



PLATFORM  
ON DISASTER  
DISPLACEMENT  
FOLLOW-UP TO THE NANSEN INITIATIVE



# POLICY BRIEF

## 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

December 2023



## KEY MESSAGES

The [Global Compact on Refugees](#) recognizes that “external forced displacement may result from sudden-onset natural disasters and environmental degradation”. It also acknowledges that “[w]hile not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements”. In response, the Global Compact on Refugees advocates for guidance and support to manage protection and humanitarian challenges for persons displaced in such contexts.<sup>1</sup>

Displacement in the context of disasters and climate change is already a reality, with numbers likely to increase. Current displacement is mainly internal, and often short-term, but some displaced persons cross borders to seek refuge abroad.

Many States have found ways to admit persons displaced or at risk of being displaced across borders in the context of disasters and the adverse effects of climate change.

These approaches highlight the benefits of and the need for a complementary implementation of the Global Compact on Refugees and the Global Compact for Migration.

**While numerous tools exist, their use is often random and hard to predict. Therefore, it is, among others, recommended to:**

- ➔ **Build on existing good practice** to develop specific guidance on the application of refugee law and complementary or temporary protection measures to disaster- and climate change-related cross-border displacement.
- ➔ **Systematically integrate this issue into training** of decision makers and country-of-origin information.
- ➔ **Develop or strengthen, harmonize, and utilize tools** such as humanitarian visas and temporary protection in predictable ways.
- ➔ **Enhance the availability and flexibility of pathways** for regular migration for persons affected by disasters and the adverse effects of climate change.
- ➔ **Explicitly include and address cross-border displacement** in the context of disasters and the adverse effects of climate change in international programs and projects supporting affected countries.

### GOOD PRACTICES INCLUDE



Harnessing the potential of the 1951 Refugee Convention and regional refugee law.



Providing complementary protection.



Providing humanitarian visas or temporary protection.



Integrating provisions for disaster-affected persons in regional and bilateral migration agreements.



Developing immigration quota schemes.

# 01

## A CHALLENGE OF INCREASING PROPORTION

The Global Compact on Refugees recognizes disasters and the adverse effects of climate change as factors intertwined with drivers of refugee movements and calls for guidance and support to manage protection and humanitarian challenges of persons forcibly displaced in disaster contexts. This policy brief<sup>2</sup> focuses on good practices that demonstrate how States can implement their commitments in an era of climate change.

### Displacement in the context of disasters and climate change is a reality.

A ten year high of 32.6 million cases of internal disaster displacement was recorded by IDMC in 2022.<sup>3</sup> The first half of 2023<sup>4</sup> has already seen earthquakes in Türkiye and Syria displace large numbers of persons, with around four million people still internally displaced as of 1 June. In early May, Vanuatu was struck by two cyclones and two earthquakes, over just three days, causing large-scale destruction and displacing thousands of people. Also in May, tropical cyclone Mocha displaced millions of people across South and South-East Asia, with some still currently in protracted displacement. By the end of June, conflict-affected Somalia had recorded nearly 1.3 million new displacements, among them 715,000 linked to drought and floods.

### Disaster and climate-related displacement is likely to increase.

According to the Intergovernmental Panel on Climate Change (IPCC), “[c]limate and weather extremes are increasingly driving displacement in all regions”, while the possibilities to adapt to the effects of climate change, and thus to reduce displacement risks, increasingly reach their limits.<sup>5</sup> According to the World Bank, up to 216 million people will move within their country due to climate change impacts by 2050. However, we “can reduce the scale of internal climate migration by as much as 60–80 percent” if we take robust “action both to cut global greenhouse gas emissions and to ensure inclusive and resilient development”.<sup>6</sup>

### Disaster- and climate-related displacement is mainly internal and often short-term, but some displaced persons cross borders to seek refuge abroad.

While comprehensive data do not exist, a review of current practices shows that authorities in many countries have been confronted with individuals claiming international protection due to the impacts of disasters and climate change. While some seek short-term refuge from disaster impacts that may last days, weeks or months, others need long-term protection because they remain at risk even long after the disaster occurred.

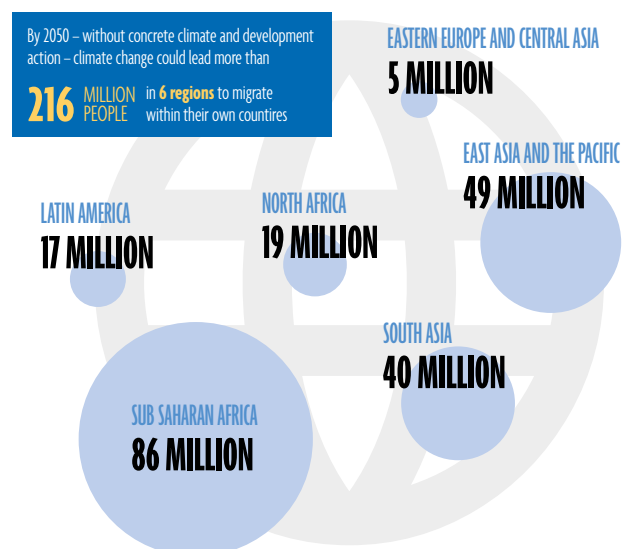
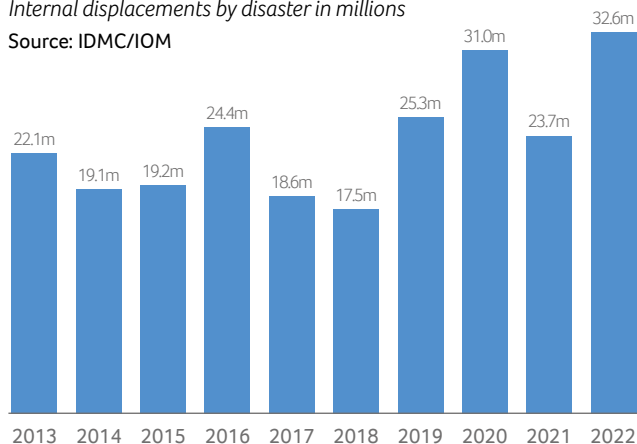
### The multicausality of displacement in the context of disasters, climate change, and environmental degradation contribute to displaced persons’ context-specific protection and assistance needs.

