**Temporary Protection and Humanitarian Visa in Times of Disasters**

*Draft Concept Note for a Workshop on Developing Guidelines for Temporary Protection Status and/or Humanitarian Visa in Situations of Disasters*

*San José, Costa Rica, 22-2, April, 2014*

**I. Introduction**

Over recent years, Central America’s[[1]](#footnote-1) wide range of natural hazards, including floods, hurricanes, drought, tsunamis, earthquakes, volcanoes and landslides, have displaced hundreds of thousands of people both within their own countries and across international borders. In response to those displaced abroad, states in the region and beyond have utilized a diverse set of temporary protection mechanisms to allow disaster-affected people to enter or remain in their countries in the aftermath of a disaster. While these measures have played an important protection role, participants at the December 2013 Nansen Initiative Regional Consultation in San Jose, Costa Rica concluded that more could be done to strengthen and harmonize these temporary protection mechanisms for cross-border disaster displacement in the region. In particular they recommended further dialogue on humanitarian visas within the context of the Regional Conference on Migration (RCM).[[2]](#footnote-2)

This concept note, thus, provides background on cross-border displacement in disaster contexts in Central America and the wider region, and an overview of past use of temporary protection mechanisms in response. It then proposes a process for further regional deliberation on the use of humanitarian visas in sudden-onset disasters that will culminate in a workshop hosted by the RCM with the ultimate objective of endorsing regional guidelines for the development and use of humanitarian visas for cross-border displaced people in future disasters.

**II. Background: Nansen Initiative Regional Consultation in Central America**

More than 100 participants from Central American countries, Mexico, Colombia, Haiti and the Dominican Republic, representatives from the Nansen Initiative, as well as representatives from regional and international organizations, civil society, and research institutions, met in San Jose, Costa Rica from 2-4 December 2013 for the second Nansen Initiative Consultation on “*Disasters and Cross-Border Displacement in Central America: Emerging Needs, New Responses.*”[[3]](#footnote-3)

During the consultation participants recognized cross-border displacement in the context of disasters as a very important issue for the region. They acknowledged that while most people displaced by disasters remain within their own countries under the protection of national law, there is a legal gap with regard to the protection of those displaced across borders. Participants identified the Regional Conference on Migration as a relevant forum for continuing the regional dialogue on how to address the protection needs of persons displaced across borders in the context of disasters.

**III. The Concepts of Temporary Protection, Humanitarian Visas and Stay Arrangements**

While the exact scope and definition of temporary protection is undefined;[[4]](#footnote-4) in general, it refers to an overall concept of allowing a person in need of protection to enter and/or stay within a country other than their own to ensure basic standards of treatment in accordance with human rights law, including protection against *refoulement*.[[5]](#footnote-5) Temporary protection arrangements have been used in situations when existing international protection standards may not be applicable or where their application and implementation is difficult or impossible. In this sense, they are complementary to other mechanisms in the international and regional protection regime, such as the 1951 Convention Relating to the Status of Refugees and the 1984 Cartagena Declaration.

In the context of sudden-disasters, temporary protection would allow for quick and flexible response, while maintaining basic international standards of protection. As the Central American experience shows, states use different legal mechanisms for providing temporary protection in disaster contexts. This concept note will explore the tools of humanitarian visas and stay arrangements, which refer to administrative decisions by a competent authority to grant a foreigner a permit to enter and/or stay in another country in the context of a disaster-related humanitarian crisis that has resulted in displacement.

**IV. Challenges and Opportunities in Central America and North America**

With an increase in the number and severity of disasters globally, and the growing challenges associated with climate change, it is anticipated that displacement in Central America and North America, including across borders, is likely to increase in the future. However, stated broadly and generally, unlike for refugees, there is no international or regional protection regime that explicitly addresses disaster-induced cross-border displacement, or the situation of regular or irregular migrants caught up in disaster situations or unable to return in safety and dignity to a country devastated by a disaster. Although human rights law provides “an indirect right to be admitted and to stay where the removal of a person back to the country of origin would amount to inhumane treatment,”[[6]](#footnote-6) this would not address all displacement situations.[[7]](#footnote-7) Finally, while the International Convention on Protection of the Rights of All Migrant Workers and Members of their Families provides some protection for migrant labourers, it does not grant them a right to admission or continuing stay in the country.[[8]](#footnote-8)

1. **Existing Temporary Protection Mechanisms**

Various countries in Central American and North American have nevertheless granted different forms of temporary protection on humanitarian grounds for victims fleeing disasters. For example, in the wake of the 2010 Haitian earthquake, many governments enacted special immigration measures in support of the disaster victims.[[9]](#footnote-9) Such examples include temporary protection status, complementary protection measures or humanitarian visas to those who have crossed international borders. These measures have either facilitated the entry of a disaster-affected person to enter the country, or allowed a foreigner from a disaster-affected country to stay within the country where they were located at the time of the disaster.

*1. Temporary Protection Measures Granting Admission*

Following the 2010 Haiti earthquake, the Dominican Republic adopted a one year multiple entry humanitarian visa allowing caregivers of the most gravely injured, accompanied by family members, to cross back and forth across the border legally to seek medical attention. The Government of Mexico created a humanitarian immigration program from February to May 2010, that allowed Mexican residents to travel to Haiti to bring back their family members, and sent three boats over the period of March to June 2010 to rescue a total of 511 Haitians. All received one year non-immigrant visas issued for “humanitarian reasons or in the public interest” that were later extended until the end of 2011. Notably, the Government of Canada, and the Province of Quebec in particular, primarily expedited and expanded the processing of existing immigration mechanisms. Quebec also applied humanitarian grounds to facilitate immigration for a small number of “particularly dire situations.” Other countries in Europe, Africa and elsewhere also eased their immigration rules in light of the 2010 Haitian Earthquake.

