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MIGRATION AND ENVIRONMENT

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TABLE OF CONTENTS

Target of the text

The aim of the following text is to provide basic information on the topic of environmental migration for the purpose of the course Migration and Environment taught at the Faculty of Law of Charles University. The aim of the course is to provide students with an insight into the legal aspects of environmental migration in the context of the more general concept of migration and the environment. The acquired knowledge of the topic will enable students to understand both the issue and the social debate surrounding it, which often lacks a legal basis. The texts are designed to be shorter and illustrative of the topic, i.e. not going into depth, and rather pointing out the context. We will cover each topic in depth in the lectures.

Topics covered in the course include a general definition of international migration, defining the environmental migrant and highlighting the links to climate change, a deeper look into international refugee law and a brief look at the legal framework for stateless persons, and the topic of more general protection options through the principle of non-refoulement and international human rights law. We will also introduce the regional embedding of international refugee law within the European Union sub region, and internal displacement. The course will conclude with a simulation of a convention negotiation at the UN or a moot court.

The teaching texts are planned as introductory; they should be read before the course lectures. Examples and materials are intended for ongoing preparation as instructed in Moodle.

International migration - definition, normative anchorage, historical context, definition of environmental migrant.

Migration has always been part of the human destiny. People have left their homes for livelihood, religious persecution, work, identity. For example Albert Einstein and Madeleine Albright had to go in search of a new home.[1] As long as there were (relatively or supposedly) empty places in the world where people could leave their home countries and find a livelihood, migration was not such a widely perceived problem. But as the world became more populous and the world population grew, migration gradually became a threat, among other things. Suddenly, it is no longer a matter of moving from place to place where one is more or less welcomed, tolerated, or at least where one's arrival and stay is not unwelcome. Increasingly, there are situations in which the State does not want a person to enter its territory. For various reasons, it perceives a person as someone it does not want to allow into its territory, most often because it fears a high number of arrivals.

[1] For more information on well-known refugees, please visit the website of the Office of the United Nations High Commissioner for Refugees. UNHCR Available from: http://www.unhcr-centraleurope.org/cz/o-nas/lide-okolo-unhcr/vyznamni-uprchlici.html (accessed on 21. 8. 2021).

States remain sovereigns whose territory is subject to their exclusive jurisdiction and even perceive unauthorised border crossing or stay as a security risk.

How do environmental migrants fit into this, that is, people who are relatively numerous and who leave their homes because they have to? What is the regulation of their status? We will talk about all this further on. The following texts are written to put the issue of environmental migrants in a broader context.

What do we mean by migration or international migration?

In the broadest sense, we understand migration as the movement of people from place to place. However, not all movement is migration; for example, visiting relatives is not. To be migration, a movement usually involves a change of residence, a change of employment and a change in social relations.[2] In the case of international migration, we mean a movement of people that is in some sense international: in the sense that it takes place between states and/or is regulated by international law. It is particularly important for international law when the movement is across national borders, when a particular person is crossing from the territory of one State into the territory of another State and must comply with the requirements that State requires for entry and residence. This is a classic example of international migration. However, international law also takes into account situations where a person moves from his or her home to another place within his or her home State, if he or she does so for reasons that are considered legally relevant in international law. Although this is not a movement across a border, i.e. international in the original sense of the word, it is also relevant to international law because international law takes into account and regulates such migration (internal migration).

International law does not define international migration. Neither a definition of international migration nor a definition of migrant can be found here. Nor do we find a comprehensive regulation of this phenomenon. International law deals only with partial aspects, for example, certain groups of forced migrants, such as refugees or stateless persons, or migrants who have left their country in search of work. In these areas, we find some treaty regulation. The regulations are often accepted by only part of the States of the international community of States. In the case of labour migration, itis the countries of the northern hemisphere, i.e. those where migrants usually go for work, that are not willing to commit to contractual arrangements, while in the case of refugees, the Asia-Pacific region is missing. These seemingly small details have a huge impact on the situation of a particular state or migrant. In addition to contractual arrangements, we can look for anchoring in customary international law, which has a settled prohibition on refoulement (to the extent of torture).[3]

[2] Simmons, A., 1987. Explaining migration: Theory at the crossroads. In: J. Duchene (ed.) *Explanation in the Social Sciences: The Search for Causes in Demography.* Louvain- la-Neuve: Universite catholique de Louvain: 73–92. Quoted by Uherek, Z. Introduction. In Uherek, Z., Honusková, V., Ošťádalova, Š., Gunter, V. Migration: History and Present. Pant Civic Association, 2016.

[3] There is a considerable body of literature on the customary nature of the non-refoulement principle, some of which even finds it an imperative norm. Cf. in particular Wouters, K. International Legal Standards for the Protection from Refoulement. Intersentia, Mortsel, 2009. Cf. also UNHCR Advisory Opinion

Who is considered a migrant in international law?

In order to clarify who is a migrant, it is necessary to consider the legal status of persons who reside on the territory of a given state. Persons residing on the territory of a state can be divided into several groups according to their legal status. There are **citizens** of the state, i.e. persons with whom the state has a link (link between the state and thecitizen). The reciprocal rights contained in this bond include obligations both on the part of the person (military service, payment of taxes, etc.) and on the part of the state (obligation to receive the citizen on its territory, obligation to protect its citizen on its territory and abroad). All other persons are non-citizens of the state (**foreigners**). From a legal point of view, foreigners do not form a homogeneous mass; on the contrary, among them are persons who have the citizenship of another state, or even of several states, and for a given state are foreigners to whom their home state has a state-citizen link. Another group of the population are persons who are **stateless**; in this case we are talking about persons who have no nationality ties to any state. Then also **refugees** are a specific group.

The state has certain obligations towards all persons residing on its territory. These obligations vary depending on the individual person. In general, a state must ensure everything it promises in its international law obligations. Sometimes they are aimed at protecting the human rights of all persons in general, other times at protecting a particular group, whether the aforementioned, such as stateless persons, or another, such as children.[4] We can imagine that a state is a party to a particular convention that protects certain rights, for example, the European Convention on Human Rights. It must then effectively guarantee these rights to all persons residing on its territory or under its jurisdiction.[5] It is therefore obliged, for example, to guarantee everyone the right not to be tortured. It must therefore ensure that it does not itself, through any of its organs, act in this way, to prevent such acts from being committed and, if they are committed against a person under its jurisdiction, to punish them.

The State also has obligations towards its citizens arising from its role as sovereign in the territory. These duties arise from the very nature of the State as an entity that has duties towards its citizens. These duties include, for example, the obligation to maintain a basic level of public order within the territory of the State. Accordingly, the state is often reticent when large numbers of foreigners are to enter its territory, for example in the event of a large influx of refugees or other persons in need of protection. In such cases, we may also encounter refusals of entry into the territory, although often illegal from the state concerned. These facts are relevant to what we can expect from a state's response to environmental migrants when they arrive in large numbers at the borders of other states.

on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol from 2007.

4 See 1966 Covenant on Civil and Political Rights, 1989 Convention on Rights of the Child as examples.

5 Cf. Art. 1 of the European Convention of Human Rights, cf. Art. 2 of the Covenant on Civil and Political Rights.

There is no general definition of a migrant in international law,[6] so let's look at the IOM dictionary, which defines the term migrant as: "*An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students*."[7] We can see that this concept encompasses many different groups of people. Some of them have a legally defined status under international law, others do not; that is why it is also important to know the general norms that may apply to them. Let us look at some examples.

Migrants include for example people who come to another country to earn money, i.e. economic migrants. There is a convention in international law that sets out their legal status: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This Convention defines a migrant for its purposes as "*a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national*". Persons so defined are covered by the Convention and a State which has accepted it must apply its provisions to migrant workers. However, the provisions of other treaties also apply to them. These are generally human rights treaties, such as International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination or International Convention on the Elimination of All Forms of Discrimination against Women, as well as treaties specifically targeting economic migrants, primarily under the International Labour Organization, including the Forced Labour Convention and the Labour Migration Convention. In addition to the above, however, it should also be recalled that, in the case of the movement of persons across borders, it is the State itself that determines who it allows into the country. The State is sovereign in international law and migration has traditionally been regarded as its *domain reservé*, which it has the right to control.[8] The decision on whom a state admits into the country is usually made in the form of a visa, i.e. the prior consent of the state to the entry of a person. While a visa does not guarantee entry, it is already issued under certain rules in a legal state (just like a residence permit which a foreigner needs later to be allowed to stay) and the withdrawal of a visa or a residence permit in such a state cannot be arbitrary. In practice, an economic migrant most often obtains a visa for a specific purpose, and once he or she enters the territory of the State of his or her choice, that State has obligations towards him or her arising from its treaty or customary obligations under international law.

[6] Scholarly literature generally agrees that the content of the word is the designation of a person who has left his state; cf. Boeles, P., Den Heijer, M., Lodder, G., Wouters, K. *European Migration Law.* 2nd ed., Cambridge-Antwerp-Portland 2014, p. 13. Some definitions distinguish between long-term and short-term migration, with long-term meaning leaving the home country for more than one year.

[7] Cf. IOM Glossary on Migration. 2nd ed. Ženeva 2011, p. 56.

[8] Traditionally, states were not obliged to allow foreigners to enter their territory; their admission is a matter of national discretion. Cf. OPPENHEIM, L. International Law. Prague 1924, p. 432.

Migrants also include refugees. Unlike voluntary migrants, they leave because they are forced to leave their country. International law defines the term refugee and regulates their status in the 1951 Convention Relating to the Status of Refugees (the Convention).[9] The Convention considers a refugee to be: "*a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*",[10] and also determines who cannot be a refugee or who ceases to be a refugee.[11] Indeed, the Convention refuses to consider as a refugee someone who, although meeting the criteria of the definition, has committed something legally unacceptable. These are perpetrators of crimes under international law or perpetrators of other unacceptable acts.[12] Nor are persons who are under the protection of a UN body or organisation other than the Office of the United Nations High Commissioner for Refugees (UNHCR) a refugee under the protection of this Convention.[13] As mentioned above, the Convention also sets out the grounds on which a person ceases to be a refugee. These are mainly situations where they cease to need protection, either because they have acquired a citizenship of another state or have reacquired a citizenship of their country of origin, or because of a change in the situation in their country of origin. This formulation implies that the status granted under the Convention is temporary and protects a person for the period of time that he or she is in need of protection. The end of the need for protection is not fixed in international law, although possibilities for time-limited assistance can be found, for example, in sub-regional arrangements of European Union law. However, the beginning of the need for protection is precisely defined: the text of the Convention clearly states that a person becomes a refugee as soon as he or she crosses the borders of his or her home country. At that point, the person is a refugee under the Convention, international law considers him or her to be protected, and any act of granting protection by the State is merely declaratory.[14] States have additional obligations to refugees under human rights conventions or customary international law. Here too, state sovereignty comes into play, with the difference that the state is obliged to let refugees - at least in the case of arrival from a country where there is imminent danger - enter into the territory. By entering the territory, the refugee acquires certain rights that are linked to his or her stay.

[9] 1951 Convention relating to the Status of Refugees. It is usually said that a state is a party to the Convention Relating to the Status of Refugees (this designation will be used here), but it should be mentioned that it is also a party to the 1967 Protocol (a separate treaty which gives states identical obligations, but without time and geographical limitations), only in this way can the obligations contained in the Convention be applied to the present. In this text, however, I will inaccurately refer also to the obligations arising from the Convention. There are 146 States Parties to the Convention, as well as to the Protocol, or just the Protocol, and these states are bound by their Convention obligations to refugees. Outside of these are, for example, the States of South-East Asia (Pakistan, India, Bangladesh, Thailand, Indonesia, Singapore, among others) and of the Arabian Peninsula (Lebanon, Jordan, Syria, Iraq, Saudi Arabia, Bahrain, Qatar, United Arab Emirates, Oman).
[10] Cf. Article 1A of the Convention.
[11] Cf. Article 1C, D and F of the Convention.
[12] Cf. Article 1F of the Convention.
[13] E.g. Palestinian refugees.
[14] Cf. also UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, Geneva 1992, p. 11.

When we think about the groups of migrants defined by international law, we must not forget that there are also those who are not legally present on the territory, i.e. irregular migrants.[15] These are people who do not have a legal title to enter or stay in the territory of states, either because they have never obtained it or because it has expired. The state then has the right to return them to their home country, mainly through readmission agreements or expulsion.

We can see that several groups of migrants can be described in relation to the existing legislation. However, there are also many who do not fall under any regulation. Knowledge of the fragmentation of migration regulation is essential for thinking about how the law treats environmental migrants. Indeed, this heterogeneity is both a strength and a weakness. It allows both for considerations of the creation of a new group of migrants with their own regulation, or considerations of the interpretive inclusion of environmental migrants under existing regulations, but also for considerations of the fact that the number of those whose status is regulated by international law is already high. Indeed, in 2020 there are a total of 281 million international migrants in the world (3.6% of the population), of which 164 million are migrant workers.[16]

Questions for homework and follow-up discussion on "How do states conceptualise the debate on environmental migrants":

1. How do Global Compacts on refugees and on migration conceptualise the issue of environmental migrants? Does it address the fact that environmental causes are also reasons for migration, and how should states respond to such migration?

2. Do conferences of states on the protection of environment address the issue of environmental migration? Consider the example of the 6th United Nations Climate Change Conference of the Parties (COP26), held in 2021 (https://unfccc.int/conference/glasgow-climate-change-conference-october-november-2021). Browse the conference website and try to find out if and what states have committed to in terms of preventing environmental migration.

Global

[15] Cf. IOM Glossary, c.d., p. 56.
[16] Cf. IOM World Migration Report 2020, IOM, 2020. These figures certainly include environmental migrants, since the reasons for leaving a country often overlap and, if migrants can leave their country and reside legally elsewhere, they usually do so.

Global Compact On Refugees

United Nations • New York, 2018

Introductory note by the Office of the United Nations High Commissioner for Refugees (UNHCR)

The resolution on the Office of the United Nations High Commissioner for Refugees which affirms the global compact on refugees (as contained in A/73/12 (Part II)) was adopted by the General Assembly on 17 December 2018 (A/RES/73/151).

The resolution underscores the importance of the global compact on refugees as a representation of political will and the ambition to operationalize the principle of burden and responsibility-sharing, to mobilize the international community as a whole, and to galvanize action for an improved response to refugee situations. It calls upon the international community as a whole, including States and other relevant stakeholders, to implement the global compact on refugees, through concrete actions, pledges and contributions, including at the first Global Refugee Forum. It further calls upon States and other stakeholders that have not yet contributed to burden- and responsibility-sharing to do so, with a view to broadening the support base in a spirit of international solidarity and cooperation.

The comprehensive refugee response framework set out in Annex I of the New York Declaration for Refugees and Migrants, adopted by the General Assembly on 19 September 2016

(A/RES/71/1), forms an integral part of the global compact on refugees; for ease of reference it has been reproduced at the end of the attached text.

The affirmation of the global compact on refugees by the General Assembly represents the culmination of a two-year period of engagement and consultation with States and all relevant stakeholders, following the adoption of the New York Declaration for Refugees and Migrants in 2016, informed by practical experience with application of the comprehensive refugee response framework in a range of specific situations with the objective to ease pressures on the host countries involved, to enhance refugee self reliance, to expand access to third-country solutions and to support conditions in country of origin for return in safety and dignity.

Geneva, December 2018

I. Introduction

A. Background

1. The predicament of refugees is a common concern of humankind. Refugee situations have increased in scope, scale and complexity and refugees require protection, assistance and solutions. Millions of refugees live in protracted situations, often in low- and middle-income countries facing their own economic and development challenges, and the average length of stay has continued to grow. Despite the tremendous generosity of host countries and donors, including unprecedented levels of humanitarian funding, the gap between needs and humanitarian funding has also widened. There is an urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees, while taking account of existing contributions and the differing capacities and resources among States. Refugees and host communities should not be left behind.

2. The achievement of international cooperation in solving international problems of a humanitarian character is a core purpose of the United Nations, as set out in its Charter, and is in line with the principle of sovereign equality of States.[17] Similarly, the 1951 Convention relating to the Status of Refugees (1951 Convention) recognizes that a satisfactory solution to refugee situations cannot be achieved without international cooperation, as the grant of asylum may place unduly heavy burdens on certain countries. [18] It is vital to translate this long-standing principle into concrete and practical action, including through widening the support base beyond those countries that have historically contributed to the refugee cause through hosting refugees or other means.

3. Against this background, the global compact on refugees intends to provide a basis for predictable and equitable burden- and responsibility-sharing among all United Nations Member States, together with other relevant stakeholders as appropriate, including but not limited to: international organizations within and outside the United Nations system, including those forming part of the International Red Cross and Red Crescent Movement; other humanitarian and development actors; international and regional financial institutions; regional organizations; local authorities; civil society, including faith-based organizations; academics and other experts; the private sector; media; host community members and refugees themselves (hereinafter "relevant stakeholders").

4. The global compact is not legally binding. Yet it represents the political will and ambition of the international community as a whole for strengthened cooperation and solidarity with refugees and affected host countries. It will be operationalized through voluntary contributions to achieve collective outcomes and progress towards its objectives, set out in para 7 below. These contributions will be determined by each State and relevant stakeholder, taking into account their national realities, capacities and levels of development, and respecting national policies and priorities.

[17] Article 1(3), Charter of the United Nations; A/RES/25/2625.
[18] Preamble, recital 4 (United Nations, *Treaty Series*, vol. 189, No. 2545). See also A/RES/22/2312, article 2(2).

B. Guiding principles

5. The global compact emanates from fundamental principles of humanity and international solidarity, and seeks to operationalize the principles of burden and responsibility-sharing to better protect and assist refugees and support host countries and communities. The global compact is entirely non-political in nature, including in its implementation, and is in line with the purposes and principles of the Charter of the United Nations. It is grounded in the international refugee protection regime, centred on the cardinal principle of non-refoulement, and at the core of which is the 1951

6. regions have also adopted specific instruments which apply to their own respective contexts.[19] The global compact is guided by relevant international human rights instruments,[20] international humanitarian law, as well as other international instruments as applicable.[21] It is complemented by instruments for the protection of stateless persons, where applicable.[22] The humanitarian principles of humanity, neutrality, impartiality and independence – A/RES/46/182 and all subsequent General Assembly resolutions on the subject, including resolution A/RES/71/127 – as well as the centrality of protection also guide the overall application of the global compact. National ownership and leadership are key to its successful implementation, taking in to account national legislation, policies and priorities.

It is recognized that a number of States not parties to the international refugee instruments have shown a generous approach to hosting refugees. All countries not yet parties are encouraged to consider acceding to those instruments and States parties with reservations to give consideration to withdrawing them.

C. Objectives

7. The objectives of the global compact as a whole are to: (i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity. The global compact will seek to achieve these four interlinked and

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[19] See the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (United Nations, *Treaty Series*, vol. 1001, No. 14691); the 1984 Cartagena Declaration on Refugees; and the Treaty on the Functioning of the European Union, article 78, and Charter on the Fundamental Rights of the European Union, article 18. See also the Bangkok Principles on the Status and Treatment of Refugees of 31 December 1966 (final text adopted 24 June 2001).

[20] . Including, but not limited to, the Universal Declaration of Human Rights (which inter alia enshrines the right to seek asylum in its article 14) (A/RES/3/217 A); the Vienna Declaration and Programme of Action; the Convention on the Rights of the Child (United Nations, *Treaty Series*, vol. 1577, No. 27531); the Convention against Torture (United Nations, *Treaty Series*, vol. 1465, No. 24841); the International Convention on the Elimination of All Forms of Racial Discrimination (United Nations, *Treaty Series*, vol. 660, No. 9464); the International Covenant on Civil and Political Rights (United Nations, *Treaty Series*, vol. 999, No. 14668); the International Covenant on Economic, Social and Cultural Rights (United Nations, *Treaty Series*, vol. 993, No. 14531); the Convention on the Elimination of All Forms of Discrimination against Women (United Nations, *Treaty Series*, vol. 1249, No. 20378); and the Convention on the Rights of Persons with Disabilities (United Nations, *Treaty Series*, vol. 2515, No. 44910).

[21] . E.g., Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (United Nations, *Treaty Series*, vol. 2237, No. 39574); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (United Nations, *Treaty Series*, vol. 2241, No. 39574).

[22] . 1954 Convention on the Status of Stateless Persons (United Nations, *Treaty Series*, vol. 360, No. 5158); 1961 Convention on the Reduction of Statelessness (United Nations, *Treaty Series*, vol. 909, No. 14458).

interdependent objectives through the mobilization of political will, a broadened base of support, and arrangements that facilitate more equitable, sustained and predictable contributions among States and other relevant stakeholders.

D. Prevention and addressing root causes

8. Large-scale refugee movements and protracted refugee situations persist around the world. Protecting and caring for refugees is life-saving for the individuals involved and an investment in the future, but importantly needs to be accompanied by dedicated efforts to address root causes. While not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements. In the first instance, addressing root causes is the responsibility of countries at the origin of refugee movements. However, averting and resolving large refugee situations are also matters of serious concern to the international community as a whole, requiring early efforts to address their drivers and triggers, as well as improved cooperation among political, humanitarian, development and peace actors.

9. Against this background, the global compact complements ongoing United Nations endeavours in the areas of prevention, peace, security, sustainable development, migration and peacebuilding. All States and relevant stakeholders are called on to tackle the root causes of large refugee situations, including through heightened international efforts to prevent and resolve conflict; to uphold the Charter of the United Nations, international law, including international humanitarian law, as well as the rule of law at the national and international levels; to promote, respect, protect and fulfil human rights and fundamental freedoms for all; and to end exploitation and abuse, as well as discrimination of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, or other status. The international community as a whole is also called on to support efforts to alleviate poverty, reduce disaster risks, and provide development assistance to countries of origin, in line with the 2030 Agenda for Sustainable Development and other relevant frameworks.[23]

II. Comprehensive refugee response framework

10. Part II of the global compact is the comprehensive refugee response framework (CRRF) as adopted by the United Nations General Assembly (A/RES/71/1, Annex I). This constitutes an integral part of the global compact.*

III. Programme of action

11. In line with A/RES/71/1, the purpose of the programme of action is to facilitate the application of a comprehensive response in support of refugees and countries particularly affected by a large refugee movement, or a protracted refugee situation, through effective arrangements for burden- and responsibility-sharing (Part III.A);

[23] E.g. Sendai Framework for Disaster Risk Reduction 2015 - 2030 and Agenda 2063.
*Reproduced at the end of this booklet for ease of reference.

and areas for timely contributions in support of host countries and, where appropriate, countries of origin (Part III.B). These parts are to be read as interlinked.