In many situations, fragility, conflict, and violence occur where climate vulnerability is disproportionately high. Displacement triggered by the impacts of seasonal shocks, such as floods and storms, or drought is often recurrent in disaster prone or fragile areas. Climate change and disaster impacts also compound wider conflict situations and other drivers of refugee movements. This leaves people in pre-existing displacement situations particularly vulnerable to natural hazards. The extent of disruption and losses, how quickly the immediate threats from natural hazards pass, and people’s capacity to recover all determine how soon and whether people can return home.

### Highest figure in a decade

Internal displacements by disaster in millions

Source: IDMC/IOM



Source: World Bank, 2021

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**The Global Compact on Refugees addresses these challenges.** It contains relevant provisions for the protection of people displaced across borders when displacement relates to climate change impacts, environmental degradation, and the effects of disasters. Paragraph 8 identifies climate impacts and disasters as factors that intertwine with drivers of refugee movements, a statement supported by UNHCR’s finding that “over 70 per cent of the world’s refugees and internally displaced people come from the most climate-vulnerable countries”.<sup>7</sup> The Global Compact on Refugees’s call for guidance and support to manage protection and humanitarian challenges, including for disaster-displaced persons (para. 63), is therefore highly relevant. In particular, mechanisms to determine international protection claims of such persons must be fair and efficient to avoid protection gaps (para. 61).

To facilitate implementation of States’ commitments in the Global Compact on Refugees, this brief illustrates effective practices in the application of policy and legal measures, including through case law, to protect persons displaced in the context of disasters, climate change, and environmental degradation. It highlights different ways States have authorized the admission and/or stay of persons affected by disasters and climate change by employing a variety of international, regional, and domestic measures associated with law and policy on refugees, human rights, and migration.

## 02

# NOT CLIMATE REFUGEES, BUT REFUGEE LAW MAY PLAY A ROLE

**In order to constitute persecution as per the 1951 Refugee Convention, the involvement of human actors is required. Notwithstanding that natural hazards do not affect people differently for reasons of race, religion, nationality, membership of a particular social group or political opinion, Courts recognize several disaster-related situations in which persecution can occur.**

Flooding, tropical storms, earthquakes, volcanic eruptions, drought, landslides, coastal erosion and other environmental sudden- or slow-onset events often cause life-threatening or otherwise serious harm to affected persons. However, natural hazards, in and of themselves, do not constitute persecution. As highlighted by domestic courts, “[t]he legal concept of ‘being persecuted’ rests on human agency”, meaning that persecution must “emanate from the conduct of either state or non-state actors”.<sup>8</sup> Thus, in the absence of human agency, the mere occurrence of a natural hazard alone is not capable of persecution “for reasons of race, religion, nationality, membership of a particular social group or political opinion as required by the Refugee Convention”.<sup>9</sup> Relatedly, even though global warming is human made, the emission of large quantities of greenhouse gases is not based on any of the Convention grounds and therefore does not constitute persecution within the meaning of refugee law.<sup>10</sup>

Therefore, courts and refugee law experts<sup>11</sup> widely acknowledge that very often refugee law does not apply to people displaced across borders in the context of disasters and climate change. However, this does not mean that refugee law is irrelevant. There are **several disaster situations in which a well-founded fear of persecution may exist**, provided that persecution occurred for relevant reasons. Such **scenarios** include:<sup>12</sup>

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**Persecution due to activities undertaken in disaster contexts that are construed as anti-government:** Arrests and prolonged prison sentences, unfair trials, torture and inhuman treatment, and other serious violations of individuals’ human rights may amount to persecution if authorities took such actions on account of the real or imputed political opinion of persons criticizing the government for its lack of preparedness for or response to a disaster. Such persons may include members of the opposition, human rights or environmental activists, leaders of marginalized communities, journalists, or organizers and participants of a demonstration. For example, a New Zealand tribunal granted refugee status to **an activist who had coordinated an opposition party’s disaster response** because the regime in her country of origin had arrested other activists for similar activities and sentenced them to substantial prison terms.<sup>13</sup>

