



# International protection for people displaced across borders in the context of climate change and disasters

A PRACTICAL TOOLKIT

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# A. Introduction

1. As the impacts of climate change and disasters affect the displacement of people worldwide, decision-makers and practitioners are increasingly being called upon to assess whether those displaced across international borders in this context are entitled to international protection. To assist with this task, this Practical Toolkit provides principled guidance on the interpretation and application of international and regional refugee and human rights law to international protection claims involving climate change and disasters.
2. This Practical Toolkit does not seek to *extend* the scope of international protection under refugee or human rights law, but rather explains how climate change and disasters can contribute to establishing the factual basis for international protection under existing legal frameworks. The analysis in this Practical Toolkit applies to all international protection claims involving the impacts of climate change and disasters, irrespective of whether they are central to the claim or part of the broader context in which the claim arises.
4. Displacement is one of four main types of human mobility occurring in the context of climate change and disasters.<sup>1</sup> It refers to the movement of people who are forced or obliged to leave their homes or places of habitual residence in connection with sudden-onset natural hazards and/or slower, cumulative pressures occurring in the context of climate change and disasters.<sup>2</sup>

‘[J]ust as a disaster is complex and multi-causal, so is disaster displacement. In addition to exposure to a natural hazard, a multitude of demographic, political, social, economic and other developmental factors also determines to a large extent whether people can withstand the impacts of the hazard or will have to leave their homes’.

Nansen Initiative on Disaster-Induced Cross-Border Displacement, [Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change](#) (vol 1, 2015) para 17.

## DISPLACEMENT 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.
5. Despite common usage of the term ‘natural disaster’, disasters are never natural. Rather, disasters occur when people lack the capacity to effectively cope with *natural hazards* – such as floods, storms, earthquakes and droughts – including those triggered or exacerbated by climate change. It is the *combination* of natural hazards with the affected community’s pre-existing vulnerabilities and capacities that generates a disaster, potentially resulting in the displacement of individuals or groups.<sup>3</sup>
6. Like other forms of human mobility, displacement *in the context of* climate change and disasters is multicausal. The impacts of climate change and disasters intersect with a wide range of social, economic, cultural, political and other non-climatic factors, which together influence people’s decisions to move. As such, this Practical Toolkit refers to displacement *in the context of* climate change and disasters.<sup>4</sup>

<sup>1</sup> The others are migration, planned relocations and evacuations.

<sup>2</sup> See Jane McAdam and Tamara Wood, [Kaldor Centre Principles on Climate Mobility](#) (Nov 2023) Glossary.

<sup>3</sup> The UN Office for Disaster Risk Reduction (UNDRR) defines a ‘disaster’ as a ‘serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity’: UNDRR, [‘Disaster’](#) (undated).

<sup>4</sup> This mirrors the approach in UN High Commissioner for Refugees (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).

## THE ROLE OF INTERNATIONAL PROTECTION

7. 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.

*'The adverse effects of climate change and disasters are often exacerbated by other factors such as poor governance, undermining public order; scarce natural resources, fragile ecosystems, demographic changes, socio-economic inequality, xenophobia, and political and religious tensions, in some cases leading to violence. As a result of these negative impacts of climate change and disasters, combined with social vulnerabilities, people may be compelled to leave their country and seek international protection'.*

UN High Commissioner for Refugees (UNHCR), [Legal Considerations regarding Claims for International Protection made in the context of the Adverse Effects of Climate Change and Disasters](#) (2020) para 2.

8. In the context of climate change and disasters, international refugee and human rights law apply in the same way as in any other context, prohibiting the *refoulement* of those at risk of persecution or other serious harm. While the relevant instruments do not explicitly mention displacement in the context of climate change and disasters, where the *impacts* of climate change and disasters on the ground generate or exacerbate the risk of persecution or other serious harm, those affected may be entitled to international protection.
9. In 2018, the Global Compact on Refugees recognized the interconnection between 'climate, environmental degradation and natural disasters' and other drivers of refugee movements.<sup>5</sup> It called on States to ensure the 'fair and efficient' determination of international protection claims 'in accordance with their applicable international and regional obligations, in a way which avoids protection gaps

and enables all those in need of international protection to find and enjoy it'.<sup>6</sup> Similarly, the Global Compact for Safe, Orderly and Regular Migration has a specific section on 'Natural disasters, the adverse effects of climate change, and environmental degradation' which emphasizes the importance of 'ensuring effective respect for and protection and fulfilment of the human rights of all migrants'.<sup>7</sup>

10. International protection is only one tool to address displacement in the context of climate change and disasters. It will not apply to everyone who moves. Depending on the nature, timeframe and stage of movement, other cross-border mobility mechanisms – including humanitarian visas, short-term temporary stay arrangements, bilateral agreements between States and free movement of persons agreements – may better address the needs of those affected. Indeed, the Global Compact on Refugees calls on governments and other stakeholders to take additional measures 'to assist those forcibly displaced by natural disasters, taking into account national laws and regional instruments as applicable'.<sup>8</sup> The Global Compact for Migration also sets out a range of relevant interventions – from disaster risk reduction through to migration pathways.<sup>9</sup> However, these other mechanisms and actions must not be used to circumvent States' international protection obligations.

## INTERNATIONAL PROTECTION AND DOMESTIC LAW

11. This Practical Toolkit focuses on international protection under international refugee and human rights instruments, as well as regional instruments in Africa, Latin America and Europe. In practice, the domestic legal context will affect when and how international protection claims in the context of climate change and disasters are assessed within individual States. Domestic constitutions, legislation and case law may set out particular interpretations of, or approaches to, international or regional treaty provisions.<sup>10</sup> It is important to be aware of these variations when analysing jurisprudence from different States.
12. Nevertheless, in the interests of reducing fragmentation across international law, the analysis and examples provided in this Practical Toolkit are intended to inform the preparation and determination of international protection claims across all jurisdictions, including in regions that do not have dedicated regional protection instruments, such as Asia and the Middle East.

<sup>5</sup> [Report of the United Nations High Commissioner for Refugees: Part II: Global Compact on Refugees](#), UN Doc A/73/12 (Part II) (2018) (Global Compact on Refugees) para 8.

<sup>6</sup> *Ibid.*, para 61 (citations omitted).

<sup>7</sup> [Global Compact for Safe, Orderly and Regular Migration](#), UNGA Res 73/195 (19 Dec 2018) (Global Compact for Migration) Objective 2, para 18(h).

<sup>8</sup> Global Compact on Refugees (n 5) para 63.

<sup>9</sup> Global Compact for Migration (n 7) para 18(h)–(i).

<sup>10</sup> See eg Kate Jastram, 'Climate Change and Cross-Border Displacement: What the Courts, the Administration, and Congress Can Do to Improve Options for the United States' (2024) 56 *Case Western Reserve Journal of International Law* 209; Chiara Scissa, 'The Climate Changes, Should EU Migration Law Change as Well? Insights from Italy' (2022) *European Journal of Legal Studies* 5; Chiara Scissa, Francesca Biondi Dal Monte, Matthew Scott, Margit Ammer and Monika Mayrhofer, 'Legal and Judicial Responses to Disaster Displacement in Italy, Austria and Sweden', *Völkerrechtsblog* (19 Oct 2022). For examples of domestic case law involving displacement in the context of climate change and disasters, visit [The Climiglaw Database](#) developed by the Global Strategic Litigation Council, Earth Refuge, the Raoul Wallenberg Institute and the Zolberg Institute for Migration & Mobility.

## FACTUAL SCENARIOS

13. The impacts of climate change and disasters may give rise to an international protection claim in a broad range of factual scenarios. These include situations in which the impacts of climate change and disasters themselves generate a risk of serious harm, as well as those in which such impacts provide the context or trigger for ill-treatment, conflict or a breakdown in public order that, in turn, generates a risk of persecution or other serious harm.

*'[I]dentifying and distinguishing scenarios in which persecution may occur in the context of disasters and adverse effects of climate change facilitates the proper assessment of claims for international protection related to such situations'.*

Walter Kälin and Hannah Entwisle Chapuisat, [Protection of Persons Displaced across Borders in the context of Disasters and the Adverse Effects of Climate Change](#), UNHCR Legal and Protection Policy Research Series, PPLA/2024/01 (June 2024) section 2.1.2.

14. A number of existing international law analyses have identified and described several factual scenarios that show how the impacts of climate change and disasters could contribute to an international protection claim. While they do not provide a shortcut for determining international protection claims – a systematic analysis of the facts against the relevant legal criteria in each case remains essential – they are useful in illustrating how the impacts of climate change and disasters might factor into a risk of persecution or other serious harm.

15. Examples of factual scenarios include:<sup>11</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.

## COUNTRY OF ORIGIN INFORMATION AND OTHER EVIDENCE

16. The preparation and assessment of international protection claims arising in the context of climate change and disasters does not require expert knowledge about the nature, causes or trajectory of climate change. Assessing the risk of harm to a person if removed requires consideration of a broad range of hazards, not just those linked to the impacts of disasters or climate change.

17. As is the case in all international protection claims, responsibility for establishing the facts of the claim is shared between the applicant and the decision-maker.<sup>12</sup> However, decision-makers should be careful not to assume that applicants will be aware of the potential significance of climate change and disaster impacts to their claim for international protection. In some cases, applicants may even be reluctant to raise such impacts due to an erroneous belief that such impacts are 'natural' and therefore not relevant.

18. The applicant's own testimony is likely to be one of the primary sources of evidence in the determination of international protection claims. However, where available, relevant country information – including information regarding the impacts of climate change and disasters, and the availability of humanitarian assistance and/or protection from or mitigation of such impacts – may also be helpful in evaluating whether the relevant risk of harm is present. In addition to the more general sources of country information, including those published by international organizations, government departments and UNHCR, decision-makers and practitioners may find it helpful to consider reports specifically relating to the human rights impacts of climate change and disasters on particular places and/or communities.<sup>13</sup>

<sup>11</sup> These scenarios have been adapted from those articulated in: Platform on Disaster Displacement (PDD) and 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) (UNHCR Climate Change Impacts) section 1.1; Refugee Law Initiative, [Declaration on International Protection in the context of Disasters and Climate Change](#) (May 2024) (RLI Declaration) para 8; Matthew Scott, *Climate Change, Disasters, and the Refugee Convention* (Cambridge University Press, 2020) 45–88.