12. While the CRRF relates specifically to large refugee situations, population movements are not necessarily homogenous, and may be of a composite character. Some may be large movements involving both refugees and others on the move; other situations may involve refugees and internally displaced persons; and, in certain situations, external forced displacement may result from sudden-onset natural disasters and environmental degradation. These situations present complex challenges for affected States, which may seek support from the international community to address them. Support for appropriate responses could build on the operational partnerships between relevant actors, including UNHCR and the International Organization for Migration (IOM), engaging their respective mandates, roles and expertise as appropriate to ensure a coordinated approach.

13. The programme of action is underpinned by a strong partnership and participatory approach, involving refugees and host communities, as well as age, gender, and diversity[24] considerations, including: promoting gender equality and empowering women and girls; ending all forms of sexual and gender-based violence, trafficking in persons, sexual exploitation and abuse, and harmful practices; facilitating the meaningful participation of youth, persons with disabilities and older persons; ensuring the best interests of the child; and combating discrimination.

A. Arrangements for burden and responsibility sharing

14. Countries that receive and host refugees, often for extended periods, make an immense contribution from their own limited resources to the collective good, and indeed to the cause of humanity. It is imperative that these countries obtain tangible support of the international community as a whole in leading the response.

15. The following arrangements seek to achieve more equitable and predictable burden- and responsibility-sharing with host countries and communities, and to support the search for solutions, including, where appropriate, through assistance to countries of origin. They entail complementary action at the global, region or country-specific levels.

16. In order to ensure full realization of the principles of international solidarity and cooperation, the arrangements are intended to be efficient, effective and practicable. Action will be taken to avoid duplication and to streamline the arrangements within existing processes where this is appropriate, including to ensure appropriate linkages with the Executive Committee of the High Commissioner's Programme (Executive Committee). At the same time, these arrangements will necessarily go beyond existing processes, changing the way that the international community as a whole responds to large refugee situations so as to ensure better sharing of the burden and responsibility resulting from the presence of large numbers of refugees.

[24] . See UNHCR Executive Committee (ExCom) Conclusion No. 108 (LIX) (2008), (f)-(k).

1. Global arrangement for international cooperation:

Global Refugee Forum

17. A periodic Global Refugee Forum, at ministerial level, will be convened for all United Nations Member States, together with relevant stakeholders, to announce concrete pledges and contributions towards the objectives of the global compact, as set out in para 7, and to consider opportunities, challenges and ways in which burden - and responsibility-sharing can be enhanced. The first Forum will be convened in 2019. Subsequent Forums will be convened every four years, unless otherwise agreed by the General Assembly, in order to ensure sustained momentum and political will. Forums will be co-convened and co-hosted by one or more State(s) and the United Nations High Commissioner for Refugees, with an invitation to the United Nations Secretary-General to participate. Forums would, in principle, take place in Geneva to facilitate the participation of all States. In the years in which Forums take place, there will be no High Commissioner's Dialogue on Protection Challenges.

18. Pledges and contributions made at Global Refugee Forums could take different forms, including financial, material and technical assistance;[25] resettlement places and complementary pathways for admission to third countries; as well as other actions that States have elected to take at the national level in support of the objectives of the global compact. Part III.B below serves as a non-exhaustive guide for areas against which pledges and contributions could be made.

19. The first Global Refugee Forum in 2019 will be dedicated to receiving formal pledges and contributions. Subsequent Forums will provide an opportunity not only to make new pledges, but also for States and relevant stakeholders to take stock of the implementation of their previous pledges and progress towards the achievement of the objectives of the global compact. This will be complemented by high-level officials' meetings, held every two years between Forums, which will provide an opportunity for "mid-term review". The ongoing stocktaking at Global Refugee Forums and high-level officials' meetings will be key components of the follow up to the global compact (as set out in Part IV below).

[25] . E.g., standby capacity or contributions to Support Platforms (section 2.2).

2. Arrangements to support a comprehensive response to a specific refugee situation

2.1 National arrangements

20. Drawing on good practices, and recognizing the importance of national leadership, national arrangements may be established by concerned host countries to coordinate and facilitate the efforts of all relevant stakeholders working to achieve a comprehensive response. The composition and working methods of national arrangements would be determined by host States, as would the need for capacity development for relevant national authorities to undertake such work.

21. Such efforts could support the development of a comprehensive plan under national leadership, in line with national policies and priorities, with the assistance of UNHCR and other relevant stakeholders as appropriate, setting out policy priorities; institutional and operational arrangements; requirements for support from the international community, including investment, financing, material and technical assistance; and solutions, including resettlement and complementary pathways for admission to third countries, as well as voluntary repatriation.

2.2 Support Platform

22. In support of national arrangements, host countries would be able to seek the activation of a Support Platform.[26]

23. The Support Platform would enable context-specific support for refugees and concerned host countries and communities. In a spirit of partnership and in line with host country ownership and leadership, its functions would include:

- galvanizing political commitment and advocacy for prevention, protection, response and solutions;
- mobilizing financial, material and technical assistance, as well as resettlement and complementary pathways for admission to third countries, in support of the comprehensive plan (para 21), where applicable, drawing on Global Refugee Forum pledges;
- facilitating coherent humanitarian and development responses, including through the early and sustained engagement of development actors in support of host communities and refugees; and
- supporting comprehensive policy initiatives to ease pressure on host countries, build resilience and self-reliance, and find solutions.

24. Upon the request of concerned host countries or countries of origin, where appropriate, a Support Platform could be activated/deactivated and assisted by UNHCR, in close consultation with relevant States that have committed to contributing

[26] In line with para 5.

in principle, taking into account existing response efforts and political, peacekeeping and peacebuilding initiatives. Criteria for activation would include:

- a large-scale and/or complex refugee situation where the response capacity of a host State is or is expected to be overwhelmed; or
- a protracted refugee situation where the host State(s) requires considerable additional support, and/or a major opportunity for a solution arises (e.g. large scale voluntary repatriation to the country of origin).

25. Each Support Platform would benefit from the leadership and engagement of a group of States to mobilize contributions and support, which may take different forms (para 23). The composition of this group would be specific to the context. Other relevant stakeholders would be invited to engage as appropriate.

26. Support Platforms would not be fixed bodies or undertake operational activities. They would draw on pre-announced expressions of interest (including at the Global Refugee Forum) and standby arrangements. They would complement and interact with existing coordination mechanisms for humanitarian and development cooperation. In consultation with participating States, UNHCR would ensure regular reporting on the work of the Support Platforms to its Executive Committee, the United Nations General Assembly and the Global Refugee Forums, including to facilitate exchange of information, practices and experiences between different platforms.

27. The strategy for support by a Platform could draw on a wide range of options. It could initiate a solidarity conference to generate support for the comprehensive plan, where this would add value and not duplicate other processes, bearing in mind the call for humanitarian assistance to be flexible, multi-year and unearmarked in line with para 32 below. A solidarity conference would be situation-specific, providing a strategic vehicle to garner broad-based support for host States or countries of origin, encompassing States, development actors, civil society, local communities and the private sector, and seeking financial, material and technical contributions, as well as resettlement and complementary pathways for admission.

2.3 Regional and subregional approaches

28. Refugee movements often have a significant regional or subregional dimension. While the characteristics of regional and subregional mechanisms and groupings vary, they may, as appropriate, play an important role in comprehensive responses. Past comprehensive responses have also demonstrated the value of regional cooperation in addressing refugee situations in a manner which encompasses the political dimensions of causes.

29. Without prejudice to global support, regional and subregional mechanisms or groupings would, as appropriate, actively contribute to resolution of refugee situations in their respective regions, including by playing a key role in Support Platforms, solidarity conferences and other arrangements with the consent of concerned States. Comprehensive responses will also build on existing regional and subregional initiatives for refugee protection and durable solutions where available and appropriate,

including regional and subregional resettlement initiatives, to ensure complementarity and avoid duplication.

30. The exchange of good practices among relevant regional and subregional mechanisms will be facilitated by UNHCR on a regular basis in the context of Global Refugee Forums to bring in different perspectives and to encourage coherence.

3. Key tools for effecting burden- and responsibility- sharing

31. The following paragraphs describe tools to operationalize burden- and responsibility-sharing, and underpin the arrangements set out above.

3.1 Funding and effective and efficient use of resources

32. While contributions to burden- and responsibility-sharing by the international community as a whole go beyond funding, the mobilization of timely, predictable, adequate and sustainable public and private funding nonetheless is key to the successful implementation of the global compact, bearing in mind the interest of all relevant stakeholders in maximizing the effective and efficient use of resources, preventing fraud and ensuring transparency. Through the arrangements set out above, and other related channels, resources will be made available to countries faced with large-scale refugee situations relative to their capacity, both new and protracted, including through efforts to expand the support base beyond traditional donors.[27] This includes:

- humanitarian assistance: States and humanitarian actors will work to ensure timely, adequate and needs-driven humanitarian assistance, both for the emergency response and protracted situations, including predictable, flexible, unearmarked, and multi-year funding whenever possible,[28] delivered fully in line with the humanitarian principles;

- development cooperation: States and other development actors will work to step up their engagement in support of refugees, host countries and host communities, and to include the impact of a refugee situation on host countries and communities in their planning and policies. This will involve additional development resources, over and above regular development assistance, provided as grants or with a high degree of concessionality through both bilateral and multilateral channels, with direct benefits to host countries and communities, as well as to refugees. Efforts will be made to ensure that development assistance is effective, in a spirit of partnership and respecting the primacy of country ownership and leadership.[29] Whenever possible, development assistance in favour of countries of origin to enable conditions for voluntary repatriation will also be prioritized;

- maximizing private sector contributions: upon the request of the concerned host country or country of origin as appropriate, the private sector, together with

[27] . Including through innovative financing schemes as recommended in the Report to the SecretaryGeneral by the High-Level Panel on Humanitarian Financing (January 2016).
[28] . See, e.g., A/RES/71/127, A/71/353.
[29] . See, e.g., A/RES/71/127, A/71/353, A/RES/69/313.

States and other relevant stakeholders, could explore: policy measures and derisking arrangements; opportunities for private sector investment, infrastructure strengthening and job creation in contexts where the business climate is enabling; development of innovative technology, including renewable energy, particularly with a view to closing the technology gap and supporting capacity in developing and least developed refugee-hosting countries; andgreater access to financial products and information services for refugees and host communities.

3.2 A multi-stakeholder and partnership approach

33. While recognizing the primary responsibility and sovereignty of States, a multi-stakeholder and partnership approach will be pursued, in line with relevant legal frameworks and in close coordination with national institutions. In addition to the exercise of its mandate responsibilities, UNHCR will play a supportive and catalytic role.

34. Responses are most effective when they actively and meaningfully engage those they are intended to protect and assist. Relevant actors will, wherever possible, continue to develop and support consultative processes that enable *refugees and host community members* to assist in designing appropriate, accessible and inclusive responses. States and relevant stakeholders will explore how best to include refugees and members ofhost communities, particularly women, youth, and persons with disabilities, in key forums and processes, as well as diaspora, where relevant. Mechanisms to receive complaints, and investigate and prevent fraud, abuse and corruption help to ensure accountability.

35. Without prejudice to activities which humanitarian organizations carry out in line with their respective mandates, *humanitarian and development actors* will work together from the outset of a refugee situation and in protracted situations. They will develop means to ensure the effective complementarity of their interventions to support host countries and, where appropriate, countries of origin, including in those countries that lack the institutional capacities to address the needs of refugees. Support by bilateral and multilateral development and financial actors for the direct benefit of host communities and refugees will be additional and undertaken in partnership, respecting the primacy of national ownership and leadership, and in a manner that does not negatively impact or reduce support for broader development objectives in the concerned country.

36. *The United Nations system* will be fully leveraged. This will include the contributions of the United Nations Sustainable Development Group and the United Nations Country Team, as well as all relevant agencies to ensure operational cooperation on the ground, in line with the United Nations Secretary-General's reform agenda, notably in the areas of peace, security and development. Guided by the Resident Coordinator, and in furtherance of national development imperatives, United Nations development action in support of host communities and refugees will, where appropriate, be considered in United Nations Development Assistance Frameworks, to be prepared and finalized in full consultation and agreement with national

governments.[30] Technical advice and support will also be made available through the United Nations regional offices.

37. *Local authorities and other local actors* in both urban and rural settings, including local community leaders and traditional community governance institutions, are often first responders to large-scale refugee situations, and among the actors that experience the most significant impact over the medium term. In consultation with national authorities and in respect of relevant legal frameworks, support by the international community as a whole may be provided to strengthen institutional capacities, infrastructure and accommodation at local level, including through funding and capacity development where appropriate. Recruitment of local personnel by humanitarian and development agencies is encouraged in line with relevant laws and policies, while bearing in mind the need for continued capacity of local actors, organizations and structures.

38. *Networks of cities and municipalities* hosting refugees are invited to share good practices and innovative approaches to responses in urban settings, including through twinning arrangements, with the support of UNHCR and other relevant stakeholders.

39. Likewise, engagement by *parliaments* as appropriate under relevant national arrangements is encouraged, with a view to supporting the global compact.[31]

40. In recognition of their important work for refugees, as well as host States and communities, and in a spirit of partnership, *civil society organizations*, including those that are led by refugees, women, youth or persons with disabilities, and those operating at the local and national levels, will contribute to assessing community strengths and needs, inclusive and accessible planning and programme implementation, and capacity development, as applicable.

41. *Faith-based actors* could support the planning and delivery of arrangements to assist refugees and host communities, including in the areas of conflict prevention, reconciliation, and peacebuilding, as well as other relevant areas.

42. *Public-private partnerships* will be explored,[32] in full respect of the humanitarian principles, including: possible new institutional arrangements and methodologies for the creation of commercial business venture conditions and financial/business instruments; to support refugee and host community employment and labour mobility; and to enable greater opportunities for private sector investment. The private sector is encouraged to advance standards for ethical conduct in refugee situations, share tools to identify business opportunities in host countries, and develop country-level private sector facilitation platforms where this would add value.

43. A *global academic network* on refugee, other forced displacement, and statelessness issues will be established, involving universities, academic alliances, and research institutions, together with UNHCR and other relevant stakeholders, to facilitate

[30] . A/RES/72/279.
[31] . A/RES/72/278, noting also the work of the Inter-Parliamentary Union (IPU).
[32] . Noting the work of the International Chamber of Commerce and the World Economic Forum, and the model provided by the Business Mechanism of the Global Forum on Migration and Development (GFMD).

research, training and scholarship opportunities which result in specific deliverables in support of the objectives of the global compact. Efforts will be made to ensure regional diversity and expertise from a broad range of relevant subject areas.

44. Recognizing the important role that *sports and cultural activities* can play in social development, inclusion, cohesion, and well-being, particularly for refugee children (both boys and girls), adolescents and youth, as well as older persons and persons with disabilities, partnerships will be pursued to increase access to sporting and cultural facilities and activities in refugee-hosting areas.[33]

3.3 Data and evidence

45. Reliable, comparable, and timely data is critical for evidence-based measures to: improve socio-economic conditions for refugees and host communities; assess and address the impact of large refugee populations on host countries in emergency and protracted situations; and identify and plan appropriate solutions. Relevant data protection and data privacy principles are to be applied with respect to all collection and dissemination of personal data, including the principles of necessity, proportionality, and confidentiality.

46. To support evidence-based responses, States and relevant stakeholders will, as appropriate, promote the development of harmonized or interoperable standards for the collection, analysis, and sharing of age, gender, disability, and diversity disaggregated data on refugees and returnees.[34] Upon the request of concerned States, support will be provided for the inclusion of refugees and host communities, as well as returnees and stateless persons as relevant, within national data and statistical collection processes; and to strengthen national data collection systems on the situation of refugees and host communities, as well as returnees.

47. Improving data and evidence will also support efforts to achieve solutions. Data and evidence will assist in the development of policies, investments and programmes in support of the voluntary repatriation to and reintegration of returnees in countries of origin. In addition, States, UNHCR, and other relevant stakeholders will work to enable the systematic collection, sharing, and analysis of disaggregated data related to the availability and use of resettlement and complementary pathways for admission of those with international protection needs; and share good practices and lessons learned in this area.

48. To inform burden- and responsibility-sharing arrangements, UNHCR will coordinate with concerned States and appropriate partners to assist with measuring the impact arising from hosting, protecting and assisting refugees, with a view to assessing gaps in international cooperation and to promoting burden- and responsibility-sharing that is more equitable, predictable and sustainable.[35] In 2018, UNHCR will convene technical expertise from international organizations and Member

[33] . Noting the work of the Olympic Refuge Foundation, and the partnership between UNHCR and the International Olympic Committee, and other entities such as Football Club Barcelona Foundation. See also the International Charter of Physical Education, Physical Activity and Sport and A/RES/71/160.
[34] . "International recommendations on refugee statistics".
[35] . A/RES/72/150, para 20.

States, and coordinate a technical review of relevant methodologies to build broad consensus on the approach to be taken. The results will be shared and provide the opportunity for formal discussions among States in 2018-2019. The first report will be issued in 2019, coinciding with the first Global Refugee Forum. Subsequent reports will be provided at regular intervals, providing the basis for determining whether there has been progress towards more equitable and predictable burden- and responsibility-sharing in line with para 7 (see also Part IV below).

B. Areas in need of support

49. The areas in need of support, set out in Part B, aim to ease the burden on host countries and to benefit refugees and host community members. Grouped around the pillars of the CRRF, and based on past comprehensive responses, the areas highlight where the international community may usefully channel support for a comprehensive and people-centred response to large refugee situations, adapted to the specific context, and in line with national priorities, strategies and policies. The success of the measures in Part B relies on robust and well-functioning arrangements for burden- and responsibility-sharing (Part A), and a commitment on the part of the international community as a whole to providing concrete contributions[36] to bring these arrangements to life, based on the principle of burden- and responsibility-sharing.

50. Support will be put in place upon the request of the host country, or country of origin where relevant, in line with country ownership and leadership and respecting national policies and priorities. It is recognized that each context is specific and that each State has different frameworks, capacities and resources. Part B is not exhaustive or prescriptive. Part B also is not intended to create additional burdens or impositions on host countries. Indeed, a key objective of the global compact is to ease pressures, particularly for low- and middle-income countries, through contributions from other States and relevant stakeholders.

51. The measures in Part B will take into account, meaningfully engage and seek input from those with diverse needs and potential vulnerabilities, including girls and women; children, adolescents and youth; persons belonging to minorities; survivors of sexual and gender-based violence, sexual exploitation and abuse, or trafficking in persons; older persons; and persons with disabilities.

1. Reception and admission

1.1 Early warning, preparedness and contingency planning

52. Preparedness, including contingency planning, strengthens comprehensive responses to large refugee situations, including over the medium term. Without prejudice to efforts to address root causes, in line with the United Nations Secretary General's prevention agenda, States and relevant stakeholders will contribute resources and expertise to include preparation for large refugee movements,

[36] . In line with para 4 above.

in a manner consistent with the CRRF where possible, in national, regional, and United Nations-supported preparedness and contingency planning efforts.

53. Under national leadership, capacity development for relevant authorities will be supported, enabling them to put in place risk monitoring and preparedness measures in advance, and to draw on support from a wide range of relevant stakeholders, including the private sector as appropriate. Preparedness measures will take into account global, regional, subregional and national early warning and early action mechanisms, disaster risk reduction efforts, and measures to enhance evidence-based forecasting of future movements and emergencies. They could, where appropriate, also take into account forced internal displacement that may result from a particular situation. UNHCR will strengthen support to concerned countries by sharing information on the movement of people of concern. Support will also be provided in the form of standby capacity, including potential standby service assistance packages and necessary technical and human resources committed in advance.

1.2 Immediate reception arrangements

54. When large numbers of refugees arrive, countries and communities go to great lengths to scale up arrangements to receive them. In support of government strategies to manage arrivals, UNHCR, States, and relevant stakeholders will contribute resources and expertise to strengthen national capacities for reception, including for the establishment of reception and transit areas sensitive to age, gender, disability, and other specific needs (through "safe spaces" where appropriate), as well as to provide basic humanitarian assistance and essential services in reception areas. Efficient mechanisms to pursue alternatives to camps away from borders will be supported, where considered relevant by the concerned host country.

55. Priority will be given to supporting response measures established by concerned States, including through the provision of assistance using national delivery systems where feasible and appropriate. Regional and international standby arrangements for personnel, as well as technical and material assistance, could be activated, in consultation with concerned States. Measures by concerned States to facilitate timely entry for standby and emergency deployments are encouraged.

1.3 Safety and security

56. Security considerations and international protection are complementary. The primary responsibility for safety and security lies with States, which can benefit from the promotion of national integrated approaches that protect refugees and their human rights, while safeguarding national security. The legitimate security concerns of host States are fully recognized, as well as the importance of upholding the civilian and humanitarian character of international protection and applicable international law, both in emergency and protracted situations.[37]

[37] . See article 9 of the 1951 Convention; ExCom Conclusions No. 94 (LIII) (2002) and 109 (LX) (2009); and A/RES/72/150, para 28.

57. At the request of concerned States, and in full respect of national laws and policies, UNHCR and relevant stakeholders will contribute resources and expertise to support protection-sensitive arrangements for timely security screening and health assessments of new arrivals. Support will also be provided for: capacity development of relevant authorities, for instance on international refugee protection and exclusion criteria; strengthening of international efforts to prevent and combat sexual and gender-based violence, as well as trafficking and smuggling in persons; capacity development for community-oriented policing and access to justice; and the identification and separation of fighters and combatants at border entry points or as early as possible after arrival in line with relevant protection safeguards. The development and implementation of programmes for protection and assistance to children formerly associated with armed groups will also be supported.

1.4 Registration and documentation

58. Registration and identification of refugees is key for people concerned, as well as for States to know who has arrived, and facilitates access to basic assistance and protection, including for those with specific needs. It is also an important tool in ensuring the integrity of refugee protection systems and preventing and combating fraud, corruption and crime, including trafficking in persons. Registration is no less important for solutions. In support of concerned countries, UNHCR, in conjunction with States and relevant stakeholders, will contribute resources and expertise to strengthen national capacity for individual registration and documentation, including for women and girls, regardless of marital status, upon request. This will include support for digitalization, biometrics and other relevant technology, as well as the collection, use and sharing of quality registration data, disaggregated by age, gender, disability, and diversity, in line with relevant data protection and privacy principles.