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**Withholding or denying access to available life-saving humanitarian assistance to members of ethnic, religious minority or specific political groups during, or in the aftermath of, a disaster:** This may include situations when state actors refuse to provide assistance for discriminatory reasons, or when non-state actors block humanitarian access or divert assistance and state authorities are unwilling or unable to intervene. For instance, a UK tribunal found that **excluding a person from accessing food aid for a reason recognised by the 1951 Refugee Convention amounted to persecution**.<sup>14</sup>

**Unwillingness or inability of authorities to protect persons exposed to harm:** Gender-based and other forms of violence commonly occur in evacuation centres, camps, and settlements for internally displaced persons (IDPs) in disaster situations.<sup>15</sup> Less often, but even more devastating, are situations where law and order collapse in disaster contexts, resulting in rampant crime and violence. Local communities or political parties may wrongly accuse migrants, refugees,<sup>16</sup> members of minorities, or activists to be responsible for disasters such as wildfires or landslides. Disasters may also ignite pre-existing ethnic, racial, or religious tensions between communities that erupt into violent intercommunity conflict. In such situations, the State may be unwilling or unable to provide protection. For this reason, **Panama and Peru granted asylum based on the 1951 Refugee Convention to a small number of Haitians** in the aftermath of the 2010 earthquake.<sup>17</sup>

**Disasters as a factor amplifying vulnerability and contributing to persecution:** Sometimes, disasters are a contributing factor to persecution. As UNHCR highlights, “adverse effects of climate change ... may give rise to social, economic or political pressures and particular populations may be left out, leading to some being disproportionately affected or even targeted”.<sup>18</sup>

This is particularly true when **disasters and adverse effects of climate change interact with armed conflict** (so called nexus situations).<sup>19</sup> Disasters often aggravate ongoing armed conflict situations and pre-existing persecution linked to it, thus creating “conditions that reinforce or bolster claims for refugee status under the Refugee Convention.”<sup>20</sup> Using starvation as a weapon of war, for instance, may be particularly harmful when a natural hazard like drought sets in or flooding destroys crops. Such scenarios are particularly worrying given that 60 per cent of the 20 countries most vulnerable to climate change impacts also experience armed conflict.<sup>21</sup>

In other situations, disasters may amplify the vulnerability of persons targeted by persecution. As courts have recognized, persons belonging, for instance, to an ethnic or religious minority or to a particular social group might become even more vulnerable in disaster contexts and, therefore, are more easily targeted by persecutors.<sup>22</sup>

**Disasters and internal flight alternatives:** Finally, the existence of a disaster situation may be a factor in assessing whether an internal flight alternative exists for persons who are persecuted in one part of the country of origin, but might find security in another region of the same country. Even in the absence of persecution, disaster impacts may contribute to living conditions in a proposed area being “unduly harsh and therefore [making it] unreasonable for the person to relocate”<sup>23</sup> there because he or she would “face economic destitution or existence below at least an adequate level of subsistence.”<sup>24</sup> Thus, a Norwegian court recognized in 2011 that a region in Somalia not affected by armed conflict but suffering from **serious drought and a devastating humanitarian situation would not provide an acceptable internal flight alternative** for a refugee without family or community support there.<sup>25</sup>

In all these cases, disasters and adverse effects of climate change do not constitute persecution. Rather, they provide the context within which persecution may occur. However, particularly in the third and fourth scenario, it might be difficult to identify relevant reasons for the persecution. Applications for international protection may also fail because violence and ill-treatment occurring in sudden-onset disaster situations may be limited to the post-disaster period until government capacity and systems are restored. Consequently, victims of past violations, such as those described in the third scenario, may not have a well-founded fear of future persecution as required by the Convention.

### OUA Convention, Article I (2)

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

### Cartagena Declaration, Article III (3)

...the definition or concept of a refugee... includes ... persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

**Regional refugee law** may provide broader protection than the 1951 Refugee Convention. The OAU Refugee Convention<sup>26</sup> and the legally non-binding Cartagena Declaration<sup>27</sup> expand the definition of who is a refugee to persons fleeing from events or circumstances, respectively, which are “seriously disturbing public order.”<sup>28</sup> Many States in Africa and Latin America reflect this wider notion of refugee<sup>29</sup> and there is widespread scholarly consensus that this notion has the potential of providing protection in some disaster situations.<sup>30</sup> In reality, State practice has been inconsistent and very limited. Nevertheless, examples of good practices exist. When drought was compounded by armed conflict in Somalia in 2011 and 2012 and food aid could not reach affected people in the absence of a functioning government, Kenya and Ethiopia admitted large numbers of Somalis fleeing famine, primarily using a group-based approach to the recognition of refugee status.<sup>31</sup> In the aftermath of the 2010 Haiti earthquake and the ensuing collapse of law and order, Mexico and Ecuador granted a limited number of Haitians refugee status on the basis of the Cartagena Declaration’s wider refugee definition because of the risk of survivors becoming victims of violence.<sup>32</sup> **These examples illustrate that disasters, particularly in the context of conflict and violence, can create serious disturbances of public order** that emanate from human actors rather than natural hazards.



