



A GUIDE TO EFFECTIVE PRACTICES FOR RCM MEMBER COUNTRIES

# Protection for persons moving across borders in the context of disasters

DRAFTED BY THE NANSEN INITIATIVE  
FOR RCM MEMBER COUNTRIES



Regional Conference on Migration  
Conferencia Regional sobre Migración

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## A GUIDE TO EFFECTIVE PRACTICES FOR RCM MEMBER COUNTRIES

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Regional Conference on Migration  
Conferencia Regional sobre Migración

THE  
NANSEN  
INITIATIVE

DISASTER-INDUCED CROSS-BORDER DISPLACEMENT



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Federal Department of Foreign Affairs FDFA



NORWEGIAN MINISTRY  
OF FOREIGN AFFAIRS

DRAFTED BY THE NANSEN INITIATIVE  
FOR RCM MEMBER COUNTRIES



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Member Countries of the Regional Conference on Migration (RCM) are exposed to a wide variety of natural hazards, including floods, hurricanes, droughts, tsunamis, earthquakes, volcanoes, fires, and landslides, each of which has the potential to trigger population movements. As a consequence of disasters generated by these natural hazards, displacement and migration have occurred within, as well as from and to Member Countries of the Regional Consultation on Migration (RCM), as well as from other countries in the Americas and beyond.<sup>1</sup>

Recognition of this challenge reflects widespread concern among a range of countries in the Americas that includes, but also extends beyond, RCM Member Countries. For example, the challenge of responding to cross-border displacement in the context of disasters and climate change was specifically recognized in the December 2014 Brasilia Declaration and Plan of Action adopted within the Cartagena +30 process. It was also recognized by participants of the second Nansen Initiative Regional Consultation on *Disasters and Cross-Border Displacement in Central America: Emerging Needs, New Responses*, held from 2-4 December 2013.<sup>2</sup> In October 2015, the majority of RCM Member Countries also endorsed the Nansen Initiative *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*.<sup>3</sup>

Some RCM Member Countries have used humanitarian protection measures<sup>4</sup> to receive foreigners displaced across international

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<sup>1</sup> Situations of cross-border disaster-displacement may be difficult to distinguish from migration in this context. The number of displaced persons in this context from and to RCM Member Countries has been low as compared to those internally displaced in disaster contexts.

<sup>2</sup> *Disasters and Cross-Border Displacement in Central America: Emerging Needs, New Responses*, Conclusions: Nansen Initiative Regional Consultation, San José, Costa Rica, 2-4 December 2013. < [www.nanseninitiative.org/central-america-consultations-intergovernmental/](http://www.nanseninitiative.org/central-america-consultations-intergovernmental/) > (Last accessed: 30 April 2015)

<sup>3</sup> The Nansen Initiative's *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (Protection Agenda) was endorsed by 114 government delegations in Geneva, Switzerland on 13 October 2015.

<sup>4</sup> As described in the Protection Agenda, "**protection**" refers to "any positive action, whether or not based on legal obligations, undertaken by States on behalf of disaster displaced persons or persons at risk of being displaced that aim at obtaining full respect for the rights of the individual in accordance with the letter and spirit of applicable bodies of law, namely human rights law, international humanitarian law and refugee law. While highlighting the humanitarian nature of such protection, the agenda does not aim to expand States' legal obligations under international refugee and human rights law for cross-border disaster-displaced persons and persons at risk of being



Photo: IOM/Charles Porcel

borders in disaster contexts. Humanitarian protection measures are temporary in nature in that the immigration status granted is for a limited duration, or such measures, for example expediting permanent residency applications, are used for a limited period of time in the aftermath of a disaster. Cross-border disaster-displacement<sup>5</sup> commonly takes three different forms:

- i. Spontaneous and/or assisted evacuation to avoid the immediate risks posed by natural hazards.
- ii. Spontaneous flight and/or assisted evacuation during the disaster to escape death or injury.

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displaced." (page 10, section B). "**Humanitarian protection measures**" refer to "the laws, policies and practices used by States to permit the admission and stay of cross-border disaster-displaced persons on their territory." Protection Agenda (see page 12, item 3).

<sup>5</sup> As described in the Protection Agenda "disaster displacement" refers to "situations where people are forced or obliged to leave their homes or places of habitual residence as a result of a disaster or in order to avoid the impact of an immediate and foreseeable natural hazard." "Cross-border disaster-displacement" occurs when such displaced persons cross an international border. See page 11, section C, items 1 and 2.

- iii. A movement to access protection and lifesaving assistance that may not be available in-country as a result of widespread destruction of infrastructure and basic services.

Governments of some RCM Member Countries have also used humanitarian protection measures in response to a second challenging scenario, in which a foreigner is abroad when his or her country of origin is affected by disaster. The impact of the disaster may raise particular humanitarian and protection concerns for such persons, such as making it unsafe for them to return to their country of origin. Other difficulties might include the inability to maintain a regular immigration status in the absence of financial support from family members in the disaster-affected country. Such measures can include extending the period of legal stay permitted, or, for example, suspending deportations.