1.5 Addressing specific needs

59. The capacity to address specific needs is a particular challenge, requiring additional resources and targeted assistance. Persons with specific needs include: children, including those who are unaccompanied or separated; women at risk; survivors of torture, trauma, trafficking in persons, sexual and gender-based violence, sexual exploitation and abuse or harmful practices; those with medical needs; persons with disabilities; those who are illiterate; adolescents and youth; and older persons.[38]

60. In support of concerned countries, States and relevant stakeholders will contribute resources and expertise for the establishment of mechanisms for identification, screening and referral of those with specific needs to appropriate and accessible processes and procedures. Multi-stakeholder response teams could be established to facilitate this operationally.[39] This will include the identification and referral of children, including unaccompanied and separated children, to best interests assessment and/or determination, together with appropriate care arrangements

[38] . A/RES/46/91.
[39] . This could include civil society, regional organizations, and international organizations such as UNHCR and IOM.

or other services.[40] Identification and referral of victims of trafficking in persons and other forms of exploitation to appropriate processes and procedures, including for identification of international protection needs or victim support, is key;[41] as is identification and referral of stateless persons and those at risk of statelessness, including to statelessness determination procedures. The development of non-custodial and community-based alternatives to detention, particularly for children, will also be supported.

1.6 Identifying international protection needs

61. Mechanisms for the fair and efficient determination of individual international protection claims provide an opportunity for States to duly determine the status of those on their territory in accordance with their applicable international and regional obligations (A/RES/72/150, para 51), in a way which avoids protection gaps and enables all those in need of international protection to find and enjoy it.[42] In the context of large refugee movements, group-based protection (such as prima facie recognition of refugee status) can assist in addressing international protection needs, where considered appropriate by the State.

62. Without prejudice to activities carried out under its mandate, UNHCR will establish an Asylum Capacity Support Group with participation of experts from relevant technical areas. Due regard will be paid to regional diversity. The group would draw on pledges and contributions made as part of Global Refugee Forums, whether in terms of expertise or funding. The group could be activated on the request of a concerned State to provide support to relevant national authorities – in line with applicable international, regional and national instruments and laws – to strengthen aspects of their asylum systems, with a view to ensuring their fairness, efficiency, adaptability and integrity. Support could include standby arrangements and sharing of good practices between States on all aspects of asylum systems, including case-processing modalities (e.g. simplified or accelerated procedures for cases likely to be manifestly founded or unfounded), registration and case management processes, interviewing techniques and broader institutional capacity development.

63. In addition, where appropriate, stakeholders with relevant mandates and expertise will provide guidance and support for measures to address other protection and humanitarian challenges. This could include measures to assist those forcibly displaced by natural disasters, taking into account national laws and regional instruments as applicable, as well as practices such as temporary protection[43] and humanitarian stay arrangements, where appropriate.

[40] . A/RES/64/142.
[41] . In line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
[42] . See above, para 5; ExCom Conclusions No. 103 (LVI) (2005) (s) and 96 (LIV) (2003).
[43] . ExCom Conclusions No.: 22 (XXXII) (1981); 74 (XLV) (1994), (r) – (u); 103 (LVI) (2005), (l).

2. Meeting needs and supporting communities

64. Thorough management of a refugee situation is often predicated on the resilience of the host community. There is also increasing recognition of the development challenges posed by large refugee situations and the advantages of shared and inclusive economic growth in refugee-hosting areas from which all can benefit, in line with the 2030 Agenda for Sustainable Development. The global compact can help attract support to ensure that refugees and their host communities are not left behind in a country's progress towards the Sustainable Development Goals. At the same time, host States that seek to strengthen national policies and institutions for the resilience of local and refugee communities often require sufficient contributions from the international community as a whole to accompany their efforts, until durable solutions can be found. Efforts to support refugees and host communities in no way diminish, and are in fact complementary to, the need to facilitate future arrangements for durable solutions.[44]

65. Without affecting humanitarian assistance, development actors will work in a complementary manner to humanitarian assistance interventions to ensure that the impact of a large refugee situation on a host country is taken into account in the planning and implementation of development programmes and policies with direct benefits for both host communities and refugees. A spirit of partnership, the primacy of country leadership and ownership, and the mobilization of predictable international responses consistent with national development strategies and aligned with the 2030 Agenda for Sustainable Development, are key to ensuring sustainability. At the same time, host countries need to be able to rely on additional development resources to ensure that communities affected by a refugee situation are not impaired in making progress towards the Sustainable Development Goals.

66. Humanitarian assistance remains needs-driven and based upon the humanitarian principles of humanity, neutrality, impartiality and independence. Wherever possible, it will be delivered in a way that benefits both refugees and host communities. This will include efforts to deliver assistance through local and national service providers where appropriate (including through multipurpose cash assistance), instead of establishing parallel systems for refugees from which host communities do not benefit over time. Increasingly, refugees find themselves in urban and rural areas outside of camps, and it is important to also respond to this reality.

67. The areas set out below require particular support by the international community as a whole in order to enhance resilience for host communities, as well as refugees. They constitute indicative areas relying on contributions from others, including through the arrangements in Part A, to assist in the application of a comprehensive response. They are not intended to be prescriptive, exhaustive, or to create additional impositions or burdens on host countries. All support will be provided in coordination with relevant national authorities in a spirit of close partnership and cooperation, and be linked as relevant to ongoing national efforts and policies.

[44] . See also ExCom Conclusion No. 109 (LX) (2009).

2.1 Education

68. In line with national education laws, policies and planning, and in support of host countries, States and relevant stakeholders[45] will contribute resources and expertise to expand and enhance the quality and inclusiveness of national education systems to facilitate access by refugee and host community children (both boys and girls), adolescents and youth to primary, secondary and tertiary education. More direct financial support and special efforts will be mobilized to minimize the time refugee boys and girls spend out of education, ideally a maximum of three months after arrival.

69. Depending on the context, additional support could be contributed to expand educational facilities (including for early childhood development, and technical or vocational training) and teaching capacities (including support for, as appropriate, refugees and members of host communities who are or could be engaged as teachers, in line with national laws and policies). Additional areas for support include efforts to meet the specific education needs of refugees (including through "safe schools" and innovative methods such as online education) and overcome obstacles to their enrolment and attendance, including through flexible certified learning programmes, especially for girls, as well persons with disabilities and psychosocial trauma. Support will be provided for the development and implementation of national education sector plans that include refugees. Support will also be provided where needed to facilitate recognition of equivalency of academic, professional and vocational qualifications. (See also section 3.3, complementary pathways for admission to third countries).

2.2 Jobs and livelihoods

70. To foster inclusive economic growth for host communities and refugees, in support of host countries and subject to their relevant national laws and policies, States and relevant stakeholders[46] will contribute resources and expertise to promote economic opportunities, decent work, job creation and entrepreneurship programmes for host community members and refugees, including women, young adults, older persons and persons with disabilities.[47]

71. Depending on the context, resources and expertise could be contributed to support: labour market analysis to identify gaps and opportunities for employment creation and income generation; mapping and recognition of skills and qualifications among refugees and host communities; and strengthening of these skills and qualifications through specific training programmes, including language and vocational training, linked to market opportunities, in particular for women, persons with

[45] . In addition to ministries of education and national education planning bodies, this could include the United Nations Children's Fund (UNICEF), the Connected Learning in Crisis Consortium, the Global Partnership for Education, UNHCR, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Connected Learning in Crisis Consortium, the UNESCO International Institute for Educational Planning, the UNESCO Institute for Statistics, UNRWA, Education Cannot Wait, the Inter-Agency Network for Education in Emergencies, non-governmental organizations, and the private sector.

[46] . This could include the private sector and local businesses, as well as the International Labour Organization (ILO), the World Bank Group, the United Nations Development Programme (UNDP), the OECD, UNHCR, the United Nations Capital Development Fund, IOM, workers' and employers' associations, microfinance institutions, and academia.

[47] . These efforts also will be guided by R205 - Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) adopted by the General Conference of the International Labour Organization and the "Guiding principles on the access of refugees and other forcibly displaced persons to the labour market" (ILO, July 2016).

disabilities, and youth. Particular attention will be paid to closing the technology gap and building capacities (particularly of developing and least-developed refugee host countries), including to facilitate online livelihood opportunities. Efforts will be made to support access to affordable financial products and services for women and men in host and refugee communities, including by reducing associated risks and enabling low-cost mobile and internet access to these services where possible; as well as to support the transfer of remittances. In some contexts, where appropriate, preferential trade arrangements could be explored in line with relevant international obligations, especially for goods and sectors with high refugee participation in the labour force; as could instruments to attract private sector and infrastructure investment and support the capacity of local businesses.

2.3 Health

72. In line with national health care laws, policies and plans, and in support of host countries, States and relevant stakeholders[48] will contribute resources and expertise to expand and enhance the quality of national health systems to facilitate access by refugees and host communities, including women and girls; children, adolescents and youth; older persons; those with chronic illnesses, including tuberculosis and HIV; survivors of trafficking in persons, torture, trauma or violence, including sexual and gender-based violence; and persons with disabilities.

73. Depending on the context, this could include resources and expertise to build and equip health facilitates or strengthen services, including through capacity development and training opportunities for refugees and members of host communities who are or could be engaged as health care workers in line with national laws and policies (including with respect to mental health and psychosocial care). Disease prevention, immunization services, and health promotion activities, including participation in physical activity and sport, are encouraged; as are pledges to facilitate affordable and equitable access to adequate quantities of medicines, medical supplies, vaccines, diagnostics, and preventive commodities.

2.4 Women and girls

74. Women and girls may experience particular gender-related barriers that call for an adaptation of responses in the context of large refugee situations. In line with relevant international instruments and national arrangements, States and relevant stakeholders will seek to adopt and implement policies and programmes to empower women and girls in refugee and host communities, and to promote full enjoyment of their human rights, as well as equality of access to services and opportunities - while also taking into account the particular needs and situation of men and boys.

75. This will include contributions to promote the meaningful participation and leadership of women and girls, and to support the institutional capacity and participation of national and community-based women's organizations, as well as all

[48] . This could include the World Health Organization (WHO); UNHCR; UNICEF; UNFPA; IOM; the Global Alliance for Vaccines and Immunizations (GAVI); the Global Fund to Fight AIDS, Tuberculosis and Malaria; and relevant civil society organizations. See also WHA70.15 (2017).

relevant government ministries. Resources and expertise to strengthen access to justice and the security and safety of women and girls, including to prevent and respond to all forms of violence, including sexual exploitation and abuse, sexual- and gender-based violence and harmful practices, are called for; as is support to facilitate access to age-, disability- and gender-responsive social and health care services, including through recruitment and deployment of female health workers. Measures to strengthen the agency of women and girls, to promote women's economic empowerment and to support access by women and girls to education (including secondary and tertiary education) will be fostered.

2.5 Children, adolescents and youth

76. Children make up over half of the world's refugees. In support of host countries, States and relevant stakeholders[49] will contribute resources and expertise towards policies and programmes that take into account the specific vulnerabilities and protection needs of girls and boys, children with disabilities, adolescents, unaccompanied and separated children, survivors of sexual and gender-based violence, sexual exploitation and abuse, and harmful practices, and other children at risk. Depending on the context, this will include resources and expertise to support integrated and age-sensitive services for refugee and host community girls and boys, including to address mental health and psychosocial needs, as well as investment in national child protection systems and cross-border cooperation and regional partnerships to provide a continuum of protection, care and services for at risk children. Capacity development for relevant authorities to undertake best interests determination and assessment to inform decisions that concern refugee children, as well as other child-sensitive procedures and family tracing, will be supported. UNHCR will work with States to enhance access by refugee boys and girls to resettlement and complementary pathways for admission.

77. The empowerment of refugee and host community youth, building on their talent, potential and energy, supports resilience and eventual solutions. The active participation and engagement of refugee and host community youth will be supported by States and relevant stakeholders, including through projects that recognize, utilize and develop their capacities and skills, and foster their physical and emotional well being.

2.6 Accommodation, energy, and natural resource management

78. Depending on the context, host countries may seek support from the international community as a whole to address the accommodation and environmental impacts of large numbers of refugees. Accordingly, in support of host countries and in line with national laws, policies and strategies, States and relevant stakeholders will contribute resources and expertise to strengthen infrastructure so as to facilitate access to appropriate accommodation for refugees and host communities and to promote

[49] . Including UNICEF and relevant civil society organizations.

integrated and sustainable management of natural resources and ecosystems in both urban and rural areas.

79. This will include contributions to bolster national capacity to address accommodation, water, sanitation and hygiene, infrastructure and environmental challenges in or near refugee-hosting rural and urban areas; and to invest in closing the technology gap and scaling-up capacity development for smart, affordable and appropriate technologies and renewable energy in developing and least developed refugee hosting countries. Environmental impact assessments, national sustainable development projects and business models for the delivery of clean energy that cater more effectively to refugee and host community needs will be actively supported, as will "safe access to fuel and energy" programming to improve the quality of human settlements, including the living and working conditions of both urban and rural dwellers. Technical capacity development will be facilitated, including from the private sector and through State-to-State arrangements. Support will also be provided, as appropriate, to include refugees in disaster risk reduction strategies.

2.7 Food security and nutrition

80. Acknowledging that food and nutrition are priority basic needs, in support of host countries, States and relevant stakeholders[50] will contribute resources and expertise to facilitate access by refugees and host communities to sufficient, safe and nutritious food, and promote increased self-reliance in food security and nutrition, including by women, children, youth, persons with disabilities and older persons.

81. This will include resources and expertise for targeted food assistance to meet the immediate food and nutritional needs of refugees and host communities through most suitable means, including increased use of cash-based transfers or social protection systems, while also supporting access by refugees and host communities to nutrition-sensitive social safety nets, including school feeding programmes. Support will also be provided to build resilience of households and food and agricultural production systems in refugee-hosting areas, including by promoting purchases from local farmers and addressing bottlenecks along the food value chain, taking into account diversity, prevailing cultural and religious practices, and preferences for food and agricultural production. Capacity development for host governments and local communities to withstand shocks and stress factors, which limit the availability of food, including its production, or constrain access to it will be prioritized.

2.8 Civil registries

82. Civil and birth registration helps States to have accurate information about the persons living on their territory, and is a major tool for protection and solutions, including for refugee women, girls and others with specific needs. While it does not necessarily lead to conferral of nationality, birth registration helps establish legal identity and prevent the risk of statelessness. In support of host countries, States and relevant stakeholders will contribute resources and expertise to strengthen the capacity

[50] . This could include the World Food Programme (WFP) and the Food and Agriculture Organization (FAO), together with the International Fund for Agricultural Development (IFAD).

of national civil registries to facilitate timely access by refugees and stateless persons, as appropriate, to civil and birth registration and documentation, including through digital technology and the provision of mobile services, subject to full respect for data protection and privacy principles.

2.9 Statelessness

83. Recognizing that ***statelessness*** may be both a cause and consequence of refugee movements,[51] States, UNHCR and other relevant stakeholders will contribute resources and expertise to support the sharing of good, gender-sensitive practices for the prevention and reduction of statelessness, and the development of, as appropriate, national and regional and international action plans to end statelessness, in line with relevant standards and initiatives, including UNHCR's Campaign to End Statelessness. States that have not yet acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are encouraged to consider doing so.

2.10 Fostering good relations and peaceful coexistence

84. Recognizing the importance of good relations between communities, pending the availability of durable solutions, programmes and projects will be designed in ways that combat all forms of discrimination and promote peaceful coexistence between refugee and host communities, in line with national policies. Specific programmes and projects will be supported to enhance understanding of the plight of refugees, including through technical cooperation and capacity development for local communities and personnel. Engagement of children, adolescents and youth will be fostered, including through sports and cultural activities, language learning, and education. In fostering respect and understanding, as well as combating discrimination, the power and positive impact of civil society, faithbased organizations, and the media, including social media, will be harnessed.

3. Solutions

85. One of the primary objectives of the global compact (para 7) is to facilitate access to durable solutions, including by planning for solutions from the outset of refugee situations. Eliminating root causes is the most effective way to achieve solutions. In line with international law and the Charter of the United Nations, political and security cooperation, diplomacy, development and the promotion and protection of human rights are key to resolving protracted refugee situations and preventing new crises from emerging. At the same time, addressing the causes of refugee movements can take time. The programme of action therefore envisages a mix of solutions, adapted to the specific context and taking into account the absorption capacity, level of development and demographic situation of different countries. This includes the three traditional durable solutions of voluntary repatriation, resettlement and local integration, as well as other

[51] . See ExCom Conclusion No. 101 (LV) (2004), (k).

local solutions[52] and complementary pathways for admission to third countries, which may provide additional opportunities.

86. As in previous sections in Part B, the elements set out below are intended to bring greater predictability, and to engage a wider range of States and relevant stakeholders, for the achievement of solutions. In particular:

- support will be provided for countries of origin, and host countries where appropriate, upon their request, to facilitate conditions for voluntary repatriation, including through Global Refugee Forums and Support Platforms;
- offers of resettlement and complementary pathways[53] will be an indispensable part of the arrangements set out in Part A; and
- while local integration is a sovereign decision, those States electing to provide this or other local solutions will require particular support.

3.1 Support for countries of origin and voluntary repatriation

87. Voluntary repatriation in conditions of safety and dignity remains the preferred solution in the majority of refugee situations.[54] The overriding priorities are to promote the enabling conditions for voluntary repatriation in full respect for the principle of nonrefoulement, to ensure the exercise of a free and informed choice[55] and to mobilize support to underpin safe and dignified repatriation. It is recognized that voluntary repatriation is not necessarily conditioned on the accomplishment of political solutions in the country of origin,in order not to impede the exercise of the right of refugees to return to their own country.[56] It is equally recognized that there are situations where refugees voluntarily return outside the context of formal voluntary repatriation programmes, and that this requires support. While enabling voluntary repatriation is first and foremost the responsibility of the country of origin towards its own people, the international community as a whole stands ready to provide support, including to facilitate sustainability of return.

88. Accordingly, without prejudice to ongoing support to host countries, the international community as a whole will contribute resources and expertise to support countries of origin, upon their request, to address root causes, to remove obstacles to return, and to enable conditions favourable to voluntary repatriation. These efforts will take into account existing political and technical mechanisms for coordinating humanitarian, peacebuilding and development interventions, and be in line with the 2030 Agenda for Sustainable Development. In some contexts it is useful for relevant States and UNHCR to conclude tripartite agreements to facilitate voluntary repatriation.

89. In addition, States and relevant stakeholders will contribute resources and expertise to support countries of origin upon their request with respect to social,

[52] . See para 100.
[53] . Made in line with para 4 above.
[54] . A/RES/72/150, para 39; ExCom Conclusions No.: 90 (LII) (2001), (j); 101 (LV) (2004); 40 (XXXVI) (1985).
[55] . In line with ExCom Conclusion No. 101 (LV) (2004).
[56] . As recognized, e.g., in ExCom Conclusion No. 112 (LXVII) (2016), (7). See also para 8 on the need for collaboration and action in addressing root causes of protracted refugee situations.

political, economic and legal capacity to receive and reintegrate returnees, notably women, youth, children, older persons and persons with disabilities. This may include support for development, livelihood and economic opportunities and measures to address housing, land and property issues. Contributions will be provided for direct repatriation support to returnees in the form of cash and other assistance, where appropriate. Depending on the context, concerned countries may seek technical guidance on measures to avoid further forced displacement on return (internal or cross-border), and to take into account the situation of internally displaced and non-displaced resident populations.[57] Relevant stakeholders will work with authorities, as appropriate, to support information sharing on protection risks in areas of return and the establishment of systems for analysis of such risks.[58][59]

3.2 Resettlement

90. Apart from being a tool for protection of and solutions for refugees, resettlement is also a tangible mechanism for burden- and responsibility-sharing and a demonstration of solidarity, allowing States to help share each other's burdens and reduce the impact of large refugee situations on host countries. At the same time, resettlement has traditionally been offered only by a limited number of countries. The need to foster a positive atmosphere for resettlement, and to enhance capacity for doing so, as well as to expand its base, cannot be overstated.

91. Contributions will be sought from States,[60] with the assistance of relevant stakeholders,[61] to establish, or enlarge the scope, size, and quality of, resettlement programmes.[62] In support of these efforts, UNHCR – in cooperation with States and relevant stakeholders - will devise a three-year strategy (2019 – 2021) to increase the pool of resettlement places, including countries not already participating in global resettlement efforts; as well as to consolidate emerging resettlement programmes, building on good practices and lessons learned from the Emerging Resettlement Countries Joint Support Mechanism (ERCM) and regional arrangements. The strategy will identify, build links and provide support to new and emerging resettlement countries, including through expertise and other technical support, twinning projects, human and financial resources for capacity development, and the involvement of relevant stakeholders.

92. In addition, pledges will be sought, as appropriate, to establish or strengthen good practices in resettlement programmes. This could include the establishment of multi-year resettlement schemes; efforts to ensure resettlement processing is predictable, efficient and effective (e.g. by using flexible processing modalities that fully address security concerns to resettle at least 25 per cent of annual resettlement submissions within six months of UNHCR referral); ensuring that resettlement is used

[57] . See also A/RES/54/167 on protection of and assistance to internally displaced persons, and subsequent General Assembly resolutions on this subject, including A/RES/72/182.
[58] . Including in line with UNHCR's mandate for returnee monitoring: ExCom Conclusions No.
[59] (XXXVI) (1985), (l); 101 (LV) (2004), (q); 102 (LVI) (2005), (r).
[60] . In line with para 4 above.
[61] . This could include UNHCR, IOM, civil society organizations, community groups, faith-based organizations, academia, individuals and the private sector.
[62] . In line with A/RES/71/1, Annex I, para 16.

strategically, improving the protection environment and contributing to a comprehensive approach to refugee situations (e.g. by allocating places for the resettlement of refugees according to UNHCR's resettlement criteria from priority situations identified by UNHCR in its annual projected global resettlement needs, including protracted situations; and/or e.g. dedicating at least 10 per cent of resettlement submissions as unallocated places for emergency or urgent cases identified by UNHCR); investing in robust reception and integration services for resettled refugees, including women and girls at risk; and the use of emergency transit facilities or other arrangements for emergency processing for resettlement, including for women and children at risk.[63]

93. In specific situations, in light of their proven value, resettlement core groups will continue to facilitate a coordinated response, with due regard to protection needs and security considerations.[64] More generally, all efforts under the global compact will align with the existing multilateral resettlement architecture, including the annual tripartite consultations on resettlement, the working group on resettlement and core groups, with a view to leveraging their added value.

3.3 Complementary pathways for admission to third countries

94. As a complement to resettlement, other pathways for the admission of persons with international protection needs can facilitate access to protection and/or solutions. There is a need to ensure that such pathways are made available on a more systematic, organized, sustainable and gender-responsive basis, that they contain appropriate protection safeguards, and that the number of countries offering these opportunities is expanded overall.

95. The three-year strategy on resettlement (section 3.2 above) will also include complementary pathways for admission, with a view to increasing significantly their availability and predictability. Contributions will be sought from States, with the support of relevant stakeholders,[65] to facilitate effective procedures and clear referral pathways for family reunification, or to establish private or community sponsorship programmes that are additional to regular resettlement, including community-based programmes promoted through the Global Refugee Sponsorship Initiative (GRSI). Other contributions in terms of complementary pathways could include humanitarian visas, humanitarian corridors and other humanitarian admission programmes; educational opportunities for refugees (including women and girls) through grant of scholarships and student visas, including through partnerships between governments and academic institutions; and labour mobility opportunities for refugees, including through the identification of refugees with skills that are needed in third countries.

