

**Climate change impacts and cross-border displacement:
International refugee law and UNHCR's mandate
12 December 2023**

The global climate crisis is a human crisis, contributing to the movement of millions of people within and across borders. In many situations, people displaced in the context of the impacts of climate change and disasters¹ will be entitled to international protection under international law, which triggers UNHCR's mandate and leadership role.

This paper aims to:

- Clarify international law relating to the protection of people displaced across borders in the context of the impacts of climate change and disasters, building on UNHCR's 2020 guidance;²
- Set out UNHCR's mandate to interpret international refugee law and its application to people displaced in the context of climate change and disasters and explain UNHCR's leadership, advocacy and operational role in these contexts.

1. Clarifying the application of international refugee and human rights law to the protection of people displaced across borders

The concept of international protection is central to UNHCR's responsibilities. As outlined in UNHCR's Statute of 1950, the High Commissioner, 'acting under the authority of the General Assembly, shall assume the function of providing international protection... and of seeking permanent solutions for the problem of refugees.'³ The need for international protection arises when a person is outside their own country and unable to return home because they would be at risk there, and their country is unable or unwilling to protect them. Risks that give rise to a need for international protection classically include those of persecution, threats to life, freedom or physical integrity arising from armed conflict or generalized violence, serious human rights violations or events or circumstances seriously disturbing public order. International protection needs also arise in the context of climate change and disasters.

There are two broad categories of persons who may fall within the refugee definitions under international law, pursuant to the 1951 Convention relating to the Status of Refugees and regional refugee law instruments. In addition, in some particular circumstances, climate change impacts can give rise to international protection needs under international human rights law. Further, in some situations where individual status determination may not be feasible or applicable, temporary or humanitarian forms of protection and stay may be granted to people displaced in the context of the impacts of climate change and disaster.

¹ [Disaster](#) is defined by the UN Office for Disaster Risk Reduction (UNDRR) as a 'serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources'

² See UNHCR, [Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters](#), 2020.

³ In addition, paragraphs 3 and 9 of the UNHCR Statute provide for the further evolution of the functions and activities of UNHCR

1.1. Refugees under international and regional refugee law instruments

1.1.1 Refugees under the 1951 Convention definition may include:

- a. People fleeing **conflict or violence** which may be **caused or exacerbated** by the effects of climate change or disaster, rendering the State unable or unwilling to protect the victims and leaving them at risk of persecution.

Example: People displaced by conflict in Sudan and South Sudan in 2019, where control of natural resources, including fertile land, was a strategic objective of both warring sides in the context of desertification and other climate change effects in the region.⁴

- b. Environmental defenders, activists or journalists targeted and persecuted for defending, conserving or reporting on ecosystems and resources or Government responses to climate change effects, which may be considered a **political stance**.

Example: Environmental defenders targeted by violence in Northern Central America in areas where there is exploitation of natural resources in connection with mining, energy projects, agriculture, excessive and/or illegal logging, and tourism or real-estate development.⁵

Example: An individual involved in relief efforts following Cyclone Nargis being subjected to extortion and threats because of their ethnic, religious and/or political characteristics.⁶

- c. People belonging to **particular groups** – such as women, **children**, the **elderly** and **disabled** - disproportionately suffering the greatest impact of climate change, compounded by pre-existing discrimination, gender-based violence, human trafficking and child marriage. In addition, **minority groups**, **indigenous people** or others who are already **marginalized or vulnerable** - who are denied access to resources or assistance or are excluded from disaster risk reduction strategies before or after a climate-induced disaster. Further, where the adverse effects of climate change lead to **food insecurity or famine**, and where the State is unwilling or unable to ensure non-discriminatory access to food for certain groups, a risk of persecution for those people may arise.