Finally, a third set of concerns arise for foreign migrants who are present in a country when it is struck by a disaster. For instance, such migrants may not have access to humanitarian assistance or may not choose to request assistance if they have an irregular immigration status. They may also need assistance to access consular services to facilitate their return home in a disaster's aftermath. These needs are often accentuated for persons who do not possess a regular immigration status, or who are transiting through the disaster-affected country's territory.

The particular challenges posed to RCM Member Countries in such disaster contexts include the absence of an agreed approach for providing humanitarian protection measures, and the consequent need better to share information on good practices. Indeed, there is no international or regional legal framework, or set of criteria that specially address the implications of cross-border disaster-displacement.<sup>6</sup> The absence of an agreed common response has the potential to lead to irregular primary and secondary movements of foreigners, the risk of their exploitation by criminal networks, and the suffering of vulnerable migrants.

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<sup>6</sup> Note that the Protection Agenda is a non-binding document with the stated purpose to "enhance understanding, provide a conceptual framework, and identify effective practices for strengthening the protection of cross-border disaster-displaced persons." See Protection Agenda, page 8, paragraph 3.



Photo: IOM/Jorge Peraza

The RCM has previously examined the migratory consequences of disasters and the practice of its Member Countries,<sup>7</sup> as have other regional bodies in the Americas in which some RCM Member Countries participate. These bodies include the Esquipulas Process, the Bolivarian Alliance for the Peoples of Our America, the Union of South American Nations, and the Organization of American States.<sup>8</sup> This Effective Practices Guide takes account of such positive regional precedents.

<sup>7</sup> In the RCM IV Meeting's Joint Communication addressing the impacts of the 1998 Hurricane Mitch, Member Countries "[a]greed that the Conference [i.e. RCM] is an ideal forum for attending to the migratory aspects derived from this natural hazard, applying the holistic vision proposed by the Puebla Process, with an emphasis on the link between migration and development." See Regional Conference on Migration, "Comunicado Conjunto, IV Conferencia Regional sobre Migración," San Salvador, 26-29 January 1999, third paragraph, cited in D.J. Cantor, "Law, Policy and Practice Concerning the Humanitarian Protection of Aliens on a Temporary Basis in the Context of Disasters: States of the Regional Conference on Migration and Others in the Americas," December 2014, a study prepared on behalf of the Nansen Initiative, p. 28.

<sup>8</sup> Ibid. Section 4.



## I. PURPOSE

The purpose of this Guide to Effective Practices on Admission and Stay for Persons Moving across Borders in the Context of Disasters (hereinafter: Effective Practices Guide) is to share information on the use of humanitarian protection measures that RCM Member Countries, depending on their domestic laws, may apply on a temporary basis in response to the needs of disaster-affected foreigners.

The Effective Practices Guide was developed following the *Regional Workshop on Temporary Protection Status and/or Humanitarian Visas in Situations of Disaster*, approved by the RCM XIX Vice-Ministerial Meeting on 26-27 June 2014<sup>9</sup> and held in San José, Costa Rica on 10 – 11 February 2015. The workshop built on the second Nansen Initiative Regional Consultation on *Disasters and Cross-Border Displacement in Central America: Emerging Needs, New Responses* held on 2-4 December 2013<sup>10</sup> and drew upon best practice among RCM Member Countries, and other States in the Americas, identified through a study commissioned by the Nansen Initiative.<sup>11</sup>

This Effective Practices Guide does not create a new set of State obligations, extend existing State obligations, or require that new laws be passed. Rather, it is intended to support the more effective and consistent use of existing law, policy and practice to ensure an appropriate response to the needs of cross-border disaster-displaced persons and foreign migrants affected by disasters. In this way, it seeks to improve the overall humanitarian response to this complex challenge.

## II. COMMON UNDERSTANDING AND CORE PRINCIPLES

This Effective Practices Guide is based on the following common understandings and core principles related to the humanitarian protection and assistance challenges faced by disaster-affected foreigners:

<sup>9</sup> Conferencia Regional sobre Migración, Declaración: Por una Región Libre de Trata de Personas, XIX Reunión Viceministerial de la Conferencia Regional sobre Migración, 26-27 June 2014, decisión 6.

<sup>10</sup> Conclusions: Nansen Initiative Regional Consultation, *supra*, note 1.

<sup>11</sup> Cantor, *supra*, note 3.