## 03

# DISASTERS: A FACTOR FOR GRANTING COMPLEMENTARY PROTECTION

**Complementary (also called subsidiary) protection allows persons who do not qualify as refugees to stay and be protected from forcible return to the country of origin (refoulement) on the basis of human rights law.**

Such protection is, for instance, granted to persons who would face a real risk of arbitrary deprivation of life, or torture and inhuman treatment, or serious and individual risk to life during armed conflict.<sup>33</sup> The UN Human Rights Committee has recognized **that in the mid- to long-term, threats to the right to life may prohibit the return of a person to low-lying islands at risk of being submerged by sealevel rise**, but emphasised in the specific case that this condition was not met at the time of the decision.<sup>34</sup>

Domestic courts in Austria routinely **take into account environmental factors**, such as recurrent drought or flooding, when assessing whether asylum-seekers from countries such as Afghanistan or Somalia are eligible for **complementary protection**.<sup>35</sup> Courts in other countries, including Germany,<sup>36</sup> Italy,<sup>37</sup> and New Zealand,<sup>38</sup> have on occasion also referred to disasters triggered by natural hazards as one element among others relevant for their assessment.

# 04

## HUMANITARIAN VISAS AND TEMPORARY PROTECTION

**States have developed and applied a series of tools mainly enshrined in migration law allowing persons displaced in the context of disasters and adverse effects of climate change to find temporary or permanent solutions abroad. Measures such as humanitarian visas and temporary protection are particularly important.**

Given the very limited application to date of refugee law and complementary or subsidiary protection for persons affected by disasters and adverse effects of climate change, tools enshrined in domestic migration law may provide alternative avenues for more comprehensive responses for disaster displaced persons, which should be implemented in a complementary manner. In this context, UNHCR's 2014 *Guidelines on Temporary Protection or Stay Arrangements* are helpful to respond to, among other scenarios, "large-scale influxes" in humanitarian crisis situations and "other exceptional and temporary conditions in the country of origin" where "individual status determination is ... not applicable" because "persons would generally not be considered to fall within the Convention, such as persons fleeing natural disasters."<sup>39</sup>

**Argentina's Special Environmental Humanitarian Visa Programme** provides humanitarian protection, planned relocation and durable solutions to disaster-displaced persons from Mexico, Central America, and the Caribbean. It grants an entry permit and a 3-year visa based on humanitarian reasons, which later may be converted to permanent residence. Resettled persons will have access to housing, maintenance, and support for a period of one year, through the sponsorship of a civil society organisation.<sup>40</sup>

**Italy's immigration legislation** allows Questure (police authorities) to issue renewable short-term residency permits to foreigners whose country of origin is in a situation of "contingent and exceptional calamity" that does not allow for a safe return. A total of 153 such permits have been issued since 2018.<sup>41</sup> The Italian Supreme Court of Cassation recognized that recurrent flooding and riverbank erosion in Bangladesh amounted to disasters that made safe return to the country of origin impossible.<sup>42</sup>

**Guidance to harmonize the application of humanitarian measures** on admission and stay of disaster-displaced persons have been developed by States in Central and South America.<sup>43</sup>

Several countries, particularly in the Americas and Europe, enshrine humanitarian measures in domestic laws and policies on immigration and the status of foreigners that can be utilized when persons displaced across borders in the context of disasters and adverse effects of climate change seek to enter or continue to stay in a country where they are

already present. Discretionary humanitarian measures such as **humanitarian visas, temporary admission, or temporary protection status** allow authorities to grant admission and stay for humanitarian reasons. In the Americas, the immigration laws of countries such as Argentina, Brazil, Canada, Ecuador, El Salvador, Guatemala, Mexico, Paraguay, Peru and the USA<sup>44</sup> contain **explicit references to risks associated with disasters** as a situation that justifies granting entry or temporary stay. Bolivia goes one step further and defines "climate migrants" as "[g]roups of persons who are forced to displace from one State to another due to climate effects, when a risk or threat to their life may exist, whether due to natural causes, environmental, nuclear [or] chemical disasters or hunger."<sup>45</sup> Other countries in the Americas and Europe have applied provisions on admission and temporary stay for "humanitarian considerations"<sup>46</sup> (that do not mention disasters) to persons at risk in disaster-affected countries of origin, for instance in the aftermath of the 2010 Haiti earthquake.<sup>47</sup> In France, a Court recognized that a person suffering from respiratory problems could not be sent back to his country of origin, where the combination of a **very high degree of atmospheric pollution and a weak medical system** would have seriously affected his health.<sup>48</sup>

Countries may also decide to **prioritize visa applications** from people affected by a sudden-onset disaster who wish to travel temporarily to stay with their relatives living abroad, as Canada, Belgium, Germany, and Switzerland did in the immediate aftermath of the 2023 earthquake in south-eastern Türkiye.<sup>49</sup> States may also **waive requirements for regular visa applications** for individuals from certain countries to either extend existing resident visas or grant new permits, which countries like the British Virgin Islands, Canada, Montserrat, and the USA have done on several occasions for applicants from disaster-affected countries.