<sup>12</sup> UNHCR, [Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#), HCR/IP/4/ENG/REV.4 (1979, reissued 2019) (UNHCR Handbook) para 196.

<sup>13</sup> Decision-makers and practitioners should bear in mind that such information may not be available for all places and/or communities. See generally Etienne Piguet, Raoul Kaenzig and Jérémie Guélat, [The Uneven Geography of Research on "Environmental Migration"](#) (2018) 39 *Population and Environment* 357.

# B. This Practical Toolkit

## OBJECTIVES

19. This Practical Toolkit aims to provide a roadmap for decision-makers and practitioners who are faced with cases where the impacts of climate change and disasters (may) form part of an international protection claim. It builds upon UNHCR's foundational 2020 document, *Legal Considerations regarding Claims for International Protection made in the context of the Adverse Effects of Climate Change and Disasters*,<sup>14</sup> and was inspired by a US-focused guide for practitioners written by the Center for Gender & Refugee Studies, entitled *Practice Advisory: Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters*.<sup>15</sup> This Practical Toolkit assumes that readers are familiar with basic principles of international protection and are interested in learning more about their practical application in claims involving the impacts of climate change and disasters.
20. The analysis here focuses on international and regional refugee and human rights law. While it uses domestic case law examples to illustrate key points, it does not provide detailed analysis of the application of international law in the domestic law of individual States. The Practical Toolkit also focuses on the inclusion criteria under relevant international and regional protection frameworks. It does not examine the criteria for cessation of, or exclusion from, international protection.
21. Although the analysis and examples in this Practical Toolkit are framed in individual terms – that is, as a guide to presenting and assessing individual claims for international protection – the analysis is equally applicable to group-based and/or *prima facie* determination procedures.<sup>16</sup> For instance, where the impacts of climate change and disasters are sufficiently widespread, it may be presumed that all those within the relevant area are affected.

*'In fulfilment of its mandate, UNHCR provides authoritative guidance on the interpretation and application of international legal instruments for the protection of refugees. ... UNHCR has issued its 2020 Legal Considerations. 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'.*

UNHCR, [Climate Change Impacts and Cross-Border Displacement: International Refugee Law and UNHCR's Mandate](#) (Dec 2023) section 2.1.

<sup>14</sup> UNHCR Legal Considerations (n 4).

<sup>15</sup> Center for Gender & Refugee Studies (CGRS), [Practice Advisory: Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters](#) (Feb 2023).

<sup>16</sup> See generally UNHCR, [Guidelines on International Protection No 11: Prima Facie Recognition of Refugee Status](#) (24 June 2015).

## HOW TO USE THIS PRACTICAL TOOLKIT

22. This Practical Toolkit is organized as follows:

Section A: Introduction

Section B: This Practical Toolkit

Section C: Key Considerations

Sections D to G: Specific legal frameworks

Section H: Conclusion

23. Section C sets out five Key Considerations that should guide any assessment of an international protection claim which raises (or could raise, on the facts) the impacts of climate change or disasters as contributing to the risk of harm. The Key Considerations apply to claims for international protection under both refugee and human rights law, and with respect to both international and regional legal frameworks. Readers may find it helpful to consult this section first as it provides valuable context and background for the remainder of this Practical Toolkit.

24. Sections D to G explain how specific international and regional legal frameworks may apply to such claims. This includes analysis of the 1951 Refugee Convention<sup>17</sup> and relevant international human rights treaties, as well as established regional frameworks in Africa, Latin America and Europe. While readers may choose to focus on the region most relevant to their work, valuable comparative insights may emerge from reading all three of the regional sections.

25. Throughout this Practical Toolkit, brief case summaries are used to illustrate how specific legal issues arise and/or have been determined within existing case law across a range of jurisdictions.



<sup>17</sup> Read together with the 1967 Protocol.



# C. Key Considerations

26. The following Key Considerations should guide decision-makers and practitioners in the preparation and assessment of all international protection claims involving the impacts of climate change and disasters, whether such impacts are a central component of the claim or part of the broader context in which the claim arises.

## KEY CONSIDERATION 1 THERE ARE NO SPECIAL RULES FOR INTERNATIONAL PROTECTION CLAIMS INVOLVING CLIMATE CHANGE AND DISASTERS

27. 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.<sup>18</sup> A structured, step-by-step approach to the assessment of international 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.<sup>19</sup>

*'People fleeing in the context of the adverse effects of climate change and disasters may have valid claims for [international protection]. No special rules exist for determining ... claims made in this context. Like any other claim, one made in the context of climate change or a disaster must show that the claimant meets the [relevant] criteria.'*

UNHCR, [Legal Considerations regarding Claims for International Protection made in the context of the Adverse Effects of Climate Change and Disasters](#) (2020) para 6.

28. 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 UNHCR and others on the interpretation and application of refugee and human rights law provides useful assistance.<sup>20</sup>

29. Establishing the facts of the claim requires the same approach as in other international protection claims.<sup>21</sup> 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>22</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

[RN \(Returnees\) Zimbabwe CG](#) [2008] UKAIT 00083 (United Kingdom)

This claim for international protection included the risks of harm to an applicant from Zimbabwe arising from discriminatory deprivation of basic assistance, including food aid, shelter and safe water. The UK Asylum and Immigration 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' (para 249).

<sup>18</sup> For recognition on a group basis, see para 21 of this Practical Toolkit.

<sup>19</sup> Noting that '[e]xperienced judges and decision makers may of course, on a case by case basis, make valid decisions using other approaches, provided their assessments are made and reasoned on the totality of the accepted evidence and the application of the essential principles of international refugee and protection law': International Association of Refugee Law Judges, [A Structured Approach to the Decision Making Process in Refugee and Other International Protection Claims](#) (2017) para 5.

<sup>20</sup> For a list of key resources and sources of guidance, see Appendix B of this Practical Toolkit.

<sup>21</sup> See paras 16–18 of this Practical Toolkit.

<sup>22</sup> [AW \(Kiribati\)](#) [2022] NZIPT 802085, para 62. This also means understanding how 'local variability in natural conditions shape risks associated with impacts of generally occurring climate hazards': para 66.

30. 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>23</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.<sup>24</sup> These should be considered cumulatively, as part of a forward-looking assessment of the risk of persecution or other serious harm.<sup>25</sup>

*‘The assessment of claims for international protection made in the context of the adverse effects of climate change and disasters should not focus narrowly on the climate change event or disaster as solely or primarily natural hazards. Such a narrow focus might fail to 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’.*

UNHCR, [Legal Considerations regarding Claims for International Protection made in the context of the Adverse Effects of Climate Change and Disasters](#) (2020) para 5.

31. 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.<sup>26</sup> 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>27</sup> In many cases, the risk of harm may emerge gradually over time,<sup>28</sup> rather than as the result of a single, extreme event.<sup>29</sup>

32. 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

[AC \(Tuvalu\)](#) [2014] NZIPT 800517-520 (New Zealand)

In this case, 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’ (para 115). 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’ (para 119).

33. 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.<sup>30</sup> 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.
34. 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.<sup>31</sup> 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.
35. Government policies and societal structures may also influence how the impacts of climate change and disasters are felt by particular individuals or groups.<sup>32</sup> Historically marginalized groups will frequently be at

<sup>23</sup> UNDRR, ‘[Hazard](#)’ (undated).

<sup>24</sup> In many cases, climate change and disasters form the context or ‘backdrop’ to the claim. See [AF \(Kiribati\)](#) [2013] NZIPT 800413, para 65.

<sup>25</sup> The nature and seriousness of the harm, and the threshold of risk, required to found an international protection claim depends on the applicable international or regional legal framework. For specific legal frameworks, see sections D to G of this Practical Toolkit.

<sup>26</sup> See eg UN Environment Programme, [Climate Change and Human Rights](#) (11 Nov 2015).

<sup>27</sup> UNHCR, Legal Considerations (n 4) para 9, citing Adrienne Anderson, Michelle Foster, Hélène Lambert and Jane McAdam, ‘[Imminence in Refugee and Human Rights Law: A Misplaced Notion for International Protection](#)’ (2019) 68 *International and Comparative Law Quarterly* 111.

<sup>28</sup> See generally [AW \(Kiribati\)](#) (n 22).

<sup>29</sup> See eg Jane McAdam, ‘[Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement](#)’ (2020) 114 *American Journal of International Law* 708, 714–15.

<sup>30</sup> Although in a given situation, it may be presumed that all individuals in a particular group fear the same harm. See para 21 of this Practical Toolkit.

<sup>31</sup> See eg International Institute for Sustainable Development, [Advancing Gender Equality and Human Rights at COP29: Why Intersectionality Matters](#) (4 Nov 2024).

<sup>32</sup> See generally European Union Agency for Asylum (EUAA), [Judicial Analysis on Qualification for International Protection](#) (2nd edn, 2023) 260–62.

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.

36. While the specific experiences and risks faced by the applicant must be taken into account, as in any international protection claim, individual applicants do not need to show that they are more at risk than others similarly situated.<sup>33</sup> Indeed, as UNHCR explains, the fact that a whole community might be affected 'may strengthen rather than weaken the evidence that justifies [the claim]'.<sup>34</sup> Furthermore, there may also be situations in which the impacts of climate change and disasters are 'so serious that [they] cannot fail to represent a likely and serious threat' to those affected.<sup>35</sup>

*[T]he ways in which environmental factors affect an individual will obviously vary considerably from one person to another. For example, children, the elderly, people with disabilities, people from ethnic, religious or other minorities, or people who are disadvantaged and living at the margins of society may be more endangered by the disruption caused to their lives by natural disasters, such as earthquakes, floods, heatwaves and fires'.*

European Union Agency for Asylum (EUAA), [Judicial Analysis on Qualification for International Protection](#) (2nd edn, 2023) 261.

37. The rights afforded to particular groups under international human rights law should be taken into account in the determination of an international protection claim. For example, the 'best interests' principle in article 3 of the Convention on the Rights of the Child means that, in any international protection claim involving a child, the decision-maker must make the child's best interests 'a primary consideration'<sup>36</sup> – even if the child is not the primary applicant.

