THE NANSEN INITIATIVE
DISASTER-INDUCED CROSS-BORDER DISPLACEMENT

Background Paper
Nansen Initiative Southern Africa Consultation
in cooperation with the Development and Rule of Law Programme (DROP) at Stellenbosch University

Disasters, Climate Change and Human Mobility in Southern Africa:
Consultation on the Draft Protection Agenda
Stellenbosch, South Africa, 4-5 June 2015

I. Introduction

The effects of natural hazards on migration and displacement in Southern Africa[1] are both substantial in scale and diverse in nature. In particular, flooding associated with tropical cyclones, and severe drought have consistently contributed to both internal and cross-border displacement. Southern Africa also experiences a range of other natural hazards including landslides, flash floods, earthquakes, tsunamis, tornados, excessive snowfall, hail storms, sand storms, land degradation, extreme temperatures and volcanic eruptions. Hazards such as these take place in broader environmental, social and political contexts impacted by inequality, poverty, violence and governance challenges. At the same time, despite the fact that human mobility is complex and multi-causal in nature, it has to be emphasized that many of the interacting social, demographic and economic drivers of observed migration are sensitive to climate change impacts.[2]

Between 2008 and 2013, the Internal Displacement Monitoring Centre (IDMC) estimated that more than 1.5 million people were displaced by sudden-onset disasters in Southern Africa.[3] Mozambique ranked the highest, with some 500,000 people displaced during that same period. While the vast majority of displacement has been internal, a few instances of cross-border displacement have occurred in the context of both slow- and sudden-onset disasters. The 2002 Cyclone Eline affected some five million people[4] and ultimately displaced as many as 1.25 million people across Southern Africa,[5] with some people from Mozambique evacuated to South Africa. In 2002, the eruption of Mt. Nyiragongo near Goma, Democratic Republic of Congo (DRC) displaced an estimated 300,000 who

NOTE: This Background Paper has been drafted by the Nansen Initiative Secretariat and has been adapted from a desk review by Robert Freeman, which was commissioned by the Nansen Initiative in Spring 2015.
[1] Angola, Botswana, Democratic Republic of the Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
[2] Intergovernmental Panel on Climate Change, Isabelle Niang and Oliver C. Ruppel, CLA, "WG2 AR5 – Africa" (2014) at 1204. Available at http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap22_FINAL.pdf, accessed 9 February 2015.
3 Internal Displacement Monitoring Centre (IDMC) data as of 09/10/2014. Accessed on 4 May 2015 at www.internal-displacement.org. Note that the overall numbers are incomplete, as not every country had data for each year.
[4] RIASCO Southern Africa, "Humanitarian Trends in Southern Africa: Challenges and Opportunities" (2013) at 20.
[5] John Oucho, "Internal Displacement of Populations in the SADC Region: An Overview," Paper presented at the Seminar on Internal Displacement in the SADC Region, Gaborone (2005).

crossed the border into Rwanda and Uganda.[6] More recently, the 2015 Cyclone Chedza caused substantial damage and displacement across eastern Southern Africa, with severe flooding reportedly prompting displacement in both directions across the border between Malawi and Mozambique.[7] In the future, the Intergovernmental Panel on Climate Change has concluded that there is a medium to high risk that the effects of climate change will result in an increase in migration and displacement across the region, and the rest of Africa.[8]

Within Southern Africa, a number of existing legal frameworks and ongoing processes are relevant to the protection of displaced persons in disaster contexts. The African Union's 2009 Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) also explicitly recognizes the protection and assistance needs of internally displaced persons in disaster contexts.[9] Although it does not specifically mention disasters linked to natural hazards, the 1969 African Union Convention Governing the Specific Aspects of Refugee Problems in Africa[10] (AU Refugee Convention) has been applied in situations where the drivers of displacement included conflict and disasters, namely the 2011-2012 Horn of Africa drought crisis.

Also relevant, among others, are the Southern African Development Community (SADC) Draft Protocol on the Facilitation of Movement, the 2011 Programme on Climate Change Adaptation and Mitigation in the Eastern and Southern Africa Region, and the 2006 SADC Disaster Risk Reduction Strategic Plan. These existing laws, policies, and processes are important not only for establishing a protective environment for those displaced in disasters, but also for preventing displacement and finding durable solutions, such as through resilience building measures.

1.1 Background to the Nansen Initiative Southern Africa Consultation

This background paper informs the Nansen Initiative Southern Africa Consultation on *"Disasters, Climate Change and Human Mobility in Southern Africa: Consultation on the Draft Protection Agenda,"* taking place in Stellenbosch, South Africa, 4-5 June 2015, which aims to explore issues related to human mobility (displacement, migration and planned relocation) in the context of disasters and climate change in Southern Africa. The Consultation will also provide participants with an opportunity to review and contribute to the Nansen Initiative's draft Protection Agenda on cross-border displacement in the context of disasters and climate change.

Launched by the Governments of Norway and Switzerland in October 2012, the Nansen Initiative is a State-led, bottom-up consultative process intended to build consensus on how best to protect and address the needs of people displaced across international borders in the context of drought,

[6] UN OCHA, "The role of OCHA in the emergency operations following the eruption of the Nyiragongo Volcano in Goma, Democratic Republic of Congo" (2002). Available at http://reliefweb.int/report/world/role-ocha-emergency-operations-following-eruption-nyiragongo-volcano-goma-democratic, accessed 13 February 2015.
[7] BBC World Service, "Africa Today: 16 February 2015" (2015). Available at http://www.bbc.co.uk/podcasts/series/africa/all, accessed 4 February 2015; Times Live, 'Relief for flood-hit Mozambique and Malawi' (2015). Available at, http://www.timeslive.co.za/thetimes/2015/01/18/relief-for-flood-hit-mozambique-and-malawi, accessed 4 February 2015.
[8] IPCC, *supra* note 8 at 1204.
[9] As of 3 December 2014, Angola, Lesotho, Malawi, Swaziland, Zambia, and Zimbabwe had ratified the Kampala Convention, with DRC, Madagascar and Namibia as unratified signatories. Botswana, Mauritius, the Seychelles and South Africa had neither signed nor ratified the Convention.
[10] As of 6 May 2015, almost all States in Southern Africa had signed and ratified the AU Refugee Convention, with Madagascar as an unratified signatory. Only Namibia had neither signed nor ratified the Convention.

flooding and other natural hazards, including those linked to the effects of climate change.[11] Inter-governmental Regional Consultations and Civil Society Meetings held in the Pacific, Central America, the Horn of Africa, Southeast Asia, and South Asia over the course of 2013 to 2015 ensured that the Nansen Initiative process is grounded in practical experience. Outcome documents from all the Regional Consultations contain recommendations for further action at the community, national, regional and international levels.

The results of the Nansen Initiative Regional Consultations, Civil Society Meetings and other consultative meetings will be consolidated within a final version of the Protection Agenda, which will be presented at the inter-governmental Global Consultation in Geneva, Switzerland from 12-13 October 2015. The Nansen Initiative does not seek to develop new legal standards, but rather to discuss and build consensus among states on the potential elements of a Protection Agenda, which may include standards of treatment. Its outcomes may be taken up at domestic, regional and global levels and lead to new laws, soft law instruments or binding agreements.

1.2 Objectives of the Southern Africa Consultation

The Nansen Initiative Southern Africa Consultation will provide an opportunity for representatives from governments, civil society, international organizations and academic institutions in the region to share relevant experiences and identify good practices from Southern Africa related to human mobility in the context of natural hazards and climate change as they review the draft Protection Agenda. The primary objectives of the Nansen Initiative Southern Africa Consultation are to:

1. Attain a better understanding of the human mobility dynamics linked to natural hazards in Southern Africa, particularly related to cross-border displacement and migration;
2. Review the draft Protection Agenda and provide feedback on the document's overall structure, content and key messages, and in particular the extent to which the draft reflects the sub-regional dynamics in Southern Africa;
3. Identify effective practices from Southern Africa - at regional, national and community levels- in relation to thematic areas within the draft Protection Agenda (climate change adaptation, disaster risk reduction, migration as adaptation, planned relocation, protecting disaster displaced persons, and protecting migrants caught up in a disaster-affected country);
4. Contribute to on-going discussions about future international institutional arrangements on cross-border disaster-displacement following the October 2015 Nansen Initiative Global Consultation.

[11] The Nansen Initiative is funded by the Governments of Norway and Switzerland, with additional financial support from the European Commission, the Government of Germany, and the MacArthur Foundation. It is governed by a Steering Group comprised of nine Member States: Australia, Bangladesh, Costa Rica, Germany, Kenya, Mexico, Norway, the Philippines, and Switzerland. A Group of Friends, coordinated by the European Union and Morocco, is comprised of interested States and regional organizations who would like to be associated with the Initiative, and contribute through comments and proposals. A Consultative Committee informs the process through expertise provided by representatives from international organizations addressing displacement and migration issues, climate change and development researchers, think tanks, and NGOs. The Envoy of the Chairmanship represents the Nansen Initiative throughout the process, providing strategic guidance and input. Finally, the Nansen Initiative Secretariat, based in Geneva, supports the process with additional strategic, research, and administrative capacity.

The Southern Africa Consultation will be hosted by the Development and Rule of Law Programme (DROP) at Stellenbosch University in South Africa and co-organized in partnership with the Nansen Initiative Secretariat and the Norwegian Refugee Council. Professor Oliver Ruppel, who heads the DROP Programme, is a member of the Nansen Initiative Consultative Committee, advising on the development of the Protection Agenda in his capacity as a Coordinating Lead Author for the Intergovernmental Panel on Climate Change (IPCC) Fifth Assessment Report. The Consultation will take the form of a one and a half day workshop, and is funded by the Chairmanship of the Nansen Initiative. The outcomes of the Nansen Initiative Southern Africa Consultation will be synthesized in a short report.

This paper has been drafted to accompany discussions within the Southern Africa Consultation. The next section (II) will provide an overview of disasters and human mobility in the region, including reflections on the underlying causes and characteristics of such movements. Section III will then explore two specific thematic issues: 1) Protecting People to Avoid Displacement in the Context of Disasters; 2) Protecting Displaced Persons in the Context of Disasters and the Effects of Climate Change. Section IV will highlight existing relevant processes within Southern Africa with which the Nansen Initiative can share the findings and conclusions from the Regional Consultation. Section V outlines potential outcomes from the Southern Africa Consultation.

