

## DOCUMENTS

# International Protection for People Displaced across Borders in the context of Climate Change and Disasters: A Practical Toolkit

## Overview

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1. This document provides an overview of *International Protection for People Displaced across Borders in the context of Climate Change and Disasters: A Practical Toolkit*<sup>1</sup> – a detailed, practically-focused analysis of how international and regional refugee law and human rights law apply to international protection claims involving the impacts of climate change and disasters. The current document provides an introduction to the core issues and key considerations that decision-makers and practitioners should take into account. It is intended as a ready-reference guide only.
2. The full Practical Toolkit provides a comprehensive analysis of the law and contains detailed references to relevant materials. It includes analysis of the 1951 Refugee Convention and applicable international human rights treaties; regional frameworks in Africa, Latin America and Europe; and case law examples.

1 Kate Jastram, Jane McAdam, Geoff Gilbert, Tamara Wood and Felipe Navarro, *International Protection for People Displaced across Borders in the context of Climate Change and Disasters: A Practical Toolkit* (Center for Gender & Refugee Studies, Kaldor Centre for International Refugee Law and Essex Law School and Human Rights Centre, 2025). The full Practical Toolkit is available on Refworld. This shorter 'Overview' is available at: <https://www.unsw.edu.au/kaldor-centre/our-resources/legal-and-policy-resources/protection-toolkit-on-climate-and-disaster-displacement>.

## THE ROLE OF INTERNATIONAL PROTECTION IN THE CONTEXT OF CLIMATE CHANGE AND DISASTERS

3. Displacement in the context of climate change and disasters is not just a future phenomenon – it is happening now. Across the globe, increasing temperatures, sea-level rise and more frequent and severe extreme weather events are forcing people to move away from anticipated and/or actual harm. As the impacts of climate change intensify, the scale of displacement is likely to increase. While most people displaced in the context of climate change and disasters remain within their own countries, some move across international borders in search of safety and protection.
4. Under international refugee and human rights law, including relevant regional instruments and customary international law, the principle of *non-refoulement* (non-removal) prohibits a person from being deported, returned or otherwise removed if they have a well-founded fear of being persecuted or face a real risk of being subjected to other serious harm, including risks to life, torture, or other cruel, inhuman or degrading treatment. Those who qualify for international protection are also entitled to a range of rights and standards of treatment during their stay in another country, including the right to non-discrimination, freedom of religion and freedom of movement, as well as basic rights to work, housing and education.
5. The impacts of climate change and disasters may give rise to an international protection claim in a broad range of factual scenarios. Examples include:<sup>2</sup>
  - Persecution of environmental activists involved in protests or disputes relating to environmental activities or policies;
  - Discrimination against particular groups in the delivery of disaster relief, humanitarian assistance or climate adaptation programming;
  - Climate change or disaster impacts triggering or exacerbating inter-communal violence and conflict;
  - Disasters leading to a breakdown in public order that threatens people's peace, safety and security.

### KEY CONSIDERATIONS FOR DECISION-MAKERS AND PRACTITIONERS

**Key Consideration 1:** There are no special rules for international protection claims involving climate change and disasters

6. International protection claims arising in the context of climate change and disasters should be assessed in the same way as all other protection claims – that is, through a systematic application of the applicable legal criteria to the established facts of the individual claim. A structured, step-by-step approach to the assessment of international

2 These scenarios have been adapted from those articulated in: Platform on Disaster Displacement and UN High Commissioner for Refugees (UNHCR), *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*, Policy Brief (Dec 2023) section 2; UNHCR, *Climate Change Impacts and Cross-Border Displacement: International Refugee Law and UNHCR's Mandate* (Dec 2023) section 1.1; Refugee Law Initiative, *Declaration on International Protection in the context of Disasters and Climate Change* (May 2024) para 8; Matthew Scott, *Climate Change, Disasters, and the Refugee Convention* (Cambridge University Press, 2020) 45–88.

protection claims that takes into account the applicant's circumstances as a whole will help to ensure that decision-makers consider all of the issues using the relevant law, evidence and reasoning.

7. There is no general proposition that people displaced in the context of climate change and disasters will, or will not, qualify for international protection. While some people will meet the criteria under international refugee or human rights law, others will not. This depends on the applicable criteria under international, regional or national law, and the facts of the particular claim. Existing guidance from the UN High Commissioner for Refugees (UNHCR) and others on the interpretation and application of refugee and human rights law provides useful assistance.
8. Establishing the facts of the claim requires the same approach as in other international protection claims. Cases concerning the impacts of climate change and disasters do not require a specialized understanding of climate science. While information regarding the projected adverse effects of climate change may be relevant to assessing the trajectory of a risk over time, the most pertinent issue is to understand the local 'hazard-scape';<sup>3</sup> including how it interacts with social, economic and political factors for the applicant.