*2. Temporary Protection Measures Allowing Continued Stay*

Argentina, Chile, Ecuador, Honduras, Panama and Venezuela stayed deportations and issued humanitarian visas to assist Haitian citizens affected by the earthquake. In North America, the United States Government granted Temporary Protected Status (TPS) to Haitians under the US Immigration Act of 1990. TPS is a temporary immigration status that may be provided to nationals of designated countries who are in the US and are unable to return to their home country because of "armed conflict, environmental disaster, or extraordinary and temporary conditions." Following the Hurricane Mitch in 1998, TPS was also granted to Hondurans and Nicaraguans on the grounds of the extraordinary degree of displacement and damage in particularly these two countries.[[10]](#footnote-10)

**B. Issues for Further Discussion**

While countries in the region have used various measures to provide protection to disaster victims who have crossed international borders, the Haiti experience also shows that such arrangements are generally developed as *ad hoc* emergency responses to extraordinary situations, determined on a case-by-case basis and often implemented unilaterally, as opposed to within a more coordinated regional response. The mechanisms do not necessarily address all of the specific protection needs of migrants residing in or transiting through a country when a disaster strikes, such as challenges accessing state protection and assistance as a non-citizen and/or as a non-documented person. Some temporary protection mechanisms may also be used for long periods of time, leaving people on temporary arrangements for extended periods of time, while others end abruptly, leaving people at risk of premature return.

During the Nansen Initiative Regional Consultations, participants identified the following needs in relation to temporary protection mechanisms in disaster situations:

* Promote and harmonize the use of humanitarian visas for the admission of persons displaced by disasters.
* Develop criteria for identifying persons eligible to receive humanitarian visas.
* Explore possibilities to ensure that beneficiaries of humanitarian visas have access to comprehensive and durable solutions when their visas expire.
* Consider protection measures for all migrants when their countries of origin are faced with emergency situations caused by disasters.
* Develop guidelines that are applicable in the region within the context of the Regional Conference on Migration’s work.

**V. Methodology to Develop Guidelines *for Temporary Protection Status and/or Humanitarian Visa***

Building upon existing practice in the region, this concept note outlines a proposal for a process to prepare the drafting of guidelines for humanitarian visa and/or temporary protection status in disaster situations, within the context of the scope and work of the Regional Conference on Migration.

The objective of the preparatory process and the RCM Workshop is to develop guidelines or a manual that cover the three situations described above, namely:

* 1. Admission, including eligibility criteria and criteria for transition to solution.
	2. Standards during stay when one’s country is affected by a disaster, which prevent return in safety and dignity
	3. Standards during stay for migrants caught up in a disaster.

The guidelines shall refer to and establish a set of principles and minimum standards for protection and also orient government as to determine:

1. Situations it will cover (scope) and categories of people covered
2. Eligibility criteria
3. Admission and reception standards
4. Minimum standards for treatment
5. Criteria for transition to solutions
6. Principles for international cooperation and solidarity, including burden sharing and responsibility sharing
7. Coordination

As a first step, a group of legal experts will be constituted, under the coordination of a team leader, and tasked to: i) map existing practice on temporary protection measures, ii) develop the concept of a humanitarian visa in disaster contexts, and iii) draft guidelines. The draft guidelines will then be presented to RCM Member Countries at a workshop for further discussion, revision, and approval.

**VIII. Practical and Organizational Issues**

Subject to approval of the concept note by the RCM, the preparatory process and the Workshop will be organized by the Government of Costa Rica and the Nansen Initiative with support of the RCM Technical Secretariat from 22-23 April 2014 (tentatively), in San Jose, Costa Rica.

A tentative budget covering venue, travel and lodging, remuneration to legal expert, facilitation and is estimated at USD 35,000 – 40,000. Only partial funding has so far been ensured for the workshop, which requires concerted fund raising efforts.

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1. Central America includes Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. [↑](#footnote-ref-1)
2. The RCM is composed of 11 countries from Central and North America and the Dominican Republic. [↑](#footnote-ref-2)
3. Please see the Conclusions from the Central American Regional Consultation at <http://www.nanseninitiative.org/> [↑](#footnote-ref-3)
4. UNHCR Roundtable on Temporary Protection p 1 [↑](#footnote-ref-4)
5. For example, in refugee contexts the concept of temporary protection has been used where individual status determination is impracticable or inapplicable and where existing responses are not adequate or suited. [↑](#footnote-ref-5)
6. Kälin and Schrepfer (2012) at 35. See also Chapter Three in McAdam, *Climate Change, Forced Migration and International Law* (2012). [↑](#footnote-ref-6)
7. See, however, outcomes from the Bellagio Conference on Climate Change and Displacement, which stated that in the case of a mass influx of individuals, states have recognized “minimum obligations to ensure admission to safety, respect for basic human rights, protection against *refoulement* and safe return when conditions permit to the country of origin. In an analogous situation where persons are in distress at sea, states have accepted time honoured duties to come to their rescue.” UNHCR, “Summary of Deliberations on Climate Change and Displacement,” April 2011, at 5. [↑](#footnote-ref-7)
8. Belize, El Salvador, Guatemala, Honduras, Mexico, and Nicaragua have ratified the Treaty. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 93. [↑](#footnote-ref-8)
9. These examples from the Haiti context can be found in Patricia Weiss Fagan, “Receiving Haitian Migrants,“ a discussion paper produced for the Nansen Initiative Central American Consultation, forthcoming. [↑](#footnote-ref-9)
10. See Jane MacAdams p 38 / Desk review. [↑](#footnote-ref-10)