Example: A man from Pakistan being granted refugee status in Italy as member of a particular social group as a person who has a common history with that of victims of trafficking for of labor exploitation purposes. The Court recognized his extreme vulnerability and vulnerability to disasters and climate change as a factor amplifying vulnerability to risks of human trafficking.⁷

Example: A member of a Zimbabwean ethnic group being denied food aid provided to ZANU-PF (ruling party) supporters following the collapse of the agricultural economy in Zimbabwe.⁸

⁴ See The Independent, [South Sudan, where a water crisis is leading to child kidnappings and rape](#), 2019; Humanitarian Practice Network, [Environmental degradation and conflict in Darfur: implications for peace and recovery](#), 2018

⁵ See Inter-American Commission on Human Rights (IACHR), [Report on the Situation of Environmental Human Rights Defenders in the Northern Central American Countries](#), OEA/Ser.L/V/II, Doc. 400/22, 16 December 2022

⁶ Australia, RRTA Case No. 0903555, 2010

⁷ Italy, Tribunale Ordinario di Firenze, Case N.R.G. 6142/2019, 1 May 2023

⁸ New Zealand, Case 76237, 2009

Example: Unequal access to humanitarian assistance for vulnerable categories in society, including Dalit communities denied access to shelters and assistance in the aftermath of cyclones in South Asia.⁹

1.1.2 Refugees under regional refugee law instruments

Refugees within **wider regional refugee definitions** encompass persons who are **compelled to leave** their country in the context of events or circumstances related to climate change events or disasters **‘seriously disturbing public order’**. This applies under the 1969 **OAU Convention** on Specific Aspects of Refugee Problems in Africa and the **Cartagena Declaration** on Refugees of 1984 in the Americas. In assessing whether the effects of climate change or disasters are severe enough to compel a person to leave and seek protection in another country, consideration needs to be given to how factors including the disaster unfolds and develops; the geographical proximity of the disaster to the person’s place of habitual residence; how it affects their life, physical integrity, liberty and enjoyment of other human rights; and how the State responds.

Example: People fleeing extreme violence in Northern Cameroon in 2021, where intercommunal violence erupted between herders, fishermen and farmers over dwindling water resources. Hundreds of people were killed and tens of thousands fled to safety within Cameroon and to Chad.¹⁰

Example: Somalis fleeing violence and conflict exacerbated by drought and famine in 2011-2012 who were granted refugee status in Kenya and Ethiopia.¹¹

People who claim international protection should be considered for and granted refugee protection where they fall within the refugee definitions under the 1951 Convention or regional refugee legal instruments. Only if they are found not in need of refugee protection should their claims be considered for the grant of complementary or other forms of international protection, as described below.

1.2 People entitled to international protection under human rights law

In addition to those protected under international refugee law, in some circumstances, people at risk of **serious human rights violations** linked to the effects of climate change and climate-induced disasters may be recognized under **international human rights law** as needing international protection, notably under non-refoulement obligations.

Example: The UN Human Rights Committee found that people whose right to life is threatened because of climate change impacts affecting habitable land, livelihoods and potable water, including due to rising sea levels, could be entitled to international protection. The Committee observed that ‘without robust national and international efforts, the effects of climate change in [the state of origin] may expose individuals to a violation of their right under... the [ICCPR], thereby triggering the non-refoulement obligations of sending states’.¹²

Example: The Italian Court of Cassation granted humanitarian protection to a man from the Niger Delta on the grounds of the existence of real risks to his rights to life and dignified existence in the region. The

⁹ See [Equality in Aid: Addressing Caste Discrimination in Humanitarian Response](#), International Dalit Solidarity Network, 2013; [How India’s caste system keeps Dalits from accessing disaster relief](#), The New Humanitarian, 2022

¹⁰ UNHCR, [Climate change fuels clashes in Cameroon that force thousands to flee](#), UNHCR, 2021

¹¹ See S. Weerasinghe, [In Harm’s Way](#), UNHCR, 2018

¹² UN Human Rights Committee, *Teitiota v. New Zealand*, [CCPR/C/127/D/2728/2016](#), 2020