II. Overview of Disasters and Human Mobility in Southern Africa

Southern Africa, with its enormous ethnic and linguistic diversity, has a long history of human mobility, both within the region and beyond. The region's more than 250 million people speak over 80 languages.[12] Bordered by the Indian Ocean to the east and the Atlantic to the west, Southern Africa includes the expansive Namib and Kalahari deserts as well as the flood plains of the Zambezi River, the seasonally snow-topped mountains of Lesotho, the equatorial forests of DRC and the islands of the south-west Indian Ocean.[13] Southern Africa is also particularly resource rich, with roughly half of the world's vanadium, platinum, and diamonds originating in the region, along with 36 per cent of gold and 20 per cent of cobalt.[14] For the purposes of this background paper, Southern Africa refers to the 15 members of SADC and the Comoros.[15]

Southern Africa has the highest income and consumption-expenditure inequality in Africa, with six of the ten most unequal countries worldwide located in the region, including the top four.[16] Despite the majority of countries in the region categorised as medium income, more than 60 per cent of people living in Southern Africa lack access to an adequate supply of safe drinking water, a third of the population live in abject poverty, and 40 per cent of the labour force is unemployed.[17] Furthermore,

[12] UNDESA, "Population Statistics" Available at http://www.unstats.un.org, accessed 13 February 2015.
[13] RIASCO Southern Africa, *supra* note 4 at 3.
[14] SADC, "Mining" (2015). Available at http://www.sadc.int/themes/economic-development/industry/mining/, accessed 22 February 2015.
[15] The SADC members are Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Most United Nations agencies and programmes exclude the DRC and Tanzania from their operational definition of Southern Africa.
[16] AfDB, "Briefing Note 5: Income Inequality in Africa" (2012); Business Insider, "Here are the Most Unequal Countries in the World" (2014). Available at http://www.businessinsider.com/gini-index-income-inequality-world-map-2014-11, accessed 17 February 2015.
[17] ILO, "Inequality in Southern Africa: Options for Redress" (2013). Available at http://www.ilo.org/actrav/WCMS_230181/lang--en/index.htm, accessed 17 February 2015 at 1.

rural populations generally affected by flooding and drought are also often the poorest. Notably, over the past 200 years, labour migration for the purposes of resource exploitation has been the primary driver of human mobility in Southern Africa.[18] Rapid urbanisation accompanying independence from colonial powers has also resulted in a significant increase in internal migration within most SADC countries.

Human mobility within the context of natural hazards and the effects of climate change takes various forms in Southern Africa. There is no internationally agreed upon terminology to describe these different categories of movement. For the purposes of this paper, and building upon paragraph 14(f) of the 2010 UN Framework Convention on Climate Change's (UNFCCC) Cancun Outcome Agreement, human mobility will be discussed within three categories: (forced) displacement, (predominantly voluntary) migration, and (voluntary or forced) planned relocation. The Nansen Initiative primarily addresses the protection needs of people displaced across international borders in the context of disasters associated with natural hazards, with migration and planned relocation addressed from the perspective of preventing displacement or finding durable solutions to displacement.

This section will provide an overview of natural hazards in Southern Africa, followed by descriptions and examples of different forms of human mobility that have occurred in the context of such hazards.

2.1 Natural Hazards and Climate Change in Southern Africa

Numerous studies of trends in global disaster frequency and intensity indicate "that Southern Africa is under sustained pressure, both environmentally and socially."[19] Most of the region experiences one rainy season, typically lasting from October to April, with highest intensity between November and March. The majority of displacement in Southern Africa is associated with flooding, especially as a consequence of tropical cyclones and storm surges. As the table below illustrates, between 2000 and 2012, the region experienced 37 defined humanitarian emergencies.[20]

Type of threat	No. of events	Years reported	Main countries affected	Total pop. affected	Av. Pop. affected /event
Severe weather/ floods	27	2000-2011	MDG, NAM, MOZ, MWI, AGO	14 098 257	542 241
Famine/food crisis /insecurity	4	2000-2004, 2005-2006, 2010, 2012	LSO, MWI, SWZ, ZAM, ZIM, MOZ	42 464 477	10 616 119
Drought	2	2000, 2007	MDG, SWZ	1 194 290	597 145
Volcanic eruption	3	2005, 2006	COM	294 000	98 000
Earthquake	1	2009	MWI	31 220	31 220

Table I: Type and frequency of humanitarian emergencies associated with an environmental shock/stress in Southern Africa[21]

[18] Francis Wilson, "Minerals and Migrants: How the Mining Industry Has Shaped South Africa" *Daedalus*, Vol. 130:1 (2001).
[19] RIASCO Southern Africa, *supra* note 4 at 28. See also, UNISDR, "Global Assessment of Risk" (2011). Available at www.preventionweb.net/english/hyogo/gar/2011/en/home/index.html, accessed 12 February 2015.
[20] The table excludes the DRC, which alone experienced 16 defined humanitarian disasters linked to natural hazards over the same period, including 11 instances of severe weather or flooding, two earthquakes, two volcanic eruptions and one landslide.
[21] DiMP, "Analysis of UN Consolidated and Flash Appeals 2000-2012" (2013); RIASCO Southern Africa, "Humanitarian Trends in Southern Africa: Challenges and Opportunities" (2013) at 5.

In recent times, particularly severe disasters causing considerable displacement occurred following cyclones: Nadia in 1994, Eline in 2000, Dera in 2001, Ivan in 2008, Giovanna in 2012, Funso in 2012 and Chedza in 2015.[22] Future impacts of tropical cyclones are expected to be felt further south, particularly in Mozambique and South Africa, as a consequence of rising sea temperature associated with climate variability and change.[23]

While land degradation and coastal erosion are persistent challenges in Southern Africa, drought remains the principle threat, with 60 per cent of the region considered vulnerable to its effects.[24] Drought can affect large areas, and continue for years at a time. According to IPCC Fifth Assessment Report, Southern Africa is also experiencing "upward trends" in temperature, as well as increased variability in both precipitation and temperature. These changes have already contributed to "shifts in biome distribution, loss of coral reefs, reduced crop productivity, adverse effects on livestock, vector- and water-borne diseases [and] under nutrition."[25]

Notably, droughts and flooding in Southern Africa are interrelated phenomena, which both exacerbate and mitigate each other's influence.[26] Flooding frequently occurs in areas previously affected by drought, which are characterised by severe land degradation and erratic fluctuations in rainfall patterns.[27] For example, in 2009, extensive flooding in the Cabrivi strip bordering Angola, Namibia, and Zambia resulted in the displacement of at least 50,000 people, despite the presence of drought in the region.[28]

Mauritius, the Comoros and the Seychelles are all susceptible to the effects of natural hazards, but are particularly exposed to the potential salt water intrusion of fresh water sources and arable land, and coastal erosion associated with sea level rise. Flooding in the Comoros, for instance, could cause the displacement of 10 per cent of the country's population by 2090 if current IPCC predictions are realized.[29]

Although difficult to isolate from other factors, diminished access to certain resources – such as potable water, grazing lands, fishing grounds, or arable land – could be a primary or contributing trigger for social unrest, violence, or even armed conflict. Such occurrences are more likely in poorer areas that lack the necessary social or economic resources to adapt to environmental changes. In Southern Africa water has been a primary source of contestation. For the most part, negotiating access to water resources has been an area of trans-boundary cooperation in the region, often a conduit through which other political issues are settled.[30] On two occasions, however, inter-state

[22] See Jennifer Fitchett & Stefan Grab, 'A 66-year tropical cyclone record for south-east Africa: temporal trends in a global context' *Int. J. Climatol.* Vol. 34:13 (2014) at 3605.
[23] Ibid.
[24] FAO, 'Drought impact mitigation and prevention in the Limpopo River Basin' (2004). Available at http://www.fao.org/docrep/008/y5744e/y5744e00.htm#Contents, accessed 12 February 2015.
[25] IPCC, *supra* note 2 at 1204, 1206.
[26] IGAD, "IGAD'S Regional Perspective on Disaster Risk Reduction" (2013).
[27] Ibid.
[28] Govt. of Namibia, "Post-Disaster Needs Assessment: Floods 2009" (2010). Available at http://www.gfdrr.org/sites/gfdrr/files/documents/Namibia_PDNA_2009.pdf, accessed 1 March 2015.
[29] UNFCCC, "Initial National Communications on Climate Change – Executive Summary" (2002).
[30] Anthony Turton & Others, "Transboundary Water Resources in Southern Africa: Conflict or cooperation?" *Development* Vol. 49:3 (2006).

conflict occurred during efforts to secure access to water.[31] Minor, isolated community-level internal conflicts have also been reported over water and grazing land, but these have not been conclusively linked to environmental factors.[32]

Whether, and to what extent, a natural hazard develops into a disaster is dependent on a community's capacity to withstand the effects of the hazard. A wide variety of other issues, including governance, conflict, poverty, violence, level of development, desertification, deforestation, poor agricultural practices, and over-grazing also contribute to disasters in Southern Africa.

2.2 Challenge of Data Collection and Analysis

In general, comprehensive data collection and analysis on displacement and migration in the context of disasters in Southern Africa is lacking. Gathering this information is by nature complex due to the diverse drivers of human mobility, scientific uncertainties, and unsystematic data collection and sharing. Therefore, participants to the Consultation may want to discuss how existing information management tools for disasters, climate change, and migration could be adapted to help inform the development of public policy and operational responses for disaster-related displacement and migration.

2.3 Displacement

The term "displacement" refers to situations where people are forced to leave their homes or places of habitual residence. Displacement may take the form of spontaneous flight, an evacuation ordered or enforced by authorities, or the relocation of a community to another location. Displacement can occur within a country, or across international borders. People displaced within their own countries are protected under national laws as well as international human rights law. However, for those who cross international borders in the context of disasters, international legal protection is lacking.

2.3.1 Examples from Southern Africa

As in other parts of the world, the drivers of displacement in Southern Africa are multi-causal and linked to other factors such as poverty, levels of development, or conflict. Thus, displacement in Southern Africa often includes people who have moved for a variety of reasons, one of which may be a sudden- or slow-onset natural hazard. In such circumstances, it may be difficult to distinguish people displaced by disasters within larger mixed migration flows, particularly those crossing international borders given the lack of common criteria to identify such people. In the absence of more precise data and analysis, the examples presented in this paper are not comprehensive representations, but rather highlight a few situations of displacement in disaster contexts (noting cross-border examples when possible) and the corresponding need to improve data collection.

The 2002 Cyclone Eline remains the most devastating sudden-onset

Tracking path - cyclone Eline, 2000 (Source: Wikidata)

[31] According to Swatuk, these events include a South Africa intervention into Lesotho to secure
second a mobilization of troops by Namibia and Botswana along the Chobe River in 1999. Larry
Cooperation in Southern Africa" (Forthcoming).