38. States' human rights obligations are also relevant to understanding and assessing the differential impacts and risks, and the nature of the potential harms, faced by women, Indigenous peoples and other marginalized groups in the context of climate change and disasters. Decision-makers should take guidance from international and regional instruments relating to the rights of women and girls, children and young people, older people, people with disabilities, Indigenous peoples, ethnic and religious minorities, LGBTQIA+ people, and rural and outer-island communities.<sup>37</sup>

#### KEY CONSIDERATION 4 HUMAN AGENCY CONTRIBUTES TO THE IMPACTS OF CLIMATE CHANGE AND DISASTERS

##### [AC \(Eritrea\)](#) [2023] NZIPT 802201–202 (New Zealand)

In this international protection claim by an Eritrean couple, based on conditions of generalized poverty and underdevelopment exacerbated by the effects of climate change, New Zealand's Immigration and Protection Tribunal took into account the government of Eritrea's failure to take adequate steps to reduce the risks to the applicants. 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 ... . It has also failed to discharge positive obligations owed to vulnerable elderly persons who are dependent on the state for their socio-economic wellbeing' (para 147). Acknowledging the government's recent steps to implement 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' (para 148).

<sup>33</sup> See *ibid*, 266.

<sup>34</sup> UNHCR Legal Considerations (n 4) para 8.

<sup>35</sup> [Elgafaji v Staatssecretaris van Justitie](#), Case 465/07, Opinion of Advocate General (9 Sept 2008), para 42 (referring to generalized violence).

<sup>36</sup> In such cases, decision-makers have at times been willing to take a longer-term perspective with respect to risk. For instance, in one Australian case, the child was a toddler at the time of the decision, but the decision-maker accepted that a risk of persecution in the 'reasonably foreseeable future' could encompass at least a decade. [1703914 \(Refugee\)](#) [2018] AATA 3088, para 75, discussed in Anderson et al (n 27) 174.

<sup>37</sup> See generally McAdam and Wood (n 2) Principle 7.

39. 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.<sup>38</sup> 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>39</sup>

40. 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.

*'Understanding that displacement in the context of disasters and the adverse effects of climate change results from the interplay between exposure to natural hazards and socio-economic vulnerability is helpful for identifying and pinpointing the role of human factors in such situations, paving the way to overcome the truncated view of disasters as "natural" events that are not shaped by human factors.'*

Walter Kälin and Hannah Entwisle Chapuisat, *Protection of Persons Displaced across Borders in the context of Disasters and the Adverse Effects of Climate Change*, UNHCR Legal and Protection Policy Research Series, PPLA/2024/01 (June 2024) 2.

41. This approach reflects the important understanding that, while there may be natural hazards, there is no such thing as a natural disaster.<sup>40</sup> 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,<sup>41</sup> 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>42</sup>

42. 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.<sup>43</sup>

## KEY CONSIDERATION 5 THE RISK OF HARM MAY MANIFEST OVER TIME

### *AW (Kiribati)* [2022] NZIPT 802085 (New Zealand)

In this case, 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' (para 106), 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' (para 128).

43. 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>44</sup>

<sup>38</sup> *AF (Kiribati)* (n 24).

<sup>39</sup> *AC (Tuvalu)* [2014] NZIPT 800517-520, para 84.

<sup>40</sup> See para 5 of this Practical Toolkit.

<sup>41</sup> See eg *Canada (Attorney General) v Ward* [1993] 2 SCR 689, 732; *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, 248 (Dawson J); *Minister for Immigration v Haji Ibrahim* (2000) 204 CLR 1, 52-53 (Gummow J); *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489, 499-500 (Lord Hope).

<sup>42</sup> UNHCR Legal Considerations (n 4) para 4.

<sup>43</sup> See generally *Case of Verein KlimaSeniorinnen Schweiz and Ors v Switzerland* [2020] ECHR 53600/20, esp paras 544ff.

<sup>44</sup> *OF (India)* [2023] NZIPT 802113, para 120.

44. 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>45</sup> meaning that international protection should be forthcoming before a situation becomes immediately life-threatening.

*'In some instances, the decision-maker may not have to peer very far into the future to be satisfied that the requisite risk exists ... . In cases grounded in more generalised conditions such climate change-related hazards, however, depending on the nature of the hazard and its existing and anticipated future frequency and/or intensity, time may weigh more heavily in terms of when the requisite degree/threshold of risk is reached'.*

[AW \(Kiribati\)](#) [2022] NZIPT 802085, paras 105–06.

45. Assessing the risk of harm over time is crucial even for apparently 'one-off' disasters, given that the impacts of disasters may be felt over a much longer timeframe. That is why it is important to consider the 'predicament' of those affected.<sup>46</sup> This includes not only the immediate impacts of a disaster, but also the ongoing social, economic, political and cultural impacts (see Key Consideration 2), particularly for communities already living in precarious circumstances (see Key Consideration 3).

46. There is no requirement that the risk of harm be 'imminent', either in the sense of timing (eg immediacy) or probability (eg more likely to occur than not). Regrettably, the use of that term by the UN Human Rights Committee in *Teitiota v New Zealand*<sup>47</sup> 'generated considerable confusion, leading many commentators to tacitly assume, or expressly believe, that imminence forms part of the test for a substantive violation'.<sup>48</sup>

47. 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.<sup>49</sup> 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>50</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.

48. A future risk of serious harm may even be established in situations involving climate change impacts and slow-onset disasters, including drought and sea-level rise, in cases where the risk is reasonably foreseeable. This can only be determined by taking into account the specific circumstances of each case, and 'much will depend on the nature of the process in question, the extent to which the negative impacts of that process are already manifesting, and the anticipated consequences for the individual claimant'.<sup>51</sup>

<sup>45</sup> *Teitiota v New Zealand*, Comm No 2728/2016 (24 Oct 2019) para 9.11.

<sup>46</sup> The 'predicament approach' has a 'broad temporal lens (in contrast to a narrow, event-based approach, where violence equates solely with a concrete event or isolated act)': *OF (India)* (n 44) para 82.

<sup>47</sup> *Teitiota v New Zealand* (n 45) para 8.4, referring *inter alia* to *Aalbersberg v Netherlands*, Comm No 1440/2005 (12 Jul 2006) para 6.3; *Bordes and Temeharo v France*, Comm No 645/1995 (22 July 1996) para 5.5.

<sup>48</sup> Michelle Foster, Hélène Lambert and Jane McAdam, 'The Time Trap in International Protection: The Misplaced Notion of "Imminence"' (2025) 56 *Georgetown Journal of International Law* (in press) (citations omitted). See also the critique in *AW (Kiribati)* (n 22) paras 101–15; RLI Declaration (n 11) para 19.

<sup>49</sup> *AW (Kiribati)* (n 22) paras 108, 128.

<sup>50</sup> *Budayeva and Others v Russia* [2008] ECHR 15339/02, para 135. The relevant burden is determined with regard to other priorities and available resources, which 'must be afforded even greater weight in the sphere of emergency relief in relation to a meteorological event, which is as such beyond human control, than in the sphere of dangerous activities of a man-made nature'. See also *AC (Tuvalu)* (n 39) paras 74–75.

<sup>51</sup> *AC (Tuvalu)* (n 39) para 58.

# D. International frameworks

## REFUGEE LAW

### 1951 REFUGEE CONVENTION

#### Article 1A(2)<sup>52</sup>

[T]he term ‘refugee’ shall apply to any person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

#### Tribunale Ordinario di Firenze, Decree, RG n 6142/2019, 10 May 2023 (Italy)<sup>53</sup>

In this case, the Ordinary Court of Florence granted refugee status to a former trafficking victim from Pakistan on the basis that he had a well-founded fear of re-trafficking, discrimination and social exclusion amounting to persecution for reasons of his membership of a particular social group (namely, poor farmers with increased vulnerability due to flooding). The court held that the applicant was at higher risk of future trafficking than others in Pakistan, noting that his previous experience of trafficking had resulted, in part, from his ‘climate vulnerability’. This was said to derive from several factors, including his residence in a rural area; his subjection to extreme poverty and social marginalization; the impact of floods on his means of survival; family conflict over land grabbing; resource scarcity due to climate change; and the government’s failure to implement adequate disaster mitigation measures.

49. The 1951 Refugee Convention, read together with the 1967 Protocol, defines a ‘refugee’ as someone with a ‘well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion’<sup>54</sup> and prohibits States from removing such persons to any place where their life or freedom would be threatened. While not all people displaced across borders in the context of climate change and disasters will meet the refugee definition, the impacts of climate change and disasters should not undermine a refugee claim – indeed, they may help to substantiate it (see Key Consideration 1).

*‘While the effects of climate change or disasters do not explicitly provide the basis for refugee status, their interaction with other drivers of displacement (such as conflict and persecution), or their differential impacts on particular groups, may substantiate a refugee claim’.*

Jane McAdam and Tamara Wood, [Kaldor Centre Principles on Climate Mobility](#) (Nov 2023) 2.

50. The impacts of climate change and disasters can intensify existing social and economic inequalities (see Key Consideration 3). These can escalate social tensions, increase political instability, contribute to conflict or violence and inhibit access to basic services, further destabilizing communities. A breakdown of social structures can also result in heightened human rights violations that amount to persecution, including gender-based violence.<sup>55</sup>

<sup>52</sup> Article 1A(2) of the 1951 Refugee Convention, read together with article I(2) of the 1967 Protocol.

<sup>53</sup> Tribunale Ordinario di Firenze, Decree, RG n 6142/2019, 10 May 2023.

<sup>54</sup> More expansive refugee definitions found in Africa and the Americas are discussed in sections E and F of this Practical Toolkit.

<sup>55</sup> ‘[E]nvironmental harms are acts capable of having the quality of acts of persecution’: EUAA (n 32) 266.

## Being persecuted

51. The notion of being persecuted is normally understood as requiring a human act or omission, whether by State or non-State actors (see Key Consideration 4).<sup>56</sup> As noted already,<sup>57</sup> it is not necessary to establish a connection between human acts or omissions, on the one hand, and climate change or a disaster *per se*, on the other. Rather, human agency is a factor in creating the risk of being persecuted.