Court recognised the existence in that region of ‘a serious situation of environmental instability, due to the indiscriminate exploitation of the area by oil companies and the ethnic-political conflicts that have affected it.’¹³

1.3 Temporary and humanitarian protection and stay

In cases of large-scale influx or similar humanitarian crises, where individual status determination may not be feasible or applicable, such as in the immediate aftermath of a disaster, when the situation in the country of origin remains fluid, temporary or humanitarian protection or stay arrangements can provide a practical tool to protect people displaced across borders. Such arrangements are without prejudice to the grant of refugee status and other forms of international protection¹⁴ and need also to be connected to longer-term strategies to ensure that the rights of temporarily protected people will be respected, and they will have access to solutions or long-term options where relevant. This reflects State practice in many situations, which recognizes the need for people displaced in the context of disasters and climate change swiftly to be granted a form of protection.

Example: In 2022, Argentina adopted a ‘Special Humanitarian Visa Program for nationals and residents of the United Mexican States, Central America and the Caribbean, displaced by socio-natural disasters’ which authorizes the processing of entry permits and visas for humanitarian reasons, at the request of a requiring person in Argentina for people who have been forcibly displaced from their place of residence as a result of ‘socio-natural disasters.’¹⁵

1.4 People who are not in need of international protection

Not all people who are displaced in the context of climate change will be in need of international protection. This includes people who move in the context of climate change, solely for **economic reasons**, such as a negative change in or loss of their livelihoods, where there is no risk of persecution or violence and their own country is able and willing to protect them.

Example This was the case, for instance, for many persons displaced in the longer-term aftermath of devastating floods in Pakistan in 2022,¹⁶ and farming communities in West Africa who move because of declining land productivity due to drought in contexts not involving conflict, violence or persecution¹⁷.

Yet even those without international protection needs are entitled to respect for their human rights. They may have particular vulnerabilities that arise in the country where they find themselves that need to be addressed by other States and humanitarian actors when they cross borders. In some countries, legal pathways exist under national migration laws for labour schemes or regional free movement protocols.

¹³ Supreme Court of Cassation, *I.L. v. Italian Ministry of the Interior and Attorney General at the Court of Appeal of Ancona*, Case N. 5022/2021, 2021

¹⁴ In 2014, UNHCR has produced [Guidelines on Temporary Protection and Stay Arrangements](#) to inform Government responses to humanitarian crises and disasters where complex or mixed population movements prevail

¹⁵ National Migration Directorate (DNM) of Argentina, [DNM Provision No. 891/2022, 2022](#)

¹⁶ See [Confronting Climate Anxiety: One Year After the Floods in Pakistan](#), IOM, 2023

¹⁷ See [Advancing a rights-based approach to climate change resilience and migration in the Sahel](#), OHCHR, 2022

In many situations, people displaced across borders who are refugees or otherwise in need of international protection may travel in **mixed movements** alongside migrants moving for other reasons. In such circumstances, all of those in such movements may have the same needs and face similar risks and threats to the enjoyment of their human rights.

2 UNHCR's leadership role and engagement in relation to persons in need of international protection in the context of climate change

UNHCR's refugee protection mandate gives it a leadership role for people displaced across borders who are in need of international protection. In the area of law and policy, this leadership role is exercised in four ways.

2.1 Authoritative interpretation, and support to States for effective application, of refugee law in the context of climate change

In fulfilment of its mandate, UNHCR provides authoritative guidance on the interpretation and application of international legal instruments for the protection of refugees.

State practice, jurisprudence and legislation have demonstrated that refugee law instruments can be interpreted in an evolving manner. Under its supervisory role for international refugee protection instruments, UNHCR has issued its 2020 Legal Considerations¹⁸. UNHCR will issue further guidance and conduct training to ensure that UNHCR's operations, States and other stakeholders have the tools and understanding to appropriately identify and protect those with international protection needs arising in the context of climate change. This will entail a range of capacity building efforts.