- i. The humanitarian response to these challenges is non-political in nature, rooted in the concept of solidarity with the affected State and its population, and grounded in respect for the fundamental human rights of every human being affected by disasters, and the principle of non-discrimination as provided for in each State's domestic law.
- ii. This Guide is based on a cooperative approach among RCM Member Countries to challenges faced by disaster-affected foreigners that seeks to facilitate the use of humanitarian protection measures in disaster situations, based on a framework drawn from existing best practices across the region and informed by applicable legal obligations.
- iii. The list of effective practices identified in this Guide is not exhaustive and should not be understood as limiting the ability of States to provide a higher level of humanitarian protection measures to disaster-affected foreigners, or to undertake other measures to assist a disaster-affected country.
- iv. The adoption of humanitarian protection measures by any State for the benefit of disaster-affected foreigners constitutes only one component of a larger humanitarian response to disasters, which could equally include longer-term efforts towards sustainable recovery and reconstruction.
- v. The Guide recognizes the importance of closely cooperating with affected communities, civil society and, where appropriate, diaspora communities in disaster contexts to address the multiple challenges faced by disaster-affected foreigners and to enhance their protection.
- vi. This Guide is without prejudice to the application of existing international or domestic law, including, to the extent applicable, refugee law, human rights law, and disaster response law.

### III. SCOPE

#### A- Situations of disaster

This Effective Practices Guide covers admission, stay, and return of foreigners in the context of sudden-onset disasters. The term "disaster" refers to a situation in which there is a "serious disruption of the functioning of a community or a society - involving widespread human, material, economic or environmental losses and impacts which exceeds the ability of the affected community

or society to cope using its own resources,"<sup>12</sup>and which is caused in part or in whole by a sudden and serious natural hazard.

The use of humanitarian protection measures may become relevant, but are not limited to, the following disaster-related situations:

- i. The sudden, and potentially mass, influx of foreigners seeking safety and assistance by crossing a border to a nearby country.
- ii. The movement of foreigners towards other, often more distant, countries owing to the disaster's destruction of livelihoods in their own country.
- iii. The temporary inability of foreigners already present in a foreign country to return safely to their country of origin due to the impact of a disaster in that country.
- iv. The specific challenges for foreign migrants living in, or transiting through, a disaster-affected country to access emergency assistance, consular services etc., particularly if they have an irregular status.
- v. The temporary inability of a disaster-affected country to receive adequately its own returning citizens due to the impact of the disaster.

## **B. Beneficiaries**

This Effective Practices Guide covers three distinct categories of persons:

- i. Foreigners who are seeking to travel to, enter and/or stay in a foreign country, whether or not adjacent to the country of origin, in search of temporary protection and assistance during or in the aftermath of a disaster in their country of origin, or in anticipation of such a disaster.
- ii. Foreigners physically present in a foreign country at a time when their country of origin is affected by a disaster who are seeking to temporarily remain in the country in which they are already

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<sup>12</sup> UN Office for Disaster Risk Reduction (UNISDR). According to UNISDR, "Disasters are often described as a result of the combination of: the exposure to a hazard; the conditions of vulnerability that are present; and insufficient capacity or measures to reduce or cope with the potential negative consequences. Disaster impacts may include loss of life, injury, disease and other negative effects on human physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption and environmental degradation." See <http://www.unisdr.org/we/inform/terminology#letter-d> (Last accessed 30 April 2015).

physically present in order to avoid the consequences of the disaster if returned to the country of origin.

- iii. Migrants who are living in or transiting through a foreign country, and who are seeking protection and assistance because they are affected by a disaster in that foreign country.

Discrimination on the basis of an immigration status or on any other ground is prohibited to the extent expressly prescribed by applicable national and international law.

### **C. Applicability of existing bodies of law**

Alongside disaster response law, three specific areas of existing national law and policy can be used by RCM Member Countries for humanitarian protection measures on a temporary basis for foreigners in the context of disasters. The majority of effective practices presented in this Guide rely upon immigration law as the legal basis for such measures. At the national level among RCM Member Countries, this encompasses, where applicable, utilizing a range of “regular” and “exceptional” migration categories. In some rare cases, categories used for refugee protection and protection against forcible return (*refoulement*) under international human rights law may also apply.

#### *1. Use of regular migration categories*

The legislation of each RCM Member Country provides for regular migration categories that are used to facilitate the travel, admission and stay of foreigners in their territory for purposes of work, family reunification, tourism, and education. Many RCM Member Countries use these migration categories to provide a response to the humanitarian consequences of a disaster. They may provide foreigners affected by a disaster with a more stable status than exceptional migration categories. At the same time, it helps States to implement their regular migration policies.

#### *2. Use of exceptional migration categories*

A number of RCM Member Countries have adopted legislation that explicitly provides for “exceptional” migration categories, frequently on the basis of humanitarian grounds. Member Countries have used these categories provide an alternative means of providing a temporary response to disaster-affected foreigners,

particularly in situations when such persons may not meet the legal requirements for travel, admission or stay in the country under regular migration categories. They may also provide a tool to rapidly grant a temporary status or stay for disaster-affected foreigners in the context of mass influx, when individual determination may not be possible or appropriate.