[63] . Issuance of single voyage convention travel documents for the purposes of facilitating evacuation may be required. This could be facilitated by UNHCR on an exceptional basis.
[64] . Potentially in coordination with or as part of the Support Platform.
[65] . Including civil society, faith-based organizations, the private sector, employers, international organizations, individuals and academia.

96. Contributions will be sought to support the sharing of good practices, lessons learned and capacity development for new States considering such schemes (see above, para 47).

3.4 Local integration

97. While voluntary repatriation remains the preferred solution in the majority of refugee situations, it is also important to support countries who elect to resolve a refugee situation locally. Local integration is a sovereign decision and an option to be exercised by States guided by their treaty obligations and human rights principles.[66] A number of States have found it useful to move towards the local integration of refugees, including by providing durable legal status and naturalization, where appropriate, without prejudice to the specific situation of certain middle income and developing countries facing large-scale refugee situations.

98. Local integration is a dynamic and two-way process, which requires efforts by all parties, including a preparedness on the part of refugees to adapt to the host society, and a corresponding readiness on the part of host communities and public institutions to welcome refugees and to meet the needs of a diverse population. In low- and middle-income countries, additional financial and technical support from the international community is required to ensure successful local integration in a manner that takes in to account the needs of both refugees and host communities.

99. In support of countries opting to provide local integration, the international community as a whole will, in close cooperation with national authorities of host countries, contribute resources and expertise to assist with the development of a strategic framework for local integration. The capacity of relevant State institutions, local communities and civil society will be strengthened to support the local integration process (e.g. to address documentation issues; facilitate language and vocational training, including for women and girls). Support will be provided for programmes fostering respect and good relations and to facilitate access to livelihood opportunities for integrating refugees, including through analysis of economies in refugee hosting areas, taking into account local labour market assessments and skills profiles, including of women and young adults. Investments in areas where refugees will settle, in support of national development plans and strategies and in line with the 2030 Agenda for Sustainable Development, will be actively promoted, and regional frameworks which may complement national laws in offering pathways to durable legal status or naturalization for refugees will be explored, where appropriate.

3.5. Other local solutions

100. In addition to local integration - where refugees find a durable solution to their plight - some host countries may elect to provide other local solutions to refugees. Such solutions entail interim legal stay, including to facilitate the appropriate economic, social and cultural inclusion of refugees, and are provided without prejudice to eventual durable solutions that may become available. Depending on the context and the needs

[66] . As stated in ExCom Conclusion No. 104 (LVI) (2005), recital 1.

identified by countries electing to provide other local solutions to refugees,[67] States and relevant stakeholders will contribute resources and expertise, including technical guidance on legal and institutional frameworks that foster the peaceful and productive inclusion of refugees and the well-being of local communities, and to address issues such as documentation and residence permits.

IV. Follow-up and review

101. The international community as a whole will do its utmost to mobilize support for the global compact and the achievement of its objectives on an equal footing, through more predictable and equitable burden- and responsibility-sharing. This is a task for all States, together with relevant stakeholders. UNHCR will play a catalytic and supportive role in this endeavour, consistent with its mandate. Follow-up and review under the global compact will be primarily conducted through the Global Refugee Forum (held every four years unless otherwise decided); high-level officials' meetings (held every two years between Forums); as well as annual reporting to the United Nations General Assembly by the United Nations High Commissioner for Refugees. States, UNHCR and relevant stakeholders will seek to coordinate the follow-up of the global compact in ways that foster coherence with other processes and actions related to people on the move.

102. Success under the global compact will be assessed in terms of progress towards the achievement of its four objectives (para 7). Indicators in this regard will be developed for each objective ahead of the first Global Refugee Forum in 2019.

103. The Global Refugee Forums will provide an important vehicle for States and other relevant stakeholders to take stock of progress towards the achievement of the objectives of the global compact. Forums will also provide an opportunity for States and relevant stakeholders to exchange good practices and experiences, both with respect to specific country or regional situations, as well as on a global level, and to review the ongoing efficacy of the arrangements for burden- and responsibility-sharing.
The stocktaking at the Forums will be informed by the results of the process coordinated by UNHCR to measure the impact arising from hosting, protecting and assisting refugees (para 48), and a mechanism for tracking implementation of pledges and contributions, as well as measuring the impact of the global compact, established by UNHCR in close consultation with States and other relevant stakeholders.

104. High-level officials' meetings on the global compact will take place between Forums. They will be organized in conjunction with the High Commissioner's Dialogue on Protection Challenges. They will be open to all United Nations Member States and relevant stakeholders, and allow for "mid-term review" of progress, facilitate regular stocktaking and sustain momentum. The first meeting involving relevant officials at high level will take place in 2021.

[67] . See also para 99 for possible areas of support, as relevant.

105. The United Nations High Commissioner for Refugees will provide the annual update, in his/her regular report to the United Nations General Assembly, on progress made towards the achievement of the objectives of the global compact.

106. States and relevant stakeholders will facilitate meaningful participation of refugees, including women, persons with disabilities, and youth, in Global Refugee Forums, ensuring the inclusion of their perspectives on progress. A digital platform developed by UNHCR and accessible to all will enable the sharing of good practices, notably from an age, gender, disability, and diversity perspective, in the application of the different elements of the global compact.

107. The global compact has the potential to mobilize all relevant stakeholders in support of a shared agenda and collective outcomes. Together, we can achieve results that will transform the lives of refugees and host communities.

Excerpt from the New York Declaration, Annex I (paras. 1-16): Comprehensive refugee response framework

1. The scale and nature of refugee displacement today requires us to act in a comprehensive and predictable manner in large-scale refugee movements. Through a comprehensive refugee response based on the principles of international cooperation and on burden- and responsibility-sharing, we are better able to protect and assist refugees and to support the host States and communities involved.

2. The comprehensive refugee response framework will be developed and initiated by the Office of the United Nations High Commissioner for Refugees, in close coordination with relevant States, including host countries, and involving other relevant United Nations entities, for each situation involving large movements of refugees. A comprehensive refugee response should involve a multi-stakeholder approach, including national and local authorities, international organizations, international financial institutions, regional organizations, regional coordination and partnership mechanisms, civil society partners, including faith-based organizations and academia, the private sector, media and the refugees themselves.

3. While each large movement of refugees will differ in nature, the elements noted below provide a framework for a comprehensive and people-centred refugee response, which is in accordance with international law and best international practice and adapted to the specific context.

4. We envisage a comprehensive refugee response framework for each situation involving large movements of refugees, including in protracted situations, as an integral and distinct part of an overall humanitarian response, where it exists, and which would normally contain the elements set out below.

Reception and admission

5. At the outset of a large movement of refugees, receiving States, bearing in mind their national capacities and international legal obligations, in cooperation, as appropriate, with the Office of the United Nations High Commissioner for Refugees,

international organizations and other partners and with the support of other States as requested, in conformity with international obligations, would:

a. Ensure, to the extent possible, that measures are in place to identify persons in need of international protection as refugees, provide for adequate, safe and dignified reception conditions, with a particular emphasis on persons with specific needs, victims of human trafficking, child protection, family unity, and prevention of and response to sexual and gender-based violence, and support the critical contribution of receiving communities and societies in this regard;

b. Take account of the rights, specific needs, contributions and voices of women and girl refugees;

c. Assess and meet the essential needs of refugees, including by providing access to adequate safe drinking water, sanitation, food, nutrition, shelter, psychosocial support and health care, including sexual and reproductive health, and providing assistance to host countries and communities in this regard, as required;

d. Register individually and document those seeking protection as refugees, including in the first country where they seek asylum, as quickly as possible upon their arrival. To achieve this, assistance may be needed, in areas such as biometric technology and other technical and financial support, to be coordinated by the Office of the United Nations High Commissioner for Refugees with relevant actors and partners, where necessary;

e. Use the registration process to identify specific assistance needs and protection arrangements, where possible, including but not exclusively for refugees with special protection concerns, such as women at risk, children, especially unaccompanied children and children separated from their families, child-headed and single-parent households, victims of trafficking, victims of trauma and survivors of sexual violence, as well as refugees with disabilities and older persons;

f. Work to ensure the immediate birth registration for all refugee children born on their territory and provide adequate assistance at the earliest opportunity with obtaining other necessary documents, as appropriate, relating to civil status, such as marriage, divorce and death certificates;

g. Put in place measures, with appropriate legal safeguards, which uphold refugees' human rights, with a view to ensuring the security of refugees, as well as measures to respond to host countries' legitimate security concerns;

h. Take measures to maintain the civilian and humanitarian nature of refugee camps and settlements;

i. Take steps to ensure the credibility of asylum systems, including through collaboration among the countries of origin, transit and destination and to facilitate the return and readmission of those who do not qualify for refugee status.

Support for immediate and ongoing needs

6. States, in cooperation with multilateral donors and private sector partners, as appropriate, would, in coordination with receiving States:

a. Mobilize adequate financial and other resources to cover the humanitarian needs identified within the comprehensive refugee response framework;

b. Provide resources in a prompt, predictable, consistent and flexible manner, including through wider partnerships involving State, civil society, faith-based and private sector partners;

c. Take measures to extend the finance lending schemes that exist for developing countries to middle-income countries hosting large numbers of refugees, bearing in mind the economic and social costs to those countries;

d. Consider establishing development funding mechanisms for such countries;

e. Provide assistance to host countries to protect the environment and strengthen infrastructure affected by large movements of refugees;

f. Increase support for cash-based delivery mechanisms and other innovative means for the efficient provision of humanitarian assistance, where appropriate, while increasing accountability to ensure that humanitarian assistance reaches its beneficiaries.

7. Host States, in cooperation with the Office of the United Nations High Commissioner for Refugees and other United Nations entities, financial institutions and other relevant partners, would, as appropriate:

a. Provide prompt, safe and unhindered access to humanitarian assistance for refugees in accordance with existing humanitarian principles;

b. Deliver assistance, to the extent possible, through appropriate national and local service providers, such as public authorities for health, education, social services and child protection;

c. Encourage and empower refugees, at the outset of an emergency phase, to establish supportive systems and networks that involve refugees and host communities and are age- and gender-sensitive, with a particular emphasis on the protection and empowerment of women and children and other persons with specific needs;

d. Support local civil society partners that contribute to humanitarian responses, in recognition of their complementary contribution;

e. Ensure close cooperation and encourage joint planning, as appropriate, between humanitarian and development actors and other relevant actors.

Support for host countries and communities

8. States, the Office of the United Nations High Commissioner for Refugees and relevant partners would:

a. Implement a joint, impartial and rapid risk and/or impact assessment, in anticipation or after the onset of a large refugee movement, in order to identify and prioritize the assistance required for refugees, national and local authorities, and communities affected by a refugee presence;

b. Incorporate, where appropriate, the comprehensive refugee response framework in national development planning, in order to strengthen the delivery of essential services and infrastructure for the benefit of host communities and refugees;

c. Work to provide adequate resources, without prejudice to official development assistance, for national and local government authorities and other service providers in view of the increased needs and pressures on social services. Programmes should benefit refugees and the host country and communities.

Durable solutions

9. We recognize that millions of refugees around the world at present have no access to timely and durable solutions, the securing of which is one of the principal goals of international protection. The success of the search for solutions depends in large measure on resolute and sustained international cooperation and support.

10. We believe that actions should be taken in pursuit of the following durable solutions: voluntary repatriation, local solutions and resettlement and complementary pathways for admission. These actions should include the elements set out below.

11. We reaffirm the primary goal of bringing about conditions that would help refugees return in safety and dignity to their countries and emphasize the need to tackle the root causes of violence and armed conflict and to achieve necessary political solutions and the peaceful settlement of disputes, as well as to assist in reconstruction efforts. In this context, States of origin/ nationality would:

a. Acknowledge that everyone has the right to leave any country, including his or her own, and to return to his or her country;

b. Respect this right and also respect the obligation to receive back their nationals, which should occur in a safe, dignified and humane manner and with full respect for human rights in accordance with obligations under international law;

c. Provide necessary identification and travel documents;

d. Facilitate the socioeconomic reintegration of returnees;

e. Consider measures to enable the restitution of property.

12. To ensure sustainable return and reintegration, States, United Nations organizations and relevant partners would:

a. Recognize that the voluntary nature of repatriation is necessary as long as refugees continue to require international protection, that is, as long as they cannot regain fully the protection of their own country;

b. Plan for and support measures to encourage voluntary and informed repatriation, reintegration and reconciliation;

c. Support countries of origin/nationality, where appropriate, including through funding for rehabilitation, reconstruction and development, and with the necessary legal safeguards to enable refugees to access legal, physical and other support mechanisms needed for the restoration of national protection and their reintegration;

d. Support efforts to foster reconciliation and dialogue, particularly with refugee communities and with the equal participation of women and youth, and to ensure respect for the rule of law at the national and local levels;

e. Facilitate the participation of refugees, including women, in peace and reconciliation processes, and ensure that the outcomes of such processes duly support their return in safety and dignity;

f. Ensure that national development planning incorporates the specific needs of returnees and promotes sustainable and inclusive reintegration, as a measure to prevent future displacement.

13. Host States, bearing in mind their capacities and international legal obligations, in cooperation with the Office of the United Nations High Commissioner for Refugees, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, where appropriate, and other United Nations entities, financial institutions and other relevant partners, would:

a. Provide legal stay to those seeking and in need of international protection as refugees, recognizing that any decision regarding permanent settlement in any form, including possible naturalization, rests with the host country;

b. Take measures to foster self-reliance by pledging to expand opportunities for refugees to access, as appropriate, education, health care and services, livelihood opportunities and labour markets, without discriminating among refugees and in a manner which also supports host communities;

c. Take measures to enable refugees, including in particular women and youth, to make the best use of their skills and capacities, recognizing that empowered refugees are better able to contribute to their own and their communities' well-being;

d. Invest in building human capital, self-reliance and transferable skills as an essential step towards enabling long-term solutions.

14. Third countries would:

a. Consider making available or expanding, including by encouraging private sector engagement and action as a supplementary measure, resettlement opportunities and complementary pathways for admission of refugees through such means as medical evacuation and humanitarian admission programmes, family reunification and opportunities for skilled migration, labour mobility and education;

b. Commit to sharing best practices, providing refugees with sufficient information to make informed decisions and safeguarding protection standards;

c. Consider broadening the criteria for resettlement and humanitarian admission programmes in mass displacement and protracted situations, coupled with, as appropriate, temporary humanitarian evacuation programmes and other forms of admission.

15. States that have not yet established resettlement programmes are encouraged to do so at the earliest opportunity. Those that have already done so are encouraged to consider increasing the size of their programmes. Such programmes should incorporate a non-discriminatory approach and a gender perspective throughout.

16. States aim to provide resettlement places and other legal pathways on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees to be met

Who is an environmental migrant?

The definition of environmental migration or environmental migrant is not found in any international treaty or custom, yet it is a very commonly used term. Therefore, we will now introduce it, even though it is a non-binding definition brought about mainly by science. The roots of the definition of environmental migrant can be found in El Hinnawi's 1985 publication.[68] He uses the term "environmental refugees", not migrants, and defines them as those "*who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life. "Environmental disruption*" in this definition means any physical, chemical and/or biological change to an ecosystem (or resource base) that makes it temporarily or permanently unsuitable for human life.[69]

This definition is very general. It contains only two conditions: permanent abandonment of home and environmental degradation above a certain level. It potentially covers a huge number of persons, which poses a problem for states that should accept a higher number of persons to give them protection, and raises issues related to the content of protection, as a higher number of persons usually correlates with the need to provide a lower standard of protection (the state may not have the resources to provide a higher standard). What is more interesting for legal regulation seems to be the typology of R. Stojanov and his colleagues, who distinguish:

1. voluntary environmental migrants who voluntarily leave their home due to environmental threats, but which do not threaten their life,
2. environmental displaced persons who leave their home under duress because of a threat to their life, health or livelihood, and can be divided into gradual and rapid,
3. planned displaced persons, who leave forcibly and usually in an organised manner in connection with the planned development of the area in which they live. [70]

Indeed, each definition is also influenced by whether it deals with long-term or rapid environmental change, for example whether it is a sea level rise that lasts for decades or a tsunami that causes a disaster in a matter of hours. We can use the above typology of Stojanov et al. to reflect on the causes of environmental migration, and the following table will serve this purpose. We can certainly add other causes to this table, but let us study it for a basic idea.

[68] El-Hinnawi, E.Environmental Refugees. UNEP, 1985.
[69] Cf. El-Hinnawi, p. 4.
[70] See Stojanov, R., Kelman, I., Duží, B., Fenomén environmentální migrace. In: Honusková, V.; Flídrová, E.; Janků, L. (eds.) Dnes migranti – zítra uprchlíci? Praha: Univerzita Karlova v Praze, Právnická fakulta, 2014.

Categories	Natural disasters	Cumulative (slow) change	Industrial disasters and pollution	Development projects	Conflicts and wars
The causes	floods, earthquakes, volcanic eruptions, landslides, hurricanes and tropical storms, tsunami	land degradation, droughts/water scarcity, climate change (variability), sea level rise	nuclear disasters, factory accidents, environmental pollution (air, water, soil)	construction of river dams, construction of irrigation facilities and infrastructure, extraction of raw materials, urbanisation	biological conflicts, deliberate destruction of the environment, wars over natural resources

Source: Stojanov, Kelman, Duží, 2014.[71]

There are different causes that may result in fast or slow migration. In this context, it is possible to consider whether or not a person needs protection *at a given moment*. Whether international law, and therefore states, consider the need for protection is related to its necessity. If it is possible for a State of which a person is a citizen or in which he or she resides to provide protection, it should do so from the perspective of international law; that is one of its roles. And in the case of a cause that causes slow departure, it can be assumed that the home State should act in the first place. After all, international human rights law obliges it to do so; this is how the universal Guiding Principles on Internal Displacement (a soft law instrument) or the regional Kampala Convention are understood. In the case of internally displaced persons, it is therefore a duty of the state towards its own population; questions arise in relation to the status of 'externally displaced persons', i.e. those who leave their home state and for some reason cannot return.

The area of international refugee law discussed below can serve as a frame of reference for how international law is set up to provide protection to a specifically defined group of persons. It is primarily the home state that is supposed to protect its citizens, and they can only become refugees when their home state fails and they are forced to cross borders for fear of their future. Protection by the home state fails when it is the home state itself that persecutes the persons or is unable or unwilling to protect them. In such a case, treaty protection is triggered by one of the States Parties to the relevant Convention, essentially as an agent of the international community; it is not specified which State this will or should be (of course the possibility of obtaining effective protection is an implicit condition – that is often not met). On the one hand, there is a need to protect the person; on the other hand, there are states that can provide that protection although they are not always willing to do so. The protection of environmental migrants can be based on a similar principle if the need for such protection is defined. There will be environmental migrants on the one hand, and states as possible agents of protection on the other. The question - beyond the legal basis – is whether environmental migrants need protection and whether they need it now. Thus, in terms of the need for protection, there may be a problem with slow-onset

[71] See Stojanov, R., Kelman, I., Duží, B., Fenomén environmentální migrace. In: Honusková, V.; Flídrová, E.; Janků, L. (eds.) Dnes migranti – zítra uprchlíci? Praha: Univerzita Karlova v Praze, Právnická fakulta, 2014.

events where there is no immediate risk for the persons.[72] There is no immediate risk for citizens of sinking islands for instance – and their home countries are trying to protect their citizens in the future, which is now their role. Sooner or later, however, the day will come when the island will be uninhabitable and its inhabitants will have to leave and rely on other countries.

If we are to consider the legislation in the context of the real need for protection, then it is now appropriate to focus more closely on those persons who leave their homes both involuntarily and rapidly. These situations are already covered by international law and we can assume that it will be easier to find a legal response to them.

[72] Slow onset events, as initially introduced by the Cancun Agreement (COP16), refer to the risks and impacts associated with: increasing temperatures; desertification; loss of biodiversity; land and forest degradation; glacial retreat and related impacts; ocean acidification; sea level rise; and salinisation.

International refugee law and the legal framework for stateless persons (international legal context of environmental migration).

Above, we talked about voluntary or involuntary (forced) migration. Those who have left their country involuntarily,[73] i.e. forced migrants, do not have one definition in the law. Within this broad category, the status of only certain groups is regulated, which entails the granting of certain status or protection. International law protects: firstly, refugees; secondly, certain other forced migrants through various treaty definitions of the principle of non-refoulement; thirdly, IDPs; and fourthly, stateless persons.[74] There is not even one single definition of voluntary migrants; there is a definition of migrant workers in international law[75] (which breaks down into several subdefinitions) - and others must be based on doctrine.

International refugee law has its roots in the early 20th century. Back then, international law was adopted in response to the arrival of large number of persons from Russia (and later from Turkey) into the European countries. Since then, several conventions have been adopted, which are often *ad hoc* treaties responding to specific large numbers of arrivals.[76] In the case of the Convention relating to the Status of Refugees, it was even a treaty with a temporal limitation on who is a refugee: only a person who had left his or her home as a result of events before 1 January 1951 was considered a refugee. The 1951 Convention responded primarily to the events of the Second World War, and the wording of the definition corresponded to the fundamental problems that refugees faced at that time. However, the Convention Relating to the Status of Refugees is still relevant, as its text was incorporated into the 1967 Protocol Relating to the Status of Refugees. The Protocol removed the time limitation and allowed for the removal of the territorial limitation, making the definition of refugee and the entire treaty regime binding on all parties to the Protocol – and it can thus apply also to today's refugees, not just those who became refugees as a result of events prior to 1 January 1951.