52. Being persecuted in the context of climate change and disasters will often take the same form as in other types of refugee claims, such as serious violations of human rights including physical violence, sexual and gender-based violence, threats and/or psychological harm. However, it may also arise as a result of existing inequalities and discrimination that 'expose certain people to additional forms of danger in the specific context of disasters, for example, by forcing certain inhabitants to live in areas particularly exposed to hazards, excluding them from risk reduction programmes, leaving them in harm's way when others are evacuated, or denying them access to life-saving relief in the aftermath of a disaster'.<sup>58</sup>

*In identifying serious harm that amounts to persecution, decision-makers should consider 'current conditions that may severely affect the applicant, such as significant effects of climate change or natural disasters (extreme drought, flooding, famine, earthquakes, volcanic eruptions, etc)'.*

United States Citizenship and Immigration Services' Refugee, Asylum, and International Operations Directorate, [Definition of Persecution and Eligibility based on Past Persecution Training Module](#) (revised 5 May 2023) 60.

53. Socio-economic harms may be particularly relevant given that climate change and disasters frequently have an impact on people's livelihoods and exacerbate existing socio-economic inequality. Where governments fail to adequately

prevent or respond to such impacts, the resulting harms may amount to persecution.<sup>59</sup> As with all refugee claims, the impacts of climate change and/or disasters must be considered cumulatively along with other hazards faced by the applicant (see Key Consideration 2) and the applicant's individual situation (see Key Consideration 3).

## Well-founded fear

54. The 'well-foundedness' of the fear of being persecuted requires a forward-looking assessment of risk over time, taking into account all relevant facts and circumstances of each case.<sup>60</sup> While the required threshold of risk has been expressed in different ways, it is generally understood to be lower than the balance of probabilities, and even as low as a 10 per cent chance.<sup>61</sup> As Goodwin-Gill and McAdam observe: 'A mere possibility of harm is insufficient, but it is not necessary to show definitively, or even probably, that ill-treatment will occur. Even a small risk can be significant and "real" where the foreseeable consequences are very serious'.<sup>62</sup> The test can be summarized as whether, taking into account all the relevant circumstances, there is a 'real chance' of persecution to the applicant if returned.<sup>63</sup>

55. While past experiences concerning the impacts of climate change and disasters may be relevant to an assessment of their future likelihood, a 'well-founded' fear may be established even where the harm has not yet manifested (see Key Consideration 5). There is no outer time limit on the future risk of being persecuted, so long as it is reasonably foreseeable. This means that where slower-onset hazards are concerned, decision-makers will need to consider their potential trajectory over time, as well as whether government action could reduce the risk of harm to below the well-founded threshold.<sup>64</sup>

56. The fact that harm is experienced by an entire community, or by a large group of people within a community (such as women or Indigenous groups) may actually support the well-foundedness of an individual applicant's fear, rather than detract from it.<sup>65</sup>

<sup>56</sup> See UNHCR Handbook (n 12) paras 51–55.

<sup>57</sup> See paragraphs 39ff of this Practical Toolkit.

<sup>58</sup> RLI Declaration (n 11) para 14.

<sup>59</sup> See paragraph 47 of this Practical Toolkit.

<sup>60</sup> UNHCR Legal Considerations (n 4) para 9.

<sup>61</sup> See Adrienne Anderson, Michelle Foster, H el ene Lambert and Jane McAdam, 'A Well-Founded Fear of Being Persecuted... But When?' (2020) 42 *Sydney Law Review* 155, 161 including citations.

<sup>62</sup> Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (4th edn, Oxford University Press, 2021) 376 (citation omitted).

<sup>63</sup> See *AF (Kiribati)* (n 24) para 90.

<sup>64</sup> See para 47 of this Practical Toolkit.

<sup>65</sup> See para 36 of this Practical Toolkit, citing UNCHR Legal Considerations (n 4) para 8.

## Nexus with a Convention ground

57. It is now well understood that, in the context of climate change and disasters, those who are already marginalized or in vulnerable circumstances may be at particular risk of harm that rises to the level of persecution (see Key Consideration 3) and their shared characteristics may correspond to one or more of the grounds set out in the 1951 Refugee Convention.<sup>66</sup> In assessing the nexus requirement, it is particularly important to consider the applicant's circumstances as a whole.
58. Climate change and disasters may have a differential impact on individuals on account of their *race*, including ethnic, tribal, Indigenous or other status. For example, they may exacerbate ongoing struggles over land and natural resources which already occur along racial identity lines.
59. Similarly, *particular social groups*, such as women or children, may be left out of resilience and preparedness efforts or suffer disproportionately from inequitable relief, assistance and recovery responses, leaving them more exposed than others to the harms associated with climate change and disasters.
60. Climate change and disasters may also have a differential impact on individuals on account of their *political opinion*. Indeed, '[d]isasters, climate change and wider environmental issues are "political" in many societies'.<sup>67</sup> For example, environmental activists, land defenders and journalists may be targeted for seeking to protect ecosystems and resources or for reporting on the impacts of climate change and disasters.<sup>68</sup>
61. Importantly, where persecution is attributable to non-State actors, the nexus with a Convention ground may be established with respect to either the persecution or the absence of State protection. In these contexts, discriminatory policies and practices that leave people disproportionately exposed to hazards and disasters – for example, because they are forced to live in particularly dangerous areas or are excluded from risk mitigation or adaptation responses – may be relevant in establishing the nexus with a Convention ground.<sup>69</sup>

## Internal flight alternative

### *Abid Hassan Jama v Utlendingsnemnda* Borgarting Court of Appeal (2011) (Norway)

In this claim for international protection by a Somali applicant, a Norwegian Court of Appeal took into account the severe drought and resulting humanitarian crisis in Somalia in finding that there was no reasonable internal flight alternative (IFA) available to the applicant. The court found that the deplorable living conditions and insecurity facing internally displaced persons in Somalia meant that those without families or other support networks faced living conditions that were inconsistent with UNHCR's 2023 guidelines on the internal flight alternative.

62. While not an explicit requirement under the 1951 Refugee Convention, many jurisdictions will not provide international protection if it is found that an applicant could obtain effective protection by relocating elsewhere within their own country.<sup>70</sup> This is known as the internal flight alternative (also 'internal relocation' or 'internal protection' alternative).
63. The impacts of climate change and disasters may be relevant to the assessment of whether an internal flight alternative exists, irrespective of whether they are also relevant to the central protection claim. A recent study of judicial practice in Austria found that disaster-related factors were considered as part of the assessment of an internal protection alternative in 44 per cent of all asylum decisions, even when they were not relevant to the primary risk assessment for the claim.<sup>71</sup>

*'Disaster-related risks in [international protection alternative (IPA)] sites are always pertinent to the IPA assessment, regardless of whether the persecution in the claimant's home area is for disaster-related reasons or not'.*

Refugee Law Initiative, *Declaration on International Protection in the context of Disasters and Climate Change* (May 2024) para 24.

<sup>66</sup> EUAA (n 32) 267.

<sup>67</sup> RLI Declaration (n 11) para 16.

<sup>68</sup> See eg The White House, *Report on the Impact of Climate Change on Migration* (Oct 2021) 30.

<sup>69</sup> See David Cantor et al, *'International Protection, Disasters and Climate Change'* (2024) 36 *International Journal of Refugee Law* 176, 185.

<sup>70</sup> See UNHCR, *Guidelines on International Protection No 4: '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* (23 July 2003) (UNHCR Internal Flight Guidelines).

<sup>71</sup> Margit Ammer, Monika Mayrhofer and Matthew Scott, *Disaster-related Displacement into Europe: Judicial Practice in Austria and Sweden* (Ludwig Boltzmann Institute for Fundamental and Human Rights and Raoul Wallenberg Institute, 2022) 18.



64. Assessing the availability of an internal flight alternative generally requires consideration of both the *absence of persecution* elsewhere in the country of origin, as well as the *reasonableness* in all the circumstances of requiring the applicant to relocate to a specific 'safe' area.<sup>72</sup>
65. Where the impacts of climate change and disasters are felt across the applicant's entire country of origin, there is unlikely to be an internal flight alternative, unless the impacts in part of the country are such that they do not amount to persecution and it is reasonable for the applicant to relocate there. For example, 'affected people may not be able to relocate to other parts of the country ... when the State is unwilling to provide adequate protection for populations'.<sup>73</sup>

## HUMAN RIGHTS LAW

### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

#### Article 6

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### *Teitiota v New Zealand*, Comm No 2728/2016 (24 Oct 2019) (UN Human Rights Committee)

The UN Human Rights Committee considered the applicant's claim for international protection on the basis that sea-level rise associated with climate change in his home country, Kiribati, put him at risk of serious harm amounting to a violation of his right to life. The Committee rejected the claim on the facts, but held that 'without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states', and that 'given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized' (para 9.11).

66. The following analysis examines the most relevant provisions of the ICCPR when it comes to non-removal in the context of climate change and disasters. As the UN Human Rights Committee has observed, '[r]eturning individuals to countries where there are substantial grounds for believing that they face a real risk to their lives violates articles 6 and 7',<sup>74</sup> including in the context of climate change and disasters.<sup>75</sup>

*'Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. ... Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors'.*

UN Human Rights Committee, *General Comment No 36: Article 6: Right to Life* (3 Sept 2019) para 62.

## Right to life

67. Under article 6 of the ICCPR, the implied principle of *non-refoulement* protects people from being removed to a situation where they face a real risk to their life.<sup>76</sup>
68. The right to life 'should not be interpreted narrowly'.<sup>77</sup> It is inseparable from certain other human rights, such as the right to an adequate standard of living and the right not to be deprived of a means of subsistence. According to the UN Human Rights Committee, the right to life 'concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity'.<sup>78</sup>
69. In *Teitiota v New Zealand*, the Committee considered whether the impacts of climate change in Kiribati threatened the author's right to life such that it should preclude his return. Recalling that 'the right to life cannot be properly understood if it is interpreted in a restrictive manner', the Committee highlighted its view that a real risk to the right to life does not necessarily depend on an immediate risk.<sup>79</sup> Rather, 'conditions of life ... may become incompatible with the right to life with dignity before the

<sup>72</sup> UNHCR Internal Flight Guidelines (n 70) para 6.

<sup>73</sup> UNHCR Legal Considerations (n 4) para 12.

<sup>74</sup> UN Human Rights Committee, *General Comment No 36: Article 6: Right to Life* (3 Sept 2019) para 55 (citations omitted) (General Comment No 36).

<sup>75</sup> See generally *Teitiota v New Zealand* (n 45).

<sup>76</sup> UN Human Rights Committee, *General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (10 Mar 1992) (General Comment No 20) para 9; UN Human Rights Committee, *General Comment No 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (29 Mar 2004) para 12.