### 3. *Use of refugee categories and protection categories under international human rights law*

In general, disaster situations do not as such fall within the scope of application of international or regional refugee protection instruments. However, in some cases, refugee law or other provisions for protection from return under human rights law may be applicable. For instance, the effects of a disaster may create international protection concerns by generating violence and persecution, such as when a collapse of governmental authority triggered by the disaster leads to violence and unrest<sup>13</sup> or when a government uses a disaster as pretext to persecute its opponents.<sup>14</sup> Thus, it is still necessary for competent authorities to carefully scrutinize cases from a disaster-affected country to assess if refugee status, or similar protection from return under applicable human rights law, is warranted due to any such negative consequences of a disaster.<sup>15</sup>

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<sup>13</sup> For example, a few States (Panama, Peru) found that asylum seekers from Haiti had a “well-founded fear of persecution by non-State actors that arose from the vacuum of governmental authority after the earthquake in Haiti,” thus applying the 1951 Refugee Convention.

<sup>14</sup> In New Zealand, the Refugee Status Appeals Authority found that a female activist from Myanmar had a well-founded fear of arrest and sentencing because in the aftermath of Cyclone Nargis she had distributed humanitarian aid purchased by foreigners who supported an opposition party. Refugee Appeal No 76374, Decision of 28 October 2009 (B.L. Burson [member]), available online at [https://forms.justice.govt.nz/search/IPT/Documents/RefugeeProtection/pdf/ref\\_20091028\\_76374.pdf](https://forms.justice.govt.nz/search/IPT/Documents/RefugeeProtection/pdf/ref_20091028_76374.pdf) (last accessed 4 March 2015).

<sup>15</sup> There is no existing obligation under international human rights law that broadly prohibits the return of individuals to disaster-affected countries. The only explicit *non-refoulement* obligation in human rights law is Article 3 of the Convention Against Torture, which prohibits the expulsion, return, or extradition of individuals to any country where there are substantial grounds for believing they would be at risk of torture. Certain courts and commentators have asserted the existence of broader nonrefoulement obligations under human rights law, such as where there is a threat to life or cruel, inhuman or degrading treatment. While no jurisprudence has yet specifically addressed return to disaster-affected countries, such protection could perhaps apply, *mutatis mutandis*, to such situations, especially if the cumulative conditions in those countries amounted a threat to life or cruel, inhuman or degrading treatment.

# PROTECTION OF FOREIGNERS FROM DISASTER-AFFECTED COUNTRIES ON HUMANITARIAN GROUNDS

## I. IMMIGRATION DISCRETION ON HUMANITARIAN GROUNDS

The power to regulate the travel to, admission and stay in their territories of foreigners is an inherent right of every country and an attribute of its sovereignty. The nature of this power is exercised with a broad degree of discretion and flexibility by immigration authorities, allowing RCM Member Countries to provide a variety of humanitarian protection measures for disaster-affected foreigners. Discretion may be used to block entry of foreigners, or deny or terminate permission to stay. It may also be exercised favorably to allow foreigners to enter or stay in the country.

### A. Provision for discretion on humanitarian grounds

RCM Member Countries share a customary practice of permitting competent authorities to exercise positive immigration discretion on the basis of “humanitarian grounds.” In general, the practice of a number of States in the RCM region suggests that the stronger the humanitarian grounds, the stronger the reasons to exercise discretion favorably. In many countries, the authority to exercise discretionary power on humanitarian grounds is expressly provided for in law. In other countries, it is based on legal provisions recognizing such power in a general manner or, in the absence such provision, as an inherent power of immigration officials.

In the few States that do not have such provisions, expressly writing this discretionary power on the basis of humanitarian grounds to into law or policy would provide immigration officials with the legal certainty that they may exercise such power.

### B. Obligations limiting discretion

The discretionary power of States in immigration matters is not unlimited, however, and must be exercised with respect for applicable rules of international and national law that may constrain its use in particular circumstances. First, international human rights law, despite the absence of specific jurisprudence,



Photo: UNHCR

may arguably protect a disaster displaced person against removal in certain limited situations.<sup>16</sup> Second, refugee law protects persons against forcible return (*refoulement*)<sup>17</sup> when relevant grounds of

<sup>16</sup> See for instance Article 6, paragraph 1 of the International Covenant on Civil and Political Rights obliging States Parties to respect the right to life and protect it under the law. The Human Rights Committee has stated its view that this provision be applied to prevent States Parties that have abolished the death penalty from extraditing a person to a State where he or she would face capital punishment (see *Kindler v. Canada*, Communication No. 470/1991, U.N. Doc. CCPR/C/48/D/470/1991 (1993)) or return rejected asylum seekers to countries where they would face a real risk of being killed. To date, States have not relied explicitly upon international human rights law obligations or complementary protection mechanisms as the legal basis for admitting disaster displaced persons but rather relied upon their discretionary authority, often on "humanitarian grounds." See Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press: Oxford, 2012) p. 49. At the regional level see Inter-American Court of Human Rights, *Advisory Opinion on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (2014) Series A, No 21, where the Court interpreted the "best interests of the child" principle (Article 3 International Convention on the Rights of the Child) to be a "central aspect" in return proceedings, meaning that a child, in principle, cannot be returned to a country if it is not in the child's best interest, including where he or she would face a real risk of human rights violations (see paras. 222, 231-232).