At the outset, it is also necessary to mention the role of the Office of the United Nations High Commissioner for Refugees.[77] The Office of the United Nations High Commissioner for Refugees (UNHCR)[78] plays an important role in refugee law. UNHCR is a subsidiary

[73] Srov. IOM Glossary, c.d., str. 58.
[74] Key treaties in this area are: Convention relating to the Status of Refugees of 1951, Convention relating to the Status of Stateless Persons from 1954, Convention on the Reduction of Statelessness of 1961, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) of 2009.
Key publications for the protection of persons in international law are Hathaway, J.C. *The Law of Refugee Status*. Toronto 1991 (2nd. ed., 2014), Goodwin-Gill, G.S., McAdam, J. *The Refugee in International Law.* 3rd ed. Oxford 2007; Feller, E., Turk, V., Nicholson, F. (eds.). *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*. Cambridge 2003.
[75] See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
[76] See Hathaway, The Law of Refugee Status, for more information.
[77] UNHCR was established by the GA as its subsidiary organ (see Art. 22 of the UN Charter) through resolution 319 A (IV) of 3 December 1949, and provided with its Statute in resolution 428 (V) of 14 December 1950 (Annex).
[78] A short discussion of the UNHCR statute can be found here https://www.unhcr.org/protection/basic/526a22cb6/mandate-high-commissioner-refugees-office.html,

body of the United Nations General Assembly (UNGA). It was established by a 1949 UN General Assembly resolution and was created at that time "to perform the functions set out in the annex to the resolution and other functions as mandated by the UN Security Council", which it was originally intended to do for a limited period of three years.[79] However, its mandate has been repeatedly extended as the situation has continued, leading to the existence of an increasing number of refugees. Then, in 2003, UNHCR was mandated by a UNGA decision to carry out protection tasks with a permanent mandate "until the refugee problem is resolved".[80]

The UNHCR is bound by a statute which sets out its jurisdiction *ratione personae*.[81] Over the years, the range of people to whom UNHCR provides assistance has expanded. In addition to refugees and asylum-seekers,[82] these include the aforementioned categories of stateless persons, internally displaced persons, as well as returnees and persons fleeing (in short and somewhat inaccurately) armed conflict. UNHCR's current mandate is therefore much broader than it was originally. It is being expanded gradually and may be expanded further in the future. Its activities are wide-ranging.[83] Two main objectives give direction: to protect refugees and to help them start a new life. This involves both its legal and humanitarian work. In many countries it is UNHCR that provides legal representation, while in other countries it provides status directly instead of the state (in accordance with the mandate from the State). UNHCR also organises resettlement on one hand and provides tents on the other, as well as gives hygiene items and food. States have an obligation to cooperate with UNHCR, but this does not mean that the office can act alone at any time. On the contrary, a state must have the permission of the territorial sovereign to act; without it, UNHCR cannot operate on the state´s territory.

Let us focus on protection of refugees at first. Who can be considered as a refugee? Today's refugee definition contains an inclusion part, i.e. determining who is a refugee, an exclusion part, i.e. who cannot be a refugee even if they meet the definition, and then a cessation clause, i.e. when a refugee ceases to be a refugee. All parts of the definition are relevant for assessing whether the refugee framework can be applied to people fleeing their country for environmental reasons. Let us therefore look at it in more detail. First, let us discuss the inclusion part. As noted above, a refugee is a

- person who owing to well-founded fear of being persecuted
- for reasons of race, religion, nationality, membership of a particular social group or political opinion,
- is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

[79] See Resolution UNGA No. 319.
[80] GA res. 58/153, 22 December 2003, implementing actions proposed by the United Nations High Commissioner for Refugees to strengthen the capacity of his Office to carry out its mandate, 22 December 2003, para. 9.
[81] The Statute of the Office of the United Nations High Commissioner for Refugees was adopted by the General Assembly on 14 December 1950 as Annex to Resolution 428 (V).
[82] Like the Convention, the Statute contains a definition of refugee. The Statute does not include the concept of a social group in the definition (see Article 6B and the explanation of this concept below), but in practice UNHCR assists them too.
[83] See Art. 8 of the UNHCR Statute.

Every refugee must be outside his or her country of origin, must fear persecution on one of five defined grounds, and cannot return to his or her country of origin because he or she is at risk of harm because he or she is a refugee.

The concept of outside one's country has a clear meaning. Refugees must cross the international borders of their country; if they do not cross them, they cannot be refugees. But the situation of those who do not cross the border can be similarly difficult. International law regulates their situation in a binding way only at the regional level in Africa,[84] but even at the universal level there is at least a soft law: Guiding Principles on Internal Displacement.[85] However, there is an important factual issue here: internally displaced persons are often in danger of their lives. In some cases, their state is unable and sometimes unwilling to help them. UNHCR therefore offers assistance to States and, where possible, provides internal refugees with shelter, food and other necessities directly in their home State, that is, with the consent of their home State. The UNHCR does this primarily in situations involving refugees or persons who are outside the territory of their home state, which is its core mandate. However, UNHCR's mandate has expanded in various ways over time and its functions and activities have continued to evolve. Would it be possible to think of UNHCR as providing at least basic protection for environmental migrants for the next decade?

The term legitimate fear contains an objective and a subjective component, that is, a subjective perception of reality supported by an objective source. We can imagine the persecution of a person taking place, among other things, by tapping a telephone. Subjectively, the person inferred this from the echo in the device; objectively, the person's claim can be supported by reports on the situation in the country in question, which confirm the persecution of political opponents in this way. Obviously, reports on the situation in a given country cannot be described as entirely objective, but by aggregating them and selecting them carefully, objectivity can at least be approached.[86]

The meaning of the word persecution is not only not (like the other terms in the definition) stated in the Convention, but its interpretation has changed over the years. The current interpretation says that it must be an act which, by its intensity, breaks the link between a person and the State, at least within the scope of Article 33 of the Convention (on one of the refugee grounds). With the development of human rights protection in the second half of the 20th century, the standard of rights that protect each person has risen; persecution can thus be further specified as a persistent and systematic failure of state protection in relation to fundamental rights. Fundamental rights can be understood as those enshrined in the two Covenants and the Convention against Torture, among others. It is the link between human rights, the duty of the home state to protect them, and the duties of other states towards those who have to flee that is important for future regulation of the status of those in need of protection. Indeed,

[84] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) of 2009, available online: https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa (accessed 19. 9. 2020).
[85] Guiding Principles on Internal Displacement of 1998, available online: https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html (accessed 19. 9. 2020).
[86] These reports will include, for example, UNHCR reports and other materials (see www.refworld.org), reports from national embassies, reports from international intergovernmental organisations or international NGOs.

earlier refugee regulations were adopted by states mainly to deal with the larger numbers of people who were in or entering their territory. Protection of persons was not the main reason for adopting the legal regulation at that time. Today's approach is more focused on the protection of persons, which is, after all, important for the future protection of environmental migrants. Persecution must entail harm, at least in the form of threat, as well as the state's failure to protect.[87]

Not every harm is relevant to refugees; it must be linked to one of the grounds listed in the definition. Thus, it is not enough to simply torture; it is necessary that the person has been tortured for one of the relevant reasons (race, nationality, religion, etc.). The intensity of the harm is also important; mere harassment is not enough; it usually involves physical violence, detention, custody or imprisonment; psychological harm may also play a role; sometimes a single act is not enough and persecution is considered cumulatively. The concept of who persecutes has also changed over the years. Traditionally, it is the state authorities who act on behalf of the state; in other words, only the actions of these persons are imputed to the state and therefore give rise to its responsibility. Both state action and inaction can give rise to responsibility: if the state fails to prevent the persecution of opponents, it is as responsible as if it had persecuted them itself. If it fails to prevent the harm, it is imputed to it. Gradually, the interpretation of when there is a failure of the state to protect an individual has become more settled, and it is now possible to distinguish between persecution:

- implemented directly by the State,
- state-supported persecution,
- state-tolerated persecution
- and persecution that is neither state-supported nor state-tolerated but occurs because the state is unable or unwilling to provide adequate protection.

This too is of fundamental importance for how states now perceive state action or inaction and its responsibility for action or inaction, and whether de facto regimes or non-state actors may also play a role in persecution.

The five grounds for protection contained in the Refugee Convention - race, nationality, religion, membership of a particular social group and certain political opinions - are, on the face of it, little related to the reasons for which environmental migrants leave. However, it is of course a matter of interpretation whether any of these reasons can be applied to environmental migration. We will therefore look at the complexities of the definition of refugee and its possible interpretations using the fictional examples that follow this text. Regarding the possibility of interpreting the Convention as applying to people who leave their homes for environmental reasons, the most interesting reason appears to be the social group. This ground was only introduced in the 1951 Convention. Others existed earlier in other conventions and definitions, but this one never appeared.

It is also important for our consideration of the status of environmental migrants to note that the understanding of this concept has evolved. The UNHCR Handbook, an often cited document that, while not a source of international law, has been adopted by most

[87] See also Hathaway, J. C. *The Law of Refugee Status…*, pp. 104-105.

states in their decision-making practice, explains the concept of social group in 1979 and 1992, respectively, as follows:

> *77. A "particular social group" normally comprises persons of similar background, habits or social status. A claim to fear of persecution under this heading may frequently overlap with a claim to fear of persecution on other grounds, i.e. race, religion or nationality.*
>
> *78. Membership of such a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the Government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the Government's policies.*
>
> *79. Mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground to fear persecution.*[88]

In the following years, UNHCR changed its approach and tried to generalise national practices in other documents. The 2002 guidelines refers to the existence of two approaches in national decision-making practice.[89] The first defines social group as a group united by a common, immutable characteristic or attribute that is so fundamental to human dignity that one should not be forced to give it up. It is called the *protected characteristics approach*, and the characteristics associated with it tend to be innate, such as gender or ethnicity, or immutable for other reasons, such as occupation or status. The second approach assumes that there is a characteristic that distinguishes a social class when perceived by outsiders and causes it to be perceived as different by society or state authorities (*social perception/sociological approach*). The UNHCR has therefore arrived at a definition that summarises both approaches: "*particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights*".[90] Based on these approaches, states began to classify women, families and homosexuals as social groups. Now that we know a possible definition of this term, can it be used in the argument in favour of environmental migrants?

However, it should not be forgotten that in order to be considered a refugee, all the elements of the definition must be met, i.e. that he or she is outside his or her country, that he or she has a well-founded fear of persecution and that this fear arises from one of the five grounds listed in the Convention.

[88] See Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees HCR/IP/4/Eng/REV.1, reedited, Geneva, January 1992, UNHCR 1979.
[89] Guidelines on International Protection No. 2: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/02, UNHCR 2002 ("Guidelines on International Protection No. 2").
[90] See Guidelines on International Protection No. 2, p. 3.

When people become refugees, they do not cease to be citizens of their countries. They are still citizens *de jure*, although *de facto* their states renounce these bonds and are the ones who persecute or do not prevent the persecution. And this ineffective bond between the state and the citizen is replaced by the bond created between the citizen and a state (different from the home state), which acts as an extended arm of the international community and provides protection. We forget this aspect in the whirlwind of events, but it may be an important line of consideration in the future: providing protection to refugees (and perhaps others) is not just in the interest of particular states, but of the international community as a whole. We can think of the refugee's link to the host state as a quasi-citizen link; it is arguably the most intense formal attachment known to international law after citizenship. The refugee is entitled to a number of benefits to which states have committed themselves in the 1951 Convention. These include the right of access to employment, entrepreneurship, education, the courts, etc. These rights or benefits are linked to the type of residence a person receives and, in practice, to the economic possibilities that are available to the state. In many cases, states are unable to provide a relatively high standard of benefits under the 1951 Convention because the numbers of refugees (persons in need of protection) reach, for example, hundreds of thousands who, moreover, may arrive within only a few months.[91] This is also why, in the long term, the best solution seems to be prevention, i.e. to prevent people from becoming refugees in the first place. If they do become refugees, then there are usually three options for dealing with their situation in the long term: resettlement, in addition to returning to their country of origin or guaranteeing them residence in the country that granted them protection.[92] Resettlement means the movement and provision of protection to selected refugees, especially by more economically advanced countries. Countries that resettle refugees include mainly the United States of America, Australia, Canada and countries in northern Europe.

Questions for home preparation and subsequent discussion:

1. Short cases that illustrate the complexity of the definition of a refugee.

Case No. 1. Mr. Thang came to the Czech Republic from Hanoi, Vietnam. He had a problem with extortionists in his hometown. He was in business, owned a restaurant which had a fairly good reputation and a considerable turnover. One day, the mafia threatened him and his wife in person and then continued to threaten him by phone. He contacted the police, but they were reluctant and lax about the problem. He believes that this was because the police are linked to the mafia and were therefore unwilling to provide him with protection. Therefore, he and his wife sold the restaurant and arranged a visa to the Czech Republic, where they arrived by plane.

[91] For more information on the very hard situation in Lebanon (the country with the largest number of refugees relative to its population) see the website of UNHCR, https://www.unhcr.org/news/press/2021/9/615430234/un-syrian-refugees-lebanon-struggle-survive-amid-worst-socioeconomic-crisis.html, accessed 21. 8. 2021.

[92] UNHCR promotes those three durable solutions for refugees as part of its core mandate. See Part 7 of the 10-Point Plan of Action, UNHCR, 2007, updated in 2016.

How would you assess this case from the point of view of the Convention relating to the Status of Refugees?

Case No. 2. Ms Mari is from a central Asian state. She is homosexually oriented. Until recently homosexuality was a crime in her country, but five years ago the law was changed and homosexuality is no longer a crime. However, society did not change so quickly and she was still threatened by her fellow citizens and had difficulty finding work. A friend of hers, also a homosexual woman, was raped by police officers when they brought her to the police station for some minor offence (they learned about her sexual orientation from a friend they brought with her). She therefore did not address her situation with the state authorities and left the country straight away; she applied for protection in an EU country.

How would you assess this case from the point of view of the Convention relating to the Status of Refugees?

Case No. 3. Mr Kao-do is a fisherman from China. A plastic factory has been built near his village. It emits chemicals and impurities into the air and water. There are no more fish in the river, which was his source of livelihood. His child contracted asthma last year and this year doctors found out that he himself has leukemia. Mr Kao-do believes it is the result of fumes emitted by the adjacent factory. The authorities have not responded to his repeated complaints. He bought a ticket for himself and his child to Canada, where he applied for protection for him and his child.

1. How would you assess this case in the light of the Convention relating to the Status of Refugees?

2. Will your legal assessment change if Mr. Kao-do's house is destroyed by an earthquake and the authorities refuse to build him a new one?

Questions

1. Is it possible to consider UNHCR's involvement in the protection of environmental migrants? How? Could UNHCR provide protection instead of states (could it be an agent of protection)?

2. Is it possible to interpret the definition of a refugee in favour of environmental migrants?

United Nations CCPR/C/127/D/2728/2016

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016 [93,94,95]

Communication submitted by:	Ioane Teitiota (represented by counsel, Michael J. Kidd)
Alleged victim:	The author
State party:	New Zealand
Date of communication:	15 September 2015 (initial submission)
Document reference:	Decision taken pursuant to former rule 97 of the Committee's rules of procedure, transmitted to the State party on 16 February 2016 (not issued in document form)
Date of adoption of Views:	24 October 2019
Subject matter:	Deportation to the Republic of Kiribati
Procedural issues:	Admissibility – manifestly ill founded; admissibility – victim status
Substantive issue:	Right to life
Article of the Covenant:	6 (1)
Articles of the Optional Protocol:	1 and 2

[93] Adopted by the Committee at its 127th session (14 October – 8 November 2019).
[94] The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.
[95] Individual opinions by Committee members Duncan Laki Muhumuza and Vasilka Sancin (dissenting) are annexed to the present Views.

1.1 The author of the communication is Ioane Teitiota, a national of the Republic of Kiribati born in the 1970s. His application for refugee status in New Zealand was rejected. He claims that the State party violated his right to life under the Covenant, by removing him to Kiribati in September 2015. The Optional Protocol entered into force for the State party on 26 August 1989. The author is represented by counsel.

1.2 On 16 February 2016, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to request the State party to refrain from removing the author to the Republic of Kiribati while the communication was under consideration by the Committee.

Factual background

2.1 The author claims that the effects of climate change and sea level rise forced him to migrate from the island of Tarawa in the Republic of Kiribati to New Zealand. The situation in Tarawa has become increasingly unstable and precarious due to sea level rise caused by global warming. Fresh water has become scarce because of saltwater contamination and overcrowding on Tarawa. Attempts to combat sea level rise have largely been ineffective. Inhabitable land on Tarawa has eroded, resulting in a housing crisis and land disputes that have caused numerous fatalities. Kiribati has thus become an untenable and violent environment for the author and his family.

2.2 The author has sought asylum in New Zealand, but the Immigration and Protection Tribunal issued a negative decision concerning his claim for asylum. Still, the Tribunal did not exclude the possibility that environmental degradation could "create pathways into the Refugee Convention or protected person jurisdiction." The Court of Appeal and the Supreme Court each denied the author's subsequent appeals concerning the same matter.

2.3 In its decision of 25 June 2013, the Immigration and Protection Tribunal first examined in detail the 2007 National Adaptation Programme of Action filed by the Republic of Kiribati under the United Nations Framework Convention on Climate Change. As described by the Tribunal, the National Adaptation Programme of Action stated that the great majority of the population had subsistence livelihoods that were heavily dependent on environmental resources. The Programme of Action described a range of issues that had arisen from the existing and projected effects of climate change-related events and processes. Among the effects of climate change, coastal erosion and accretion were most likely to affect housing, land and property. In South Tarawa, 60 sea walls were in place by 2005. However, storm surges and high spring tides had caused flooding of residential areas, forcing some to relocate. Attempts were being made to diversify crop production, for example, through the production of cash crops. Most nutritious crops were available and could be prepared into long-term preserved food. However, the health of the population had generally deteriorated, as indicated by vitamin A deficiencies, malnutrition, fish poisoning, and other ailments reflecting the situation of food insecurity.

2.4 The Tribunal next considered the expert testimony of John Corcoran, a doctoral candidate researching climate change in Kiribati at the University of Waikato in New Zealand. Mr. Corcoran, a national of the Republic of Kiribati, characterized the country as a society in crisis owing to climate change and population pressure. The islands constituting the country rose no more than three meters above sea level. Soils were generally poor and infertile. Unemployment was high. The population of South Tarawa had increased from 1,641 in 1947 to 50,000 in 2010. In Tarawa and certain other islands of Kiribati, the scarcity of land engendered social tensions. Violent fights often broke out and sometimes led to injuries and deaths. Rapid population growth and urbanization in South Tarawa had compromised the supply of fresh water. No island in Kiribati had surface fresh water. As a result of the increase in population, the rate of water extraction from the freshwater lens exceeded the rate of its replenishment through the percolation of rainwater. Waste contamination from Tarawa had contributed to pollution of the freshwater lens, rendering some of the five underground water reserves unfit for the supply of fresh drinking water. Increasingly intense storms occurred, submerging the land in certain places on South Tarawa and rendering it uninhabitable. This often occurred three or four times a month. Rising sea levels caused more regular and frequent breaches of sea walls, which were in any case not high enough to prevent saltwater intrusion over the land during high tides. Household wells in high-density housing areas could not be used as a water supply due to increasing contamination, and rainwater catchment systems were only available in homes constructed of permanent materials. Thus, approximately 60 per cent of the population of South Tarawa obtained fresh water exclusively from rationed supplies provided by the public utilities board. Trash washed onto the beach posed health hazards for local landowners. According to Mr. Corcoran, the Government of the Republic of Kiribati was taking some steps to address this. It had a Programme of Action in place to help communities adapt to climate change.[96]

2.5 Next, the Tribunal examined the testimony given by the author during the appeal hearing. According to the Tribunal's description of the testimony, the author was born on an islet situated north of Tarawa, a journey of several days away by boat. He completed secondary school and obtained employment for a trading company, which ended in the mid1990s when the company folded. He had not been able to find work since then. In 2002, the author and his wife moved in with his wife's family in a traditionally-constructed dwelling in a village in Tarawa. The dwelling was situated on ground level and had electricity and water but no sewage services. Beginning in the late 1990s, life progressively became more insecure on Tarawa because of sea level rise. Tarawa became overcrowded due to the influx of residents from outlying islands, because most government services, including those of the main hospital, were provided on Tarawa. As villages became overcrowded, tensions arose. Also beginning in the late 1990s, Tarawa suffered significant amounts of coastal erosion during high tides. The land surface regularly flooded, and land could be submerged up to knee-deep during king tides. Transportation was affected, since the main causeway separating north

[96] Mr. Corcoran's written report was provided with the author's comments. Entitled "Evidence of climate change impacts in Kiribati," it includes photographs depicting, inter alia, flooding of homes after high tides, land with limited vegetation, a breached sea wall, and trash washed onto a beach.

and south Tarawa was often flooded. The situation caused significant hardship for the author and other inhabitants of Tarawa. The wells on which they depended became salinized. Salt water was deposited on the ground, resulting in the destruction of crops. The land was stripped of vegetation in many places, and crops were difficult to grow. The author's family relied largely on subsistence fishing and agriculture. The sea wall in front of the author's in-laws' home was often damaged and required constant repair. The author and his wife left the Republic of Kiribati for New Zealand because they wished to have children, and had received information from news sources that there would be no future for life in their country. The author accepted that his experiences were common to people throughout the Republic of Kiribati. He believed that the country's Government was powerless to stop the sea level rise. Internal relocation was not possible. The author's parents lived on Tarawa but faced similar environmental and population pressures.

2.6 The Tribunal also considered the oral testimony of the author's wife. According to the Tribunal, she testified that she was born in the late 1970s on Arorae Island, in the south of the Republic of Kiribati. In 2000, her family moved to Tarawa. She married the author in 2002. Her parents' house there was situated on the edge of a sea wall. The house and land were not owned by her parents but belonged to a neighbor. Since her arrival in New Zealand, the neighbor had passed away, and his children had been demanding that her family vacate the house. Her family was supported financially by one of her brothers, who had obtained employment in South Tarawa. If the family were obligated to vacate the house, they would have to travel back to Arorae Island and settle on a small plot of land. She was concerned for the family's health and well-being. The land was eroding due to the effects of sea level rise. The drinking water was contaminated with salt. Crops were dying, as were the coconut trees. She had heard stories of children getting diarrhea and even dying because of the poor quality of the drinking water. Land was becoming very overcrowded, and houses were close together, which led to the spread of disease.

2.7 The Tribunal also considered many supporting documents submitted by the author, including several scholarly articles written by United Nations entities and experts. The Tribunal analyzed whether the author could qualify as a refugee or a protected person under the Refugee Convention, the Convention against Torture, or the Covenant. It found the author entirely credible. It noted that the carrying capacity of the land on the Tarawa atoll had been negatively impacted by the effects of population growth, urbanization, and limited infrastructure development, particularly in relation to sanitation. These impacts had been exacerbated by both sudden-onset environmental events, such as storms, and slow-onset processes, such as sea level rise. The Tribunal noted that the author had been unemployed for several years before arriving in New Zealand, and had relied on subsistence agriculture and fishing, while receiving financial support from his wife's brother. The Tribunal noted the author's statement that he did not wish to return to the Republic of Kiribati because of the difficulties he and his family faced there, due to the combined pressures of overpopulation and sea level rise. The house they were living in on South Tarawa was no longer available to them on a long-term basis. Although the couple's families had land on other islands,

they would face similar environmental pressures there, and the land available was of limited size and was occupied by other family members.