Grounded in migration law and enshrined in the [Global Compact on Refugees](#), paragraph 63, these collective practices addressing cross-border disaster-displacement are also in line with the approach adopted by States in the [Global Compact for Safe, Orderly, and Regular Migration](#) (GCM). Under Objective 5 on enhancing the availability and flexibility of pathways for regular migration, States committed to building on a series of measures, including using or developing practices based on humanitarian considerations to temporarily admit "migrants compelled to leave their countries of origin owing to sudden-onset natural disasters ... , while adaptation in or return to their country of origin is not possible" (GCM, para. 21[g]).

# 05

## MIGRATION AGREEMENTS AND IMMIGRATION QUOTAS: A PATHWAY TO SAFETY

**Agreements on the free movement of persons, as well as bilateral agreements or immigration quotas for persons from climate vulnerable countries, enable disaster displaced persons to access safe, orderly, and regular migration pathways in regions particularly affected by drought, flooding, or sea level rise. Such measures also anticipate and seek to avoid future cross-border disaster-displacement.**

The **Protocol on the Free Movement of Persons in the IGAD Region**, adopted in 2021, provides that “Member States shall allow citizens of another Member State who are moving in anticipation of, during or in the aftermath of disaster to enter into their territory provided that upon arrival they shall be registered in accordance with national law.”

**Cross-border simulation exercises** have been conducted by neighbouring States in Central and South America and the Horn of Africa<sup>50</sup> that led to the revision of Standard Operating Procedures for relevant authorities and the development of bilateral Memoranda of Understanding.

Another approach can be found in Africa and the Caribbean. Here, sub-regional **agreements on the free movement of persons** have allowed individuals and families to travel to neighbouring countries and, for instance, find refuge and employment **during times of drought and flooding** in Africa’s ECOWAS region,<sup>51</sup> or enter a country in the immediate aftermath of tropical storms in the Caribbean.<sup>52</sup> In 2021, Member States adopted a Protocol on Free Movement of Persons in the IGAD Region, which explicitly provides that disaster-affected people may enter and stay in the territory of another Member State (Article 16).

While free movement agreements usually allow for temporary admission before permanent stay becomes possible, **bilateral migration agreements** could usefully address the issue of permanent admission of persons from countries that are losing substantial parts of their territory due to sea level rise and other long-term impacts of slow-onset disasters.<sup>53</sup>

Finally, States may establish **immigration quotas** for individuals from countries particularly affected by disasters and the adverse effects of climate change. While not introduced with the purpose to protect people affected by climate change, New Zealand’s [Pacific Access Category](#) offers permanent admission to a certain number of people from Kiribati, Tuvalu, Tonga or Fiji, with annual quotas recently doubled between 2022 and 2023. The Pacific Australia Labour Mobility (PALM) scheme allows workers from climate vulnerable Pacific Island States to take up seasonal jobs in the agricultural sector, develop their skills, and send home income to support their families and communities. Australia is also developing a new [Pacific Engagement Visa](#) (PEV) scheme that would allow families from such islands to permanently stay in Australia, and thus **help countries affected by sea level rise and losing habitable territories to build and strengthen a viable diaspora** in Australia in the mid-to-long term. The 2023 [Pacific Human Mobility Framework](#), in paragraph 39, commits States to “explore opportunities to provide people who are compelled to cross borders in the context of the adverse effects of climate change with opportunities for humanitarian admission and stay as well as access to longer-lasting and sustainable solutions including resettlement and regularisation of their legal status” in line with domestic law.





# 06

## INTERNATIONAL SUPPORT

**The international community and bilateral donors need to support States that provide international protection to or otherwise host persons displaced in the context of disasters and adverse effects of climate change, in line with the principles of shared responsibilities and international solidarity that underlie the Global Compact on Refugees.**

Examples of practices for effective support include the World Bank's Window for Host Communities and Refugees (WHR) that creates medium and long-term development opportunities for refugees and host communities. The EU's Regional Development Protection Program (RDPP), an international protection initiative set up by the EU and its Member States, assists third countries to address the protection and developmental needs of migrants, refugees, and asylum seekers. The RDPP also supports the efforts of migrant and refugee hosting communities, and builds national authorities' capacities regarding asylum and protection. Other examples include the EU Trust Fund project on "Free movement of persons and transhumance in the IGAD region" that supports implementation of IGAD's free movement

protocol, a similar project funded by Germany, entitled "Improving Migration and Refugee Policies in the IGAD Region," as well as the EU's "Support to Free Movement of Persons and Migration" project supporting implementation of the ECOWAS Free Movement Protocol and ECOWAS Common Approach on Migration.

Climate finance offers largely untapped potential to support host countries affected by adverse climate change effects. In particular, the [fund for loss and damage](#), established by the UNFCCC Conference of the Parties in 2022 (COP27), provides an important opportunity to include support for measures to anticipate, respond to and address displacement.

# 07

## CONCLUSIONS AND RECOMMENDATIONS

As this overview illustrates, existing measures derived from international refugee law, human rights law, as well as migration law offer legal and policy options for admitting and protecting people displaced across borders in the context of disasters and the adverse effects of climate change. The regional practices further demonstrate that consensus is growing on the need to protect such persons. However, a closer analysis of State practice indicates that the use of these tools is limited, often random, hard to predict, and neither harmonized nor well-coordinated. In other words, implementation remains partial and unpredictable.