**Key Consideration 2:** The hazard-scape should be considered as a whole

*In RN (Returnees) Zimbabwe CG, the UK Asylum and Immigration Tribunal considered the risks of harm to an applicant from Zimbabwe arising from discriminatory deprivation of basic assistance, including food aid, shelter and safe water. The Tribunal held that, in a context of severe food shortages and limited alternative options for survival, 'discriminatory exclusion from access to food aid is capable itself of constituting persecution for a reason recognised by the Convention'.<sup>4</sup>*

9. People displaced across borders in the context of climate change and disasters typically flee from a range of hazards – that is, impacts or activities 'that may cause loss of life, injury or other health impacts, property damage, social and economic disruption or environmental degradation'.<sup>5</sup> Hazards may be both natural and human. In this context, the determination of an international protection claim should not focus only on climate change or the disaster per se, but on the full range of hazards that may be present (the 'hazard-scape') and the associated harm feared by the applicant. These should be considered cumulatively, as part of a forward-looking assessment of the risk of persecution or other serious harm.
10. A cumulative assessment of the risk of harm is especially important in the context of climate change and disasters, which may impact a wide range of human rights, including rights to life, water and sanitation, food security, shelter and health. As UNHCR has noted, 'it is important to understand that impacts may emerge suddenly or gradually; overlap temporally and geographically; vary in intensity, magnitude and frequency; and persist over time'.<sup>6</sup> In many cases, the risk of harm may emerge gradually over time, rather than as the result of a single, extreme event.

<sup>3</sup> AW (Kiribati) [2022] NZIPT 802085, para 62.

<sup>4</sup> RN (Returnees) Zimbabwe CG [2008] UKAIT 00083, para 249.

<sup>5</sup> UN Office for Disaster Risk Reduction (UNDRR), 'Hazard' (UNDRR website, undated).

<sup>6</sup> UNHCR, *Legal Considerations regarding Claims for International Protection made in the context of the Adverse Effects of Climate Change and Disasters* (2020) (UNHCR Legal Considerations) para 9 (citations omitted).

11. Decision-makers assessing claims in this context should consider the impacts of climate change and disasters within the broader social context (including underlying systemic issues of discrimination or inequity that may impact on how people experience harm). Thus, the hazard-scape in the country of origin should be considered as a whole in identifying and assessing the future risk of harm.

**Key Consideration 3:** Climate change and disasters affect people in different ways

*In AC (Tuvalu), New Zealand's Immigration and Protection Tribunal considered non-refoulement obligations with respect to a family from Tuvalu. Regarding the children of the primary applicants for international protection, the Tribunal noted that '[t]he best interest of the child principle requires that the tribunal turn its mind to their specific vulnerabilities as children'.<sup>7</sup> While the Tribunal found that the children were not at sufficient risk of serious harm if returned to Tuvalu to qualify for international protection, it nevertheless recognized that 'by reason of their young age', they were 'inherently more vulnerable to the adverse impacts of natural disasters and climate change than their adult parents'.<sup>8</sup>*

12. An assessment of the risk of harm should take into account not only the full range of hazards to which the applicant may be exposed (see Key Consideration 2), but also the circumstances, characteristics and capacities of the individual applicant. The impacts of climate change and disasters are not indiscriminate – they affect people in different ways, including on account of age, gender, health, resources and other characteristics, such as disability.
13. The differential impacts of climate change and disasters often reflect the overlapping and interrelated factors that shape individuals' vulnerabilities and capacities, which requires an intersectional approach. This highlights the need for a nuanced and comprehensive assessment of all international protection claims that takes into account the various identities, experiences and risks faced by particular individuals and groups. Being specific in identifying the harms feared by the individual reduces the risk of oversimplified (and erroneous) generalizations about the supposedly indiscriminate nature of climate change and disasters.
14. Government policies and societal structures may also influence how the impacts of climate change and disasters are felt by particular individuals or groups. Historically marginalized groups will frequently be at increased risk of such impacts due to increased exposure and/or vulnerability, as well as underlying patterns of discrimination, which may limit their access to available assistance and protection.

**Key Consideration 4:** Human agency contributes to the impacts of climate change and disasters

*In AC (Eritrea), the New Zealand Immigration and Protection Tribunal considered an international protection claim by an Eritrean couple, based on conditions of generalized poverty and underdevelopment exacerbated by the effects of climate change. The Tribunal held that '[t]he direct and indirect actions of the government of Eritrea (that include the state's military prioritisation, poor governance, corruption and abuses significantly impacting the subsistence lifestyle of the appellants) have contributed meaningfully to their predicament'.<sup>9</sup> Acknowledging the government's recent steps to implement*

<sup>7</sup> AC (Tuvalu) [2014] NZIPT 800517-520, para 115.

<sup>8</sup> Ibid, para 119.