2.8 After a lengthy analysis of international human rights standards, the Tribunal considered that "while in many cases the effects of environmental change and natural disasters will not bring affected persons within the scope of the Refugee Convention, no hard and fast rules or presumptions of non-applicability exist. Care must be taken to examine the particular features of the case." After further examination, the Tribunal concluded that the author did not objectively face a real risk of being persecuted if returned to Kiribati. He had not been subjected to any land dispute in the past and there was no evidence that he faced a real chance of suffering serious physical harm from violence linked to housing/land/property disputes in the future. He would be able to find land to provide accommodation for himself and his family.[97] Moreover, there was no evidence to support his contention that he was unable to grow food or obtain potable water. There was no evidence that he had no access to potable water, or that the environmental conditions that he faced or would face on return were so perilous that his life would be jeopardized. For these reasons, he was not a "refugee" as defined by the Refugee Convention.

2.9 Regarding the Covenant, the Tribunal noted that the right to life must be interpreted broadly, in keeping with the Committee's general comment No. 6 (1982) on article 6. The Tribunal cited academic commentary stating that under article 6, an arbitrary deprivation of life involves an interference that is: (a) not prescribed by law; (b) not proportional to the ends sought; and (c) not necessary in the particular circumstances of the case.[98] On this basis, the Tribunal accepted that the right to life involves a positive obligation of the state to fulfil this right by taking programmatic steps to provide for the basic necessities for life. However, the author could not point to any act or omission by the Government of Kiribati that might indicate a risk that he would be arbitrarily deprived of his life within the scope of article 6 of the Covenant. The Tribunal considered that the Government of Kiribati was active on the international stage concerning the threats of climate change, as demonstrated by the 2007 Programme of Action. Moreover, the author could not establish that there was a sufficient degree of risk to his life, or that of his family, at the relevant time. Quoting the Committee's jurisprudence in *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), the Tribunal stated that under the Optional Protocol, the risk of a violation of the Covenant must be "imminent." This means that the risk to life must be, at least, likely to occur. No evidence was provided to establish such imminence. The Tribunal accepted that, given the greater predictability of the climate system, the risk to the author and his family from sea level rise and other natural disasters could, in a broad sense, be regarded as more imminent than the risk posed to the life of the complainants in *Aalbersberg et al v. the Netherlands*. However, the risk to the author and his family still fell well short of the threshold required to establish substantial grounds for believing

[97] The Tribunal noted that the father of the author's wife was negotiating with the new owner of the land where the author had been living, and that an arrangement had been made to give the father time to relocate his family to their home island in the south. The Tribunal considered that while the author would need to share the available land with other members of his kin group, it would provide him and his family with access to sufficient resources to sustain themselves to an adequate level.
[98] The Tribunal cited, inter alia, Manfred Nowak, *The U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kiehl, NP Engel, 2005), p. 128-29.

that they would be in danger of arbitrary deprivation of life within the scope of article 6 of the Covenant. This risk remained firmly in the realm of conjecture or surmise. There was no evidence establishing that his situation in the Republic of Kiribati would be so precarious that his or his family's life would be in danger. The Tribunal noted the testimony of the author's wife that she feared her young children could drown in a tidal event or storm surge. However, no evidence had been provided to establish that deaths from such events were occurring with such regularity as to raise the prospect of death occurring to the author or his family members to a level rising beyond conjecture and surmise, let alone a risk that could be characterized as an arbitrary deprivation of life. Accordingly, there were not substantial grounds for believing that the author or any of his family members would be in danger of a violation of their rights under article 6 of the Covenant. The Tribunal also found that there was not a substantial risk that the author's rights under article 7 of the Covenant would be violated by his removal.

2.10 The author also provided a copy of the decision of the Supreme Court, which denied the author's appeal of the decision of the Tribunal on 20 July 2015. The Court considered, inter alia, that while the Republic of Kiribati undoubtedly faced challenges, the author would not, if returned there, face serious harm. Moreover, there was no evidence that the Government of the Republic of Kiribati was failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it could. The Supreme Court was also not persuaded that there was any risk that a substantial miscarriage of justice had occurred. Nevertheless, the Court did not rule out the possibility that environmental degradation resulting from climate change or other natural disasters could "create a pathway into the Refugee Convention or other protected person jurisdiction."

The complaint

3. The author claims that by removing him to Kiribati, New Zealand violated his right to life under the Covenant. Sea level rise in Kiribati has resulted in: (a) the scarcity of habitable space, which has in turn caused violent land disputes that endanger the author's life; and (b) environmental degradation, including saltwater contamination of the freshwater supply.

State party's observations on admissibility

4.1 In its observations dated 18 April 2016, the State party provides additional facts relating to the communication. In 2007, the author and his wife arrived in New Zealand. They had three children there, though none of the children are entitled to citizenship in New Zealand. The family remained in New Zealand without authorization after their residence permits had expired on 3 October 2010.

4.2 On 24 May 2012, with the assistance of legal counsel, the author filed a claim for recognition as a refugee and/or protected person. Under domestic law, Refugee and Protection Officers issue first instance decisions on such claims. Under the Immigration Act 2009, a person must be recognized as a refugee if she or he is a refugee within the meaning of the Refugee Convention. A person must be recognized as a protected

person under the Covenant if there are substantial grounds for believing that the person would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. Arbitrary deprivation of life has the same meaning under the Immigration Act 2009 as it does under the Covenant. The State party's decision makers have regard to the jurisprudence of the Committee. On 24 August 2012, the author's claim was denied by a Refugee and Protection Officer.

4.3 The Immigration and Protection Tribunal conducts *de novo* examination of appeals relating to claims for recognition as a refugee and/or a protected person. On 25 June 2013, the Tribunal denied the author's appeal of the negative decision of the Refugee and Protection Officer. On 26 November 2013, the High Court denied the author's application for leave to appeal the decision of the Tribunal. On 8 May 2014, the Court of Appeal denied the author's application for leave to appeal the decision of the High Court. On 20 July 2015, the Supreme Court denied the author's application for leave to appeal the decision of the Court of Appeal. All of the author's applications and appeals were made with the assistance of legal counsel.

4.4 On 15 September 2015, the author was detained and was served with a deportation order. On 16 September 2015, an immigration officer interviewed the author, in the presence of his counsel and with the assistance of an interpreter. The author completed a 28-page Record of Personal Circumstances form, which the immigration officer then evaluated through a cancellation assessment. Under domestic law, an immigration officer must perform a cancellation assessment if the individual concerned provides information concerning his or her personal circumstances, and the information is relevant to the State party's international obligations. The immigration officer assessing the author's case did not consider that his removal order should be cancelled. On 22 September 2015, the Minister of Immigration denied the author's request to cancel his removal. On 23 September 2015, the author was removed to Kiribati, and his family left shortly thereafter. They have not returned to New Zealand.

4.5 The State party considers that the communication is inadmissible because the author's implied claim under article 6 (1) of the Covenant is not sufficiently substantiated to establish a *prima facie* case. This is because, firstly, there is no evidence of actual or imminent harm to the author. In its decision on *Beydon et al. v. France* (CCPR/C/85/D/1400/2005), the Committee found that for a person to claim to be a victim of a violation of a Covenant right, she or he "must show either that an act or an omission of a State party has already adversely affected his or her enjoyment of such right, or that such effect is imminent." The Committee considered that the authors had failed to substantiate, for the purpose of admissibility, the alleged violation of their rights under the Covenant. In the present case, there is no evidence that the author faced an imminent risk of being arbitrarily deprived of his life when he was removed to Kiribati. Moreover, there is no evidence that the author faces such a risk. There is also no evidence that his situation is materially different from that of all other persons in Kiribati. The domestic authorities emphasized that their conclusions should not be read to mean that environmental degradation resulting from climate change could never create a pathway into protected person jurisdiction. The authorities considered, however, that the author and his family had not established such a pathway.

4.6 Secondly, the author's evidence contradicts his claim. His communication consists of two brief letters, and he appears to rely on the evidence that he presented to the Immigration and Protection Tribunal, as well as the decisions of the domestic authorities. The Tribunal considered a substantial amount of information and evidence from both the author and an expert concerning the effects of climate change and sea level rise on the people and geography of Kiribati. The Tribunal accepted the evidence, including the author's evidence, in its entirety. However, it found that there was no evidence that the author had faced or faced a real risk of suffering serious physical harm from violence linked to housing, land or property disputes. The Tribunal also found that there was no evidence to support the author's claim that he was unable to grow subsistence crops or obtain potable water in Kiribati. The author had claimed that it was difficult, not impossible, to grow crops as a result of saltwater intrusion onto the land. The Tribunal considered that there was no evidence establishing that the environmental conditions the author faced or was likely to face upon return to Kiribati were so parlous that his life would be jeopardized, or that he and his family would be unable to resume their prior subsistence life with dignity. The Tribunal accepted that States have positive duties to protect life from risks arising from known natural hazards, and that failure to do so may constitute an omission that falls afoul of article 6 (1) of the Covenant. However, the author could not point to any such act or omission by the Government of Kiribati that might indicate a risk that he would be arbitrarily deprived of his life within the scope of article 6 (1) of the Covenant; and he could not establish that there was at that time a sufficient degree of risk to his life or that of his family. The Tribunal concluded that the risk to the author from climate change fell well short of the threshold required to establish a substantial ground for believing that he and his family would be in danger of arbitrary deprivation of life within the scope of article 6 of the Covenant. In the Tribunal's words, the risk remained "firmly in the realm of conjecture or surmise." According to the Committee's jurisprudence, it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case.

4.7 The communication is also insufficiently substantiated because the author has not submitted any further evidence in addition to the evidence that has already been considered by the domestic authorities. The Immigration and Protection Tribunal accepted the evidence presented by the author. The Court of Appeal considered that the Tribunal's decision was well-structured, carefully reasoned and comprehensive. The High Court noted that in order for the author's application for leave to appeal to be granted, the author would have to present a seriously arguable case that the Tribunal's factual findings were incorrect, and that this would be difficult to meet this requirement because the Tribunal had not challenged the author's evidence. The domestic courts confirmed that the author had not established that he would suffer a violation of article 6 of the Covenant by returning to Kiribati, and that the Tribunal's findings were therefore justified.

Author's comments on the State party's observations on admissibility

5. In his comments dated 25 July 2016, the author maintains that due to the lack of clean drinking water, he and his family have had "reasonably bad health issues" since returning to Kiribati in September 2015. One of the author's children suffered from a serious case of blood poisoning, which caused boils all over his body. The author and his family are also unable to grow crops. Before the Supreme Court of New Zealand issued its decision on the author's case in 2015, the author had provided to the Court new information, namely, the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. The Report indicated that Kiribati would face serious survival issues if the increase in global temperatures and sea level continued.

State party's observations on the merits

6.1 In its observations dated 16 August 2016, the State party considers that the communication is without merit, for the reasons it previously stated. The State party acknowledges that the right to life is the supreme right under the Covenant from which no derogation is permitted, and should not be interpreted narrowly. States parties are required to adopt positive measures to protect the right to life. However, the complainant has not provided evidence to substantiate his claim that he faces actual or imminent harm. In its jurisprudence, the Committee has found inadmissible claims based on hypothetical violations of Covenant rights that might occur in the future. [99] The Committee has also found inadmissible claims where the author lacks victim status due to a failure to demonstrate that either an act or omission of a State party has already adversely affected his or her enjoyment of the right in question, or that such effect is imminent.[100] In addition, the Committee found unsubstantiated the *non-refoulement* claim of an author who presented general allegations of a risk of arbitrary arrest and detention that could ultimately lead to torture and death, but who acknowledged that he had not experienced any direct threat to his life.[101]

6.2 In addition to reiterating its previous arguments, the State party considers that there is no evidence that the authors now face an imminent risk of being arbitrarily deprived of life following their return to Kiribati. The communication does not present a situation analogous to the facts of *Lewenhoff et al. v. Uruguay.*[102] In that case, the Committee determined that because further clarification of the case depended on information exclusively in the hands of the State party, the author's allegations were substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

[99] The State party cites *V.M.R.B. v. Canada* (CCPR/C/33/D/236/1987), para. 6.3.
[100] The State party cites *Beydon v. France* (CCPR/C/85/D/1400/2005), para. 4.3.
[101] The State party cites *Lan v. Australia* (CCPR/C/107/D/1957/2010), para. 8.4. For the purpose of comparison, the State party also cites *Young-kwan Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012), in which the Committee considered the authors' claims to be sufficiently substantiated and therefore admissible.
[102] *Lewenhoff et al. v. Uruguay* (CCPR/C/OP/1 at 109 (1985)), para. 13.3.

Author's comments on the State party's observations on the merits

7.1 The author presented further comments on 29 December 2016. He claims that during the 2015 United Nations Climate Change Conference (COP 21), the State party endorsed the findings of the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.[103] The Report describes a rise in sea level of at least 0.7 meters for developing countries in the Pacific Ocean, and the resulting loss of rainfall and incursion of salt water into underground freshwater lenses and aquifers. Thus, it appears that the State party has opened the door to accepting the legal concept of a climate change refugee in cases where an individual faces a risk of serious harm. For climate change refugees, the risk of serious harm arises from environmental factors indirectly caused by humans, rather than from violent acts.

7.2 The author faces an intermediate risk of serious harm in Kiribati, which is losing land mass and can be expected to survive as a country for 10 to 15 more years. The author appealed the decision of the Immigration and Protection Tribunal because he disagreed with the Tribunal's determination as to the timeframe within which serious harm to the author would occur. The author states that the expert report he provided to the Immigration and Protection Tribunal confirms his claims.

7.3 The author's life, along with the lives of his wife and children, will be at risk as the effects of climate change worsen. The evidence and compelling photographs provided by the climate change expert, John Corcoran, were largely ignored by the domestic authorities.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not currently being examined under another procedure of international investigation or settlement.

8.3 Noting that the State party has not contested the author's argument that he exhausted all available domestic remedies, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.4 The Committee notes the State party's argument that the communication is inadmissible under article 2 of the Optional Protocol because the author has not sufficiently substantiated his claim that when he was removed to Kiribati, he faced an imminent risk of being arbitrarily deprived of his life. The Committee recalls its jurisprudence stating that a person can only claim to be a victim in the sense of article 1

[103] The author provides a copy of a document issued by Climate & Development Knowledge Network, entitled "The IPCC's Fifth Assessment Report: What's in it for Small Island Developing States?"

of the Optional Protocol if he or she is actually affected.[104] It is a matter of degree how concretely this requirement should be taken. However, any person claiming to be a victim of a violation of a right protected under the Covenant must demonstrate either that a State party has, by act or omission, already impaired the exercise of his right or that such impairment is imminent, basing his arguments for example on legislation in force or on a judicial or administrative decision or practice.[105] If the law or practice has not already been concretely applied to the detriment of that individual, it must in any event be applicable in such a way that the alleged victim's risk of being affected is more than a theoretical possibility.[11] Individuals claiming to be victims of a violation by a State party of article 6 of the Covenant must demonstrate that the State party's actions resulted in a violation of their right to life, specific to the individuals, or presented an existing or imminent threat to their enjoyment of this right.[106]

8.5 The Committee notes, however, that the author's communication sought to prevent his imminent deportation from New Zealand to Kiribati. Accordingly, the question before the Committee is not whether he was, at the time of submission, a victim of a past violation of the Covenant, but rather whether he has substantiated the claim that he faced upon deportation a real risk of irreparable harm to his right to life. The Committee considers that in the context of attaining victim status in cases of deportation or extradition, the requirement of imminence primarily attaches to the decision to remove the individual, whereas the imminence of any anticipated harm in the receiving state influences the assessment of the real risk faced by the individual. The Committee notes in this connection that the author's claims relating to conditions on Tarawa at the time of his removal do not concern a hypothetical future harm, but a real predicament caused by lack of potable water and employment possibilities, and a threat of serious violence caused by land disputes.

8.6 Based on the information the author presented to the domestic authorities and in his communication, the Committee considers that the author sufficiently demonstrated, for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of the Republic of Kiribati and on the security situation in the islands, he faced as a result of the State party's decision to remove him to the Republic of Kiribati a real risk of impairment to his right to life under article 6 of the Covenant. Accordingly, the Committee considers that articles 1 and 2 of the Optional Protocol do not constitute an obstacle to the admissibility of the communication. The Committee therefore proceeds to examine the communication on its merits.

[104] See, inter alia, *Rabbae v. the Netherlands* (CCPR/C/117/D/2124/2011), para. 9.5.
[105] See, inter alia, *Rabbae v. the Netherlands* (CCPR/C/117/D/2124/2011), para. 9.5; *Picq v. France* (CCPR/C/94/D/1632/2007), para. 6.3; *E.W. et al. v. the Netherlands* (CCPR/C/47/D/429/1990), para. 6.4; *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), para. 6.3. [11] See *Aumeeruddy-Cziffra v. Mauritius* (CCPR/C/OP/1 at 67 (1984)), para. 9.2.
[106] See, inter alia, *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), para. 6.3; *Bordes and Temeharo v. France* (CCPR/C/57/D/645/1995), para. 5.5.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that by removing him to the Republic of Kiribati, the State party subjected him to a risk to his life in violation of article 6 of the Covenant, and that the State party's authorities did not properly assess the risk inherent in his removal.

9.3 The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal, that it cannot derive merely from the general conditions in the receiving State, except in the most extreme cases,[107] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. [108] The obligation not to extradite, deport or otherwise transfer pursuant to article 6 of the Covenant may be broader than the scope of the principle of *nonrefoulement* under international refugee law, since it may also require the protection of aliens not entitled to refugee status.[109] Thus, States parties must allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized or group status determination procedures that could offer them protection against *refoulement*. [16] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin. [110] The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that this assessment was clearly arbitrary or amounted to a manifest error or a denial of justice.[111]

9.4 The Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures. The Committee also recalls its general comment No. 36, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death.[112] The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable

[107] General comment No. 36 (2018) on article 6 of the Covenant on the right to life (CCPR/C/GC/36), para. 30.
[108] See, inter alia, *B.D.K. v. Canada* (CCPR/C/125/D/3041/2017), para. 7.3; and *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3.
[109] General comment No. 36 (CCPR/C/GC/36), para. 31. [16] General comment No. 36 (CCPR/C/GC/36), para. 31.
[110] See, inter alia, *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.
[111] See, inter alia, *M.M. v. Denmark* (CCPR/C/125/D/2345/2014), para. 8.4; *B.D.K. v. Canada* (CCPR/C/125/D/3041/2017), para. 7.3; see also Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32) (2007).
[112] General comment No. 36 (CCPR/C/GC/36), para. 3; see *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.3.

threats and life-threatening situations that can result in loss of life.[113] States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life.[114] Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.[115]

9.5 The Committee also observes that it, in addition to regional human rights tribunals, have established that environmental degradation can compromise effective enjoyment of the right to life,[116] and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life.[117]

9.6 In the present case, the Committee recalls that it must assess whether there was clear arbitrariness, error or injustice in the evaluation by the State party's authorities of the author's claim that when he was removed to the Republic of Kiribati he faced a real risk of a threat to his right to life under article 6 of the Covenant. The Committee observes that the State party thoroughly considered and accepted the author's statements and evidence as credible, and that it examined his claim for protection separately under both the Refugee Convention and the Covenant. The Committee notes that in their decisions, the Immigration and Protection Tribunal and the Supreme Court both allowed for the possibility that the effects of climate change or other natural disasters could provide a basis for protection. Although the Immigration and Protection Tribunal found the author to be entirely credible, and accepted the evidence he presented, the Tribunal considered that the evidence the author provided did not establish that he faced a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati. In particular, the Tribunal found that there was no evidence that: (a) the author had been in any land dispute in the past, or faced a real chance of being physically harmed in such a dispute in the future; (b) he would be unable to find land to provide accommodation for himself and his family; (c) he would be unable to grow food or access potable water; (d) he would face life-threatening environmental conditions; (e) his situation was materially different from that of every other resident of Kiribati; or (f) the Government of Kiribati had failed to take programmatic steps to provide for the basic necessities of life, in order to meet its positive obligation to fulfill the author's right to life. The Tribunal observed that the Government of Kiribati had taken steps to address the effects of climate change, according to the 2007 National

[113] See *Toussaint v. Canada* (CCPR/C/123/D/2348/2014), para. 11.3; *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.5.
[114] See, inter alia, *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.3.
[115] General comment No. 36 (CCPR/C/GC/36), para. 62.
[116] *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.4 ; Inter-American Court of Human Rights, *Advisory opinion OC-23/17* of 15 November 2017 on the environment and human rights, series A, No. 23, para. 47; *Kawas Fernández v. Honduras*, judgment of 3 April 2009, series C, No. 196, para. 148. See also African Commission on Human and People's Rights, general comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (article 4), para. 3 (States' responsibilities to protect life "extend to preventive steps to preserve and protect the natural environment, and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.") See also European Court of Human Rights, application Nos. 54414/13 and 54264/15, *Cordella and Others v. Italy*, judgment of 24 January 2019, para. 157 (serious environmental harm may affect individuals' well-being and deprive them of the enjoyment of their domicile, so as to compromise their right to private life).
[117] See European Court of Human Rights, *M. Özel and others v. Turkey*, judgment of 17 November 2015, paras. 170, 171 and 200; *Budayeva and others v. Russia*, judgment of 20 March 2008, paras. 128–130, 133 and 159; *Öneryildiz v. Turkey*, judgment of 30 November 2004, paras. 71, 89, 90 and 118.

Adaptation Programme of Action submitted by Kiribati under the United Nations Framework Convention on Climate Change.

9.7 In assessing whether the State party's authorities provided the author with an adequate and individualized assessment of the risk of a threat to his right to life, the Committee first notes the author's claim that the increasing scarcity of habitable land on Tarawa has led to violent land disputes that have produced fatalities. In this connection, the Committee considers that a general situation of violence is only of sufficient intensity to create a real risk of irreparable harm under articles 6 or 7 of the Covenant in the most extreme cases, where there is a real risk of harm simply by virtue of an individual being exposed to such violence on return,[118] or where the individual in question is in a particularly vulnerable situation.[119] In assessing the author's circumstances, the Committee notes the absence of a situation of general conflict in the Republic of Kiribati. It observes that the author refers to sporadic incidents of violence between land claimants that have led to an unspecified number of casualties, and notes the author's statement before the domestic authorities that he had never been involved in such a land dispute. The Committee also notes the Tribunal's statement that the author appeared to accept that he was alleging not a risk of harm specific to him, but rather a general risk faced by all individuals in Kiribati. The Committee further notes the absence of information from the author about whether protection from the State would suffice to address the risk of harm from non-state actors who engage in acts of violence during land disputes. While the Committee does not dispute the evidence proffered by the author, it considers that the author has not demonstrated clear arbitrariness or error in the domestic authorities' assessment as to whether he faced a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of violent acts resulting from overcrowding or private land disputes in Kiribati.