<sup>77</sup> UN Human Rights Committee, General Comment No 36 (n 74) para 3.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Teitiota v New Zealand* (n 45) para 9.4.

risk [to life] is realized'.<sup>80</sup> It added that the obligation to respect and ensure the right to life 'extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life', even if loss of life does not eventuate.<sup>81</sup>

The Committee also recalled that 'environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life'.<sup>82</sup>

*'Both sudden-onset events, such as intense storms and flooding, and slow-onset processes, such as sea level rise, salinization and land degradation, can propel cross-border movement of individuals seeking protection from climate change-related harm. The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending States. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized'.*

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

70. At the same time, the Committee noted that 'it must assess whether there was clear arbitrariness, error or injustice in the evaluation by the State party's authorities of the author's claim that when he was removed to Kiribati he faced a real risk of a threat to his right to life under article 6 of the Covenant'.<sup>83</sup> Finding that no such errors existed, no violation of article 6 was made out.<sup>84</sup> It is important to stress that the core question for the Committee was whether *New Zealand's* act of removing the applicant constituted a breach of its *non-refoulement* obligations under international law by exposing him to a real risk to his life in Kiribati. Although the Committee was not charged with assessing whether *Kiribati* had violated the right to life, its evaluation of *New Zealand's* actions necessarily required

some analysis of the conditions to which the applicant said he would be exposed on return.<sup>85</sup>

71. This is reflected in the Committee's conclusion that:

The information made available to the Committee does not indicate that when the author's removal occurred, there was a real and reasonably foreseeable risk that he would be exposed to a situation of indigence, deprivation of food and extreme precarity that could threaten his right to life, including his right to a life with dignity. The Committee therefore considers that the author has not established that the assessment of the domestic authorities was clearly arbitrary or erroneous in that regard, or amounted to a denial of justice.<sup>86</sup>

72. The New Zealand Immigration and Protection Tribunal has critiqued the Committee's focus on the right to life 'with dignity', stating that 'insofar as the threshold requirements for dignified life are grounded in socio-economic entitlements for which the relevant human right is subject to progressive realisation or rights more generally which may be permissibly limited or derogated from, an extension of Article 6 to being one of an absolute nature risks rendering the right otiose'.<sup>87</sup> The International Law Association has likewise questioned this approach:

To the extent this relies on the bundle of goods and services to which ICESCR rights relate, this may, in effect, convert the substantive content of rights which are subject to progressive realization and other limitations into an absolute right. An over-extension of Article 6, being of an absolute nature, risks rendering these rights futile.<sup>88</sup>

73. Enjoyment of the right to life may be threatened by a range of climate change and disaster impacts, including extreme weather events – such as storms, heavy rains and drought – as well as slower-onset environmental changes – such as erosion and sea-level rise. Both individually and cumulatively, these impacts may undermine people's food security, shelter and health, thereby threatening their ability to live in safety and with dignity.<sup>89</sup>

74. Climate change impacts may form the basis of an international protection claim even before they become

<sup>80</sup> Ibid, para 9.11.

<sup>81</sup> Ibid, para 9.4.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid, para 9.6.

<sup>84</sup> Ibid, para 9.7.

<sup>85</sup> By contrast, *New Zealand's* assessment concerned whether there was any act or omission by the government of Kiribati that 'might indicate a risk that he will be "arbitrarily deprived" of his life within the scope of Article 6 of the ICCPR': *AF (Kiribati)* (n 24) para 88. This differs from the approach taken in Europe, where the question is whether the State's act of removal itself amounts to a risk of ill-treatment. See further paras 81–82 of this Practical Toolkit.

<sup>86</sup> *Teitiota v New Zealand* (n 45) para 9.9.

<sup>87</sup> *AW (Kiribati)* (n 22) para 124.

<sup>88</sup> International Law Association (ILA) Committee on International Law and Sea Level Rise, *Final Report to the Eighty-First Conference* (Athens, 25–28 June 2024) 39.

<sup>89</sup> For a detailed analysis, see Jane McAdam, Bruce Burson, Walter Kälin and Sanjula Weerasinghe, *International Law and Sea-Level Rise: Forced Migration and Human Rights* (Fridtjof Nansen Institute, 2016) section 1.3.

life-threatening (see Key Consideration 4). As the UN Human Rights Committee has made clear, removing a person to conditions that include insufficient fresh water, overcrowding, inundation, erosion and land disputes could trigger ‘the non-refoulement obligations of sending states’ by jeopardizing the right to life.<sup>90</sup> And, as noted above, ‘conditions of life ... may become incompatible with the right to life with dignity before the risk [to life] is realized’,<sup>91</sup> meaning that protection should be forthcoming before the harm materializes fully.

75. Where deteriorating conditions in the context of climate change are part of a claim for international protection, decision-makers and practitioners should consider not only the material conditions themselves, but also the steps being taken by the country of origin to protect people’s right to life by managing climate risks (see Key Consideration 4). For example, the duty to protect the right to life includes an obligation on States to protect people from disasters where they know, or ought to know, of the relevant risk.<sup>92</sup>
76. A failure by authorities to guard against known 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>93</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.
77. Establishing an international protection claim under article 6 of the ICCPR requires a forward-looking assessment of the risk to the applicant’s right to life (see Key Consideration 4). The future risk to the applicant ‘must be personal in nature’<sup>94</sup> and ‘cannot derive merely from the general conditions in the receiving State, except in the most extreme cases’.<sup>95</sup> This is ‘a high threshold’.<sup>96</sup> However, it is crucial to note that:

[t]he fact that many or all members of a community are impacted does not undermine the validity of any individual member’s claim. ... In some cases, the adverse effects of climate change and disasters on an entire community may strengthen rather than weaken the evidence that justifies the fear of an individual being persecuted.<sup>97</sup>

78. States’ obligation to protect the right to life extends to ‘reasonably foreseeable threats and life-threatening situations that can result in loss of life’.<sup>98</sup> It implies that States ‘should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity’, which may include ‘degradation of the environment’, ‘widespread hunger and malnutrition and extreme poverty and homelessness’.<sup>99</sup>

## Torture or cruel, inhuman or degrading treatment or punishment

### AC (Eritrea) [2023] NZIPT 802201–202 (New Zealand)

In this case, an elderly couple from Eritrea claimed international protection on the basis of serious harm resulting from conditions of generalized poverty and underdevelopment, exacerbated by the effects of climate change. The New Zealand Immigration and Protection Tribunal upheld the claim under article 7 of the ICCPR, taking into account the couple’s advanced age and distance from family in Eritrea and noting that ‘the appellants would be returning to conditions of abject poverty, underdevelopment and likely displacement ... . They are particularly vulnerable, given their elderly status and lack of family support’ (para 142).

79. The implied principle of *non-refoulement* under article 7 of the ICCPR protects people from being removed to a situation where they face a real risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.
80. The four types of ill-treatment in article 7 are not defined in the ICCPR, but decision-makers generally do not draw sharp distinctions between them. According to UN Human Rights Committee, it is not necessary to do so: ‘the distinctions depend on the nature, purpose and severity of the treatment applied’.<sup>100</sup> Ill-treatment can encompass both physical and mental suffering,<sup>101</sup> as well as violations of civil, political, economic, social or cultural rights.

<sup>90</sup> *Teitiota v New Zealand* (n 45) para 9.11.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Budayeva and Others v Russia* (n 50).

<sup>93</sup> *Ibid.*, para 135; see also para 47 of this Practical Toolkit.

<sup>94</sup> UN Human Rights Committee, General Comment No 36 (n 74) para 30 (citation omitted). Although, read with article 26, a person could face a ‘risk of a personal nature’ if they were a member of a group and the group as a whole faced that risk – the risk is personal, not individualized. See para 36 of this Practical Toolkit.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Teitiota v New Zealand* (n 45) para 9.3 (citations omitted).

<sup>97</sup> UNHCR Legal Considerations (n 4) para 8, referring to UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status related to Situations of Armed Conflict and Violence* (2 Dec 2016) (UNHCR Armed Conflict Guidelines) para 17.

<sup>98</sup> UN Human Rights Committee, General Comment No 36 (n 74) para 7. See also paras 125–27 below.

<sup>99</sup> *Ibid.*, para 26 (citations omitted).

<sup>100</sup> UN Human Rights Committee, General Comment No 20 (n 76) para 4.

<sup>101</sup> *Ibid.*, para 5.

81. The term ‘treatment’ is understood in different ways in different jurisdictions. In Europe, the act of removal may amount to inhuman or degrading treatment if it results in a real risk of a person’s ‘most basic human rights [being] seriously violated’.<sup>102</sup> For instance, the European Court of Human Rights has found that ‘destitution’ and ‘dire humanitarian conditions’ may constitute inhuman or degrading treatment if they reach a sufficient level of severity, whether cumulatively or alone.<sup>103</sup> In the context of climate change and disasters, food or water shortages, insecure shelter and inadequate health care could potentially create a real risk of inhuman treatment in violation of article 7, especially when considered together.<sup>104</sup>

82. By contrast, in New Zealand, the statutory context prohibits the act of removal from constituting the relevant ‘treatment’. There, demonstrating a real risk of inhuman or degrading ‘treatment’ requires a positive act or omission by an authority that ‘transcend[s] failure of the state’s general economic policies to provide for an adequate standard of living’.<sup>105</sup> This approach means that in the disaster context, a State’s incapacity to respond to a disaster would generally be insufficient to constitute ‘treatment’, whereas the denial of post-disaster assistance on a discriminatory basis could potentially constitute ill-‘treatment’ of the disaster-affected population.<sup>106</sup>

*‘Just as it was not intended that consequences of general socio-economic policy should constitute a treatment under article 7 of the ICCPR, nor does the mere fact that a state lacks the capacity to adequately respond to a naturally occurring event mean that such inability should, of itself, constitute a “treatment” of the affected population. However, the existence of positive state duties in disaster settings means that, in some circumstances, it may be possible for a failure to discharge such duties to constitute a treatment. Specific examples will be the discriminatory denial of available humanitarian relief and the arbitrary withholding of consent for necessary foreign humanitarian assistance’.*

**AC (Tuvalu) [2014] NZIPT 800517-520, para 84.**

83. As already noted, disasters often have ongoing socio-economic impacts and it is essential that these are not overlooked (see Key Consideration 2). As Scott notes:

Particularly for individuals living already marginal existences, a return to ‘pre-disaster levels’ entails a return to a situation of exposure and vulnerability, albeit potentially significantly more marginal than before the unfolding of the ‘natural’ disaster. Assessment of risk on return in the context of [the determination of an international protection claim] should therefore not stop with consideration of the disaster relief cycle, but needs instead to examine foreseeable exposure to disaster-related harm in the context of a subsequent disaster.<sup>107</sup>

He advocates for the broad temporal lens encompassed in a ‘predicament’ approach, rather than a narrow focus on a single ‘event’.<sup>108</sup>

84. Finally, in assessing whether the risk of harm meets the relevant threshold under article 7, decision-makers and practitioners should consider both the general conditions in the applicant’s country of origin (see Key Consideration 2) as well as the individual characteristics and situation of the applicant (see Key Consideration 3), since ‘different forms of inequality (for instance gender, wealth, family situation, age) [are] particularly important with regard to experiencing the consequences of disasters’.<sup>109</sup>

<sup>102</sup> Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (2nd edn, Oxford University Press, 2019) 533.