[32] David Lesolle, "SADC Policy Paper on Climate Change: Assessing the Policy Options of SADC Member States" (SADC. 2012); Duncan Okello, Jacob Aketch & Arthur Muliro "Towards a Common Agenda: Resource Based Conflicts in East and Southern Africa – Politics, Policy and Law" (SID, 2005).

natural hazard to have affected Southern Africa in recent memory; traversing 2,000 km across the continent, affecting 5 million people,[33] and ultimately displacing as many as 1.25 million people across Southern Africa.[34] The immediate effects of the cyclone caused the displacement of 540,000 people across the region, with 250,000 displaced in Mozambique alone.[35] Of the total of 16,551 people evacuated by air in Mozambique during the relief effort, 14,391 were transported by the South African Air Force, including some across the border into South African territory.[36]

In the Democratic Republic of Congo (DRC), between 350,000 and 500,000 people were displaced following the eruption of Mt. Nyiragongo near Goma in 2002, including the further displacement of a portion of the two million IDPs and refugees already displaced by violence in the region.[37] Of those displaced, approximately 300,000 crossed the border into Rwanda and Uganda, although only 10,000 remained in Rwanda within a week of the eruption.[38] In addition, Mt. Khartala in the Comoros has erupted on three occasions since 2000, causing a combined internal displacement of 300,000 people.[39]

The arrival of Cyclone Chedza on 19 January 2015 caused substantial damage and displacement across eastern Southern Africa, with severe flooding effecting, in particular, southern Malawi and northern Mozambique. At least 21,475 people were displaced in Madagascar as the storm moved across the island, with an estimated 230,000 more displaced in Malawi, and 50,000 in Mozambique.[40] At the time of writing, a number of the displaced in both Malawi and Mozambique were receiving shelter in relocation centres intended to be used as formal settlements in the future, with the possibility of moving others currently in short-term accommodation facilities to additional previously constructed relocation sites.[41] As the flooding affected the border region between Malawi, Mozambique and Zimbabwe, an unknown number of displaced persons reportedly crossed the border between Malawi and Mozambique in both directions.[42]

While Southern Africa generally faces a low exposure to earthquakes, the East African Rift does extend through Tanzania, Malawi and Mozambique. In 2010, an earthquake in the far northern

[33] RIASCO Southern Africa, *supra* note 4 at 20.
[34] Some estimates go as high as 1.25 million displaced persons. See Oucho, *supra* note 5.
[35] RIASCO Southern Africa, *supra* note 4 at 43. In addition, largely as a consequence of cyclone Eline, Mozambique's economic growth rate fell from 12% to 9%, likely causing further displacement. See further, International Research Institute for Climate & Society, "Climate Risk Management in Africa: Learning from Practice" (IRI, 2007). Available at http://www.wmo.int/pages/prog/dra/documents/CDSCaseStudy_Mozambique_V2_Withpictures.pdf, accessed 11 February 2014.
[36] Wilfried DeBrouwer, "The UN Joint Logistics Operation in Mozambique," *Humanitarian Exchange* Vol. 17.
[37] UN OCHA, 'The role of OCHA in the emergency operations following the eruption of the Nyiragongo Volcano in Goma, Democratic Republic of Congo' (2002). Available at http://reliefweb.int/report/world/role-ocha-emergency-operations-following-eruption-nyiragongo-volcano-goma-democratic, accessed 13 February 2015.
[38] *Ibid.*
[39] UNISDR, "Disaster Risk Reduction in Africa: Status Report on Implementation of African Regional Strategy and Hyogo Framework for Action" (2013).
[40] UN OCHA ROSA, "Weekly Report 10 to 16 February 2015" (2015). Available at, http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_ROSA_Weekly_Report_Map_10to16Feb2015.pdf; UN HCT Mozambique, "Mozambique Floods 2015: Response and Recovery Proposal" (2015).
[41] UN HCT Mozambique, "Mozambique Floods 2015: Response and Recovery Proposal" (2015).
[42] BBC World Service, "Africa Today: 16 February 2015" (2015). Available at http://www.bbc.co.uk/podcasts/series/africa/all, accessed 4 February 2015; Times Live, "Relief for flood-hit Mozambique and Malawi" (2015). Available at, http://www.timeslive.co.za/thetimes/2015/01/18/relief-for-flood-hit-mozambique-and-malawi, accessed 4 February 2015.

district of Karonga, Malawi, bordering on Tanzania, experienced an Mw 6.0 earthquake, which caused severe damage to 10,500 homes and affected 31,220 people.[43] At least 4,676 people were displaced following the initial shock, with some suspected to have crossed the border into Tanzania.[44] Over the following weeks, some 5,000 people were evacuated into nearby camps.[45] Another earthquake measuring 7.0 on the Richter scale – the worst in recorded history for Southern Africa – hit Mozambique in February 2006, causing some damage to property and localised displacement.[46] Landslides, tsunamis, and severe snow and sand storms have also caused displacement in the region.[47] For example, the 2004 Indian Ocean Tsunami displaced some 1,000 people in Madagascar as well as a small number of people in the Seychelles, while in 2013 over 5,000 people were reportedly displaced by a single landslide in the DRC.[48]

In 2013-2014, Southern Angola and Northern Namibia experienced a severe drought with rainfall 60 per cent below average. The Government of Angola established an emergency plan to assist 640,000 people, and an estimated 2.2 million people (including a third of Namibia's population) were considered food insecure across the affected area.[49] As a result, both Namibia and Angola set up displacement camps, including in border regions. Angolans are also known to have crossed the Kunene River into Namibia in search of food and medical care.[50]

The table below provides an overview of examples of displacement in the context of natural hazards and climate change in Southern Africa based upon best available data. The table is not comprehensive, and is instead intended to provide context for a discussion of disaster displacement in the region.

Examples of Displacement in the Context of Disasters and Climate Change in Southern Africa

Year	Event	Countries Affected	People Displaced	Internal or Cross-border
March 1989	Earthquake	Malawi	50,000[51]	Internal
1992	Drought	Regional, notably Zimbabwe		Internal/Cross-border
February 1993	Cyclone Geralda	Madagascar	40,000[52]	Internal
March 1994	Cyclone Nadia	Madagascar, Mozambique		Internal
February 2000	Cyclone Eileen	Mozambique, Zimbabwe, Botswana,	1,250,000	Internal/Cross-border

[43] Office of the United Nations Resident Coordinator, "Malawi - Karonga Earthquake Situation Report III, 28 December 2009" (2009). Available at: http://reliefweb.int/sites/reliefweb.int/files/resources/ED8C7B949A5F9C798525769A00749803-Full_Report.pdf, accessed 12 February 2015

[44] IFRC, "Malawi Red Cross hands over houses to earthquake survivors" (2013); Radio New Zealand News, "Series of earthquakes hit Malawi and Tanzania" (2009).

[45] J. Biggs, E. Nissen, T. Craig, J. Jackson, D. Robinson, "Breaking up the hanging wall of a rift-border fault: The 2009 Karonga earthquakes, Malawi," *Geophysical Research Letters* Vol. 37:11 (2010).

[46] Aderemi Alabi, Olukayode Akinyemi & Adebambo Adewale, "Seismicity Pattern in Southern Africa from 1986 to 2009" *Earth Science Research* Vol. 2:2 (2013); Council for Geosciences, "Recent Seismic Activity in the Mozambique Region". Available at http://www.geoscience.org.za/125-young-science-forum/projects-2009/1299-recent-seismicity-in-the-mozambique-region-and-its-impact--effects-on-south-africa, accessed 12 February 2015.

[47] UNISDR, *supra* note 39.

[48] RIASCO Southern Africa, *supra* note 4.

[49] Reidun Gjerstad, "Angola's Migration of Thirst: the 2013 Drought," *The State of Environmental Migration 2014 (2015)* at 92; UN OCHA, "Namibia: Hundreds of thousands affected by drought," Available at, http://www.unocha.org/rosa/node/3245, accessed 22 February 2015.

[50] Gjerstad, *Ibid* at 92.

[51] Alik Ismail-Zadeh et al. *Extreme Natural Hazards, Disaster Risk and Societal Implications* (Cambridge, 2014) at 220.

[52] IRIN, "Madagascar: Cyclone expected in high population areas" (2012). Available at http://www.irinnews.org/report/94853/madagascar-cyclone-expected-in-high-population-areas, accessed 1 March 2015.

		Namibia, South Africa, Zambia		
February 2001	Flooding (Zambezi River)	Botswana, Malawi, Mozambique, South Africa, Swaziland, Zimbabwe	500,000[53]	Internal/Cross-border
March 2001	Cyclone Dera	Mozambique, Malawi	223,000[54]	Internal
2001-2002	Drought	Zimbabwe, Malawi	Part of existing displacement	Internal/Cross-border
January 2002	Mt. Nyiragongo Eruption	Democratic Republic of Congo (DRC)	350,000 - 500,000	Internal/Cross-border
December 2004	2004 Indian Ocean Tsunami	Madagascar	5,000	Internal
November 2005	Mt. Karthala	Comoros	10,000+[55]	Internal
December 2005	Lake Tanganyika Earthquake	DRC, Rwanda, Burundi, Tanzania, Kenya	Minimal	
February 2006	Earthquake	Mozambique		Internal
February 2007	Flooding	Mozambique, Zimbabwe, Zambia, Malawi, Namibia	120,790 in Mozambique[56]	Internal
2008	Cyclone Ivan	Madagascar	191,182[57]	Internal
March 2009	Flooding	Namibia, Angola, Zambia	50,000 in Namibia[58]	Internal/Cross-border (suspected)
2010	Earthquake	Malawi, Tanzania	4,676	Internal/Cross-border (suspected)
December 2011	Flooding	Tanzania	10,000[59]	Internal
January 2012	Cyclone Funso	Mozambique, Malawi	124,000[60]	
February 2012	Cyclone Giovanna	Mozambique	240,000[61]	Internal
January 2013	Flooding	Mozambique	185,000[62]	Internal
2013-2014	Drought	Angola, Namibia		Internal/ Cross-border
April 2014	Flooding	Tanzania	10,000[63]	Internal
January 2015	Cyclone Chedza	Madagascar, Mozambique, Zimbabwe, Malawi	300,000+	Internal/ Cross-border
February 2015	Cyclone Fundi	Madagascar	10,000+	Internal

2.4 Migration

[53] RIASCO Southern Africa, *supra* note 4 at 21.
[54] International Recovery Platform, "Mozambique Floods, 2000" (2013). Available at http://www.recoveryplatform.org/countries_and_disasters/disaster/29/mozambique_floods_2000, accessed 1 March 2015.
[55] Alik Ismail-Zadeh et al. *Extreme Natural Hazards, Disaster Risk and Societal Implications* (Cambridge, 2014) at 170.
[56] UNICEF, "Mozambique: Donor Update" (2007). Available at http://www.unicef.org/videoaudio/PDFs/Mozambique_Donor_Update_-_23feb07.pdf, accessed 1 March 2015.
[57] ReliefWeb, "Madagascar: Cyclone Ivan - Feb 2008" (2008). Available at http://reliefweb.int/disaster/tc-2008-000023-mdg, accessed 1 March 2015.
[58] Government of the Republic of Namibia, "Post-Disaster Needs Assessment: Floods 2009" (2010) at 2. Available at http://www.gfdrr.org/sites/gfdrr/files/documents/Namibia_PDNA_2009.pdf, accessed 1 March 2015.
[59] UN OCHA, "Tanzania: Floods and Landslides - Dec 2011" (2011). Available at http://reliefweb.int/disaster/fl-2011-000183-tza, accessed 1 March 2015.
[60] IFRC, "Emergency Appeal: Mozambique Storm and Cyclone" (2012). Available at http://www.ifrc.org/docs/Appeals/12/MDRMZ009EA.pdf, accessed 1 March 2015; Mail and Guardian, 'Cyclone Funso causes floods in Malawi, 5 000 displaced' (2012). Available at http://mg.co.za/article/2012-01-25-cyclone-funso-causes-floods-in-malawi-5-000-displaced, accessed 1 March 2015.
[61] EU Delegation at the UN, "Madagascar: EU Commission launches €1 million emergency funding cyclone Giovanna and Irina victim"' (2012). Available at http://eu-un.europa.eu/articles/en/article_11966_en.htm, accessed 1 March 2015.
[62] UN OCHA, "Mozambique: Floods - Jan 2013" (2013). Available at http://reliefweb.int/disaster/fl-2013-000008-moz, accessed 1 March 2015.
[63] UN OCHA,"Tanzania: Floods - Apr 2014" (2014). Available at http://reliefweb.int/disaster/fl-2014-000053-tza, accessed 1 March 2015.