**To support the implementation of paragraphs 61 and 63 of the Global Compact on Refugees,**

### **UNHCR**

**should, building on existing good practice:**

- ➔ Develop further guidance on the application of refugee law, complementary protection, and their limits in the context of disasters, climate change, and environmental degradation;
- ➔ Develop additional guidance on the use of temporary protection and stay measures in the context of disasters, climate change, and environmental degradation; and
- ➔ Support regional dialogues and similar processes on refugee law, where they exist, and encourage States to seriously consider and build consensus on the applicability of regional refugee law.

### **States**

**in order to harness the full potential of the 1951 Refugee Convention, should:**

- ➔ Include the issue of disaster- and climate change-related displacement into training for officials and judges involved in refugee status determination;
- ➔ Ensure the systematic integration of relevant disaster and climate change-related facts and analysis in country-of-origin information;
- ➔ Ensure access to refugee status determination procedures for everyone claiming to be in need of international protection due to persecution in the context of disasters and the adverse effects of climate change; and
- ➔ Ensure that decision makers systematically consider factors related to disasters and adverse effects of climate change as relevant elements when deciding whether an internal flight alternative exists or whether to grant complementary/subsidiary protection.

### **States**

**should consider the use of national and regional migration law to:**

- ➔ Develop new or strengthen existing tools based on humanitarian considerations, such as humanitarian visas and temporary protection status, that are harmonized and utilized in predictable ways;
- ➔ Utilize discretionary powers to authorize the admission and/or stay of displaced persons using regular migration categories;
- ➔ Integrate disaster displacement into regional or bilateral agreements on the free movement of persons; and
- ➔ Introduce immigration quotas to create pathways for safe, orderly, and regular migration from countries particularly affected by sea level rise or otherwise losing habitable territory as a consequence of the adverse effects of climate change.

### **Donors**

**should explicitly include and address cross-border displacement in the context of disasters and the adverse effects of climate change in programs and projects supporting hosting countries, whilst not neglecting efforts to reduce greenhouse gas and to prevent and address displacement in countries of origin, including through climate adaptation and loss and damage financing.**

### **The Platform on Disaster Displacement**

**should continue its support for collaborative efforts that promote predictable, complementary, and integrated approaches to address displacement in the context of disasters and climate change.**

## EXISTING GUIDANCE



UNHCR's 2020 [Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters](#) set out key legal considerations concerning the applicability of international and regional refugee and human rights law when cross-border displacement occurs in the context of the adverse effects of climate change and disasters. The document primarily focuses on the interpretation and application of the 1951 Refugee Convention and the meaning of “events seriously disturbing public order” as enshrined in the OAU Refugee Convention, but also addresses complementary protection and temporary protection mechanisms.



UNHCR's 2014 [Guidelines on Temporary Protection or Stay Arrangements](#) assist governments in the development of Temporary Protection or Stay Arrangements (TPSAs) as responses to humanitarian crises and complex or mixed population movements, particularly in situations where existing responses are not suited or adequate. The document highlights that such arrangements, particularly in cases of large-scale influx and as part of a humanitarian response, need to be flexible to quickly react to a disaster situation while also providing at least a minimum level of protection.



The 2015 [Nansen Initiative Protection Agenda](#) presents key principles and elements to protect persons displaced across borders in the context of disasters triggered by natural hazards, including those linked to climate change. Importantly, it aims to support States and (sub-)regional actors integrate effective practices into their own normative frameworks, in accordance with their specific context, by offering a toolbox to better prevent and prepare for displacement before a disaster strikes. When displacement cannot be avoided, the Protection Agenda also presents tools to help States improve their responses to disaster situations that force people to find refuge, either within their own country or across an international border.