<sup>103</sup> See eg *Sufi and Elmi v United Kingdom*, App Nos 8319/07 and 11449/07 (ECtHR, 28 June 2011); *D v United Kingdom* (1997) 24 EHRR 423; *R v Secretary of State for the Home Department, ex parte Adan* [2001] 2 AC 477. See further paras 144ff of this Practical Toolkit.

<sup>104</sup> *Verwaltungsgericht Baden-Württemberg*, A 11 S 2042/20 (17 Dec 2020) para 30.

<sup>105</sup> See eg *BG (Fiji)* [2012] NZIPT 800091, para 148.

<sup>106</sup> *AC (Tuvalu)* (n 39) para 84.

<sup>107</sup> Scott (n 11) 139.

<sup>108</sup> See also *OF (India)* (n 44).

<sup>109</sup> Ammer et al (n 71) 10.

## HUMAN RIGHTS LAW

### CONVENTION AGAINST TORTURE (CAT)

#### Article 3

No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

85. The CAT creates an express and absolute *non-refoulement* obligation with respect to torture in article 3. 'Torture' is the most extreme type of ill-treatment, defined in article 1 as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

86. In countries where the ICCPR's broader protection from return to torture or related harm is not available and/or in situations where an individual does not meet the 1951 Refugee Convention definition, the CAT may provide a basis for a *non-refoulement* claim. For example, a person in danger of being subjected to torture as a result of protesting against, or even documenting, the effects of climate change and disasters could fall within the CAT.<sup>110</sup>

87. Torture, as defined in the CAT, is a more limited concept than that of being persecuted under the 1951 Refugee Convention, encompassing by comparison a relatively narrow set of severe harms. It is also limited by the requirement that the harm be inflicted by a public official or other person acting in an official capacity, or by someone acting at the instigation of or with the consent or acquiescence of such a person.

88. However, international protection under the CAT is more expansive than the refugee definition in two respects. First, there is no requirement that the danger of being subjected to torture is for reasons of one of the five grounds set out in 1951 Refugee Convention. Applicants who cannot establish a link to a Convention ground may fit within the CAT definition. Second, there are no grounds of exclusion under the CAT. Persons who would otherwise fit the refugee definition but are excludable may merit protection under the CAT if they meet the substantive requirements.

<sup>110</sup> See eg *Pena-Lojo v US Attorney General*, No 20-2641, 2021 WL 5149759 (3d Cir, 5 Nov 2021) (unpublished).

# E. Regional frameworks: Africa

## REFUGEE LAW

### 1969 OAU REFUGEE CONVENTION

#### Article I(2)

The term 'refugee' shall ... 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.

#### Example: Displacement from drought, famine and insecurity in Somalia

Between 2011 and 2012, people fleeing the combined effects of drought, famine and insecurity in Somalia were recognized as refugees in Kenya and Ethiopia on the basis that conditions in Somalia amounted to events seriously disturbing public order.<sup>111</sup>

89. A refugee is defined in article I of the 1969 OAU Refugee Convention. Paragraph I incorporates the universal refugee definition contained in article 1A(2) of the 1951 Refugee Convention. Paragraph II establishes Africa's regional refugee definition.
90. The breadth of the enumerated refugee-producing events under Africa's regional refugee definition, including 'events seriously disturbing public order', makes it particularly suited to recognition of refugees on a group basis and in situations involving large-scale displacement, such as may occur in the context of a serious disaster.<sup>112</sup> The definition has also been incorporated into the domestic legislation of most African States, making it enforceable at the national level.

91. In 2023, the African Commission on Human and Peoples' Rights endorsed the expansion of regional refugee protection to 'those compelled to seek refuge outside their country of origin, nationality or habitual residence as a result [of] climate change that affects their fundamental rights, regardless of whether such effects seriously disturb public order'.<sup>113</sup> Although the Commission's recommendation has no binding legal effect, decision-makers and practitioners should remain alert to future developments in this area.
92. As a matter of procedure, there is no distinction between the two refugee definitions in the 1969 OAU Refugee Convention. Which one is utilized will depend on the facts of the claim (whether they align more closely with one definition or the other) and the availability of durable solutions (some solutions – for example, most UNHCR resettlement programs – may be limited to refugees recognized under the article I(1) definition).

*'We are of the view that ... the broader definition of refugees adopted by the OAU/AU Convention Governing the Specific Aspects of Refugee Problems in Africa to include persons who are compelled due to natural disasters, to leave their place of habitual residence in order to seek refuge in another place outside their country of origin or nationality, has enabled African countries ... to open their borders'.*

Statement by the Permanent Representative of the Federal Democratic Republic of Ethiopia to the United Nations Office at Geneva and to Other International Organizations in Switzerland at the [Nansen Initiative Global Consultation](#) (12 Oct 2015).

<sup>111</sup> Sanjula Weerasinghe, *In Harm's Way: International Protection in the Context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change*, UNHCR Legal and Protection Policy Research Series, PPLA/2018/05 (Dec 2018) 2–4.

<sup>112</sup> See generally Tamara Wood and Ahmed Elbasouy, 'Analysing Group Refugee Recognition in African States' Law and Practice', RefMig Working Paper No 11/2023 (2023). Group recognition is not confined to African regional refugee law, however. It may also be used under other international protection frameworks. See para 21 of this Practical Toolkit.

<sup>113</sup> African Commission on Human and Peoples' Rights, *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers* (2023) (African Guiding Principles) Principle 2, para 4.

## Events seriously disturbing public order

93. People displaced in the context of climate change and disasters are most likely to qualify for protection in situations involving ‘events seriously disturbing public order’.<sup>114</sup> This phrase includes both qualitative and quantitative components – there must be a disturbance to ‘public order’ and that disturbance must be ‘serious’.

94. The impacts of climate change and disasters may generate events seriously disturbing public order on their own – for example, in situations involving severe and/or sudden-onset disasters – or in combination with other factors, including conflict and violence. Slow-onset impacts, such as drought, may also contribute to events seriously disturbing public order – for example, by ‘exacerbat[ing] conflict and instability ... while also diminishing a State’s capacity to protect its population from harm’.<sup>115</sup>

95. While there is no single, uniform meaning of ‘public order’ in international law, according to UNHCR, the concept encompasses the prevailing level of administrative, social, political and moral order in a society<sup>116</sup> and the maintenance of societal stability.<sup>117</sup> A state of public order should be assessed according to ‘the effective functioning of the State in relation to its population and based on respect for the rule of law and human dignity to such an extent that the life, security and freedom of people are protected’.<sup>118</sup>

96. Understood this way, a disturbance to public order corresponds closely to the concept of a ‘disaster’, which the UN Office for Disaster Risk Reduction defines as a ‘serious disruption of the functioning of a community or a society’.<sup>119</sup> Just as a disaster may stem from a combination of natural hazards and other social, economic and political factors,<sup>120</sup> a similar range of factors may contribute to a disturbance to public order.

97. In all cases, the assessment of a disturbance to public order should focus on the *effects* of the disturbance rather than the initial trigger or cause.<sup>121</sup> Thus, distinctions between ‘natural’ and ‘human’ events, which inform some historical commentaries on Africa’s regional refugee definition, have no place in an accurate assessment of events seriously disturbing public order.<sup>122</sup>

98. A *serious* disturbance to public order entails a ‘widespread or generalised threat to the rights to life, physical integrity and/or liberty of individuals in a society, such that the disturbance can be said to affect society at large, and the State is unable or unwilling to restore public order’.<sup>123</sup> As noted already, in some situations, the impacts of climate change and disasters may be sufficiently serious to pose a threat to an entire population.<sup>124</sup>

*‘Whether a disturbance to public order stems from human or other causes is not determinative for concluding a serious disturbance to public order; the central concern is the effect of a given situation. Accordingly, the principal inquiry at the time of assessing a claim for refugee status is whether a serious disturbance to public order exists as a matter of fact, based on an assessment of available evidence’.*

UNHCR, [Legal Considerations regarding Claims for International Protection made in the context of the Adverse Effects of Climate Change and Disasters](#) (2020) para 16 (citations omitted).

99. In practice, a range of factual indicators may be used as evidence of a serious disturbance to public order, including: a failure by the government to meet people’s basic needs, such as food, health and education; risks to people’s lives, physical integrity or liberty; a failure of law enforcement bodies to abide by the rule of law; or the declaration of a state of emergency.<sup>125</sup> No particular indicator is required to establish a serious disturbance to public order, however, and the assessment of such a disturbance should be made on a case-by-case basis, taking into account the situation as a whole (see Key Consideration 2).<sup>126</sup>

100. The serious disturbance to public order must be assessed with respect to the applicant’s place of habitual residence. However, the nature of the factual indicators is such that they are unlikely to be confined to narrow geographical areas and, as such, evidence regarding the prevailing level of public order in applicant’s country of origin as a whole will also be relevant.

<sup>114</sup> See UNHCR Legal Considerations (n 4) para 15.

<sup>115</sup> Cleo Hansen-Lohrey, [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 Legal and Protection Policy Series, PPLA/2023/01 (Sept 2023) i.

<sup>116</sup> UNHCR Legal Considerations (n 4) para 16.

<sup>117</sup> Hansen-Lohrey (n 115) 57.

<sup>118</sup> UNHCR Legal Considerations (n 4) para 16.

<sup>119</sup> UNDRR (n 3).