<sup>17</sup> The relevant rule in relation to refugees is Article 33 of the Refugee Convention. Complementary protection provisions concerning *refoulement* usually are derived from the provisions of international human rights law treaties.

persecution occur in a disaster context (below pages 20-21, item 3). Third, persons affected by disasters also continue to benefit from relevant protection under international, regional or national laws relating to victims of trafficking.<sup>18</sup> However, these existing guarantees for non-return find only exceptional and very limited application in disaster scenarios.

Conventions protecting the human rights of migrants do not provide additional protection with regard to admission and non-return.<sup>19</sup> However, States may be bound by bilateral or (sub-) regional agreements guaranteeing free movement to certain categories of persons, which may also be applicable in disaster situations.<sup>20</sup>

## II. IDENTIFYING DISASTER-AFFECTED FOREIGNERS

### A- Effective practices regarding the identification of disaster-affected foreigners on an individual basis

The practice of a number of States in the RCM region suggests that officials usually exercise their discretion favorably, to the extent permitted by national law, on “humanitarian grounds” for disaster-affected foreigners in situations where the relevant person is “directly and seriously affected by the disaster.”

An analysis of practice in the RCM region indicates that with regard to identifying disaster-affected foreigners for the purposes of providing humanitarian protection measures, States require foreigners to be “directly and seriously affected by the disaster.”

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<sup>18</sup> See, for example, the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children states in Article 7 on the Status of victims of trafficking in persons in receiving States, that “each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases” and “give appropriate consideration to humanitarian and compassionate factors.”

<sup>19</sup> See the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Doc. A/RES/45/158, 18 December 1990.

<sup>20</sup> For example, the Central America Four Border Control Agreement allows for the free movement of persons between the borders of Guatemala, Nicaragua, El Salvador and Honduras without visas or passports and with limited migration and customs restrictions. “SICA Un Breve Vistazo al Sistema de la Integración Centroamericana” (Programa de Formación en Integración Regional de la Secretaría General del SICA 2004) p. 25



Foreigners may be considered directly and seriously “affected” by the disaster:

- i. Where an ongoing disaster, or in rare cases an imminent one, creates a substantial risk to his/her life or safety in the country of origin.
- ii. Where, as a direct result of the disaster, the person has been wounded, has lost family members, his property and/or his/her (means of) livelihood.
- iii. Where, in the aftermath and as a direct result of the disaster, the person faces ‘extreme hardship’ in his/her country, in particular because he or she cannot access needed humanitarian protection and assistance in that country.<sup>21</sup>

The impact of a disaster can be considered “direct” when its effects result in a sudden and severe change for the worse in the person’s circumstances. A person might face extreme hardship as a direct result of a disaster, even though she or he may have only had scarce resources or faced some level of hardship before the disaster.

Determining whether a direct impact is “serious” depends not only on objective factors such as the overall degree of destruction, but also on pre-existing individual vulnerabilities that may be exacerbated by the impact of the disaster. Sick and wounded persons, children (particularly when orphaned or unaccompanied), female-headed households, persons with disabilities, older persons or members of indigenous communities are often among the most adversely affected by disasters. In any individual case, officials may also consider a wide range of factors beyond those directly linked to the disaster, such as family ties in the receiving country.

Where persons foreigners are not directly and seriously affected by a disaster, States may still be ready to provide humanitarian protection measures, including for considerations of solidarity with an affected country that is temporarily unable to adequately protect and assist all of its citizens due to the disaster, particularly when an affected country has requested the use of humanitarian protection mechanisms for their citizens.

Subject to applicable refugee and human rights law, and based upon careful examination of each case, factors justifying decisions not to exercise discretion favorably may include national security risks posed by the individual or his/her serious criminal activities.

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<sup>21</sup> For more detailed discussion, see page 17, section C of the Protection Agenda.

## **B. Effective practices regarding the identification of disaster-affected foreigners on a group basis**

When a mass influx of foreigners takes place, or when a large number of potentially-affected foreigners are already living on the territory of the relevant State and the disaster is particularly serious and large-scale, States may find it desirable to deal with disaster-affected foreigners on a *prima facie* “class” or group basis rather than examining each individual application in detail, especially as a basis for the temporary suspension of deportation or admission under an exceptional migration category.

## **C. Standards of treatment for disaster-affected foreigners**

The standards of treatment for disaster-affected foreigners who are admitted or otherwise permitted to enter are determined by the category under which admission or authorized entry takes place. Standards of treatment for foreigners admitted or temporarily suspended from the obligation to leave the country under exceptional migration categories are determined by applicable domestic law but should not be lower than what is required by applicable human rights obligations. In addition, specific disaster-related needs and vulnerabilities of such persons should be addressed in accordance with applicable human rights obligations, including the principle of non-discrimination and the best interests of the child, to the extent consistent with national law.