9.8 The Committee also notes the author's claims before the domestic authorities that he would be seriously harmed by the lack of access to potable water on Tarawa, as fresh water lenses had been depleted due to saltwater contamination produced by sea level rise. In this regard, the Committee notes that according to the report and testimony of the climate change researcher John Corcoran, 60 per cent of the residents of South Tarawa obtained fresh water from rationed supplies provided by the public utilities board. The Committee notes the findings of the domestic authorities that there was no evidence that the author would lack access to potable water in the Republic of Kiribati. While recognizing the hardship that may be caused by water rationing, the Committee notes that the author has not provided sufficient information indicating that the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death.

9.9 The Committee further notes the author's claim before the domestic authorities that his right to life had been violated because he had been deprived of his means

[118] Cf., European Court of Human Rights, *Sufi and Elmi v. United Kingdom*, application Nos. 8319/07 and 11449/07, judgment of 28 June 2011, paras. 218, 241.
[119] See *Jasin v. Denmark* (CCPR/C/114/D/2360/2014), paras. 8.8, 8.9; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 8.3.

of subsistence, as his crops had been destroyed due to salt deposits on the ground. The Committee observes the finding of the domestic authorities that, while the author stated that it was difficult to grow crops, it was not impossible. The Committee recognizes that in certain places, the lack of alternatives to subsistence livelihoods may place individuals at a heightened risk of vulnerability to the adverse effects of climate change. However, the Committee notes the lack of information provided by the author on alternative sources of employment and on the availability of financial assistance to meet basic humanitarian needs in the Republic of Kiribati. The Committee further notes the Tribunal's observation that most nutritious crops remained available in the Republic of Kiribati. The information made available to the Committee does not indicate that when the author's removal occurred, there was a real and reasonably foreseeable risk that he would be exposed to a situation of indigence, deprivation of food, and extreme precarity that could threaten his right to life, including his right to a life with dignity. The Committee therefore considers that the author has not established that the assessment of the domestic authorities was clearly arbitrary or erroneous in this regard, or amounted to a denial of justice.

9.10 Finally, the Committee notes the author's assertion that he faces a risk to his right to life because of overpopulation and frequent and increasingly intense flooding and breaches of sea walls. The Committee also notes the author's argument that the State party's courts erred in determining the timeframe within which serious harm to the author would occur in the Republic of Kiribati, and did not give sufficient weight to the expert testimony of the climate change researcher. The Committee notes that in his comments submitted in 2016, the author asserted that the Republic of Kiribati would become uninhabitable within 10 to 15 years.

9.11 The Committee takes note of the observation of the Immigration and Protection Tribunal that climate change-induced harm can occur through sudden-onset events and slow onset processes. Reports indicate that sudden-onset events are discrete occurrences that have an immediate and obvious impact over a period of hours or days, while slow-onset effects may have a gradual, adverse impact on livelihoods and resources over a period of months to years. Both sudden-onset events (such as intense storms and flooding) and slow-onset processes (such as sea level rise, salinization, and land degradation) can propel cross-border movement of individuals seeking protection from climate change-related harm. [120] The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.

9.12 In the present case, the Committee accepts the author's claim that sea level rise is likely to render the Republic of Kiribati uninhabitable. However, it notes that the timeframe of 10 to 15 years, as suggested by the author, could allow for intervening

[120] See Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), para. 18 (h), (i), (l).

acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population. The Committee notes that the State party's authorities thoroughly examined this issue and found that the Republic of Kiribati was taking adaptive measures to reduce existing vulnerabilities and build resilience to climate change-related harms. Based on the information made available to it, the Committee is not in a position to conclude that the assessment of the domestic authorities that the measures by taken by the Republic of Kiribati would suffice to protect the author's right to life under article 6 of the Covenant was clearly arbitrary or erroneous in this regard, or amounted to a denial of justice.

9.13 In the light of these findings, the Committee considers that the State party's courts provided the author with an individualized assessment of his need for protection and took note of all of the elements provided by the author when evaluating the risk he faced when the State party removed him to the Republic of Kiribati in 2015, including the prevailing conditions in Kiribati, the foreseen risks to the author and the other inhabitants of the islands, the time left for the Kiribati authorities and the international community to intervene and the efforts already underway to address the very serious situation of the islands. The Committee considers that while the author disagrees with the factual conclusions of the State party, the information made available to it does not demonstrate that the conduct of the judicial proceedings in the author's case was clearly arbitrary or amounted to a manifest error or denial of justice, or that the courts otherwise violated their obligation of independence and impartiality.

9.14 Without prejudice to the continuing responsibility of the State party to take into account in future deportation cases the situation at the time in the Republic of Kiribati and new and updated data on the effects of climate change and rising sea-levels thereupon, the Committee is not in a position to hold that the author's rights under article 6 of the Covenant were violated upon his deportation to the Republic of Kiribati in 2015.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not permit it to conclude that the author's removal to the Republic of Kiribati violated his rights under article 6 (1) of the Covenant.

Annex 1 Individual opinion of Committee member Vasilka Sancin (dissenting)

1. I regret that I cannot join the majority in finding that the Committee is not in a position to conclude that the State Party's assessment that the measures taken by the Republic of Kiribati would suffice to protect the author's right to life under article 6 of the Covenant was clearly arbitrary or manifestly erroneous, or amounted to a denial of justice (paras. 9.12 and 9.13), particularly since, in my opinion, the State Party failed to present evidence of proper assessment of author's and his dependent children's access to safe drinking water in Kiribati.

2. The author argued, among others, that by removing him and his family to Kiribati, New Zealand violated Article 6(1) of the Covenant, because they have no access to safe drinking water, which poses an imminent threat to their lives. Evidence, uncontested by the State Party, can be found in paras. 2.4, 2.6 and 5 of the views.

3. The State Party to the contrary concluded that there is no evidence to support author's contention that he was unable to obtain potable water and that there is no evidence that he had no access to potable water (para. 2.8). My concern arises from the fact that the notion of 'potable water' should not be equated with 'safe drinking water'. Water can be designated as potable, while containing microorganisms dangerous for health, particularly for children (all three of the author's dependent children were born in New Zealand and were thus never exposed to water conditions in Kiribati).

4. The Committee (para. 9.6) repeats the State Party's argument that although the Tribunal found the author to be entirely credible, and accepted the presented evidence, it considered as unestablished that he faced a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati. In particular, the Tribunal found that there was no evidence that: … (c) he would be unable to grow food or access potable water; … or (f) the Government of Kiribati had failed to take programmatic steps to provide for the basic necessities of life, in order to meet its positive obligation to fulfill the author's right to life. These conclusions were based on the fact that the Government of Kiribati had taken steps to address the effects of climate change, according to the 2007 National Adaptation Programme of Action. In para. 9.8, the Committee, while recognizing the hardship that may be caused by water rationing, concludes that the author has not provided sufficient information indicating that the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death.

5. However, expert reports, inter alia, the United Nations Special Rapporteur on the human right to safe drinking water and sanitation, Ms. Catarina de Albuquerque, after her mission to Kiribati from 25 July 20121, warned that in Kiribati, the National Development Strategy 2003-2007 and the National Development Plan 2008-2011 contain policies and goals of direct relevance to the water, but that the 2008 National Water Resources Policy and a 2010 National Sanitation Policy's priorities set for the first 3 years have yet to be implemented. In these circumstances, it is my opinion that it falls on the State Party, not the author, to demonstrate that the author and his family would in fact enjoy access to safe drinking (or even potable) water in Kiribati, to comply with its positive duty to protect life from risks arising from known natural hazards.

6. Considering all of the above, I am not persuaded that the author's claim concerning the lack of access to safe drinking water is not substantiated for finding that the State Party's assessment of author's and his family situation was clearly arbitrary or manifestly erroneous. This is why, in the circumstances of the present case, I disagree with the Committee's conclusion that the facts before it do not permit it to conclude that the author's removal to Kiribati violated his rights under article 6 (1) of the Covenant.[121]

[121] https://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12389&LangID=E (accessed 12 December 2019).

Annex 2 Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)

1. Upon carefully examining the facts of the instant communication, I am of the considered view that the author presents a case that reveals a violation and consequently, it should be admissible. The facts before the Committee re-emphasise the need to employ a human-sensitive approach to human rights issues. Accordingly, I disagree with the position reached by the rest of the Committee. The State Party placed an unreasonable burden of proof on the author to establish the real risk and danger of arbitrary deprivation of life – within the scope of Article 6 of the Covenant. The conditions of life laid out by the author – resulting from climate change in the Republic of Kiribati, are significantly grave, and pose a real, personal and reasonably foreseeable risk of a threat to his life under Article 6(1) of the Convention. Moreover, the Committee needs to handle critical and significantly irreversible issues of climate change, with the approach that seeks to uphold the sanctity of human life.

2. The author presents the evidence, which is not disputed by neither the State Party, nor the rest of the Committee, that sea level rise in Kiribati has resulted in: the scarcity of habitable space causing life endangering violent land disputes; severe environmental degradation resulting in contamination of water supply, and the destruction of food crops; yet the author's family relied largely on subsistence agriculture and fishing. Since removal to Kiribati, the author and his family have been unable to grow crops. Furthermore, the land in Tarawa (the home village of the author and his family) has reportedly gotten significantly flooded; with land being submerged up-to knee deep in king tides. Moreover, beyond stories of children getting diarrhoea and dying because of the poor quality of drinking water, the author and his family on return to Kiribati, have had bad health issues – with one of his children suffering from a serious case of blood poisoning, causing boils all over the body.

3. Whereas the risk to a person expelled or otherwise removed, must be personal – not deriving from general conditions, except in extreme cases, the threshold should not be too high and unreasonable. Even as the jurisprudence of the Committee emphasises a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists; it has been critical to consider all relevant facts and circumstances, including the general human rights situation in the author's country of origin[122]. As a necessary corollary to the high threshold, the Committee has been careful to counterbalance a potentially unreachable standard, with the need to consider all relevant facts and circumstances, which comprise *among other conditions* – the grave situation in the author's country.

4. It is the Committee's position that the right to life includes the right of individuals to enjoy a life with dignity, free from acts or omissions that are expected to cause unnatural or premature death.[123] It is also the Committee's position that environmental degradation and climate change constitute extremely serious threats to the ability

[122] B.D.K. v. Canada (CCPR/C/125/D/3041/2017), para. 7.3; K. v. Denmark (CCPR/C/114/D/2393/2014), para. 7.3.
[123] General Comment No. 36 (CCPR/C/GC/36), para. 3.

of both present and future generations to enjoy the right to life.[124] In recognition of this reality, States have been obligated to preserve the environment and protect it against harm, pollution and climate change.[125]

5. In my view, the author faces a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of the conditions in Kiribati. The considerable difficulty in accessing fresh water because of the environmental conditions, should be enough to reach the threshold of risk, without being a complete lack of fresh water. There is evident significant difficulty to grow crops. Moreover, even if deaths are not occurring with regularity on account of the conditions (as articulated by the Tribunal), it should not mean that the threshold has not been reached.[126] It would indeed be counterintuitive to the protection of life, to wait for deaths to be very frequent and considerable; in order to consider the threshold of risk as met. It is the standard upheld in this Committee, that threats to life can be a violation of the right, even if they do not result in the loss of life. [127] It is should be sufficient that the child of the author has already suffered significant health hazards on account of the environmental conditions. It is enough that the author and his family are already facing significant difficulty in growing crops and resorting to the life of subsistence agriculture on which they were largely dependent. Considering the author's situation and his family, balanced with all the facts and circumstances of the situation in the author's country of origin, reveals a livelihood short of the dignity that the Convention seeks to protect.

6. Lastly, while it is laudable that Kiribati is taking adaptive measures to reduce the existing vulnerabilities and address the evils of climate change, it is clear that the situation of life continues to be inconsistent with the standards of dignity for the author, as required under the Covenant. The fact that this is a reality for many others in the country, does not make it any more dignified for the persons living in such conditions. New Zealand's action is more like forcing a drowning person back into a sinking vessel, with the "justification" that after all there are other voyagers on board. Even as Kiribati does what it takes to address the conditions; for as long as they remain dire, the life and dignity of persons remains at risk.

[124] General Comment No. 36 (CCPR/C/GC/36), para. 62.
[125] Ibid.
[126] See, p. 5, of the Committee's decision, para. 2.9
[127] See p. 11 of the Committee's decision, para. 9.4.

De facto protection of people in need? The principle of non-refoulement and international human rights law as a context for protection of environmental migrants

It is a fact that people are leaving and will leave for what we collectively (inaccurately) call environmental reasons. It is equally indisputable that States will sooner or later have to take measures to address cases where these reasons cause more people to move. The fact that current international law does not yet regulate environmental migration or oblige states to treat environmental migrants in a particular way does not mean that they remain entirely unprotected. This is evident in the Teitiota case and is also evident in both global compacts. We will now look at whether it is possible to find protection for environmental migrants in other instruments, particularly those dealing with the protection of human rights.

Some conventions provide, or may be interpreted, that a person under the jurisdiction of a state cannot be returned to his or her country of origin if he or she is at risk of being treated in violation of the relevant treaty provision. For example, Article 7 of the International Covenant on Civil and Political Rights provides that "*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*".[128] This means that a State party to the Covenant may not torture a person subject to its jurisdiction or subject him or her to any other treatment prohibited by this article. This is quite clear from Article 2 of the Covenant, which stipulates when a state must comply with its obligations.[129] At the same time, however, it is clear from this article that a state may not send a person outside its jurisdiction to a place where he would be at risk of the treatment described above. This would still leave the state with imaginary blood on its hands because it knew or could have known that conduct in violation of Article 7 would occur and should have prevented it by not sending or returning the person to the country. The consideration of the impossibility of returning a person to a place where he or she is in danger is rooted in adherence to the principle of non refoulement; the interpretation of Article 7 is only one of many normative expressions of that principle. In its purest form, it can be found in Article 33 of the Refugee Convention, where parties have a fundamental obligation to refugees not to return them to the borders of a territory where their life or personal liberty is threatened for reasons contained in the definition of refugee.[130] This is a definition of the principle of non-refoulement, which is also explicitly named as "*Prohibition of expulsion or refoulement*". However, the prohibition of refoulement is not formulated in the Convention as absolute; the state has no obligations towards refugees who pose a danger to it. A different normative definition of the principle of non-refoulement can be found in the Convention against Torture. Here, Article 3 contains a direct obligation on the State not to expel a person: "*1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing*

[128] See Art. 7 of the Covenant.
[129] See Art. 2 of the Covenant.
[130] Cf Art. 33 of the 1951 Convention.

that he would be in danger of being subjected to torture." At the same time, there is no exception where a state could derogate from this obligation; the Convention only details how a state could establish that the situation envisaged in Article 1 has arisen: "2. *For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights*."

Thus, it is crucial for the future protection of environmental migrants what rights they will be deprived of, and whether the state's obligation to respect these rights can be interpreted as preventing the state from returning environmental migrants. Here it is also advisable to become familiar with regional human rights arrangements, as in some parts of the world neighbouring states have agreed to a higher or more effective standard of human rights protection. For example, a sophisticated system at the level of the Council of Europe also means sophisticated protection for persons under the jurisdiction of the member states of this international regional organisation. And it also means a more difficult situation for the state (from its point of view) because it cannot send the person back to his or her home country without further delay. The level of protection that has been established following the European Convention on Human Rights is indeed high and effective. The effectiveness of the protection is due to the existence of a strong judicial-type control mechanism: the European Court of Human Rights. The high level of protection, together with an effective control mechanism, has led, for example, to the fact that Article 3, which prohibits the State from committing torture or inhuman or degrading treatment or punishment,[131] has developed through the Court's case-law into a form in which it is applicable extraterritorially. Thus, a person cannot be returned if he or she is threatened with treatment within the meaning of Article 3; indeed, it is possible to speak of the absolute nature of that provision.[132] At the same time, the content of the words that Article 3 enshrines has been expanded. For example, we can talk about the prohibition of return on medical grounds, where the ECtHR has recognised that it is a violation of Article 3 to return an HIV-positive alien if his life expectancy would be reduced because of the absence of or very poor medical care.

We can therefore ask whether there are already certain rights that could be used to protect environmental migrants in conjunction with the principle of non-refoulement. It may be the right to life, which is protected by some of the human rights treaties, it may be the right not to be tortured etc. It is also worth considering whether a new right can be established, for example in the European region by extending rights through additional protocols to the European Convention on Human Rights or new specific treaties, or through the case law of the European Court of Human Rights when it interprets and applies the current provisions. We can also ask whether, when facing large influx of environmental migrants, states will not retreat from the application of their international obligations, for example, by preventing entry into their territories

[131] See Art. 3 "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*"
[132] See for instance Slingenberg, L., The Reception of Asylum Seekers under International Law: Between Sovereignty and Equality, Hart Publishing, 2014, p. 291., see also Battjes, H. In Search of a Fair Balance: The Absolute Character of the Prohibition of Refoulement under Article 3 ECHR Reassessed. Leiden Journal of International Law, 22:3, pp. 583–621.

by building fences and thus breaching their obligations, or, perhaps later, even from being bound by international treaties.

Questions for home preparation and subsequent discussion:

Case No. 1: Mr Moreti has no time to waste

In 2015, Bauro Moreti (born 1980) and his family left their home country, the island of Kiribati. They came to Finland and applied for protection, thinking they were refugees. In his application, he states that due to climate change and rising sea levels, his country has become uninhabitable and the overall situation is already very unstable and deteriorating. As a result of rising sea levels, the area of agricultural land is shrinking, leading to disputes that often escalate into violence. The shrinking land area also brings with it housing problems, as there is nowhere to build houses or apartments. Environmental degradation also brings the major problem of saltwater contamination of freshwater sources. It is clear that within a few years the island is likely to become uninhabitable and is already a dangerous place for his family.

1. Is Mr. Moreti a refugee? Why or why not?

2. In your opinion, can he apply for assistance through any of the instruments under the universal protection of human rights? Which ones, how, and under what conditions (would there be a specific treaty provision to be used)?

3. Let us imagine that Finland rejects Mr Moreti's request for protection. Can it deport him back? Give reasons why or why not.

4. And one more question, which goes back to the previous seminars. What if his island really does disappear? Will he retain citizenship of Kiribati?

Please always justify your opinions, i.e. refer to documents, case law, etc.

Questions

1. Is there a right to water? Could such a right help those fleeing for environmental reasons?

2. How effective are the international monitoring mechanisms in protecting human rights at the universal and regional levels?

3. Can Article 8 of the ECHR be considered relevant to the protection of environmental migrants?

4. Please study the judgment of the Grand Chamber of the ECtHR in N. D. and N. T. v. Spain (no. 8675/15, Grand Chamber judgment of 13 February 2020). Is it a departure from previous case law on Article 3?

European Court of Human Rights – Information Note on the Court's case-law 237

February 2020
N.D. and N.T. v. Spain [GC] - 8675/15 and 8697/15
Judgment 13.2.2020 [GC]
Article 4 of Protocol No. 4

Prohibition of collective expulsion of aliens

Immediate and forcible return of aliens from a land border, following an attempt by a large number of migrants to cross it in an unauthorised manner and en masse: no violation

Facts – In August 2014 a group of several hundred migrants from sub-Saharan Africa, including the applicants, attempted to enter Spain by scaling the fences surrounding the city of Melilla, a Spanish enclave on the North African coast. As soon as they had crossed the fences they were apprehended by members of the Guardia Civil, who allegedly handcuffed them and took them back to the other side of the border. The applicants reportedly did not undergo any identification procedure and had no opportunity to explain their personal circumstances. They subsequently managed to enter Spain without authorisation and orders were issued for their expulsion. Their administrative appeals were dismissed, as was the asylum application lodged by one of them.

In a judgment of 3 October 2017 (see Information Note 211) a Chamber of the Court held unanimously that there had been a violation of Article 4 of Protocol No. 4 on account of the lack of individualised examination of the situation of each of the applicants, and a violation of Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4.

On 29 January 2018 the case was referred to the Grand Chamber at the Government's request.

Law – Article 4 of Protocol No. 4

a) *Applicability* – The Court was called upon for the first time to address the issue of the applicability of Article 4 of Protocol No. 4 to the immediate and forcible return of aliens from a land border, following an attempt by a large number of migrants to cross that border in an unauthorised manner and en masse. As the Government maintained that the applicants' case concerned a refusal of admission to Spanish territory rather than an expulsion, the Court had to ascertain whether the concept of "expulsion" also covered the non-admission of aliens at the border of a Contracting State or – in respect of States belonging to the Schengen area – at an external border of that area, as the case might be.

The Court had not previously ruled on the distinction between the non-admission and expulsion of aliens, and in particular of migrants or asylum-seekers, who were within the jurisdiction of a State that was forcibly removing them from its territory. For persons in danger of ill-treatment in the country of destination, the risk was the same in both cases, namely that of being victims of such treatment. Examination of the international and European Union law materials supported the Court's view that the protection of the Convention, which was to be interpreted autonomously, could not be dependent on formal considerations. The opposite approach would entail serious risks of arbitrariness, in so far as persons entitled to protection under the Convention could be deprived of such protection, for instance on the grounds that, not having crossed the State's border lawfully, they could not make a valid claim for protection under the Convention. States' legitimate concern to foil the increasingly frequent attempts to circumvent immigration restrictions could not go so far as to render ineffective the protection afforded by the Convention, and in particular by Article 3, which embraced the prohibition of refoulement within the meaning of the Geneva Convention relating to the Status of Refugees.

These reasons had led the Court to interpret the term "expulsion" in the generic meaning in current use ("to drive away from a place"), as referring to any forcible removal of an alien from a State's territory, irrespective of the lawfulness of the person's stay, the length of time he or she had spent in the territory, the location in which he or she was apprehended, his or her status as a migrant or an asylum-seeker and his or her conduct when crossing the border. As a result, Article 3 of the Convention and Article 4 of Protocol No. 4 had been found to apply to any situation coming within the jurisdiction of a Contracting State, including to situations or points in time where the authorities of the State in question had not yet examined the existence of grounds entitling the persons concerned to claim protection under those provisions. In the Court's view these considerations, which formed the basis for its recent judgments in Hirsi Jamaa and Others, Sharifi and Others and Khlaifia and Others, concerning applicants who had attempted to enter a State's territory by sea, had lost none of their relevance. There was therefore no reason to adopt a different interpretation of the term "expulsion" with regard to forcible removals from a State's territory in the context of an attempt to cross a national border by land.

In the instant case the applicants had been removed from Spanish territory and forcibly returned to Morocco, against their will and in handcuffs, by members of the Guardia Civil. There had therefore been an "expulsion" within the meaning of Article 4 of Protocol No. 4.

b) *Merits* – While Article 4 of Protocol No. 4 required the State authorities to ensure that each of the aliens concerned had a genuine and effective possibility of submitting arguments against his or her expulsion, the applicant's own conduct was a relevant factor in assessing the protection to be afforded under that provision. According to the Court's well-established case-law, there was no violation of Article 4 of Protocol No. 4 if the lack of an individual removal decision was the consequence of the applicant's own conduct. In particular, a lack of active cooperation with the procedure for conducting an individual examination of the applicants' circumstances had prompted

the Court to find that the Government could not be held responsible for the fact that no such examination was carried out. In the Court's view, the same principle must also apply to situations in which the conduct of persons who crossed a land border in an unauthorised manner, deliberately took advantage of their large numbers and used force, was such as to create a clearly disruptive situation which was difficult to control and endangered public safety.