<sup>9</sup> AC (Eritrea) [2023] NZIPT 802201–202, para 147.

climate adaptation measures, the Tribunal nevertheless found that ‘such risk mitigation factors are inadequate to reduce the risk of the appellants facing starvation here and now below the real chance level’.<sup>10</sup>

15. Not all risks of serious harm will give rise to international protection (see Key Consideration 1). In addition to the requisite threshold of harm, human agency (both for acts and omissions) is generally required to found an international protection claim. For instance, the New Zealand Immigration and Protection Tribunal has taken the view that a State’s inability to respond to a disaster will generally not constitute ill-treatment, whereas a decision to withhold humanitarian assistance on a discriminatory basis could.<sup>11</sup>
16. The human agency requirement for an international protection claim relates to the risk of harm to the applicant, determined holistically with regard to the situation as a whole (see Key Consideration 2) and the applicant’s individual characteristics (see Key Consideration 3), rather than to the specific precipitating event or conditions. Thus, it is not necessary to establish human agency with respect to a particular hazard or disaster, or for climate change per se. Rather, human agency must be a factor in creating the risk of serious harm to the applicant.
17. This approach reflects the important understanding that, while there may be natural *hazards*, there is no such thing as a natural *disaster*. Some older decisions concerning the application of the 1951 Refugee Convention in the context of disasters, famines and epidemics erroneously regarded these as ‘natural’ phenomena that could not give rise to refugee status, rather than being related to broader social conditions. Decision-makers must ‘recognize the social and political characteristics of the effects of climate change or the impacts of disasters or their interaction with other drivers of displacement’.<sup>12</sup>
18. For many international protection claims, the human agency requirement is captured by the inability or unwillingness of the applicant’s State to protect the applicant from harm. In the context of climate change and disasters, this could include the government’s failure to evacuate people at risk; provide life-saving assistance; ensure equitable access to aid; or even to take disaster risk reduction or adaptation measures that would reduce the risk.

### **Key Consideration 5:** The risk of harm may manifest over time

*In AW (Kiribati), a man from Kiribati sought international protection based on, among other things, a future risk of serious harm arising from the impacts of climate change. Noting that ‘the further in time the decision-maker projects, the greater the opportunity for risk-reducing factors to intrude’,<sup>13</sup> New Zealand’s Immigration and Protection Tribunal found that ‘there is no sufficiently compelling evidence before the Tribunal to establish that existing and future climate change adaptation and disaster risk reduction measures ... alongside ongoing sustainable development projects and programming, will not reduce the risk that the appellant’s international human rights will be breached ... to below the real chance standard’.<sup>14</sup>*

<sup>10</sup> Ibid, para 148.

<sup>11</sup> AC (Tuvalu) (n 7) para 84.

<sup>12</sup> UNHCR Legal Considerations (n 6) para 5.

<sup>13</sup> AW (Kiribati) (n 3) para 106.

<sup>14</sup> Ibid, para 128.

19. At the heart of all international protection claims is a forward-looking assessment of the risk of persecution or serious harm to the applicant. While the assessment of future risk must be made at the time the claim is determined, there is no limit on the future timeframe in which the risk is assessed. The impacts of climate change and disasters may emerge suddenly or gradually, and their effects may be felt over time. Thus, in all international protection claims, ‘the relevant timeframe ... must be broad enough to encompass a continuum of repeated harms of varying nature and intensity.’<sup>15</sup>
20. In places where the impacts of climate change and disasters are already being felt, and/or where the applicant has already experienced persecution or other forms of serious harm as a result, this will be relevant to an assessment of the future risk to the applicant if returned. However, an international protection claim may also be grounded in anticipated future harms that have not yet manifested. For example, the UN Human Rights Committee has noted that conditions in a country facing the impacts of climate change ‘may become incompatible with the right to life with dignity before the risk is realized’,<sup>16</sup> meaning that international protection should be forthcoming before a situation becomes immediately life-threatening.
21. In assessing the risk of harm over time, decision-makers should take into account both the likely increases in climate change impacts over time, as well as the positive steps that a country may take to mitigate the risk of harm, such as through climate change adaptation, disaster risk reduction measures and sustainable development. A failure by authorities to guard against known future climate risks could support a claim to international protection, at least in situations where risk reduction actions would not pose ‘[a]n impossible or disproportionate burden’ on the government.<sup>17</sup> However, government action to mitigate and reduce climate risks may indicate that international protection is not needed, where such action reduces the likelihood of harm to below the ‘real risk’ threshold.

## FURTHER INFORMATION

For further information, see International Protection for People Displaced across Borders in the context of Climate Change and Disasters: A Practical Toolkit.<sup>18</sup> The full Practical Toolkit expands on the Key Considerations set out here, provides detailed legal analysis of specific international and regional legal frameworks, and includes suggested fact-finding questions and key resources for further reading.

15 *OF (India)* [2023] NZIPT 802113, para 120.

16 *Teitiota v New Zealand*, Comm No 2728/2016 (24 Oct 2019) para 9.11.

17 *Budayeva and Others v Russia* [2008] ECHR 15339/02, para 135.

18 Jastram et al. (n 1).