Standards of treatment for foreigners admitted as refugees are determined by applicable international refugee and human rights law,<sup>22</sup> without prejudice to higher standards that may be provided by domestic law and taking into account disaster-related specific needs and vulnerabilities of admitted persons. Standards of treatment for persons protected on the basis of international human rights law or similar domestic law are determined by applicable domestic laws, without prejudice to higher standards under applicable international human rights law. The principle of *non-refoulement* should be fully respected under all circumstances consistent with such legal obligations.

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<sup>22</sup> See, in particular, Articles 2-34 of the 1951 Convention relating to the Status of Refugees.

### III. PROTECTION FOR FOREIGNERS ARRIVING FROM DISASTER AFFECTED COUNTRIES

#### A- Activation and eligibility

A disaster in a foreign country may prompt citizens or permanent residents from that country to travel and seek admission and permission to stay in a destination country, whether or not it neighbors the disaster-affected country. In such situations, States may



Photo: IOM/Alan Motus

activate humanitarian protection measures on a temporary basis for such persons if a disaster has been declared by competent authorities of the affected country. Such a declaration provides an objective criterion to assist in determining whether the situation is serious enough to justify activating humanitarian protection measures for affected foreigners.

Foreigners who could benefit from temporary humanitarian protection measures, whether on an individual or group basis, are persons directly and seriously affected by the disaster as defined above (pages 15-16, section A).

States may also extend temporary humanitarian protection measures to other foreigners from disaster-affected countries (see page 16, paragraph 4), particularly when a disaster-affected country has requested such protection on behalf of their citizens.

#### B. Effective practices regarding the use of migration categories

##### 1. Regular migration categories

Effective practices States could consider with regard to using regular migration categories as the basis for granting humanitarian protection measures to foreigners arriving from a disaster-affected country, to the extent permitted by national law, include:

- i. Using biometric methods to quickly identify and register foreigners fleeing during or shortly after a disaster in a neighboring country.

- ii. Expediting the processing of applications from foreigners eligible for travel, admission and stay under regular migration categories, for instance foreigners reuniting with family members already lawfully present in the destination country.
- iii. Waiving standard immigration requirements (such as the possession of specific documents, the payment of fees, proof of employment or other supporting documentation) either on a case-by-case basis or for a specific group of persons.
- iv. Waiving requirements that applications for travel, admission and stay must be submitted prior to arrival in the destination country;
- v. Allowing foreigners to apply to renew their immigration status, taking into account the post-disaster situation in the country of origin as well as the specific situation of each person, including his or her vulnerabilities.
- vi. Creating programs that support return in safety and dignity, or provide for the possibility to apply for a more stable migration category.

## 2. *Exceptional migration categories*

Effective practices States could consider with regard to using exceptional migration categories as the basis for granting humanitarian protection measures to foreigners arriving from a disaster-affected country, to the extent permitted by national law, include:

- i. Using provisions that allow immigration authorities to authorize travel, admission and stay of foreigners on the basis of humanitarian grounds to persons directly and seriously affected by a disaster in their country of origin (see above pages 15-16, section A) whether or not relevant domestic law specifically covers disaster situations.
- ii. Using immigration discretion in favor of foreigners directly and seriously affected by a disaster in their country of origin (see above pages 15-16, section A), including where such discretion is provided for by applicable domestic law without explicit reference to humanitarian grounds.
- iii. Creating, by decision of the competent high level authority (parliament, president, prime minister, minister, etc.), *ad hoc* arrangements authorizing, on the basis of humanitarian grounds, travel, admission and stay of foreigners directly and seriously affected by a disaster in their country of origin.

While admission under exceptional migration categories is temporary, relevant authorities could consider, to the extent permitted by national law:

- i. Allowing foreigners benefitting from humanitarian protection measures to apply for renewal of their temporary immigration status, taking into account the post-disaster situation in the country of origin as well as the specific situation of each person, including his or her vulnerabilities.
- ii. Creating programmes to facilitate return in safety and dignity or, after a certain period of time as determined by domestic law, the possibility to apply for a regular migration category.

### *3. Refugee law and protection under human rights law*

Although the use in RCM Member States of refugee designation or protection under international human rights law has been limited with respect to persons affected by disasters, States should remain open to carefully examining applications of foreigners affected by a disaster in their country of origin under refugee and human rights law.

Noting the limited scope of refugee law in disaster situations (see page 12, item 3), international protection needs may arise in the context of disasters under certain circumstances, for example:

- i. Where a disaster affects a country that already produces refugees, foreigners arriving from that country may qualify as refugees under national laws implementing the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, or domestic law implementing the 1984 Cartagena Declaration<sup>23</sup> regardless of the disaster. Such persons should continue to be recognized as refugees and their protection needs dealt with directly under the receiving country's applicable refugee law framework. The occurrence of a disaster in their country of origin should not serve as a pretext for withholding recognition of refugee status.
- ii. Even if a disaster does not in itself constitute a ground for refugee status, its effects may create international protection needs if they generate violence or persecution on account of a protected ground (e.g., religion, political opinion), including

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<sup>23</sup> Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19-22 November 1984.

events seriously disturbing public order as recognized by some countries that have adopted the Cartagena Declaration in their national legislation.<sup>24</sup> Competent authorities should therefore carefully scrutinize cases from an affected country with a view to assessing if refugee status is merited as a result of the negative consequences of the disaster.