## ENDNOTES

- <sup>1</sup> *Global Compact on Refugees*, paras. 8, 61 and 63. See UNHCR, [Climate change and disaster displacement in the Global Compact on Refugees](#).
- <sup>2</sup> It builds on a review of laws, policies and practices of 52 States, as well as other relevant instruments and documents, including the Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137) and Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (hereafter 1951 Refugee Convention and 1967 Protocol) and corresponding regional instruments; the International Covenant on Civil and Political Rights and relevant regional human rights instruments; the Global Compact for Safe, Orderly, and Regular Migration (GCM) and relevant migration agreements; UNHCR's [Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters](#) and its [Guidelines on Temporary Protection or Stay Arrangements](#); and the Nansen Initiative [Agenda for the protection of cross-border displaced persons in the context of disasters and climate change](#), 2015.
- <sup>3</sup> IDMC, *GRID 2023: Global Report on Internal Displacement*, Internal Displacement Monitoring Centre and Norwegian Refugee Council, 2023.
- <sup>4</sup> IDMC, [2023 Mid-year update on internal displacement](#).
- <sup>5</sup> IPCC, “Summary for Policymakers” in *IPCC Climate Change 2022 – Impacts, Adaptation and Vulnerability – Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Pörtner H.O. and others (eds)) (Cambridge University Press 2022), pp. 9 and 11.
- <sup>6</sup> Clement V. and others, *Groundswell Part 2: Acting on Internal Climate Migration*, World Bank, 2021, p. xxvii.
- <sup>7</sup> See UNHCR, [2023: A Moment of Truth for Global Displacement](#).
- <sup>8</sup> 0907346 [2009] [RRTA 1168](#) (10 December 2009), para. 48.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> *Ibid.*, para. 51.
- <sup>11</sup> McAdam J., *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012) pp. 39-51; Ragheboom H., *The International Legal Status and Protection of Environmentally Displaced Persons: A European Perspective* (Brill 2017), pp. 293-357; Borges I.M., *Environmental Change, Forced Displacement and International Law: From Legal Protection Gaps to Protection Solutions* (Routledge 2020), pp. 116-151; Scott M., *Climate Change, Disasters, and the Refugee Convention* (Cambridge University Press 2020), pp. 155-156; Goodwin-Gill G. and McAdam J., *The Refugee in International Law* (4th ed., Oxford University Press 2021), pp. 642-45; Storey H., *The Refugee Definition in International Law* (Oxford University Press 2023), pp. 26; See also CGRS, *Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters: Making the Best Use of Existing Legal Frameworks*, [Center for Refugee & Gender Studies](#), June 14, 2023.
- <sup>12</sup> For these and other scenarios see Scott M., *ibid.*, pp. 45-88.
- <sup>13</sup> [Refugee Appeal No 76374](#) (New Zealand Refugee Status Appeals Authority, 28 October 2009).
- <sup>14</sup> [RN \(Returnees\) Zimbabwe v. Secretary of State for the Home Department](#), [2008] UKAIT 00083 para. 249.
- <sup>15</sup> UNHCR, [Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#) (HCR/GIP/02/01), 7 May 2002.
- <sup>16</sup> Note UNHCR's [Operational Strategy for Climate Resilience and Environmental Sustainability 2022-2025](#).
- <sup>17</sup> Cantor D.J., [Law, Policy and Practice Concerning the Humanitarian Protection of Aliens on a Temporary Basis in the Context of Disasters](#), Nansen Initiative, 2015, p. 17.
- <sup>18</sup> UNHCR, [Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters](#), 1 October 2020.
- <sup>19</sup> See UNHCR, [Guidelines on International Protection No. 12 on claims for refugee status related to situations of armed conflict and violence under Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee def.](#), 2 December 2016.