2.2 Advocacy and engagement in key platforms

UNHCR advocates for States to meet their obligations to those in need of international protection and has, in recent years, drawn attention to the need to protect people displaced in the context of climate change. The Nansen Initiative Protection Agenda¹⁹, adopted by 109 States in 2015, developed from discussions in UNHCR's 63rd Executive Committee (ExCom) Meeting. UNHCR also contributes to discussions in multilateral fora, including the Platform on Disaster Displacement (PDD)²⁰ and regional fora.

In situations where large-scale influxes caused by exceptional conditions in a country of origin – such as sudden-onset or extreme climate-induced weather events including floods – UNHCR may advocate for States to use discretionary, humanitarian or other short-term stay arrangements to protect those affected, for example, where the assessment of individual claims for international protection is not yet practicable in the host country, including where humanitarian needs are such that temporary protection is needed to save lives (see above). UNHCR also advocates where relevant for the inclusion of protection-sensitive legal stay arrangements in domestic law and policy for individuals unable or unwilling to return to their

¹⁸ [Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters](#), UNHCR, 2020

¹⁹ [Agenda for the protection of cross-border displaced persons in the context of disasters and climate change](#) Nansen Initiative, 2015

²⁰ See PDD, [Policy brief on the protection of persons displaced across borders in the context of disasters and the adverse effects of climate change - good practices to support implementation of the Global Compact on Refugees](#), in cooperation with UNHCR, 2023



countries of origin due to the adverse effects of climate change or disasters and who are not eligible for international protection under refugee law.²¹

For people who move largely for economic or humanitarian reasons and who are not in need of international protection, UNHCR's role is more nuanced. UNHCR will continue to work with other international actors in promoting and supporting humanitarian and other efforts to benefit people who do not need international protection in the context of climate change.

UNHCR further engages with States and other partners in **public and inter-agency discussions**, providing substantive and expert perspectives on displacement risks, international protection needs in climate-related contexts, and on ways to ensure more effective and coordinated responses in line with international law.

2.3 Research and dialogue

UNHCR is currently conducting research on the interpretation of 'events seriously disturbing public order' compelling people to flee across borders under the 1969 OAU Convention. Similar efforts will be undertaken in relation to the application of the Cartagena Declaration.

The growing numbers of people displaced by climate change have prompted calls for new legal instruments, including a Protocol to the 1951 Convention. While discussions on and work to explore the further development of international law to protect those displaced in the context of the impacts of climate change are likely to continue, it remains important to understand how existing legal norms can provide effective protection.

2.4 Operational engagement on protection

In relevant situations where UNHCR's mandate is engaged for refugees and other people in need of international protection, UNHCR works in support of governments to facilitate access to protection and to promote enjoyment of rights. This may include support to registration, to access systems for determination of asylum claims, to documentation, legal advice and assistance and other essential steps to recognition of international protection needs and access to rights. It also includes facilitating access to specific protection services such as prevention and response to gender-based violence; community-based protection services in climate change-impacted areas; protection and risk monitoring and analysis; and related operational protection work.

In these and other ways, UNHCR engages to strengthen protection environments for forcibly displaced and stateless persons, including in conflict-affected and fragile settings. UNHCR works further to amplify the voices, support the agency and ensure meaningful inclusion of forcibly displaced and stateless persons in climate change-related discussions and decision-making processes, including women and children.

²¹ In the Americas for instance, UNHCR has had an active role in discussions that resulted in the establishment of humanitarian temporary residence categories, incorporated into the legislation of countries such as Ecuador, Bolivia, and others. More recently, Argentina has implemented lawful pathways to facilitate the admission of individuals from disaster-affected countries in Central America and the Caribbean ([Migraciones anunció ante la ONU un visado para desplazados por desastres socio-naturales de México, Centroamérica y el Caribe | Argentina.gob.ar](https://www.argentina.gob.ar/migraciones))