The term "migration" commonly refers to a broad category of population movements.[64] The term "mixed migration" has been defined as "complex population migratory movements that include refugees, asylum seekers, economic migrants and other migrants, as opposed to migratory population movements that consist entirely of one category of migrants."[65] Thus, mixed migration encompasses regular and irregular movements, and also denotes the diverse and overlapping motives that influence an individual's decision to move, which can change over time. Likewise, the International Organization for Migration's (IOM) working definition of an "environmental migrant" includes various groups of individuals moving within different contexts: voluntarily or involuntarily, temporarily or permanently, within their own country or abroad.[66]

Because the Nansen Initiative specifically focuses on the distinct protection needs of people displaced across international borders in the context of disasters, "migration" in this paper is used to refer to human movements that are *preponderantly* voluntary; for example, to work abroad in order to support families at home with remittances, or in order to avoid a situation where moving to another country at a later stage becomes unavoidable. In the context of slow-onset environmental degradation, "migration as adaptation" refers to the primarily voluntary decision to "avoid or adjust to"[67] deteriorating environmental changes that may result in a humanitarian crisis and displacement in the future.

For the Nansen Initiative, understanding the dynamics of migration flows, including the associated motives, also provides insight into the overall conditions within which displaced people move in a region. Pre-existing migration patterns frequently indicate the paths that displaced people will follow, and may illustrate some of the risks and challenges of moving in the region.[68] Migration management tools and mechanisms are also useful examples of existing practice that could potentially be adapted to differentiate disaster displaced persons from other migrants which, in turn, could facilitate the development of policy responses to adequately meet the specific protection needs of different groups of people.

2.4.1 Examples from Southern Africa

[64] IOM defines migration as, "The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification." International Organisation for Migration, *Glossary on Migration* (IOM, Geneva, 2011) available at http://publications.iom.int/bookstore/free/IML_1_EN.pdf.
[65] Ibid.
[66] IOM's working definition states: "Environmental migrants are persons or groups of persons who, for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to have to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their territory or abroad." International Organization for Migration, 'Discussion Note: Migration and the Environment MC/INF/288-1' (2007) available at http://migrationeducation.de/56.1.html?&rid=208&cHash=6cf222c08c5309a7e2288d393f5ba88d.
[67] Jon Barnett and Michael Webber, "Migration as adaptation: Opportunities and limits," in Jane McAdam (ed.) *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart, Oxford, Portland, 2012).
[68] Nicholas van Hear, Oliver Bakewell and Katy Long, "Drivers of Migration" (2012) *1 Migrating out of Poverty Research Programme Consortium Working Paper. Falmer, University of Sussex.*

Migration within Southern Africa "has increased dramatically over the past two decades," building on a long history of regional migration for labour and other purposes.[69] In particular, vast inequality in wealth between States in the region has resulted in a considerable influx of migrants from poorer countries in the region like Lesotho, Mozambique and Malawi to richer countries including Botswana, Namibia and South Africa.[70] While ascertaining migrant statistics is difficult, the number of documented migrants in South Africa – the primary destination for both intra-SADC and global migration in the region – rose from one million in 1990 to 7.4 million in 1998.[71] The number of undocumented migrants is thought to be considerable as well, with a conservative estimate of 1.5-2 million Zimbabwean undocumented migrants alone residing in South Africa.[72]

The majority of migration in Southern Africa is circular, and tends to follows kinship and other community ties.[73] The reasons for cross-border migration vary across the region. The results of a SADC study suggest that in Mozambique 67 per cent of documented international migrants arrive in search of work, while tourism accounts for 58 per cent of migrants to Swaziland and Namibia, but only 16 per cent in Zimbabwe.[74] Although most migrants come from within the region, a large number of migrants – both documented and otherwise – come to South Africa from other parts of Africa, and in particular Ethiopia, Nigeria and Somalia,[75] as well as outside the continent, such as China, India, Pakistan and the United Kingdom.[76]

Over the past 200 years, labour migration for the purposes of resource exploitation has been the primary driver of human mobility in Southern Africa.[77] Today, a large number of migrants from across Southern Africa work in the mines of Angola, DRC, South Africa and Zambia. However, international migrant workers in general face a number of challenges, particularly in light of recent reports of negative sentiments toward foreign nationals across the region.

Concrete data on migration out of the region is limited, despite increasing attention to the possibility of a region-wide "brain drain."[78] Anecdotal evidence suggests that a limited number of people, including some who are already migrants in Southern Africa, do move to areas where they have diaspora ties, including the United Kingdom, France, Portugal, the United States, Canada and Australia.[79] Considering the difference in real income between most SADC countries and the industrialised North, the numbers of SADC emigrants remains small. This is likely because the poorest

[69] Belinda Dodson & Jonathan Crush, "Migration Governance and Migrant Rights in the Southern African Development Community (SADC): Attempts at Harmonization in a Disharmonious Region" (UNRISD, 2013) at 2.
[70] Ibid.
[71] Ibid.
[72] See further, Tara Polzer, "Regularizing Zimbabwe migration to South Africa," *Migration policy brief, Consortium for Refugees and Migrants and University of Witwatersrand Forced Migration Programme* (2009); CDE, "Migration from Zimbabwe: Numbers, Needs and Policy Responses" (2008).
[73] Jonathan Crush & Others, "Migration in Southern Africa" (GCIM, 2005).
[74] Ibid.
[75] Christopher Horwood, "In Pursuit of the Southern Dream: Victims of Necessity: Assessment of the Irregular Movement of Men from East Africa and the Horn to South Africa" (International Organization for Migration, 2009).
[76] StatsSA, "Documented Migrants in South Africa" (2013). Available at http://www.statssa.gov.za/publications/p03514/p035142012.pdf, accessed 24 February 2015.
[77] Francis Wilson, "Minerals and Migrants: How the Mining Industry Has Shaped South Africa" *Daedalus*, Vol. 130:1 (2001).
[78] Alejandro Portes, "Modernization for Emigration: Determinants & Consequences of the Brain Drain" *Daedalus* Vol. 142: 3 (2013).
[79] Ibid.

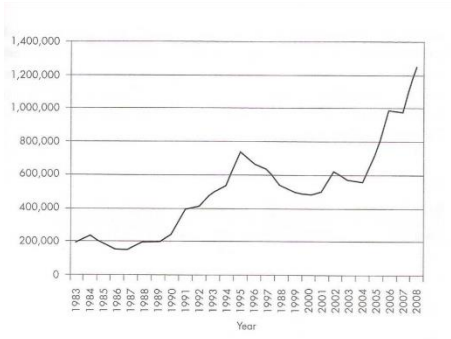
people "have to overcome considerable obstacles to their potential migration," and are often "trapped" within vulnerable situations.[80]

At the same time, the rapid urbanisation that has accompanied independence from colonial powers has also resulted in a significant increase in internal migration in most SADC countries. Many of those moving to urban centres continue to maintain property or other ties to their rural homelands, while many people who remain behind have become dependent on remittances from migrant workers on mines and oil fields.[81]

2.4.2 Natural Hazards, Environmental Degradation and Migration in Southern Africa

Natural hazards and environmental degradation have been identified a driver, combined with other factors, of migration in Southern Africa.[82] For example, the movement of Zimbabweans to neighbouring countries including Botswana, Mozambique and South Africa has been shown to be driven by a combination of the effects of political persecution, economic pressure and severe drought.[83]

The extent and form of human mobility varies. For example, the 1992 Southern African drought "was the region's worst drought in living memory."[84] It affected an estimated 86 million people across ten countries, of which 20 million were considered to be at "serious risk."[85] The drought resulted in the death of in excess of a million head of cattle (1.3 million in Zimbabwe alone), with a 62 per cent drop in cereal production across the region.[86] However, with the exception of some displacement across the border from Mozambique – where there was an on-going civil war – and the southern districts of Zimbabwe into South Africa, both internal and cross-border displacement was minimal (or went undocumented) across the region.[87]



Migration of economically active persons 1990–2002 – statistics from CSO, Zimbabwe (Source: Foresight Report 2011)

[80] Pieter Kok, "Introduction," *Migration in South and Southern Africa: Dynamics and Determinants* (2006) at 3.

[81] As the response of affected people to drought has shown, it is a lack of buying power associated with access to cash from remittances and other local sources, rather than the failure of crops, which stokes disasters in Southern Africa. See further, Christopher Eldridge, "Why was there no famine following the 1992 Southern African drought? The contributions and consequences of household responses" *IDS Bulletin* Vol. 33:4 (2002); JoAnn McGregor, Luca Marazzi & Busani Mpofu, "Migration and Global Environmental Change – Conflict, Migration and the Environment: the case of Zimbabwe" (Foresight Report, 2011).

[82] Roger Zetter, "Protecting Environmentally Displaced People: Developing the capacity of legal and normative frameworks" (UNHCR, 2011); Foresight Report, *Migration and Global Environmental Change* (UK Office for Science, 2011).

[83] JoAnn McGregor, Luca Marazzi & Busani Mpofu, "Conflict, Migration and the Environment: the case of Zimbabwe," Foresight, ibid.

[84] Eldridge, *supra* note 82 at 79.

[85] SADC, "Assessment of the Responses to the 1991/92 Drought in the SADC Region" (1993).

[86] Eldridge, *supra* note 82 at 79.

[87] Marie Wentzel and Kholadi Tlabela, "Historical Background to South African Migration" Kok (ed.) *Migration in South and Southern Africa: Dynamics and Determinants* (2006) at 81. Multiple explanations for the success in mitigating death and displacement following the outbreak of the drought have been mooted. See further, Laurie DeRose, Ellen Messer and Sara Millman, *Who's hungry? And how do we know? Food Shortage, Poverty, and Deprivation* (UNU, 1998); Ailsa Holloway, "Drought Emergency, Yes…Drought Disaster, No: Southern Africa 1991-93" *Cambridge Review of International Affairs* Vol. 14:1 (2000).

This forms a sharp contrast to the relatively moderate drought of 2001-2002, during which Zimbabwe experienced a comparatively moderate rainfall deficit of 28 per cent.[88] Despite this, during the height of the drought, and political and economic insecurity, a conservative estimate of between 1.5 and 2 million Zimbabweans left the country to South Africa, Botswana, other SADC countries, and further abroad to the United Kingdom, Australia and the United States. While the political instability that characterised this period is likely the central driver of the cross-border movement, a number of studies have suggested that the drought contributed to the migration.[89] For example, during the same period, an unknown number of Malawians also moved across the border into Zambia as a result of drought and food insecurity.[90]

Finally, sea level rise recorded over the past 20 years in Mauritius will likely increase coastal erosion, which combined with overfishing and warmer seas, may also affect fishing grounds.[91] Already increases in temporary adaptive migration between Rodrigues Island, an autonomous outer island of Mauritius, and Mauritius proper have been reported as a response to poverty when fish stocks dwindle each season.[92]

2.5 Planned relocation

According to the *IASC Operational Guidelines on the Protection of Persons in the Context of Natural Disasters*, permanent relocation is defined as, "The act of moving people to another location in the country and settling them there when they no longer can return to their homes or place of habitual residence."[93] Planned relocation may be relevant in the context of natural hazards and effects of climate change in three scenarios:

1) as a preventative measure within the country of origin to reduce the risk of displacement in the future by moving people out of areas particularly at risk of sudden-onset disasters (such as flooding or land-slides) or becoming inhabitable in the face of environmental degradation;
2) as a durable solution within the country of origin to allow for the return of people displaced internally or across international borders whose homes may need to be moved in the event that a disaster rendered their place of origin as no longer fit for habitation;
3) as a durable solution in a receiving country in the extreme event that natural hazards or environmental degradation render large parts of or an entire country unfit for habitation (e.g., low-lying island states).

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[88] Compared to a 58 per cent deficit in 1992. See further, JoAnn McGregor, Luca Marazzi & Busani Mpofu, 'Migration and Global Environmental Change – Conflict, Migration and the Environment: the case of Zimbabwe' (Foresight Report, 2011) at 14.