In this context, however, the Court would attach considerable importance to whether, in the circumstances of the particular case, the respondent State had provided genuine and effective access to means of legal entry, in particular border procedures. Where the respondent State had provided such access but an applicant had not made use of it, the Court had to consider, in the context of the case at hand and without prejudice to the application of Articles 2 and 3 of the Convention, whether there had been cogent reasons preventing the person concerned from doing so, based on objective facts for which the respondent State was responsible.

The means of legal entry had to allow all persons who faced persecution to submit an application for protection, based in particular on Article 3, under conditions which ensured that the application was processed in a manner consistent with the international norms. In the context of the present case, the implementation of the Schengen Borders Code presupposed the existence of a sufficient number of border crossing points. In the absence of appropriate arrangements, States might refuse entry to their territory; this was liable to render ineffective all the Convention provisions designed to protect individuals who faced a genuine risk of persecution.

However, where such arrangements existed and secured the right to request protection under the Convention, and in particular Article 3, in a genuine and effective manner, the Convention did not prevent States, in the fulfilment of their obligation to control borders, from requiring applications for such protection to be submitted at the existing border crossing points. Consequently, they could refuse entry to their territory to aliens, including potential asylum-seekers, who had failed, without cogent reasons, to comply with those requirements by seeking to cross the border at a different location, especially, as had happened in this case, by taking advantage of their large numbers and using force in the context of an operation that had been planned in advance.

Spanish law had afforded the applicants several possible means of seeking admission to the national territory. It was established that on 1 September 2014, shortly after the events in the present case, the Spanish authorities had set up an office for registering asylum claims at the Beni Enzar international border crossing point. Furthermore, even prior to the setting-up of that office, there had not only been a legal obligation to accept asylum applications at that border crossing point but also an actual possibility to submit such applications.

The applicants had failed to make use of that possibility with a view to submitting reasons against their expulsion in a proper and lawful manner. Only the absence of cogent reasons based on objective facts for which the respondent State was responsible and preventing the use of that legal avenue could lead to this being regarded as the consequence of the applicants' own conduct, justifying the fact that the Spanish

border guards did not identify them individually. The Court was not persuaded that the applicants had had cogent reasons for not using the Beni Enzar border crossing point. In the present case, even assuming that difficulties had existed in physically approaching the crossing point on the Moroccan side, no responsibility of the respondent Government for that situation had been established. This finding was sufficient for the Court to conclude that there had been no violation of Article 4 of Protocol No. 4 in the present case.

The Court noted the Government's argument to the effect that, in addition to being afforded genuine and effective access to Spanish territory at the Beni Enzar border crossing point, the applicants could have applied either for a visa or for international protection at Spain's diplomatic and consular representations in their countries of origin or transit or else in Morocco. Specifically, if the applicants had wished to seek such protection they could easily have travelled to the Spanish consulate in Nador, which was close to the place where the storming of the border fences had taken place. They had not offered any explanation to the Court as to why they had not done so. In particular, they did not even allege that they had been prevented from making use of those possibilities. In any event, the applicants' representatives had been unable to indicate the slightest concrete factual or legal ground which, under international or national law, would have precluded the applicants' removal had they been registered individually. Moreover, the applicants' complaints under Article 3 had been declared inadmissible by the Chamber.

Consequently, in accordance with its settled case-law, the Court considered that the lack of individual removal decisions could be attributed to the fact that the applicants, if they indeed wished to assert rights under the Convention, had not made use of the official entry procedures existing for that purpose, and had thus been a consequence of their own conduct.

However, the Court specified that this finding did not call into question the broad consensus within the international community regarding the obligation and necessity for the Contracting States to protect their borders – either their own borders or the external borders of the Schengen area, as the case might be – in a manner which complied with the Convention guarantees, and in particular with the obligation of non refoulement.

Conclusion: no violation (unanimously).

The Court also held, unanimously, that there had been no violation of Article 13 taken in conjunction with Article 4 of Protocol No. 4, on the grounds that the lack of an individualised removal procedure had been a consequence of the applicants' own conduct and that the applicants' complaint regarding the risks they were liable to face in the destination country had been dismissed at the outset of the procedure.

(See Hirsi Jamaa and Others v. Italy [GC], 27765/09, 23 February 2012, Information Note 149; Sharifi and Others v. Italy and Greece, 16643/09, 21 October 2014, Information Note 178; Khlaifia and Others v. Italy [GC], 16483/12, 15 December 2016, Information Note 202; see also M.A. v. Cyprus, 41872/10, 23 July 2013, Information Note 165; Berisha and Haljiti v. the former Yugoslav Republic of Macedonia (dec.), 18670/03, 16 June 2005, Information Note 76; and Dritsas and Others v. Italy (dec.), 2344/02, 1 February 2011)

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Poland's return of people from Chechnya to Belarus without examining requests for international protection violated the Convention

The case of M.K. and Others v. Poland (application nos. 40503/17, 42902/17 and 43643/17) concerned the repeated refusal of Polish border guards on the border with Belarus to admit the applicants, who had come from Chechnya and had asked for international protection.

In today's Chamber judgment1 in the case, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of torture or inhuman or degrading treatment) of the European Convention on Human Rights, and

a violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the Convention, and

a violation of Article 13 (right to an effective remedy) of the Convention, in conjunction with Article 3 and Article 4 of Protocol No. 4.

It also held, unanimously, that Poland had failed to comply with its obligations under Article 34 (right to individual petition) of the Convention.

The Court found in particular that the applicants had repeatedly arrived at the Terespol border crossing between Poland and Belarus and had made it clear, despite the Polish authorities' statements to the contrary, that they wished to seek international protection.

Instead, the border guards had returned them consistently to Belarus, without a proper review of their applications. Furthermore, the Government had ignored interim measures issued by the European Court to prevent the removal of the applicants, who had argued that they were at a real risk of chain-refoulement and treatment contrary to the Convention.

The Polish State had demonstrated a consistent practice of returning people to Belarus in such circumstances, a policy which amounted to collective expulsion. Given the authorities' refusal to implement the Court's interim measures, the Polish State had also failed to live up to its obligations under the Convention.

Principal facts

M.K. v. Poland, application no. 40503/17

The applicant, Mr M.K., is a Russian national.

Between July 2016 and June 2017 he travelled to the border crossing between Poland and Belarus at Terespol approximately 30 times. He each time informed Polish border guards that he was from Chechnya and expressed fears for his safety in that region of Russia, expressly stating that he wished to lodge an application for international protection. He several times carried with him a written application.[133]

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

He told the guards that he had been detained many times in Chechnya without a legal basis, had been arrested and ill-treated. His Belarus visa had expired, he could not remain in that country and in practice it was impossible to find international protection there.

The border guards turned the applicant away each time on the basis of administrative decisions that he did not have any authorisation to enter Poland and he had not stated that he was at risk of persecution in his home country but that he was actually trying to emigrate for economic or personal reasons. He lodged at least one appeal against those decisions, which was upheld by the head of the National Border Guard. An appeal against the latter decision is still pending completion.

On 8 June 2017 the European Court of Human Rights, after a request from the applicant's legal representative, indicated an interim measure to the Polish Government under Rule 39 of the Rules of Court that he should not be removed to Belarus, however, he was returned the same day. He returned several times to the border and, despite the interim measure, was each time turned away.

On at least one occasion when he went to the border his legal representative sent copies of his international protection request by email, fax and a public service Internet platform to the border guards at Terespol and border guard headquarters in Warsaw. The representative also informed the Foreign Ministry department responsible for proceedings before international human rights bodies, including the Strasbourg Court and referred to the interim measure.

The Court twice rejected a Government request to end the interim measure. The applicant eventually left Belarus owing to fears of deportation to Chechnya.

M.A. and Others v. Poland, application no. 42902/17

[133] 1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

The applicants are Mr M.A. and Mrs M.A. and their five children, who are minors. They are all Russian nationals.

The applicants travelled to the border crossing at Terespol on two occasions in April 2017, where they expressed a wish for international protection owing to fears for their safety in Chechnya.

They were both times turned away under administrative decisions owing to the absence of any authorisation to enter Poland and because they had not stated that they were at risk of persecution in their home country. The border guards' official notes stated that they were seeking to emigrate for economic or personal reasons.

In April and May 2017 they sought protection from Lithuania, a situation which was the subject of a separate Court judgment in late 2018 (M.A. and Others v. Lithuania).

On 16 June 2017 they again went to the Polish-Belarusian border, when their lawyer asked the Court for an interim measure. The Court applied Rule 39 and indicated to the Polish Government that the applicants not be removed to Belarus, nevertheless, they were returned the same day.

Several days later they returned to the border with a letter seeking international protection and a copy of the letter about the interim measure, but were turned away. Their representative also sent a copy of the first applicant's application for protection to the border guards and the Foreign Ministry.

The applicants made further unsuccessful efforts to be admitted to Poland between August and December 2017. The first applicant subsequently went to a police station in Brest in Belarus after a summons by the police in Chechnya. The whole family left Belarus and went to Smolensk in Russia, where the first applicant was detained and later transferred to Chechnya.

The second applicant returned to Belarus with the children and in January 2018 again applied for protection in Poland, which this time admitted her to a refugee reception centre. The first applicant was released from detention in Chechnya, making serious allegations of ill-treatment. He travelled back to Terespol and was ultimately admitted to the same refugee reception centre as the rest of his family.

The family travelled to Germany in in May 2018, where the authorities lodged requests for them to be transferred back to Poland, although this has not happened to date. Following the applicant's admission to Poland and them subsequently leaving that country, the Court decided to lift the interim measure in their case.

M.K. and Others v. Poland, application no. 43643/17

The applicants are Mr M.K. and Mrs Z.T. and their three children, who are minors. They are all Russian nationals.

Between September 2016 and July 2017 they travelled twelve times to the Terespol crossing, where they expressed a wish to apply for international protection owing to fears for their safety in Chechnya. They were turned away under administrative decisions that they did not have authorisation to enter Poland and had not stated

they were at risk of persecution in their home country. Their reason to enter Poland was economic or personal, according to the border guards. They appealed at least once, but were unsuccessful. A further appeal is still pending a decision.

On 20 June 2017 the applicants went again to the border, when their representative lodged a request under Rule 39 for an interim measure preventing their return to Belarus. The measure was granted, but the applicants were nevertheless denied entry to Poland the same day.

Between June and September 2017 the applicants returned at least seven more times to the border, but were turned away each time. They submitted that they had had documents with them about the Court's interim measure and written applications for international protection.

The applicants left Belarus on an unspecified date in order to avoid deportation. They have remained in hiding for fear of being tracked by the Chechen authorities. The Court has rejected requests by the Government to lift the interim measure.

Complaints, procedure and composition of the Court

The applicants complained under Article 3 (prohibition of torture, inhuman or degrading treatment or punishment) of being denied access to asylum procedures and of being exposed to a risk of treatment in Chechnya contrary to the Convention.

They also complained that they had been subjected to collective expulsion, contrary to Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the Convention, and under Article 13 (right to an effective remedy) that they had had no effective remedy under Polish law by which to lodge their complaints under Article 3 and Article 4 of Protocol No. 4.

They complained in addition under Article 34 (right to individual petition) of the Convention that the Polish Government had failed to comply with the Court's interim measures.

The applications were lodged on 8, 16 and 20 June 2017 respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija Turković (Croatia), President,
Krzysztof Wojtyczek (Poland),
Aleš Pejchal (the Czech Republic),
Armen Harutyunyan (Armenia),
Pere Pastor Vilanova (Andorra),
Tim Eicke (the United Kingdom), Raffaele Sabato (Italy), and also Renata Degener, Deputy Section Registrar.

Decision of the Court

Article 3

Joining the applicants' cases because of their similarity, the Court noted the fundamental importance of the prohibition on inhuman and degrading treatment in Article 3 of the Convention.

Furthermore, the Court itself did not examine asylum applications, but assessed the existence of effective guarantees to protect applicants from arbitrary refoulement. If a Contracting State decided to remove an asylum-seeker to a third country without examining an asylum claim on the merits, it had to review whether the person would have access to an adequate asylum system in that country.

The Court first noted that the Government had disputed the argument that the applicants had actually expressed a wish to lodge applications for international protection or had expressed any fear for their own safety on their numerous visits to the border crossing.

However, the Court gave more credence to the applicants' statements, which had been corroborated by accounts collected from other witnesses by national human rights institutions, in particular the Ombudsman and the Children's Ombudsman. Those bodies' reports indicated a systemic practice of Polish border guards misrepresenting statements by asylum-seekers in their official notes. The Supreme Administrative Court had also confirmed irregularities in the questioning of foreigners at the border.

The applicants' account was also backed up by documents they had presented to the Court at every stage of the proceedings, especially copies of applications for international protection which they had had with them at the border. The Court did not find it credible that they had not handed those documents to border guards who were to decide on their admission to Poland or return to Belarus.

In any event, the applicants' requests for international protection had been made available to the Government when they had requested interim measures. The Court itself had in addition informed the State that it considered that the applicants had lodged requests for international protection.

The Court could not accept the Polish Government's argument that the applicants had not presented any evidence that they were at risk of being subjected to treatment contrary to Article 3. They had also raised arguments about why they considered that Belarus was not a safe third country and that they faced a risk of "chain-refoulement" there. Those arguments had been substantiated by official statistics, which showed that the asylum procedure in Belarus was not effective for Russian citizens.

The Court concluded that the applicants had made an arguable claim that their asylum applications would not be treated seriously by the Belarusian authorities and that their return to Chechnya would violate Article 3. The Polish authorities should have carried out an assessment of those claims in compliance with the procedural obligations of Article 3. Poland had also been under an obligation to ensure the applicants' safety,

in particular by allowing them to stay on its territory, until their claims had been properly determined by the domestic authorities.

The Court also considered that a State could not deny access to its territory to people who alleged that they might face ill-treatment if they remained in a neighbouring State, unless adequate measures had been taken to eliminate such a risk.

The Government had argued that it had acted in line with European Union law when it had refused the applicants entry. The Court noted, however, that the non-refoulement principle was also found in EU law, including the Schengen Borders Code. The State could thus have met the requirements of that Code if it had accepted their applications for protection and had not returned them to Belarus.

Furthermore, the experience of the applicant in the first application highlighted the real risk of ill-treatment: he had returned to Russia, where he said he had been detained and tortured.

The Court concluded that the fact that the authorities had failed to review the applicants' applications on the 35, eight, and 19 or more occasions when they had presented themselves at the Polish border had led to a violation of Article 3. Given the situation in Belarus, the Polish authorities had also subjected them to a serious risk of chain refoulement and treatment prohibited by the Convention by not allowing them to stay on Polish territory while their applications were examined.

There had accordingly been a violation of Article 3.

Article 4 of Protocol No. 4

The Court first decided that the applicants had been expelled, within the meaning of the Convention. The question was whether that expulsion had been collective.

The Government had submitted that the applicants had been interviewed and given individual decisions. However, the Court noted its findings on the way border officers had disregarded the applicants' statements on international protection and found that the individual decisions in question had not properly reflected the applicants' reasons for their fears of persecution.

Furthermore, they had not been able to consult lawyers and had been denied access to them at the border. Independent reports on the situation at the border indicated that the applicants' cases exemplified a policy of refusing access to foreigners coming from Belarus, whether economic migrants or people who had expressed a fear of persecution in their countries of origin.

Those reports noted a practice of very short interviews which disregarded people's explanations for seeking international protection; of emphasis being put on arguments which allowed them to be classed as economic migrants; and of misrepresentations of foreigners' statements.

The existence of a wider State policy of refusing to review people's requests for international protection and returning them to Belarus was supported by a statement by the then Minister of the Interior and Administration, who had expressed opposition to accepting migrants from Chechnya.

The Court concluded that the decisions in the applicants' cases had been taken without proper regard to their individual situations and were part of a wider policy. Those decisions had amounted to a collective expulsion of aliens, in violation of Article 4 of Protocol No. 4.

Article 13 in conjunction with Article 3 and Article 4 of Protocol No. 4

The Court, noting its findings so far in the case, found that the applicants' complaints had been arguable for the purposes of Article 13.

It had also held that the applicants were asylum-seekers and that an appeal against a refusal to admit them to Poland which had no automatic suspensive effect, as in their cases, and which could not have prevented them being returned to Belarus, could not be regarded as an effective remedy. Nor had the Government pointed to any other remedies which met Convention requirements.

The Court concluded that there had been a violation of Article 13 of the Convention, taken in conjunction with Article 3 and Article 4 of Protocol No. 4.

Article 34

The applicants complained that the Government had failed to comply with the interim measures.

The Court noted that the interim measures had included instructions to the authorities to refrain from returning the applicants to Belarus. In the first and second applications it had also stated that the measures should be interpreted as meaning that the applicants' applications for asylum should be received by the Border Guard service and forwarded to the appropriate body for review.

The Government had continuously questioned the possibility of complying with the interim measures on the grounds that the applicants had not actually been admitted into Poland and could not therefore have been removed. The Government had continued to rely on its arguments against the measures even after the Court had rejected them by refusing its requests to lift them.

Furthermore, the Government had still not complied with the measures in the first and third applications and had only implemented the one in the second application after a long delay. The applicants had thus been put at risk of the kind of treatment the measures had aimed at preventing.

The Court concluded that Poland had failed to comply with its obligations under Article 34.

It also held that the interim measures in the first and third applications had to remain in force until the judgment in the applicants' cases became final or the Court took a further decision.

Just satisfaction (Article 41)

The Court held, by six votes to one, that Poland was to pay:

the applicant in application no. 40503/17 34,000 euros (EUR) in respect of non pecuniary damage and EUR 140 in respect of costs and expenses;

the applicants in application no. 42902/17 EUR 34,000 jointly in respect of non -pecuniary damage, and EUR 39 in respect of costs and expenses; and,

the applicants in application no. 43643/17 EUR 34,000 jointly in respect of non-pecuniary damage, and EUR 140 in respect of costs and expenses.

Separate opinions

Judge Eicke expressed a dissenting opinion with reference to the question of just satisfaction. The opinion is annexed to the judgment.

The judgment is available only in English.

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Legal framework for stateless persons

In addition to the regulation of the legal status of refugees as a legally defined group, there is also a regulation of the legal status of stateless persons. Here too, states have moved to regulate their status through a treaty, the Convention relating to the Status of Stateless Persons, which provides a practical solution to the needs of stateless persons until their situation is resolved. According to this Convention, '*the term "stateless person" means a person who is not considered as a national by any State under the operation of its law*', and, as in the Convention relating to the Status of Refugees, there is an exclusion from protection. Stateless persons are obliged to be granted certain benefits from the receiving state, which are similar to those defined for refugees. What limits a certain degree of certainty for stateless persons that they will get a certain status somewhere and not be completely without shelter, resources and the possibility to stay in a state is the number of States Parties, of which there are only about 80. The existence of stateless persons is in many ways a problem for states and therefore for international law. If a person is stateless, there is no state that will accept them, that will protect their rights or that will be obliged to take them back into its territory. International law therefore also seeks to prevent such cases from occurring; so far, it has done so primarily through the Convention on the Reduction of Statelessness.[134]

At first glance, it may seem that the only connection between the issue of statelessness and environmental migrants is that some people who leave their homes do not have citizenship. However, this is not the case. The question of the legal status of people living in so-called 'sinking states', i.e. islands that are likely to be under the sea in a few decades as a result of climate change, is also a very important one.[135] Reference is often made to Kiribati or Tuvalu, whose territory is on average 1.8 metres above sea level in the former case and less than 2 metres in the latter.[136] But they are not the only ones. The Intergovernmental Panel on Climate Change (IPCC) warned that the rising of sea will have impact not only on the low-lying Pacific Island States of Kiribati and Tuvalu, but also Tokelau, the Marshall Islands etc.[137] If these islands sink, then the states whose territory lies on the islands will lose one of the basic elements of statehood. International law speaks of four requisites for a state to be a subject of international law. These are territory, population, exercise of governmental authority over the territory, and the ability to enter into relations with other states.[138] So what happens when one of them ceases to exist? And is it possible to infer from the fact that, for example, an entire territory is 5 cm below sea level that this territory no longer exists?

[134] See 1961 Convention on the Reduction of Statelessness.
[135] You can read about this issue in many books and articles, for example McAnaney, S.C. Sinking Islands? Formulating a Realistic Solution to Climate Change Displacement, New York University Law Review, 87:4, 2012, available at https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-87-4-McAnaney.pdf (accessed 21. 8. 2021), or Brookings policy brief that can be downloaded here https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/.
[136] See also an article in the Guardian, available at https://www.theguardian.com/global-development/2019/may/16/one-day-disappear-tuvalu-sinking-islands-rising-seas-climate-change (accessed 21. 8. 2021).
[137] See also the reports from IPCC on their website (https://www.ipcc.ch).
[138] See Art. 1 of the Montevideo Convention on the Rights and Duties of States of 1933, which says: "*The state as a person of international law should possess the following qualifications: a. a permanent population; b. a defined territory; c. a government; and d. capacity to enter into relations with the other states.*"

While it is impossible to find a clear view in international law as to how this situation will be interpreted, it is clear that the territory of such a state will be uninhabitable. But whether a particular State also ceases to exist as a result of the disappearance of its territory is decisive for whether its citizens lose their citizenship. The status of stateless persons is at least addressed in some legal way, whereas the status of persons whose state has no territory but is not legally considered to have ceased to exist is not addressed at all, even though they are in an equally problematic situation. It is a situation in which it can be concluded that the fate of these - tens of thousands of persons - is a matter for the entire international community. And that, as in the case of refugees, the quasi-citizen link is provided by one of the states as an extended arm of the entire international community.

A very good analysis was provided by UNHCR, which you can read in preparation for the seminars.[139]

Questions:

1. How are the governments of Kiribati and Tuvalu trying to address the situation of rising sea level? Do you think this is a viable option for a solution?

2. Please go back to the Teitiota case. In your opinion, could the Human Rights Committee's decision be different in 20 years (or if the territory was already below sea level)? Why?

3. Please read the excerpt from the New Zealand Administration's Operations Manual (on special categories of residence for certain nationals).

[139] See Park. S. Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States. UNHCR, 2011, available at https://www.unhcr.org/protection/globalconsult/4df9cb0c9/20-climate-change-risk-statelessness-situation-low-lying-island-states.html (accessed on 21. 8. 2021).