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## Developing temporary protection in Africa

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**Formalised temporary protection arrangements in Africa could significantly improve access to territory and human rights for people displaced across borders by disasters. Such arrangements must adhere to states' existing protection obligations.**

Some people displaced across borders by disasters and the effects of climate change in Africa will be eligible for protection as refugees, either under the 1951 Refugee Convention or under the 1969 African Refugee Convention. However, existing legal and policy frameworks in Africa are inadequate to ensure that all disaster-displaced persons, including those displaced by drought, flooding, volcanoes and desertification, will be able to secure protection outside their country of origin. The Nansen Initiative's May 2014 Horn of Africa Regional Consultation concluded that African states should therefore consider "the development and use of temporary protection measures in disaster contexts where cross-border displaced people are not recognised under the [1969 African] Refugee Convention but are still in need of international protection and assistance".<sup>1</sup>

The provision of temporary refuge to neighbours in distress, including in the disaster context, has a strong tradition in Africa. In 2002, those fleeing the eruption of Mount Nyiragongo in the Democratic Republic of Congo were permitted to stay in Uganda until it was safe to return, despite not being granted refugee status. Botswana and Tanzania have also admitted people fleeing flooding in neighbouring states. However, such arrangements have generally been ad hoc and informal, with those displaced across borders relying on the goodwill of host communities and non-governmental organisations for their safety and survival.

According to the United Nations High Commissioner for Refugees' new *Guidelines on Temporary Protection or Stay Arrangements*, temporary protection is a "pragmatic tool" for "offering sanctuary to those fleeing humanitarian crises".<sup>2</sup> In practice, however,

temporary protection arrangements have sometimes been criticised for their discretionary and ad hoc nature, and for being used by states to circumvent their more comprehensive protection obligations under international refugee and human rights law.

### Building on what exists

Against this background, the Nansen Initiative's Horn of Africa Regional Consultation recommended that temporary protection measures in Africa "build upon existing laws, policies and practices in the region". Such an approach would not only promote temporary protection among African states; it would also help to ensure that any such measures are consistent with states' existing protection obligations, under international and regional instruments, as well as customary law.

African states have already expressed their commitment to addressing disaster-related displacement. The Migration Policy Framework for Africa, adopted by Member States of the African Union (AU) in 2006, recognises disasters and other environmental factors as major sources of displacement and recommends that this fact be addressed through national and regional migration policies. The AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (known as the Kampala Convention), although it does not address cross-border displacement, articulates states' recognition of the protection needs of disaster-displaced persons by including in its definition of IDPs persons who have been forced to flee their homes as a result of, or in order to avoid the effects of, "natural or human-made disasters".<sup>3</sup>

For temporary protection to promote, rather than undermine, protection in the region

it must, as a minimum, be consistent with African states' existing obligations under international and regional law. Existing regional law and policy frameworks could also provide a useful basis for the negotiation and development of temporary protection in Africa, by articulating principles that have already been agreed on by states and which could be extended to disaster-displaced persons.

At a minimum, the development of temporary protection measures in Africa must respect states' *non-refoulement* obligations under international and regional human rights instruments, according to which states are prohibited from returning persons to territories where they are at risk of certain kinds of harm. This prohibition may encompass conditions in some disaster-affected areas, in situations where the harm faced by those returning is imminent and particularly serious.

In addition, the widespread practice of African states in providing temporary refuge to disaster-affected populations from neighbouring states may suggest the development of a regional customary norm of protection, although in general the practice of providing temporary refuge in these circumstances has been explained by African states with reference to principles of African hospitality and good neighbourliness, rather than legal obligation.

States Party to the 1981 African Charter on Human and Peoples' Rights (the Banjul Charter) must assure a range of rights – including the right to life and integrity of the person, freedom of movement within the state, right to leave and return to one's country, and rights to property and to physical and mental health – for every person within their territory, including non-nationals. Significantly, and in contrast to most international human rights instruments, the African Charter does not contain a derogation clause, meaning that limitations on the rights provided by the Charter cannot be justified by emergencies or other special circumstances. In order

for temporary protection measures to conform to states' human rights obligations they must guarantee these rights for beneficiaries of temporary protection.

### Refugee protection

As noted above, at least some people displaced by disasters and the negative effects of climate change will be eligible for protection under international and regional refugee law. The Nansen Initiative's Horn of Africa Regional Consultation's concluding document recognises the potential applicability of the 1969 Convention – in particular, the phrase "events seriously disturbing public order" – to disaster situations, at least in cases where the protection and assistance available to affected communities are hampered by conflict. This was the case in 2011, when tens of thousands of people fleeing drought and famine in southern Somalia were granted *prima facie* refugee status in Kenya.

Refugee protection is itself 'temporary', in the sense that it does not entail a right to permanent residence and its duration is circumscribed by cessation clauses which provide an end to refugee status when conditions in one's country of origin change. However, as long as a person remains a refugee within the terms of refugee law they are entitled to the comprehensive set of rights provided for under international and regional refugee regimes. The development of temporary protection measures in Africa must not undermine, nor circumscribe, the provision of refugee-specific rights to those persons who qualify for refugee status.

### Freedom of movement arrangements

Finally, the development of temporary protection measures in Africa could build upon existing frameworks for the free movement of people between countries in the region. The Horn of Africa Regional Consultation recommended, for example, that freedom of movement arrangements currently being developed in Africa's sub-regional economic communities, such as the EAC and Intergovernmental Authority for Development (IGAD), could be applied

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in a way which facilitates the admission of displaced persons during a disaster.

It is important to note, however, that freedom of movement arrangements are not protection-oriented; rather, they are designed to promote regional development and facilitate the movement of labour between countries. As such, they do not address the particular needs of displaced persons – indeed they may be suspended in times of emergency, such as a disaster, and their operation depends on individuals being able to access identity documents and secure employment. Nevertheless, the relaxation of entry requirements between African states could facilitate ease of movement for those affected, or likely to be affected, by disasters and climate change. For example, in February 2014 the governments of Kenya, Uganda and Rwanda signed an agreement to allow citizens to travel between the three countries using national identity cards. At the practical level, arrangements such as these could be used to assist in the admission and management of displaced persons under a temporary protection regime.

The development of formalised temporary protection measures in Africa for people displaced in the context of disasters and climate change could thus significantly improve access to protection for those who are forced to flee across borders. By removing such protection from the realm of ad hoc and informal arrangements, a temporary protection regime could provide more guaranteed access to territory and human rights, and promote the more consistent reception and treatment of disaster-displaced populations outside their countries of origin. In order to do so, however, temporary protection must uphold African states' existing protection obligations under regional refugee protection and other human rights instruments.

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1. <http://tinyurl.com/NansenInitiativeHornConclusion>
2. [www.refworld.org/docid/52fba2404.html](http://www.refworld.org/docid/52fba2404.html)
3. <http://tinyurl.com/KampalaConventionAU>