was made on May 25, 2010, that is only four months after the earthquake of January 12, 2010 in Haiti. Before this Court, the applicant alleges that “[t]here is a rape epidemic in Haiti, exacerbated by the earthquake”. It would appear that since the earthquake, some 1.5 million persons have been displaced and are living in close proximity in camps or elsewhere in extreme conditions and without adequate protection, as the case may be. Considering that fear of persecution is forward-looking, the Court expects that there will be a complete and objective evaluation of the most up-to-date documentation with respect to rape and sexual abuse committed against women and children in Haiti in light of the particular situation of the applicant and increasingly worsening country conditions.’ *Josile v. Canada (Citizenship and Immigration)*, 2011 FC 39 (CanLII): <https://canlii.ca/t/2fdk8>, para 38.

²²⁰ X (Re), 2011 CanLII 26575, VA9-00035, (CA IRB): <https://canlii.ca/t/fldvx>.

understand the power imbalances, discrimination and inequality exacerbated by climate change and how to redress them.’²²¹

109. In addition, minority groups²²² or others who are already marginalized or vulnerable, are often denied access to resources or assistance or are excluded from risk reduction strategies before or after a disaster. Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ+) persons are uniquely vulnerable and may be excluded from recovery, relief and response efforts. They may also lack access to emergency shelters due to stigmatization and discrimination or that satisfy their specific needs.²²³ LGBTIQ+ people may also be particularly exposed to adverse displacement outcomes including exclusion from humanitarian assistance and ostracization which forces them to settle in informal shelters, heightening their exposure to violence.²²⁴

110. Indigenous peoples ‘are among those who have contributed the least to climate change while suffering some of its worst impacts.’²²⁵ Indigenous peoples across the Americas and elsewhere are facing threats and losses to their ancestral lands, cultures and traditional ways of living owing to the adverse effects of climate change. Indigenous peoples are highly dependent on their lands, territories and natural resources for their livelihoods and cultural practices and are thus, particularly vulnerable to climate change-related displacement.

111. Given their relationship with their traditional lands and the environment, as recognized by this Court in *Saramaka v Surinam*²²⁶, *Indigenous Community Xákmok Kásek v Paraguay*²²⁷, and *Kichwa Indigenous People of Sarayaku v Ecuador*²²⁸, indigenous peoples in the region remain particularly vulnerable to the dispossession of their ancestral lands, a situation that can be aggravated by the exploitation of natural resources, and its effect on the environment which can in turn lead to further dispossession and displacement. UNHCR considers that in such contexts, a well-founded fear of being persecuted may arise for individuals or groups of indigenous peoples.²²⁹

²²¹ UNHCR and Potsdam Institute for Climate Impact Research, *Gender, displacement and climate change*, July 2020: <https://reporting.unhcr.org/sites/default/files/UNHCR%20Gender%2C%20Displacement%20and%20Climate%20Change%20Update%20-%20July%202020.pdf>, p. 1.

²²² See for example, International Dalit Solidarity Network, *Equality in Aid: Addressing Caste Discrimination in Humanitarian Response*, 2013: <https://reliefweb.int/report/world/equality-aid-addressing-caste-discrimination-humanitarian-response>; and The New Humanitarian, *How India’s caste system keeps Dalits from accessing disaster relief*, 2022: <https://www.thenewhumanitarian.org/news-feature/2022/11/29/India-Dalits-disaster-relief-aid>, which reveals the unequal access to humanitarian assistance for vulnerable categories in society, including Dhalit communities denied access to shelters and assistance in the aftermath of cyclones in South Asia.

²²³ OHCHR, *Gender-responsive climate action*, (A/HRC/41/26), note 214 above, paras 17 and 23.

²²⁴ UNHCR and Potsdam Institute, *Gender, Displacement and Climate Change*, November 2022: note 215 above, p. 3.

²²⁵ UN Special Rapporteur on IDPs, *Report A/75/207*, note 216 above, para. 29.

²²⁶ IACtHR, *Saramaka People v Surinam*, Preliminary Exceptions, Merits, Reparations and Costs, Judgment of 28 November 2007, ([2007] IACHR Ser C Serie C no. 172): https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf.

²²⁷ IACtHR, *Indigenous Community Xákmok Kásek v Paraguay*, Merits, Reparations and Costs, Judgment of 24 August 2010, Series C No. 214 ([2010] IACHR Ser C No 214): https://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf.

²²⁸ IACtHR, *Kichwa Indigenous People of Sarayaku v Ecuador*, Merits and Reparations, Judgment of 27 June 2012, Series C No. 245 ([2012] IACHR Ser C No 245): https://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf.

²²⁹ UNHCR, *Legal considerations*, note 62 above, para. 10.