[89] See further, Craig Richardson, "How much did drought matter? Linking rainfall and GDP growth in Zimbabwe" *African Affairs* Vol. 106 (2007); Carolina Dube *The Impact of Zimbabwe's Drought Policy on Sontala Rural Community in Matabeleland South Province* MSc thesis, Stellenbosch University (2008); Sithabiso Gandure *Coping with and Adapting to Drought in Zimbabwe* PhD dissertation, University of Witwatersand (2005).

[90] Ben Lilliston & Andrew Ranallo, "Grain Reserves and the Food Price Crisis: Selected Writings from 2008–2012" (2012).

[91] IOM, "The Other Migrants Preparing for Change: Environmental Changes and Migration in the Republic of Mauritius" (2011).

[92] Mathew Bunce & Others, "Collapse and recovery in a remote small island—A tale of adaptive cycles or downward spirals?" *Global Environmental Change* Vol. 19:2 (2009); IPCC, 'WGII AR5 – Small Islands' (2014). Available at http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap29_FGDall.pdf, accessed 17 February 2015.

[93] IASC, *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters* (2011) The Brookings-Bern Project on Internal Displacement available at http://www.ohchr.org/Documents/Issues/IDPersons/OperationalGuidelines.pdf.

It is important to note that relocation, even when taken for the best of reasons, can also be displacement when people are forced to move, such as when government authorities have determined that an area is no longer safe for habitation due to the likely risk of future natural hazards. At the same time, proactive, pre-disaster relocation may be useful in helping to prevent cross-border displacement or dangerous, undocumented migration that could arise in the context of hardship associated with the disaster.

There is a significant body of literature on relocation (both forced and voluntary) in different contexts that are relevant to displacement in disaster contexts.[94] In general, because of the many potential negative effects associated with the process, research strongly suggests that relocation in the context of natural hazards and environmental degradation only take place as a last resort after all other options have failed and community resilience has significantly eroded.[95]

2.5.1 Examples from Southern Africa

To date, most planned relocation processes in Southern Africa have taken place in the context of development projects, particularly mining and dam construction.[96] Nevertheless, there are a few examples of relocation in the context of disaster risk reduction and climate change adaptation efforts. Flood-related inter-island relocations have occurred within all three small island states in Southern Africa.[97] For example, the villages of Tranquebar and Cite Lumiere in Mauritius were relocated to nearby towns after mudslides and flooding continually destroyed the villagers' houses.

However, the history of planned relocation schemes in Southern Africa (and Africa as a whole) has been generally viewed as unsuccessful.[98] As in other parts of the world, such processes have been criticized for being involuntary, poorly organized, lacking community consultation, and causing social and cultural fragmentation of the relocated community.[99] An Oxfam study about relocation projects in Mozambique following floods and cyclones, for example, highlighted that a lack of sufficient livelihood opportunities, health and education services, agricultural land, and community services (such as access to water and electricity water) in relocated communities were the major challenges

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[94] See for example, Graeme Hugo. "Lessons from Past Forced Resettlement for Climate Change Migration," *Revised Draft Chapter 9*, Etienne Piguet, Antoine Pecoud and Pal de Guchteneire (eds.), *Migration and Environment and Climate Change* (UNESCO, May 2010); Anthony Oliver-Smith and Alex de Sherbinin, "Something old and something new: Resettlement in the twenty first century" (2013) *Institute for the Study of International Migration, Georgetown University, Washington*; Elizabeth Ferris, "Protection and Planned Relocation in the Context of Climate Change" (July 2012) *UNHCR Legal and Protection Policy Research Series. Geneva*.

[95] Graeme Hugo, "Climate change-induced mobility and the existing migration regime in Asia and the Pacific" in Jane McAdam (ed.) *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing, Oxford, 2012) 10.

[96] For example the displacement and resettlement of 700 families after the development of Vale's Moatize coal mine in Mozambique and the resettlement by Anglo Platinum of almost 10,000 people from Ga-Pila and Mothotlo near the Mogalakwena mine in South Africa. See Bogumil Terminiski, '"Mining-induced displacement and resettlement: Social problem and human rights issue" (2012) *SSOAR Research Report* p.21 at http://www.ssoar.info/ssoar/bitstream/handle/document/32777/ssoar-2012-terminski-Mining-induced_displacement_and_resettlement_social.pdf?sequence=1

[97] IOM (2011) *supra* note 92; UNICEF, "UNICEF Responds to Flood Emergency: Comoros" (2012); Govt. of Seychelles, "Damage, Loss and Needs Assessment – 2013 Floods" (2013).

[98] See, for example, the Human Rights Watch report on Zimbabwe's relocation program after the flooding of the Tokwe-Mukorsi dam basin in February 2014. HRW, "Zimbabwe: Coerced into precarious resettlement" at http://www.hrw.org/news/2015/02/03/zimbabwe-coerced-precarious-resettlement

[99] For example the relocation of Tranquebar and Cite Lumiere in Mauritius was criticized by the local population for lacking sufficient community consultation and involvement. See IOM (2011), *supra* note 92 at 35

inhibiting successful relocation.[100] Consequently, many of the people moved back to their prior homes in the floodplains, despite future risks.[101]

Notwithstanding such challenges, planned relocation is included within the Governments of Malawi[102] and Mozambique[103] NAPAs as potential policy options. Although not specifically in response to a natural hazard, a relocation process in Mauritius of Mare Chicose village to the nearby town of Rose Belle was largely viewed as a positive response to an open air landfill site that was polluting the nearby river and causing health concerns among the community. In particular, the Mare Chicose relocation was characterized by community involvement and consultation, agreed compensation between the government and community, and support by the community for the choice of the relocation site.[104]

2.6 Displacement in the Context of Conflict and Violence

The Southern African region is also a frequent destination for displaced persons from across the rest of Africa, including in the context of disasters linked to natural hazards.[105] Southern Africa is currently host to some 250,000 refugees, and 280,000 asylum seekers, the majority hosted in DRC and South Africa.[106] While most refugees and asylum seekers are from within the region (e.g., DRC, Zimbabwe) or from neighbouring countries, in recent years, tens of thousands of people from the Horn of Africa have travelled south in search of asylum.[107] A significant number of asylum seekers have also arrived from South Asia.[108] IDMC estimates that over 2.1 million people were newly internally displaced in Southern Africa between 2008 and 2013[109] for reasons related to inter-State violence, localised political upheaval, violation of human rights, development projects, and the effects of disasters. The largest number of IDPs were in the DRC, Angola and Zambia.

III. Towards a Protection Agenda: Thematic Issues in Southern Africa

Recognizing the multiple and overlapping factors impacting displacement and migration in Southern Africa, actors at the local, national, regional and international levels have undertaken significant efforts to support vulnerable people, build resilience and prevent displacement, including through disaster risk management, development, climate change adaptation and humanitarian assistance plans and programmes. However, although these measures address some of the protection needs of

[100] Cited in Stockholm Environmental Institute, "Climate adaptation in Southern Africa: Addressing the needs of vulnerable communities" (15 July 2008) at 22. https://static.weadapt.org/placemarks/files/1102/533c344fbe258sei-oxfam-climate-adaptation-report-15july.pdf.

[101] Geraldine Zambrana, "Mozambican floods and resettlement processes," *The State of Environmental Migration 2013,* Francois Gemenne, Pauline Brucker and Dina Ionesco, Eds., IDDRI, Sciences Po, 2013 at 75.

[102] Resettlement is listed in Annex 1 evaluating the criteria for adaption options, although resettlement scores low against other options. See Mauritius NAPA.

[103] Strategies include "resettlement of people in areas not prone to floods" see Mozambique NAPA at 13

[104] IFC, "Handbook for Preparing a Resettlement Action Plan" at https://commdev.org/userfiles/ResettlementHandbook.pdf

[105] Horwood, *supra* note 75.

[106] UNHCR, "Global Appeal 2015: Southern Africa" (2015). Available at http://www.unhcr.org/5461e6040.html, accessed 25 February 2015; UNHCR 'Democratic Republic of the Congo' (2015). Available at http://www.unhcr.org/pages/49e45c366.html, accessed 25 February 2015.

[107] IOM, "Southern Africa" (2010). Available at http://iom.int/cms/en/sites/iom/home/where-we-work/africa-and-the-middle-east/southern-africa.html, accesed 25 February 2015.

[108] UNHCR, *supra* note 107.

[109] IDMC, "Global Figures 2013" (2014). Available at http://www.internal-displacement.org/global-figures, accessed 24 February 2015.

people displaced across international borders in the context of disasters, other protection and assistance gaps remain. For example, issues related to admitting displaced persons into a foreign country in disaster contexts, the conditions under which they would be permitted to stay, and the conditions and modalities of return have not been fully addressed in existing international or regional laws, policies or administrative procedures.

Building upon this background and Southern Africa's past experience of disasters and human mobility, this section explores two specific thematic issues. The first section, Protecting People to Avoid Displacement in the Context of Disasters, discusses how disaster risk reduction, climate change adaptation, development activities, migration as adaptation, and planned relocation can all contribute to preparedness to prevent or mitigate the negative effects of disaster displacement in Southern Africa. The second section, Protecting Displaced Persons in the Context of Disasters and the Effects of Climate Change, addresses the potential protection challenges of internally displaced persons and people displaced across international borders in disaster contexts.

3.1. Protecting People to Avoid Displacement in the Context of Disasters

State responsibility for its citizens includes the obligation to prepare for, mitigate, and, when possible, prevent displacement.[110] This responsibility is recognized in international human rights law, as well as in the Kampala Convention and the Great Lakes Protocol that address the protection and assistance need of internally displaced persons. For example, the Kampala Convention "provides for the establishment of national and regional mechanisms for early warning, disaster risk reduction and for coordination of humanitarian assistance."[111]

In the context of natural hazards, this duty requires States to prepare for foreseeable disasters and to do what is possible to prevent threats to the lives and property of their people, including preventing displacement.[112] Disaster risk reduction activities, contingency planning exercises, infrastructure improvements, relocating people at risk of displacement to safer areas, land reform and other measures to improve resilience are all potential actions to prevent displacement or reduce the impact of displacement when it cannot be avoided. State responsibility may also require the government to mobilize relevant regional and international organizations, arrangements and resources.[113]

[110] Walter Kälin and Nina Schrepfer, "Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches," UNHCR Legal and Protection Policy Research Series (2012). See also the Nansen Conference Principle II: "States have a primary duty to protect their populations and give particular attention to the special needs of the people most vulnerable to and most affected by climate change and other environmental hazards, including the displaced, hosting communities and those at risk of displacement." UNHCR, "Summary of Deliberations on Climate Change and Displacement" (2011).

[111] For further discussion see, Allehone Mulugeta Abebe, "The Kampala Convention and environmentally induced displacement in Africa," IOM Intercessional Workshop on Climate Change, Environmental Degradation and Migration 29-30 March 2011, Geneva, Switzerland, at 1.

[112] Kälin and Schrepfer, *supra* note 111. See also Nansen Principle II, which confirms that, "States have a primary duty to protect their populations and give particular attention to the special needs of the people most vulnerable to and most affected by climate change and other environmental hazards, including the displaced, hosting communities and those at risk of displacement" and UNHCR, "Summary of Deliberations on Climate Change and Displacement" (2011) 23 *International Journal of Refugee Law* 561.

[113] Kälin and Schrepfer, ibid.