- <sup>20</sup> Weerasinghe S, [In Harm's Way – International Protection in the Context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change](#), UNHCR, December 2018, p. 10.
- <sup>21</sup> ICRC, [When rain turns to dust](#) (ICRC, July 2020), p. 10.
- <sup>22</sup> See Tribunale Ordinario di Firenze, *X v Ministero dell' Interiore*, E.R.G. 6142/2019 [10 May 2023] and *X v Ministero dell' Interiore*, E.R.G. 2019/16935/2019 [3 May 2023] where the court recognized that flooding and ensuing loss of land contributed to the vulnerability of men who had been trafficked and, in the absence of State protection, feared being targeted again by traffickers as members of a social group.
- <sup>23</sup> UNHCR, [Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees](#), UN Doc HCR/GIP/03/04 (23 July 2003), para. 25.
- <sup>24</sup> *Ibid*, para. 29.
- <sup>25</sup> Borgarting Court of Appeal, [Abid Hassan Jama v. Utlendingsnemnda](#), Decision of 23 September 2011.
- <sup>26</sup> [OAU Convention Governing the Specific Aspects of Refugee Problems in Africa](#) (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45, art. 1(2).
- <sup>27</sup> [Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama](#), adopted by the Colloquium, held at Cartagena, Colombia, 19–22 November 1984, Conclusion III(3).
- <sup>28</sup> On this notion, see Hansen-Lohrey, C., [Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change](#), UNHCR PPLA/2023/01 (September 2023).
- <sup>29</sup> According to *ibid*, p. 21, 48 African countries and 14 Latin American countries apply the wider refugee definition.
- <sup>30</sup> See Hansen-Lohrey (n. 28); Adeola A., "Protecting 'Climate Refugees' Under the OAU 1969 Refugee Convention" in Adeola, A. and Mutua, M.W. (eds.), *The Palgrave Handbook of Democracy, Governance and Justice in Africa* (Palgrave Macmillan 2022), p. 361; Marina Sharpe, *The Regional Law of Refugee Protection in Africa* (Oxford University Press 2018), p. 50; Weerasinghe (n 20); Wood, T., [Protection and Disasters in the Horn of Africa – Norms and Practice for Addressing Cross-Border Displacement in Disaster Contexts](#), Nansen Initiative Technical Paper, 2013.
- <sup>31</sup> Weerasinghe (n 20), pp. 36-58.
- <sup>32</sup> Cantor (n 17) p. 18. Weerasinghe (n 20), pp. 75-83.
- <sup>33</sup> See, e.g., Article 15 of the [Qualification Directive](#).
- <sup>34</sup> Human Rights Committee, *Teitiota v New Zealand*, Communication No 2728/2016 (7 January 2020), paras. 9.11–9.13.
- <sup>35</sup> Ammer, M., Mayrhofer, M., Scott, M., [Synthesis Report – ClimMobil – Judicial and policy responses to climate change-related mobility in the European Union with a focus on Austria and Sweden](#) Ludwig Boltzmann Institute and Raoul Wallenberg Institute, May 2022; Mayrhofer, M. and Ammer, M., [Climate mobility to Europe: The case of disaster displacement in Austrian asylum procedures](#), (2022) 4 *Frontiers in Climate*; Scissa, C., Biondi Dal Monte, F., Scott, M., Ammer, M., Mayrhofer, M., [Legal and Judicial Responses to Disaster Displacement in Italy, Austria and Sweden](#), *Völkerrechtsblog*, 19.10.2022.
- <sup>36</sup> See VGH Baden-Württemberg A 11 S 2042/20 (17.12.2020) which recognized that environmental conditions, such as the climate and disasters are relevant factors for determining the humanitarian conditions in Afghanistan (para. 25). Similar, VGH Baden-Württemberg, A 13 S 3196/19 (16 December 2021) para. 57 ff (Somalia).
- <sup>37</sup> See *Order no. 5022* of the Corte di Cassazione of 2021 requiring courts to consider "conditions of social, environmental or climatic degradation ... which pose a serious risk to the survival of the individual" when assessing claims under Article 19 of Decree no. 286/98 regarding expulsion and rejection prohibitions.
- <sup>38</sup> See [AC \(Eritrea\)\[2023\] NZIPT 802201–202](#), in which the tribunal granted the elderly applicants from Eritrea protection because it was found that their living conditions upon return would expose them to a violation of their right to be free of inhuman treatment (Article 7 ICCPR). The reasoning included acknowledgment that climate change impacts, notably drought and heavy rainfalls, compounded food insecurity.
- <sup>39</sup> Division of International Protection, [Guidelines on Temporary Protection or Stay Arrangements](#), UNHCR, 2014, paras. 9 and 10, and footnote 9.
- <sup>40</sup> See [Programma Especial de Visado Humanitario Ambiental](#), Global Compact on Refugees.
- <sup>41</sup> Scissa, C., An innovative analysis of Italy's protection against disaster displacement: Numbers and profiles of the beneficiaries, [RLI Blog](#), 5 May 2023.
- <sup>42</sup> Scissa C., [The Climate Changes, Should EU Migration Law Change as Well? Insights from Italy](#), (2022) 14(1) *European Journal of Legal Studies* 5, p. 21, summarizing Court of Cassation, I Civil Section, Order of 4 February 2020, n 2563.
- <sup>43</sup> Regional Conference on Migration, Protection for Persons Moving Across Borders in the Context of Disasters, [A Guide to Effective Practices for RCM Member Countries](#), Nansen Initiative, November 2016; Conferencia Suramericana sobre Migraciones, [Lineamientos regionales en materia de protección y asistencia a personas des-plazadas a través de fronteras y migrantes en países afectados por desastres de origen natural](#), CSM 2018.
- <sup>44</sup> Cantor, D.J. [Environment, Mobility, and International Law: A New Approach in the Americas](#), (2021) 21(2) *Chicago Journal of International Law* 263, at pp. 306-308.
- <sup>45</sup> *Ibid*, p. 306, citing Ley No. 370, Ley de Migración, art. 65, May 8, 2013 (Bol.), per-ma.cc/P2EV-ECD7., art 4(16).
- <sup>46</sup> See, e.g., Germany, Section 60(5) of the German [Residence Act](#) in conjunction with Article 3 ECHR; Jamaica, Refugee Policy, 12(a)(iii), 13(f), 2009 (leave to remain on "humanitarian grounds"); New Zealand, Immigration Act 2009, Section 207(1)(a) "exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand".
- <sup>47</sup> For example, in 2017, Argentina interpreted "humanitarian considerations" in its national migration law (Disposition No. E 1143/2017, preamble, Mar. 15, 2017, [33588] B.O. 23 (Arg.)) to include disaster-related considerations to regularize Haitians in the country following the 2010 earthquake. See Cantor (n. 43), p. 306.
- <sup>48</sup> Cour administrative d'appel de Bordeaux (France), 2ème chambre, 18 décembre 2020, 20BX02193, [20BX02195](#).
- <sup>49</sup> Fragonment, [Worldwide/Türkiye: Relaxed Visa Requirements for Those Affected by Earthquake](#), 10 May 2023.
- <sup>50</sup> To date, such simulation exercises have been conducted between Costa Rica and Panama, Colombia and Ecuador, Ethiopia and Kenya, and Kenya and Uganda. For example, see Platform on Disaster Displacement, [Uganda and Kenya Conclude Simulation Exercise on Managing Cross-Border Disaster Displacement](#), 25 May 2023.
- <sup>51</sup> Wood, T., [The role of free movement agreements in addressing climate mobility](#), (2022) 69 *Forced Migration Review* 62, at 63. See also Wood (n 30).
- <sup>52</sup> Francis, A., [Free Movement Agreements & Climate-Induced Migration: A Caribbean Case Study](#), Sabin Center for Climate Change Law, September 2019.
- <sup>53</sup> See, for example, Article 3 of the [Australia-Tuvalu Falepili Union Agreement](#) of 9 November 2023, which commits Australia to grant residency to citizens of Tuvalu. Ratification of the treaty may require parliamentary approval in both States before it comes into force.



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## GLOBAL COMPACT ON REFUGEES

### Paragraph 61.

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

### Paragraph 63.

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



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