- iii. If national legislation includes a broader refugee definition than is found in international or regional refugee law, it may, where appropriate, be used to facilitate entry, suspension of deportation or temporary stay of disaster-affected foreigners.
- iv. Where domestic refugee law or practice applies the "internal relocation" concept as a basis for rejecting claims of persons who would otherwise qualify as refugees, due consideration should be given to the situation in the country of origin during and in the aftermath of a disaster.

If persons applying for refugee protection do not qualify as refugees, States may provide for their temporary stay or protection on the basis of humanitarian grounds (see page 13, section A), or, where applicable, international human rights law (see pages 13-14-15, section B above) or similar domestic law.

Refugees admitted in the context of a disaster may benefit from durable solutions programs developed for refugees in general. The cessation of refugee status will be determined based upon applicable provisions of international or national refugee law.<sup>25</sup>

## **IV. PROTECTION OF FOREIGNERS FROM DISASTER-AFFECTED COUNTRIES ABROAD AT THE TIME OF A DISASTER**

### **A- Activation and eligibility**

States may activate humanitarian protection measures for foreigners from disaster-affected countries who are already abroad when a disaster occurs and who, at that time, seek to extend the

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<sup>24</sup> See paragraph 3, which states, "Hence the 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, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."

<sup>25</sup> See, in particular, Article 1C of the 1951 Convention relating to the Status of Refugees.

duration of an existing migration status or transfer to another more stable category. Humanitarian protection measures may also be activated when foreigners from a disaster-affected country are in an irregular situation and obliged to leave the country voluntarily or else be deported.

Foreigners who could benefit from temporary humanitarian protection measures, whether on an individual or group basis, are persons directly and seriously affected by the disaster as defined above (pages 15-16, section A) in case of return to their country of origin.

States may choose to activate humanitarian protection measures on a temporary basis for such persons, particularly if a disaster has been declared by competent authorities of the affected country. Countries may require a formal request by the affected country to activate such measures.

States may, as a matter of solidarity with the disaster-affected country, also extend humanitarian protection measures to other foreigners from disaster-affected countries, particularly when a country has requested such measures on behalf of their citizens. Such foreigners may be able to effectively support the relief and recovery efforts in the disaster-affected country by sending back remittances to family members.

## **B. Effective practices regarding the use of migration categories for disaster-affected foreigners already abroad**

### *1. Regular migration categories*

Effective practices States could consider with regard to using regular migration categories as the basis for granting humanitarian protection measures to foreigners from a disaster-affected country who are already abroad when a disaster occurs, to the extent permitted by national law, include:

- i. Allowing foreigners in regular migration situations to extend or change their status on humanitarian grounds to support an extended stay until return to the disaster-affected country is possible, for example by transferring from a student to a work permit.

- ii. Reviewing requests from foreigners in irregular situations to apply to regularize their stay by expediting the processing of their applications and waiving standard requirements, such as requiring that applications be submitted before arrival in the destination country.

## 2. *Exceptional migration categories*

Effective practices States could consider with regard to using exceptional migration categories as the basis for granting humanitarian protection measures to foreigners from a disaster-affected country who are already abroad when a disaster occurs include:

- i. Temporarily suspending the deportation of disaster-affected foreigners:
  - a. On the basis of humanitarian grounds (see page 13, section A), on either an individual or a group basis.
  - b. In situations where the country of origin is unable to cope with the return of its citizens for reasons related to the disaster.

While humanitarian protection measures are temporary, relevant authorities could consider:

- i. Allowing foreigners benefitting from such measures to apply to renew their temporary migration status, taking into account the post-disaster situation in the country of origin as well as the specific situation of the person, including his or her vulnerabilities.
- ii. Creating programmes that support return in safety and dignity, or, after a certain period of time as determined by domestic law, provide for the possibility to apply for a regular migration category.

## 3. *Refugee law and protection under human rights law*

Although the use in RCM Member States of refugee categories or protection under international human rights law has been limited with respect to persons affected by disasters, States should remain open to carefully examining the applications of foreigners who were already abroad when a disaster occurred under applicable refugee and human rights law. (See pages 20-21, item 3 above.)



# PROTECTION OF FOREIGNERS MIGRANTS LIVING IN OR TRANSITING THROUGH A DISASTER-AFFECTED COUNTRY

## I. ACTIVATION AND ELIGIBILITY

Foreign migrants may find themselves in a State's territory at a time when that country is affected by a disaster, and consequently may face the same severe impacts as the nationals of that country. However, in addition, their status as migrants may make it difficult for them to access humanitarian assistance, or they may be particularly vulnerable to exploitation and abuse in disaster situations.

Humanitarian protection measures responding to the needs of migrants are particularly appropriate when a disaster has been declared by competent authorities.