112. Moreover, UNHCR considers that the Court's jurisprudence in recognizing the indivisible connection between indigenous peoples and their ancestral lands must be considered in a context of climate emergency and disaster, furthering protection safeguards and measures to prevent the forceful displacement of indigenous communities. Similarly, in *Billy et al. v. Australia*, the UN Human Rights Committee held that the Government of Australia had failed to adequately protect the Indigenous Torres Strait Islanders against the adverse impacts of climate change, thereby violating their rights to enjoy their culture and be free of arbitrary interferences with their private lives, their family and home.²³⁰

XIV. Protection of Children

113. As mentioned above, the adverse effects of climate change environmental degradation and the impacts of disasters have the potential to impact a broad array of human rights, including the rights to education and health and can exacerbate the protection needs of children, and can expose girls to the same risks of sexual violence and/or trafficking as women as discussed above. The *Convention on the Rights of the Child* ('CRC'),²³¹ which enjoys near universal ratification, obliges States to take action to ensure the realization of all rights in the Convention including measures to address the challenges posed to children by climate change.

114. According to UNICEF, 'one billion children – nearly half of the world's 2.2 billion children – live in 33 countries classified as at extremely high risk to the impacts of climate change. Globally, around 500 million children live in areas with very high risk of flooding and nearly 160 million live in areas of extreme or high risk of drought.'²³² In 2020, 9.8 million children were displaced due to weather-related events.²³³

115. In a recent regional example, after Hurricanes Eta and Iota hit Central America and the Caribbean in 2020, 'many families lost their crops and the animals they had raised for food. As a consequence, poverty and child malnutrition has increased.'²³⁴ In rural regions where subsistence farming is common, women and girls are the primary providers of food, water and fuel. Climate change directly impacts resource scarcity, making the traditional gendered household chores, such as collecting firewood and water, increasingly difficult and dangerous. 'For instance, during droughts, women and girls often walk long distances to collect water, increasing their exposure to gender-based violence. Increased pressure to provide for their families also forces girls to drop out of school.'²³⁵ Indeed, the hurricanes in Central America and the Caribbean in 2020 'caused

²³⁰ *Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, UN Human Rights Committee, 22 September 2022: https://www.ccprcentre.org/files/decisions/CCPR_C_135_D_3624_2019_34335_E.pdf, paras 8.12, 8.14 and 9.

²³¹ UN General Assembly, *Convention on the Rights of the Child* ('CRC'), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3: www.refworld.org/docid/3ae6b38f0.html.

²³² UNICEF, *The climate crisis is a child rights crisis*, August 2021: <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>, cited in Guiding Principles for Children on the Move in the Context of Climate Change, July 2022: <https://www.unicef.org/globalinsight/media/2796/file/UNICEF-Global-Insight-Guiding-Principles-for-children-on-the-move-in-the-context-of-climate-change-2022.pdf>, p. 14.

²³³ *Ibid.*

²³⁴ *UN Special Rapporteur on Climate - A/77/226*, note 201 above, para. 33.

²³⁵ UNHCR and Potsdam, *Gender, displacement and climate change*, note 215 above, p. 1. As the UN Committee on the Rights of the Child noted, 'States should recognize and address the disproportionate indirect and knock-on effects of environmental degradation on children's education, paying special attention to gender-specific situations,

young people and children to interrupt their education owing to displacement and the initial isolation suffered by many communities.’²³⁶

116. In its *Advisory Opinion OC-21/14*, this Court recognised that children continue to migrate internationally for various reasons, including environmental degradation and the gradual or sudden changes in the environment, adversely affecting children’s lives and living conditions.²³⁷ UNHCR’s written and oral submissions to the Court in *Advisory Opinion OC-21/14*, reaffirmed the applicability of existing general principles for the protection of asylum-seeking and refugee children, including their right to asylum and protection against instances of refoulement, as foreseen in international refugee and human rights law.²³⁸

117. Therefore, in the context of the forced displacement of children caused or exacerbated by the effects of climate change and disasters, UNHCR wishes to highlight that there is a pressing need to adopt effective early identification mechanisms. These mechanisms must efficiently identify children and their specific protection and assistance needs. This Court:

‘stresse[d] that the situation of being unaccompanied or separated exposes children to “various risks that affect their life, survival and development such as trafficking for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, in death,” especially in those countries or regions where organized crime is present.’²³⁹

118. According to UNODC, over 80 per cent of sex trafficking victims are women and girls, with traffickers ‘likely to target vulnerable communities, including due to forced displacement, lack of opportunities for income generation, discrimination and family separation.’²⁴⁰

119. UNHCR remains deeply concerned about the increased risk of family separation in the context of the environmental impacts on children. Consequently, the adoption of measures to guarantee the principle of family unity²⁴¹ and children’s right to family life is imperative.²⁴² This Court has held that to respect unity of the family, the ‘State is also under the obligation not only to abstain from measures that might lead to separation of families, but also to take steps that will

such as children leaving school due to additional domestic and economic burdens in households facing environment-related shocks and stress.’ Committee on the Rights of the Child, *General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crcgc26-general-comment-no-26-2023-childrens-rights>, para. 57.

²³⁶ *UN Special Rapporteur on Climate - A/77/226*, note 201 above, para. 33. In Brazil, poor children and children of African descent, are the most affected by the intensity and occurrence of extreme events of floods and landslides.