<sup>120</sup> See para 5 of this Practical Toolkit.

<sup>121</sup> UNHCR Legal Considerations (n 4) para 16, citing Tamara Wood, ‘Who is a Refugee in Africa? A Principled Framework for Interpreting and Applying Africa’s Expanded Refugee Definition’ (2019) 31 *International Journal of Refugee Law* 290.

<sup>122</sup> *Ibid.*

<sup>123</sup> Hansen-Lohrey (n 115) 59.

<sup>124</sup> See para 36 of this Practical Toolkit.

<sup>125</sup> UNHCR Legal Considerations (n 4) para 16; UNHCR Armed Conflict Guidelines (n 97) para 59; Hansen-Lohrey (n 115) 55ff.

<sup>126</sup> UNHCR Legal Considerations (n 4) para 16.

## Compelled to leave

101. To qualify for international protection under Africa's regional refugee definition, an applicant must also demonstrate that they were 'compelled to leave' because of one of the enumerated refugee-producing events. This element fulfils a similar function to 'well-founded fear' in the 1951 Refugee Convention refugee definition, entailing a forward-looking assessment of the risk to the refugee if returned to their place of origin.<sup>127</sup> It looks to the connection between the event and the refugee's flight, including whether the event is 'sufficiently serious that it is objectively reasonable for a person to leave her or his place of habitual residence and seek refuge in another country'.<sup>128</sup> Those who habitually reside in a place unaffected by the serious disturbance to public order will not satisfy this requirement.
102. The applicant must further be compelled to leave 'in order to seek refuge in another place outside his country of origin or nationality'. Those who could reasonably relocate to another safe area within their country of origin arguably do not satisfy this requirement.<sup>129</sup> However, as noted already, where the impacts of climate change and disasters are felt across the applicant's entire country of origin, there is unlikely to be an internal flight alternative, unless the impacts in part of the country are such that they do not generate events seriously disturbing public order and it is reasonable for the applicant to relocate there.<sup>130</sup>

## HUMAN RIGHTS LAW

### AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

#### Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

#### Article 18(1)

The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.

103. African regional human rights law includes a prohibition on removal that is broadly consistent with that under international human rights instruments. Thus, much of the international human rights law analysis above could be relevant in Africa as well. Drawing on the African Charter of Human and Peoples' Rights, as well as the ICCPR and the CAT, the African Commission on Human and Peoples' Rights (African Commission) advises that no State shall remove ('*refouler*') a person where there are substantial grounds for believing they would be 'in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment' or 'subjected to a real risk of irreparable harm to a fundamental human right, particularly the right to life'.<sup>131</sup>

<sup>127</sup> Ibid, para 17. While the use of the past tense – 'compelled' – has led to suggestions that this component of Africa's regional refugee definition involves a retrospective assessment of the refugee's reasons for flight, thereby precluding the recognition of *sur place* claims for protection, such a reading would be inconsistent with the object and purpose of the 1969 OAU Refugee Convention, which is the prevention of future harm to refugees. See eg the 1969 OAU Refugee Convention's article II(3) *non-refoulement* provision which prohibits return of a refugee to territory 'where his [or her] life, physical integrity or liberty would be threatened'. See Tamara Wood, 'The International and Regional Definitions Compared' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press, 2021).

<sup>128</sup> UNHCR Armed Conflict Guidelines (n 97) para 50.

<sup>129</sup> cf UNHCR Internal Flight Guidelines (n 70) para 5.

<sup>130</sup> See para 65 of this Practical Toolkit.

<sup>131</sup> African Guiding Principles (n 113) Principle 20, paras 3 and 4. See also African Commission on Human and Peoples' Rights, *Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa* (2nd edn, Apr 2008) (Robben Island Guidelines) art 15: 'States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture'.





Photo credit: IOM/Muse Mohammed

104. While the African Court on Human and Peoples' Rights has yet to engage with the principle of *non-refoulement* under regional human rights law, the African Commission has endorsed a broad approach to the right to life that is consistent with that of the UN Human Rights Committee.<sup>132</sup> This means that the *non-refoulement* obligation under African regional human rights law will be triggered where there is a real risk of irreparable harm to the applicant's enjoyment of the right to a life with dignity.<sup>133</sup>
105. According to the African Commission's guidance, States' *non-refoulement* obligations may also be triggered by a real risk of irreparable harm to other 'fundamental human rights'. Although Commission has not elaborated on which other rights could be included here, elsewhere it recognizes the 'fundamental right' to an adequate standard of living, including 'adequate food, clothing and housing'.<sup>134</sup>
106. Finally, the African Commission has held that where a person's removal results in family separation, this violates the protection of family unity under African regional human rights law. This highlights the importance of considering the applicant's individual predicament within international protection determination procedures (see Key Consideration 3). The risk of family separation may be particularly acute, for example, in the context of cross-border movement following a disaster.
107. To date, African States generally have not incorporated human rights-based obligations into their domestic laws or international protection determination procedures. However, individuals at risk of *refoulement* under regional human rights law may lodge communications with the African Commission after exhausting domestic options for a remedy.

<sup>132</sup> The African Commission has similarly stated that '[t]he right to life should be interpreted broadly': African Commission on Human and Peoples' Rights, *General Comment No 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)* (12 Dec 2015) paras 41ff. This reflects UN Human Rights Committee, General Comment No 36 (n 74) para 3.

<sup>133</sup> See also *Teitiota v New Zealand* (n 45).

<sup>134</sup> African Guiding Principles (n 113) Principle 28 (drawing on article 11 of the International Covenant on Economic, Social and Cultural Rights).

# F. Regional frameworks: The Americas

## REFUGEE LAW

### 1984 CARTAGENA DECLARATION

#### Conclusion III(3)

[T]he definition or concept of a refugee to be recommended for use in the region is one which ... includes among refugees 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.

#### Example: Displacement from Haiti

Following the 2010 earthquake in Haiti, Mexico recognized some Haitians as refugees under the Cartagena Declaration refugee definition on the basis that the insecurity, violence and human rights violations that prevailed following the earthquake amounted to a serious disturbance to public order.<sup>135</sup>

108. As in the 1969 OAU Refugee Convention, the 1984 Cartagena Declaration incorporates the universal refugee definition contained in article 1A(2) of the 1951 Refugee Convention. It also establishes a regional refugee definition in Conclusion III(3). UNHCR has affirmed that people displaced in the context of climate change and disasters can be refugees under the 1984 Cartagena Declaration criteria.<sup>136</sup>
109. Since the 1984 Cartagena Declaration is a non-binding instrument, there is no specific regional refugee treaty body or court to which an individual can bring a refugee claim. However, the Inter-American Court of Human Rights (IACtHR) has recognized that States' obligations resulting from the right to seek and receive asylum – as enshrined in the 1948 American Declaration of the Rights and Duties of Man (American Declaration) and the 1969 American Convention on Human Rights (American Convention) – are informed by the sources and evolving principles of international refugee law,<sup>137</sup> and are 'operative with respect to those persons who meet the components of the expanded definition of the Cartagena Declaration'.<sup>138</sup>
110. Despite being severely underutilized, the 1984 Cartagena Declaration has, with domestic variations, served as a foundation for progressively developing refugee law in the Americas. Fifteen States in the Americas have adopted some form of the expanded refugee definition in their domestic legislation,<sup>139</sup> and others have applied it in practice in cases of large-scale movements.<sup>140</sup> In addition, Costa Rica has incorporated the regional definition via the decision of an administrative tribunal.<sup>141</sup>
111. When addressing the needs of people displaced in the context of climate change and disasters, decision-makers and practitioners should confirm the precise language used in domestic law and determine whether the definition may apply within group or individual status determination procedures or both. A well-reasoned argument can demonstrate that displacement linked to the impacts of climate change and disasters can fall squarely within some of the grounds outlined in the 1984 Cartagena Declaration.

<sup>135</sup> Weerasinghe (n 111) 4.

<sup>136</sup> UNHCR Legal Considerations (n 4) para 14.

<sup>137</sup> *Pacheco Tineo Family v Bolivia*, Inter-American Court of Human Rights (25 Nov 2013) para 143.

<sup>138</sup> *The Institution of Asylum and Its Recognition as a Human Right in the Inter-American Protection System*, Inter-American Court of Human Rights Advisory Opinion OC-25/18 (30 May 2018) para 132; *Rights and Guarantees of Children in the context of Migration and/or in Need of International Protection*, Inter-American Court of Human Rights Advisory Opinion OC-21/14 (19 Aug 2014) para 79.

<sup>139</sup> See UNHCR, 'Regional Definition of Refugee' (undated) (UNHCR Regional Definition). These States are Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

<sup>140</sup> UNHCR, *International Protection Considerations with regard to People Fleeing Colombia* (Aug 2023) 79.

<sup>141</sup> See UNHCR Regional Definition (n 139) 6.

## Circumstances which have seriously disturbed public order

112. UNHCR advises that its guidance on the interpretation and application of the parallel 1969 OAU Refugee Convention provision on ‘events seriously disturbing public order’ applies equally to the 1984 Cartagena Declaration.<sup>142</sup>
113. Referring to the 1984 Cartagena Declaration specifically, UNHCR has confirmed that the impacts of climate change and environmental disasters can seriously disturb public order.<sup>143</sup> More particularly, UNHCR advises that whether the disturbance to public order stems from human or other causes is not determinative; the central concern is the effect of a given situation.<sup>144</sup> In that light, it is important to assess disturbances to public order holistically. For example, while a disaster such as Haiti’s 2010 earthquake was not caused by human activity, the resulting breakdown in the government’s ability to provide basic safety and security to internally displaced individuals, especially women and girls, was attributable to the social and political context in which the disaster occurred.<sup>145</sup>

*‘While the Cartagena Declaration does not provide a legal definition for the concept of “disturbing public order”, in UNHCR’s view, the broad scope of the language can encompass climate or environmental disasters’.*

UNHCR, [Amicus Brief of the Office of the United Nations High Commissioner for Refugees to the Inter-American Court of Human Rights regarding the Request for an Advisory Opinion on the Climate Emergency and Human Rights from the Republic of Colombia and the Republic of Chile](#) (18 Dec 2023) para 50.