## II. EFFECTIVE PRACTICES FOR FOREIGNS MIGRANTS IN A DISASTER-AFFECTED COUNTRY

Effective practices competent authorities in the disaster-affected country could consider to address the protection needs of foreign migrants living in or transiting through the country, to the extent permitted by national law, include:

- i. Ensuring that disaster-affected migrants on their territory have access to the same emergency protection and assistance as citizens and habitual residents, without impermissible discrimination of any kind and with full respect for their human rights.
- ii. Undertaking measures aimed at ensuring that migrants in an irregular situation are not at risk of being reported to immigration authorities if they access emergency protection and assistance.
- iii. Facilitating access of disaster-affected migrants on their territory to the consular services of their country of origin, as well as assisting with their departure if they wish to return home.



Photo: IOM/Kaith Dannemiller

- iv. Temporarily refraining from enforcing immigration laws in areas directly affected by the disaster and areas where disaster survivors seek protection and assistance.
- v. Exercising positive discretion in immigration matters where migrants present on their territory are unable to comply with requirements imposed under applicable immigration law for reasons linked to the disaster (such as lost documentation, inability to pay taxes and fees, or disruption of travel and postal services), and to consider temporarily waiving certain requirements.
- vi. Exercising positive discretion in immigration matters where migrants with previously regular stay have lost the basis for such stay as a consequence of the disaster (for instance their business or property was destroyed, or a spouse possessing the citizenship of the host country has perished).

- vii. Ensuring that laws and policies expressly recognize the power of immigration authorities to take account of the specific situation of foreign migrants in disaster contexts in their decision making.
- viii. Ensuring that disaster-affected migrants on their territory, as well as their consulates and embassies, are adequately informed of any measures taken in migrants' favor.

Effective practices competent authorities in the country of origin could consider to address the protection needs of their citizens when they are abroad in a disaster-affected country, to the extent permitted by national law, include:

- i. Providing consular registration for all citizens so that they can be easily identified in the case of a disaster.
- ii. Disseminating information to citizens on the services provided by consulates and competent authorities in the case of a disaster.
- iii. Strengthening consular staff in countries affected by a disaster with persons specialized in emergency response.
- iv. Providing emergency funding for citizens affected by a disaster.
- v. Facilitating repatriation for citizens who wish to return.

The occurrence of disasters caused by natural hazard calls for a cooperative humanitarian response among States to complement national efforts. Among RCM Member Countries, responses to the humanitarian needs of disaster-affected foreigners may be developed both bilaterally and within the framework of the RCM itself. The adoption of humanitarian protection measures in these situations forms one possible part of the broader set of actions taken by States to provide emergency assistance and support long-term recovery efforts.

## **I. BILATERAL COOPERATION**

In the spirit of solidarity and cooperation, the Government of any RCM Member Country affected by a disaster may request any other RCM Member Country to apply humanitarian protection measures for the benefit of its nationals. Such requests may be based on humanitarian or practical considerations, such when the return of citizens would aggravate the emergency disaster response. RCM Member Countries should consider such requests seriously, although the decision to grant the request remains a matter of discretion.

When a disaster occurs on the territory of a RCM Member Country, or any other State, all other RCM Member Countries may offer humanitarian assistance. This includes humanitarian protection or other measures as each State deems appropriate for the temporary benefit of nationals and habitual residents of the affected country. Utilization of humanitarian protection measures does not require the consent of the affected State, except where doing so would impinge on its jurisdiction. Consultation with the affected State as to their desirability, form and scope is recommended where possible.

Each RCM Member Country may take any additional humanitarian action as permitted by the legal relationship with the affected country.

RCM Member Countries may consider concluding bilateral agreements with neighboring States to further cooperation and mutual assistance in disaster situations, which may also contain provisions on the use of humanitarian protection measures for their respective citizens.

## **II. REGIONAL COOPERATION WITHIN THE REGIONAL CONFERENCE ON MIGRATION**

Further activities utilizing the framework of the RCM in a pragmatic manner to address the humanitarian consequences of disasters for affected foreigners may include the following:

- i. Putting the matter on the agenda of relevant RCM meetings for discussion and possible action when a disaster occurs on the territory of a RCM Member Country, or when such a disaster occurs on the territory of a non-RCM State but has significant humanitarian protection impacts on one or more RCM Member Countries.
- ii. Organizing further workshops aimed at developing a cooperative response not only in the emergency phase, but also during the recovery and reconstruction phase of a disaster. By encouraging RCM Member Countries to cooperate in these long-term efforts, the RCM will facilitate the sustainable return of disaster-affected foreigners.
- iii. Using the RCM as a forum for exchanging information on disaster risk, as well as the situation during and in the aftermath of a disaster, to refine and make recommendations regarding humanitarian protection measures that RCM Member Countries may consider for the temporary benefit of nationals and habitual residents of the affected country. The RCM may also be a forum for providing technical assistance to the disaster-affected country where appropriate. Finally, information on the disaster and its impact can also be shared to improve decision-making by RCM Member Countries.