3.1.1 Disaster Risk Reduction, Climate Change Adaptation, and Development Planning

Both the United Nations Human Rights Committee and the African Commission on Human Rights have specified that governments may be accountable if they "fail to act according to their human rights obligations in preventing disasters or impacts where such harm is foreseeable."[114] A State's positive obligation to prevent foreseeable harm may also include providing support to those obliged to move from high risk areas.[115] Disaster risk reduction activities can play a particularly important role in building the resilience of disaster-affected communities to prevent displacement, strengthening host communities' capacity to receive displaced persons, and finding durable solutions to end displacement.

At the 5th African Regional Platform on Disaster Risk Reduction held in May 2014, delegates from across Africa including Southern Africa agreed that, "Disasters are not constrained by administrative boundaries and require trans-boundary policies and programmes. Population movements induced by disasters (fast- and slow-onset) and long-term violent conflicts call for cross-border cooperation."[116] Delegates agreed to work on adopting this policy within their own countries, as well as taking the recommendation to the March 2015 World Conference on Disaster Risk Reduction in Japan, which ultimately adopted the Sendai Framework for Disaster Risk Reduction 2015-2030 that includes references to both internal and cross-border displacement.

In 2011, SADC launched a Regional Platform for Disaster Risk Reduction, intended to support States in coordinating preparation for future disasters.[117] This builds on the SADC Programme for Action on Disaster Risk Reduction, and the commitment to reducing disaster risk in the Regional Indicative Strategic Development Plan (RISDP).[118] The recently launched Disaster Risk Reduction and Climate Change Adaptation Technical Centre for Southern Africa Technical Centre (DIMSUR) hosted in Maputo, Mozambique and supported by UNISDR and UN-HABITAT will provide technical support for future disaster preparedness schemes, including in the area of disaster-related displacement.[119]

The SADC Climate Change Policy Paper, which contributes to the Programme on Climate Change Adaptation and Mitigation in the Eastern and Southern Africa Region,[120] is one of very few policy documents at the national or regional level in Southern Africa that expressly mentions the effect of climate change and other disasters on migration and displacement, both internally and across international borders. On a national level, most Southern African countries have developed national adaptation plans, including some National Adaptation Programmes of Action (NAPA) within the

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[114] Michelle Leighton, "Key Issues for the Legal Protection of Migrants and Displaced Persons" (2010) *Climate Change and Migration, German Marshall Fund of the United States* 7 available at http://www.ehs.unu.edu/file/get/7102.
[115] Ibid.7.
[116] AUC, "Summary Statement: Africa's Contribution to the Post-2015 Framework for Disaster Risk Reduction" (2014) at 3. Available at http://www.preventionweb.net/files/37530_5afrpsummarystatementen16mayfinal.pdf, accessed 13 February 2015.
[117] UNISDR, "Southern Africa launches Disaster Risk Reduction Platform" (2011). Available at http://www.unisdr.org/archive/23244, accessed 15 February 2015.
[118] SADC, "Regional Indicative Strategic Development Plan" (2001).
[119] UN HSP, "Southern Africa Disaster Risk Reduction and Climate Change Adaptation Technical Centre is launched" (2013). Available at http://reliefweb.int/report/mozambique/southern-africa-disaster-risk-reduction-and-climate-change-adaptation-technical, accessed 15 February 2015.
[120] COMESA, EAC & SADC, "Programme on Climate Change Adaptation and Mitigation in the Eastern and Southern Africa (COMESA-EAC-SADC) Region" (2011).

UNFCCC Cancun Adaptation Framework.[121] Of these, a few national policies recognize human mobility within their climate change adaptation planning. For example, Malawi's NAPA observes, **"**Floods and other natural disasters have led to the displacement of people, a situation that is compounded by extreme poverty in rural areas that is making it difficult for rural family households to purchase food and farm inputs to enhance crop production."[122] The Government of Mozambique's NAPA identifies the impacts of flooding, cyclones and drought on human mobility, noting the negative impacts of displacement and the planned relocation as a potential response for those living in flood prone areas.[123] Tanzania also acknowledges that salt water inundation in coastal areas may lead to "forced" migration if not adequately addressed, noting that such migration could lead to "social conflicts and other environmental degradation due to overpopulation and utilization of resources."[124]

Participants could discuss how disaster risk reduction, food security, and development strategies in the region could better address the concerns of people displaced across international borders in disaster contexts, identifying examples of good practices and lessons learned from past experience.

3.1.3 Migration as Adaptation

In the context of slow-onset natural hazards and environmental degradation, research indicates that people tend to increasingly migrate from affected areas over time, as opposed to waiting until a crisis point arrives.[125] In such situations, the responsibility to prevent displacement could also mean that States have a duty to try to secure legal, voluntary means for their citizens to move to another part of the country, or in exceptional cases, to migrate abroad. It is for this reason that the 2011 Nansen Conference, which was hosted by the Government of Norway to discuss the nexus between climate change and displacement, urged national governments to "proactively anticipate and plan for migration as part of their adaptation strategies and development plans..."[126]

Within the African Union, regional integration remains a key priority for its New Partnership for African Development (NEPAD).[127] In order to facilitate the implementation of the 1991 Abuja Treaty that creates an integrated African Economic Community, African Ministers in charge of integration formulated the Minimum Integration Programme (MIP) "as a dynamic strategic framework for the continental integration process."[128] One of the key pillars of the MIP is free movement across Africa.[129]

Similarly, the 2006 AU Migration Policy Framework for Africa "serves to provide guidelines and principles to assist governments and Regional Economic Communities… in the formulation and

[121] Jane McAdam, *Climate Change, Forced Migration and International Law* (Oxford University Press, Oxford, New York, 2012).
[122] Malawi NAPA, at 6 cited in McAdam, *Ibid* at 275.
[123] Cited in McAdam, ibid at 275.
[124] Cited in McAdam, ibid at 278.
[125] Kälin and Schrepfer, *supra* note 111 at 41.
[126] Ibid. at 61.
[127] NEPAD, "Regional Integration and Infrastructure" (2013). Available at http://www.nepad.org/regionalintegrationandinfrastructure, accessed 27 November 2013.
[128] African Union, "Minimum Integration Plan" (2010).
[129] Ibid.

implementation of national and regional migration policies."[130] The Framework does not specifically address issues related to cross-border displacement and the full spectrum of corresponding protection risks. However, the Framework, as well as the African Common Position on Migration and Development, makes it clear that "[e]nvironmental factors play a role in causing population movements," and consequently recommends that States and Regional Economic Communities (including SADC and COMESA) "[i]ncorporate environmental considerations in the formulation of national and regional migration management policies to better address environment related causes of migratory movements."[131] Likewise, the joint AU-EU Tripoli Declaration on Migration and Development and the Africa-European Union Partnership on Migration, Mobility and Employment recognises "environmental factors" as a "fundamental cause" of migration, including across borders, in Africa.[132]

At the sub-regional level, the Common Market for Eastern and Southern Africa (COMESA) is in the process of developing a programme for the implementation of regional frameworks on migration, including the COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visa restrictions.[133] In September 2013, the first COMESA Regional Consultative Process (COMESA-RCP) on migration was held, with the intention of facilitating discussion on migration in the region.[134] Some COMESA countries have already relaxed visa restrictions for those travelling from other COMESA States.[135]

Similarly, in the 1992 SADC Treaty – SADC's founding document – Article 5(2)(d) states that SADC shall "develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States," within a framework of "human rights, democracy and the rule of law."[136] A SADC meeting on the free movement of persons was held in Harare in 1993, and a Draft Protocol on the Free Movement of Persons in the Southern African Development Community was published in 1995. The Protocol was officially released in August 2005 as the SADC Protocol on the Facilitation of Movement of Persons. Notably, the final protocol lacks all reference to free movement, preferring instead the promotion of 90 day visa-free travel throughout the region.[137] In any event, the Protocol has not reached ratification by two-thirds of SADC Member States necessary to come into effect.

Participants in the Consultation will be invited to discuss in what contexts migration could be viewed as positive way to adapt to environmental degradation and climate change. Participants could also discuss what role governments could play in promoting migration as an adaptation measure, and

[130] RMMS, "Responses to Mixed Migration in the Horn of Africa and Yemen: policies and assistance responses in a fast-changing context" (2013).
[131] African Union, "The Migration Policy Framework for Africa" (2006); African Union, "African Common Position on Migration and Development" (2006).
[132] African Union and European Union, "Joint Africa-EU Declaration on Migration and Development" (2006).
[133] RMMS, *supra* note 131.
[134] COMESA, "Regional Dialogue on Migration is Launched" (2013). Available at http://www.comesa.int/index.php?option=com_content&view=article&id=913:regional-dialogue-on-migration-is-launched&catid=5:latest-news&Itemid=41, accessed 27 November 2013.
[135] TMSA, "COMESA: IC calls for implementation of protocols on visas and free movement of persons" (2014). Available at, http://www.trademarksa.org/news/comesa-ic-calls-implementation-protocols-visas-and-free-movement-persons, accessed 15 February 2015.
[136] SADC "Treaty of the Southern African Development Community" (1993).
[137] Dodson and Crush, *supra* note 69 at 6.

explore how existing agreements could facilitate migration as a positive form of adaptation in times of environmental stress, addressing in particular the severe protection challenges facing migrants.

3.2 Protecting Displaced Persons in the Context of Disasters and the Effects of Climate Change

3.2.1 Protection for Internally Displaced Persons (IDPs)

The African Union's 2009 Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) explicitly recognizes the protection and assistance needs of internally displaced persons in disaster contexts.[138] Such needs are linked to the type of natural hazard and the involuntary nature of their movement. In the case of displacement following a sudden-onset disaster, people may flee without essential legal documents such as identity cards and marriage certificates, or documents may be destroyed.

During flight, family members may become separated, or face sexual and gender based violence. Displaced women and children may be trafficked. Displaced people may also need emergency shelter, and access to health services, education, livelihood support, and psycho-social counselling. For example, following the 2013 flooding in Mozambique, displaced persons located in a temporary settlement site lacked access to farming areas, prompting many to regularly travel 20km to their place of origin until return was possible.[139] Sometimes the need for ongoing humanitarian assistance is underestimated, with assistance needed months or even years after the disaster. For example, in Malawi, flooding in January 2015 displaced some 230,000 people, with some 162,000 people in temporary camps over three months later.[140] The Camp Coordination and Camp Management Cluster consequently worked with the Government of Malawi to develop a Framework for Durable Solutions. Upon return, displaced individuals or communities may find that their right to enjoy their land and property rights has been affected in their absence. Displacement may also result in discrimination and limited access to participation and consultation in planning processes for disaster relief and recovery. Finally, the poor are often the most likely to be displaced.

Where present, National Disaster Management Offices generally coordinate a national response to a disaster, often supported by a national society of the International Federation of the Red Cross and Red Crescent. If a disaster overwhelms national capacity, government authorities may request international humanitarian and development assistance. The international humanitarian response is coordinated in collaboration with national efforts under the leadership of a UN designated Humanitarian Coordinator using the cluster system.[141] A regional response to disasters in Southern Africa is supported by the Johannesburg-based UN OCHA Regional Office for Southern Africa.[142]

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[138] As of 3 December 2014, Angola, Lesotho, Malawi, Swaziland, Zambia, and Zimbabwe had ratified the Kampala Convention, with DRC, Madagascar and Namibia as unratified signatories. Botswana, Mauritius, the Seychelles and South Africa had neither signed nor ratified the Convention.