²³⁷ IACtHR, *Advisory Opinion OC-21/14 - Children*, note 27 above, paras 2 and 35.

²³⁸ UNHCR’s submissions to the IACtHR in *Advisory Opinion on Children*, note 21 above.

²³⁹ IACtHR, *Advisory Opinion OC-21/14 - Children*, note 27 above, para. 90.

²⁴⁰ See, IUCN, *Gender-based violence and Environment linkages*, note 80 above, 5.1.4.

²⁴¹ Article 16(3) of the UDHR, note 49 above; Article 23(1) ICCPR, note 50 above; Article 10(1) ICESCR, note 51 above, as well as the preamble of the CRC, note 231 above, and other human rights instruments all recognize the family as the fundamental group unit of society and entitled to protection and assistance.

²⁴² CRC, Article 9 and 10 (Family and not to be separated), note 231 above. See also, *Cartagena Declaration*, which acknowledges ‘that reunification of families constitutes a fundamental principle in regard to refugees and one which should be the basis for the regime of humanitarian treatment in the country of asylum, as well as for facilities granted in cases of voluntary repatriation.’; note 8 above, Conclusion III (13).

allow the family to remain united, or for its members to reunite if they have been separated.’²⁴³ This was affirmed in *Advisory Opinion OC-21/14*, where the Court also that it was ‘essential that States try to trace the members of their family, as long as this has been assessed as being in the best interest of the child [and] the State should proceed to reunify such children with their families as soon as possible.’²⁴⁴

120. States must also establish child-sensitive asylum and other protection procedures²⁴⁵ where they can freely express their views to ensure that the best interests of children are paramount in line with articles 3 and 12 of the *CRC*²⁴⁶ as well as establish adequate reception conditions for the safety, well-being, and development of children as affirmed by this Court in *Advisory Opinion OC-21/14*.²⁴⁷

XV. Persons on the move not in need of international protection

121. Notwithstanding UNHCR’s considerations on the applicability of the international protection regime in the context of cross-border climate change and disaster displacement, it is important to affirm, that not all people displaced under such circumstances will be in need of international protection as refugees. This includes people who move in the context of climate change and disasters, solely for economic reasons, such as a negative change or loss of livelihoods, where there is no risk of persecution or violence involved and their own country is able and willing to protect them. This was the case, for instance, for many persons displaced in the longer term aftermath of devastating floods in Pakistan in 2022²⁴⁸ and farming communities in West Africa who moved because of declining land productivity due to drought in contexts not involving conflict, violence or persecution.²⁴⁹

XVI. Conclusion

122. In the context of climate change, disaster and displacement, international human rights law obliges States to take all positive measures to protect and preserve the right to life and human dignity. This includes measures to prevent and avoid the conditions leading to displacement, but also includes measures to provide protection to those who are forced to flee as well as internally displaced persons.

²⁴³ IACtHR, *Advisory Opinion on Juridical Condition and Human Rights of the Child*, OC-17/02, 28 August 2002: www.refworld.org/cases/IACRTHR.4268c57c4.html, p. 36.

²⁴⁴ IACtHR, *Advisory Opinion OC-21/14 - Children*, note 27 above, para. 105. See also, para. 261.

²⁴⁵ See, UNHCR, *2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child*, May 2021: www.refworld.org/docid/5c18d7254.html.

²⁴⁶ CRC, Article 3 (Best interests) and Article 12 (Right to be heard), note 231 above.

²⁴⁷ IACtHR, *Advisory Opinion OC-21/14 - Children*, note 27 above, paras 164, 167, and 261. See also, UN Committee on the Rights of the Child, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6: www.refworld.org/docid/42dd174b4.html, part VI.

²⁴⁸ See IOM, *Confronting Climate Anxiety: One Year After the Floods in Pakistan*, 16 November 2022: <https://reliefweb.int/report/pakistan/confronting-climate-anxiety-one-year-after-floods-pakistan>.

²⁴⁹ See OHCHR, *Advancing a rights-based approach to climate change resilience and migration in the Sahel*, 16 November 2022: <https://www.ohchr.org/en/documents/reports/advancing-rights-based-approach-climate-change-resilience-and-migration-sahel>.

123. UNHCR urges the Court to recognize that international refugee law can apply to protect persons fleeing in the context of the impacts of climate change, including under the expanded protection provided in the Cartagena Declaration. The impacts of climate change can be part of the interpretation of ‘other circumstances which have seriously disturbed public order’. Further, without prejudice to the right to seek and enjoy asylum, States are encouraged to make use of legal stay arrangements or temporary forms of protection as well as regional free movement frameworks.

124. Climate change affects everyone, but some groups and individuals face greater challenges and experience the impacts disproportionately. Thus, States have an obligation to effectively prevent and protect against the differentiated impacts of climate change on women, children, Indigenous peoples, LGBTIQ+ persons and other vulnerable groups, including stateless and internally displaced persons.

125. UNHCR thanks the Court for the opportunity to present these observations.

**UNHCR,
18 December 2023**