[139] Geraldine Zambrana, "Mozambican floods and resettlement processes," *The State of Environmental Migration 2013,* Francois Gemenne, Pauline Brucker and Dina Ionesco, Eds., IDDRI, Sciences Po, 2013.

[140] CCCM Cluster, "CCCM Cluster responds to Malawi floods," 10 April 2015. http://reliefweb.int/report/malawi/cccm-cluster-responds-malawi-floods (Last accessed: 8 May 2015)

[141] For a detailed explanation of the Cluster Approach see HR.INFO available at https://www.humanitarianresponse.info/clusters/space/page/what-cluster-approach.

[142] The Office provides support for the following countries: Angola, Botswana, Comoros, Lesotho, Madagascar, Malawi, Mauritius, Reunion, Mozambique, Namibia, South Africa, Seychelles, Swaziland, Zambia and Zimbabwe.

Notably, Angola has national policies that specifically address IDPs, using the definition of Guiding Principles on Internal Displacement, which includes disasters as a cause of displacement; however such policies were drafted to address conflict-related displacement.[143]

Participants to the Regional Consultation could discuss the link between internal displacement and cross-border displacement, and the extent to which the provision of protection and assistance in the event of internal displacement in disaster contexts reduces the need to seek assistance outside of one's own country. Participants could also discuss the potential role of regional disaster risk management mechanisms, such as the SADC Disaster Risk Reduction Strategic Platform, to support national response efforts. Participants will also be invited to share experiences of other protection and operational challenges during displacement, and provide examples of good practices about how to respond to these gaps.

3.2.2 Preparing for Cross-Border Movements in the Context of Disasters and Natural Hazards

Displacement across international borders poses an additional, distinct set of protection needs and challenges. There is no international legal assurance that in the event of a sudden-onset disaster, or when a slow-onset disaster has forced people to move, a person will be able to seek international protection in another country.[144] Although human rights law provides "an indirect right to be admitted and to stay where the removal of a person back to the country of origin would amount to inhumane treatment,"[145] this does not address all displacement situations.[146]

Furthermore, while both the International Convention on Protection of the Rights of All Migrant Workers and Members of their Families (1990) and the ILO Convention on Domestic Workers (2011) provide some protection for migrant labourers, they do not grant them a right to admission or continual stay in the country. Moreover, few SADC States have ratified either convention.[147]

Ensuring that displaced people can access protection in another country demands international collaboration and cooperation. National authorities cannot always find solutions on their own. For example, Kälin and Schrepfer have argued that, "in the absence of an ability to assist and protect them, [the state of origin] should advocate for and safeguard their interests in the state in which they have found refuge, for example by activating a temporary protection scheme where possible or even necessary."[148]

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[143] For more detail, see the Brookings Institution, "IDP Laws and Policies: Angola," (Last accessed: 6 May 2015) http://www.brookings.edu/about/projects/idp/laws-and-policies/angola

[144] Kälin and Schrepfer have proposed the following as necessarily elements to be addressed: "Movement-related rights: Beneficiaries should be entitled (i) to enter countries of refuge, (ii) to stay there temporarily, i.e. as long as the obstacles to their return exist; (iii) to protection against *refoulment* as well as expulsion to other countries; and (iv) to permanent admission if after a prolonged period of time (some years) it becomes clear that return is unlikely to become an option again." Kälin and Schrepfer, *supra* note 111 at 61.

[145] Ibid at 35.

[146] For further discussion, see Nansen Initiative, "Nansen Initiative Horn of Africa Desk Review (Draft)" (2014).

[147] Lesotho, Mozambique and the Seychelles in the case of the former, and Mauritius and South Africa in the case of the latter.

[148] Kälin and Schrepfer, *supra* note 111 at 44.

3.2.2.1 Admission and Stay

There is no regional temporary protection scheme in Southern Africa that explicitly addresses cross-border disaster-displacement. There is on-going debate as to whether "events seriously disturbing public order" in Art. I(2) of the 1969 AU Refugee Convention is broad enough to be applied as the legal basis for a person displaced in the context of disaster to gain admission to, and subsequent protection from, a signatory State.[149] To date, the possibility of using the Convention to provide protection to people who cross borders in the context of natural hazards or the effects of climate change has not been explored by any state agency or judicial body in the region. Where information is available, evidence suggests that the expanded definition of a refugee in the AU Refugees Convention has generally been rarely applied across the region, including in situations where the movement is triggered by conflict.[150]

At the domestic level, States and local communities in the region have received disaster displaced persons. For example, the Malawian government received Mozambicans who crossed the border following the recent 2015 Cyclone Chedza.[151] At the community and local level, despite some tension between tribal authorities along the Angola/Namibia border, shared ethnic heritage has seen pastoralists from Angola crossing over to Namibia to access pastures and water sources.[152] Similarly, Zambians affected by seasonal flooding in the west of the country regularly cross into Angola where they have Kinship ties.[153] The Lubombo Trans-frontier Conservation and Resource Area on the border of Lesotho and South Africa has also been used as a conduit through which BaSotho who have been affected by snow storms can cross the border into South Africa.[154]

Notably, the Special Dispensation Permit issued by South Africa for citizens of Zimbabwe who arrived undocumented during the protracted instability, drought and food crises of the early 2000s is also an example of protection measures in the region. The application for a Special Dispensation Permit did not require individuals to hold a passport or other specified form of documentation, recognising documents might have been lost or damaged during the process of displacement. Permit holders were moreover granted the ability to remain legally in South Africa (including the corresponding right to work or study) regardless of the original method of entry into the country.[155]

While not created to address disaster displacement, a number of countries in the region have entered into agreements that could potentially allow temporary admission in disaster situations. For example, the Governments of Mozambique, Zambia and Zimbabwe have signed a trilateral

[149] See further Tamara Wood, "Protection and Disasters in the Horn of Africa: Norms and Practice for Addressing Cross-Border Displacement in Disaster Contexts," Nansen Initiative (2014).
[150] See further, Tamara Wood, "Expanding Protection in Africa? Case Studies of the Implementation of the 1969 African Refugee Convention's Expanded Refugee Definition," Int J Refugee Law Vol. 26:4 (2014).
[151] Times Live, "Relief for flood-hit Mozambique and Malawi" (2015). Available at http://www.timeslive.co.za/thetimes/2015/01/18/relief-for-flood-hit-mozambique-and-malawi, accessed 4 February 2015.
[152] Strategy Leader, "The Luchazi People" (2008). Available at http://strategyleader.org/profiles/luchazi.html, accessed 17 February 2015.
[153] Danny Simatele – University of the Witwatersrand Dept. of Geography, *Personal Interview with the Author* (2015).
[154] Govt. of South Africa, "Transfrontier Conservation Areas"(2015). Available at https://www.environment.gov.za/projectsprogrammes/transfrontier_conservation_areas, accessed 12 February 2015; Danny Simatele – University of the Witwatersrand Dept. of Geography, *Personal Interview with the Author* (2015).
[155] Department of Home Affairs, South Africa, "Zimbabwean Special Permit" (2015). Available at http://www.dha.gov.za/index.php/immigration-services/zimbabwean-special-permit-zsp, accessed 12 February 2015.

agreement whereby any person can cross the border for one day, and for up to 50 kilometres, without any documentation.[156] Some countries in the region, including Malawi, Mozambique and Zambia, offer 30-day visa free permits to other members of COMESA.[157]

Outside of the region, few countries have provided protection to those moving in disaster contexts from Southern Africa. A notable exception is the Canadian Government's Temporary Suspension of Removals (TSR) policy, which enables the Canadian Minister of Public Safety and Emergency Preparedness to temporarily suspend deportation of a foreign national whose country faces a generalised risk of, *inter alia*, "an environmental disaster resulting in a substantial temporary disruption of living conditions."[158] Between 2002 and 2014, the TSR was in place for nationals of Zimbabwe.[159] When the TSR was lifted in 2014, affected Zimbabweans could apply for permanent residence on humanitarian and compassionate grounds, or return to Zimbabwe.[160] The United Kingdom placed a similar ban on enforced removals of Zimbabweans between 2006 and 2010.[161]

While the above initiatives may provide some protection for disaster displaced persons in Southern Africa, they are not comprehensive. Participants to the Consultation can consider under what conditions the AU Refugee Convention should be applied in disaster contexts, and discuss whether there is a need to develop additional criteria or guidance to identify those in need of protection and assistance in disaster contexts. They can also discuss in what disaster contexts the AU Refugee Convention would not be appropriate, and whether such situations would warrant the use of other humanitarian protection measures to grant admission.

3.2.2.2 Status during Stay

Even under normal circumstances, migrants may face a number of potential migration related challenges, including expensive consular services, discrimination, socio-cultural adaptation, limited communication with home, lack of documentation, informal labour status and low wages. In the event that a disaster-displaced person receives the right to enter a new country, on either a temporary or longer-term basis, it will be important to clarify their rights and responsibilities for the duration of their stay.[162]

While some people may be eligible for protection under existing international arrangements, no agreement provides clear guidelines on protection of international displaced persons in the context of disasters.[163] International human rights law, does, however, provide a general protection

[156] Tamlyn Monson, "Zimbabwean migration into Southern Africa: new trends and responses" (FMSP, 2009). Available at http://www.academia.edu/190604/Zimbabwean_migration_into_Southern_Africa_new_trends_and_responses, accessed 9 February 2015.
[157] Ibid.
[158] Government of Canada, "Temporary Suspension of Removals (TSRs)" (2015). Available at http://news.gc.ca/web/article-en.do?nid=910579, accessed 12 February 2015. The similar United States Temporary Protection Status (TPS), granted for 18 months at a time, has not been offered to any country in Southern Africa.
[159] Government of Canada, "Temporary suspension of removals lifted for Haiti and Zimbabwe" Available at http://news.gc.ca/web/article-en.do?nid=910599, accessed 12 February 2015.
[160] Ibid.
[161] Dominic Casciani, "UK Resumes Zimbabwe Deportations" (BBC, 2010).
[162] For a detailed discussion of status rights in the context of displacement due to natural hazards, see Kälin and Schrepfer, *supra* note 111.
[163] See further, Robert Holzmann and Steen Jorgensen, "Social Risk Management: A New Conceptual Framework for Social Protection, and Beyond" *International Tax and Public Finance* Vol. 8:4 (2001).

framework that impacts on those displaced in disaster contexts. At a regional level, unlike the 1951 UN Refugee Convention, the AU Convention does not include any provisions relating to social protection during displacement.[164] The 2003 SADC Charter of Fundamental Social aims at "promot[ing] the establishment and harmonization of social security schemes" across Southern Africa.[165] The Charter is, however, intended to protect migrant labourers, and thus provides little protection for displaced people.

Another SADC instrument that impacts on the protection of displaced persons is the Code on Social Security, adopted in 2007.[166] Article 17 of this non-binding agreement focuses on Migrants, Foreign Workers and Refugees. After stating that Member States should work toward free movement of persons, and progressively reduce immigration controls, it sets out core principles for each of three categories of migrants. While those displaced across borders in the context of disasters do not fall into any of the three categories, Art. 17(2) does state that "illegal residents and undocumented migrants should be provided with basic minimum protection." However, what this protection this would entail is not specified in the agreement.

3.2.2.3 Search for Durable Solutions

States have the primary responsibility to find a durable solution for displaced persons. In the event that people are displaced across an international border in a disaster context, any durable solutions process should ensure that displaced people have the capacity and information they need to make a voluntary and informed choice about the different options available to them. This may mean including displaced people as participants in the planning and management of the durable solutions process, such as visiting their home area prior to returning or visiting a potential relocation site. Displaced people should also have access to those administering and implementing the durable solutions process, such offices or organizations involved in the humanitarian or development programs within the overall plan. Finally, the displaced should have access to information about how the program is progressing.

While many people may be able to return within a short period of time following a sudden-onset disaster, as was the case following the 2006 volcanic eruption in the DRC, the experience of internal displacement shows that the displaced often return before immediate and future displacement-related risks have been fully addressed (quick return in itself is not necessarily always a desirable or safe solution). Some examples and lessons learned about how to ensure durable solutions for returning displaced persons can be drawn from the internal displacement and refugee context.[167]

In the context of cross-border disaster-displacement, participants to the Consultation could discuss the potential of developing inter-governmental mechanisms that would determine clear criteria for

[164] There have, however, been compelling arguments to suggest that the entitlements – including socio-economic protection – set-out in the in 1951 Convention would also apply to those granted protection in terms of the AU Refugee Convention. See further, Jane McAdam, *Complementary Protection in International Refugee Law* (Oxford University Press, 2007); Marina Sharpe, "The 1969 African Refugee Convention: Innovations, Misconceptions, and. Omissions" *McGill Law Journal* 58 (2012).
[165] SADC, Charter of Fundamental Social Rights (2003).
[166] SADC, "Code on Social Security in the SADC" (2007).
[167] For example, see the *IASC Framework for Durable Solutions for Internally Displaced Persons* (Brookings Institution-University of Bern Project on Internal Displacement, 2010).

when return in safety and dignity is permissible, including necessary exit procedures and travel home.

IV. International Cooperation and Solidarity

International cooperation and solidarity are essential elements in addressing the protection risks associated with cross-border disaster-displacement. States have the primary responsibility to provide protection, assistance and durable solutions for their displaced citizens, as well as all people within their jurisdiction. However, if a situation or a disaster overwhelms the national capacity to respond, State responsibility requires States to mobilize relevant regional and international organizations, arrangements and resources.

In the event of cross-border displacement in the context of disasters, inter-state and regional coordination facilitating the movement of people and the humanitarian response will be essential. Collaboration also allows governments and other actors to pool resources, avoid duplication, and develop complementary assistance. Fully anticipating and responding to potential displacement dynamics requires coordination and planning across the various fields of disaster risk management, humanitarian response, human rights, migration, border management, development, and climate change.

While States in Southern Africa have traditionally been open to cross-border movement and fostering regional solidarity, numerous scholars have described an increasingly securitized approach to human mobility in the region[168] and few new developments on the coordination of cross-border movement through SADC or other bodies. However, there remain a number of forums for addressing the issue of cross-border disaster-displacement in the region. Because global and continental processes related to cross-border disaster-displacement have been compiled by the Nansen Initiative elsewhere, this section concentrates on three Southern African-specific processes and associated laws, policies and frameworks.

4.1 Migration Dialogue for Southern Africa (MIDSA)

The Migration Dialogue for Southern Africa (MIDSA) is a Regional Consultative Process formed in 2000 with the primary goal of promoting and supporting the SADC Protocol on the Free Movement of Persons.[169] In addition, the founding objectives of MIDSA included enhancing "understanding of officials and policy-makers of the causes, dimensions and impacts of migration in Southern Africa" and fostering "co-operation among SADC Member States on migration-related issues."[170] These objectives have since been revised into three guiding principles: 1) Assist SADC governments to respond to the AU Strategic Framework on Migration and AU Common Position on Migration and Development, 2) Stimulate discussion and debate on the implications of ratifying the SADC Draft

[168] For example see ACMS, "Challenging Presumptions, Changing Process: Towards Progressive, Pro-Poor Migration Policy," *Testimony to the Parliamentary Portfolio Committee on the Department of Home Affairs* (2013). Gregory Mthembu-Salter & Others, "Counting the Cost of Securitising South Africa's Immigration Regime," *Migration out of Poverty Working Papers* (2014). Christopher Changwe Nshimbi & Lorenzo Fioramonti, "The Will to Integrate: South Africa's Responses to Regional Migration from the SADC Region," *African Development Review* Vol. 26:S1 (2014).
[169] Dodson and Crush, *supra* note 69.
[170] SADC, "Establishment of a Migration Dialogue for Southern Africa" (2000).

Protocol on the Facilitation of Movement, and 3) Assist governments to participate in global debates about migration and development.[171] Over the past 15 years, MIDSA has held over 20 regional MIDSA conferences and workshops on a range of topics, as well as several ministerial-level meetings, hosted by 11 SADC countries.[172] The MIDSA Steering Committee is chaired by IOM, and includes UNHCR and the Southern African Migration Project (SAMP) as members.

At MIDSA's first ministerial level meeting in 2010, governments from across the region agreed to work on ratifying the Protocol on the Facilitation of Free Movement of Persons, and agreed to meet yearly at a ministerial level to discuss migration-related issues affecting the region. To date, cross-border displacement as a consequence of disasters has not been addressed; however, the effects of drought and flooding on human mobility have been discussed.[173]

For example, at the MIDSA Migration Dialogue for Southern Africa Conference in 2013, the Mozambique Minister of Labour referenced the high numbers of regular and irregular migrants in the SADC region caused by conflicts, poverty and significantly natural disasters.[174] Cross border cooperation to protect migrants was also considered as a key issue for the SADC region, including the need for migrants to "have access to social benefits, health services and continuum of care across borders."[175] Notably, the delegates of Zambia also argued for the need to harmonize border crossing systems and develop an "Immigration Standards Manual" that would standardize immigration procedures, policies and approaches particularly for irregular migrants.[176] Similarly, while the MIDSA 2014 workshop also did not specifically address disaster displacement, it proposed a Draft Benchmark for Action on Mixed and Irregular Migration to implement the 2010 Dar-es-Salaam regional Action Plan on mixed and irregular migration. The workshop also recognized that conflict, poverty, unemployment and climate change impact migration.[177]

4.2 Programme on Climate Change Adaptation and Mitigation in Eastern and Southern Africa

In 2011, the East African Community (EAC), COMESA and SADC entered into a joint Programme on Climate Change Adaptation and Mitigation in the Eastern and Southern Africa Region.[178] The agreement, supported by Norway, the United Kingdom and the European Union, seeks to mitigate the effects of climate change on vulnerable populations, and facilitate the development of adaptive mechanisms to help communities cope with future changes in the environment. The three Regional Economic Communities (RECs) have established a five-year programme that includes formulating a coherent climate change adaptation policy.[179]

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[171] Dodson and Crush, *supra* note 69 at 11
[172] Ibid.
[173] MIDSA, "Minutes of Regional Workshop on Displaced Persons" (2005).
[174] MIDSA Conference Report, "MIDSA Migration Dialogue for Southern Africa: Enhancing Labour Migration and migration management in the SADC region" (July 2013) p.10 at https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/Final-MIDSA-REPORT-22-11-2013.pdf
[175] Ibid at 6.
[176] Ibid at 20.
[177] Ibid.
[178] COMESA, EAC & SADC, "Programme on Climate Change Adaptation and Mitigation in the Eastern and Southern Africa (COMESA-EAC-SADC) Region" (2011).
[179] Ibid.

The SADC Climate Change Policy Paper, intended to feed into the RECs' programme, is one of very few policy documents at the national or regional level in Southern Africa that expressly mentions the effect of climate change and other disasters on migration and displacement. The report notes that, "the impact of global warming and climate change on the SADC region already contributes to inside-country migration. With more crop failure associated with recurrence of droughts, more and more people, especially the subsistence farmers abandon their land and migrate into towns and cities to seek alternative income generating opportunities."[180]

Moreover, the SADC Climate Change Policy Paper acknowledges that "the impact of global warming and climate change on the SADC region already contributes to inside-country migration," and that climate change "is expected to exacerbate the environmentally induced migration patterns."[181] In this context, the report suggests that SADC countries "may consider developing policy responses to assist those Member States most vulnerable and also taking into account the most pressing needs of the island Member States."[182]

4.3 SADC Disaster Risk Reduction (DRR) Strategic Plan and Platform

The SADC Disaster Risk Reduction Strategic Plan (SADC Strategic Plan), initially formulated in 2001 by SADC Member States and updated in 2006, is the principle DRR policy document in Southern Africa.[183] The aim of the Strategic Plan is to "reduce the impact of disasters by providing a regional framework for coordinating disaster risk management related activities within the SADC Member States."[184] In addition, the SADC Strategic Plan forms part of the Africa Regional Strategy for Risk Reduction adopted in 2004.

In 2010, a regional Disaster Risk Reduction (DRR) Platform was launched for the purpose of contributing to policy debates and coordinating DRR interventions amongst SADC Member States. At the 2011 SADC DRR and Preparedness Planning Workshop, participants recommended that SADC Member States test contingency plans through simulation exercises, which included large-scale disaster scenarios with cross-border implications. The SADC DRR Unit (SADC DRRU), SADAC Member States and the Regional Inter-Agency Standing Committee, with the support of government institutions thus held an exercise in Namibia on 2-3 February 2012. This exercise included participation of six regional DRR committees and the SADC Department of Disaster Risk and Management.[185] During the 2012 Workshop participants also identified gaps requiring future action, including the need to improve collaboration between neighbouring countries, and the need for SADC to enhance collaboration "among cross border countries which share common hazards."[186] The need for future action was also highlighted in the 2013 SADC DRR Sub-regional Platform, where

[180] SADC Secretariat, "SADC Policy Paper on Climate Change: Assessing the Policy Options for SADC Members" (2012) at 4. Available at https://www.environment.gov.za/sites/default/files/reports/ltasphase2_climatechangeadaptation_sadc.pdf, accessed 23 February 2015.
[181] Ibid at 4.
[182] Ibid at 5.
[183] SADC, "About the Disaster Risk Reduction Unit" (2015). Available at http://gisportal.sadc.int/drru/?q=node/2, accessed 25 February 2015.
[184] Ibid.
[185] SADC Meeting Report, 'Regional disaster risk reduction, preparedness and response planning workshop 2012' <http://www.humanitarianresponse.info/system/files/documents/files/SADC%202012%20Workshop%20Report.pdf> accessed 28 February 2015.
[186] Ibid at18.

participants agreed on the need to mainstream DRR in SADC to addressing cross-border hazards and risks through collaboration among SADC Member States.[187]

V. Conclusion

Displacement related to disasters and the effects of climate change is a reality. Such displacement is multi-causal with climate change being an important, but not the only factor. Population growth, underdevelopment, weak governance, armed conflict and violence, as well as poor urban planning in rapidly expanding cities, are expected to be important drivers of human mobility as they further weaken resilience and exacerbate the impacts of natural hazards and climate change. This document seeks to highlight the particular dynamics and opportunities for responding to disaster displacement in Southern Africa, and to facilitate discussion within the Southern Africa Consultation. The outcomes of the Nansen Initiative Southern Africa Consultation will be synthesized in a short report, which will in turn contribute to the Nansen Initiative Protection Agenda, which will be presented in Geneva, Switzerland in October 2015.

[187] SADC Workshop report, "South African Development Community (SADC) Disaster Risk Reduction (DRR) Sub-regional Platform: Mainstreaming & implementing DRR into Development Frameworks in the SADC region" (28 29 November 2013) at 6.