114. In places such as Mexico, where domestic regulations require that the circumstances ‘result from acts attributable to man’,<sup>146</sup> this requirement can be met by analysing the government’s actions and omissions before, during and after the disaster (see Key Consideration 5). Simply asking what caused the event is not enough since the State’s response, or lack thereof, is largely responsible for determining the disaster’s impact on the population.

115. Additionally, it is important to note that, as in the 1969 OAU Refugee Convention, a formal declaration of a state of emergency is not a prerequisite for determining that circumstances seriously disturbing public order exist.<sup>147</sup>

## Massive violation of human rights

116. According to the IACtHR, ‘massive’ relates to the magnitude of the human rights violation, regardless of its duration, and can result from a single event or a series of events.<sup>148</sup> The scale of the violation, rather than the time span, is what qualifies an act as ‘massive’. Additionally, UNHCR notes that when the effects of human rights violations extend beyond the immediate victims and impact large segments of the population or society as a whole, the situation may also be classified as a massive violation of human rights.<sup>149</sup>
117. While the concept has been traditionally examined by the IACtHR in situations involving extreme violence, such as extrajudicial killings, the underlying legal principles are also relevant in the context of climate change and disasters. In reality, massive human rights violations occur in conditions where civil, political, economic, social or cultural rights are denied in a severe and systematic way.<sup>150</sup> These conditions can arise from both rapid- and slow-onset climate impacts that lead to severe consequences such as droughts, floods, heatwaves, fires and coastal erosion.<sup>151</sup>
118. Some domestic laws impose restrictions or specific criteria on the conditions that constitute a ‘massive violation of human rights’. For example, Mexico’s Refugee Law Regulation defines such violations as those that occur ‘in accordance with a specific policy’.<sup>152</sup> Yet, even in the context of climate change and disasters, policy decisions inherently shape government action – or inaction – in terms of both preparedness and response, which can have deep and unequal impacts on the population.
119. Consequently, a key factor in determining the occurrence of massive human rights violations is whether the State supports, acquiesces or allows these violations to happen, without taking preventive measures.<sup>153</sup> According to UNHCR, the 1984 Cartagena Declaration’s refugee definition does not distinguish between the types of rights that are threatened – whether life, security or freedom – and displacement itself may indicate the existence of a ‘massive violation of human rights’.<sup>154</sup>

<sup>142</sup> UNHCR Legal Considerations (n 4) para 14. See also UNHCR Climate Change Impacts (n 11) section 1.1.2; section E of this Practical Toolkit.

<sup>143</sup> UNHCR, [Amicus Brief of the Office of the United Nations High Commissioner for Refugees to the Inter-American Court of Human Rights regarding the Request for an Advisory Opinion on the Climate Emergency and Human Rights from the Republic of Colombia and the Republic of Chile](#) (18 Dec 2023) para 50.

<sup>144</sup> *Ibid*, para 55 (citation omitted); see also para 97 of this Practical Toolkit.

<sup>145</sup> See further Weerasinghe (n 111).

<sup>146</sup> See UNHCR Regional Definition (n 139) 3.

<sup>147</sup> UNHCR Armed Conflict Guidelines (n 97) para 79.

<sup>148</sup> *‘Las Dos Erres’ Massacre v Guatemala*, Inter-American Court of Human Rights (24 Nov 2009) paras 73, 79, 152.

<sup>149</sup> UNHCR Armed Conflict Guidelines (n 97) para 76.

<sup>150</sup> International Conference on Central American Refugees, [Principios y criterios para la protección y asistencia a los refugiados, repatriados y desplazados en América Latina](#) (CIREFCA, 1989) para 34.

<sup>151</sup> Inter-American Commission on Human Rights, [Climate Emergency: Scope of Inter-American Human Rights Obligations](#), Res 3/2021 (31 Dec 2021) 5.

<sup>152</sup> [Reglamento de la Ley sobre Refugiados y Protección Complementaria](#) (Mexico) art 4(X). ‘Massive violation of human rights’ is defined as: ‘Conduct that violates human rights and fundamental freedoms in the country of origin, on a large scale and in accordance with a specific policy’.

<sup>153</sup> [González et al \(‘Cotton Field’\) v Mexico](#), Inter-American Court of Human Rights (16 Nov 2009) para 236.

<sup>154</sup> UNHCR Armed Conflict Guidelines (n 97) para 76.

## Lives, safety or freedom have been threatened

120. The element of ‘threat’ – or risk – refers to the *possibility* of harm being inflicted on individuals, groups or entire populations; it is not necessary that the harm actually occurs. The emphasis is not on the individual’s personal circumstances when fleeing, but rather on the objective conditions in their country of origin that could impact a threat to their life, security or freedom. The geographical closeness of the situation to the person is enough to potentially create a threat that forces them to leave their country.<sup>155</sup>
121. The rights to life, security and freedom should be interpreted broadly, including ‘physical and mental integrity, security, freedoms, human dignity and livelihoods, with reference to internationally and regionally recognized human rights’.<sup>156</sup> This broad interpretation is crucial when considering how the effects of climate change and disasters can lead to serious human rights violations, compelling individuals to seek refuge across borders.

## HUMAN RIGHTS LAW

### 1969 AMERICAN CONVENTION ON HUMAN RIGHTS

#### Article 4

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

#### Article 5

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

### Article 19

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

122. The Inter-American human rights system has developed a robust interpretation of the principle of *non-refoulement*. The American Convention explicitly includes a *non-refoulement* obligation that aligns with that found in the 1951 Refugee Convention,<sup>157</sup> which the IACTHR considers to be a rule of customary international law.<sup>158</sup> While the American Declaration does not explicitly contain a *non-refoulement* obligation, the Inter-American Commission on Human Rights has recognized that it is a necessary tool to effectively respect certain fundamental rights, such as the rights to life, liberty and personal integrity, in addition to the right to seek and receive asylum.<sup>159</sup>
123. Moreover, the IACTHR has clarified that the principle of *non-refoulement* applies whenever a person’s ‘life, integrity and/or freedom are in danger of being violated, whatsoever his legal status or migratory situation’.<sup>160</sup> As recognized by both the court and the Inter-American Commission, States are required to offer complementary protection in cases where an individual’s right to life or freedom is threatened, whether or not they are eligible to be recognized as a refugee.<sup>161</sup> This underscores the broad nature of the principle of *non-refoulement* within the Inter-American human rights system, which is relevant in the context of climate change and/or disasters, given the impacts discussed above.
124. At the time of writing, the IACTHR was due to issue an Advisory Opinion on the ‘Climate Emergency and Human Rights’.<sup>162</sup> While it remains to be seen how the court will address cross-border displacement in the context of climate change,<sup>163</sup> it has been called upon to affirm that, under existing law, individuals should not be removed to places where their lives, freedom, or personal integrity are at risk due to foreseeable risks caused or exacerbated by the climate emergency.<sup>164</sup>

<sup>155</sup> Ibid, paras 81–82.

<sup>156</sup> Ibid, para 83.

<sup>157</sup> Art 22(8) of the American Convention provides: ‘In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions’.

<sup>158</sup> *Pacheco Tineo Family v Bolivia* (n 137) para 151; Inter-American Court of Human Rights Advisory Opinion OC-21/14 (n 138) para 211.

<sup>159</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System* (2000) paras 31–32; Inter-American Commission on Human Rights, *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless, Persons and Victims of Human Trafficking*, Res 4/2019 (7 Dec 2019) Principle 6.

<sup>160</sup> *Pacheco Tineo Family v Bolivia* (n 137) para 135.

<sup>161</sup> Inter-American Court of Human Rights Advisory Opinion OC-21/14 (n 138) paras 217, 237, 238, 240; Inter-American Commission on Human Rights Res 4/2019 (n 159) Principle 57.

<sup>162</sup> Republic of Chile and Republic of Colombia, *Request for an Advisory Opinion on the Climate Emergency and Human Rights Submitted by the Republic of Colombia and the Republic of Chile*, Petition to the Inter-American Court of Human Rights (9 Jan 2023).

<sup>163</sup> Ibid, 14. One of the questions posed to the court is: ‘What obligations and principles should guide the individual and coordinated actions to be taken by States in the region to address non-voluntary human mobility, exacerbated by the climate emergency?’

<sup>164</sup> Felipe Navarro, ‘How the Inter-American Court Could Advance Protection for Climate-Displaced Individuals’, *Just Security* (12 June 2024).

## Right to life

### *La Oroya v Peru*, Inter-American Court of Human Rights (27 Nov 2023) (IACtHR)

In this case, the IACtHR considered the link between the right to a healthy environment and the right to life. It held that the State's failure to protect its population from environmental degradation, which led to physical and psychological suffering, was in violation of the right to life with dignity. It further held that the risk was greatest to children, women and the elderly.

125. The IACtHR has consistently held that the right to life, enshrined in article 4 of the American Convention, not only prohibits arbitrary deprivation of life but also requires States to protect and preserve life under conditions that ensure a dignified existence.<sup>165</sup> For instance, the court has recognized that access to essential resources, such as clean water, adequate food and health care, are fundamental to this right. The IACtHR has connected environmental protection to the right to a dignified life, noting that environmental degradation may infringe on this right.<sup>166</sup>
126. In the context of *non-refoulement*, the IACtHR has further clarified that the risk to life must be real and foreseeable. This means the danger must be a predictable consequence of specific actions or prevailing conditions, rather than hypothetical or remote.<sup>167</sup>
127. These principles are relevant to cases involving climate change and disasters. Climate change exacerbates environmental degradation and resource scarcity, while environmental degradation, in turn, makes communities more vulnerable to the effects of climate change.<sup>168</sup> Both may create conditions that threaten the right to life.

## Right to personal integrity

128. The right to personal integrity is explicitly recognized in article 5 of the American Convention, as well as in article XXVII of the American Declaration. This right encompasses both physical and psychological integrity, ensuring that individuals are protected from threats or a real risk of harm that affects their bodily and/or mental well-being.<sup>169</sup>

129. The IACtHR has held that 'Article 5 of the American Convention ... reveals the obligation of the State not to deport, return, expel, extradite, or remove in any other way to another State a person ... when there are grounds for believing that they would be in danger of being subjected to torture, or cruel, inhuman or degrading treatment'.<sup>170</sup> This is reinforced by the explicit *non-refoulement* obligation enshrined in article 13 of the Inter-American Convention to Prevent and Punish Torture.
130. The court has further clarified that protection against threats to personal integrity extends beyond torture to include other forms of ill-treatment, which may vary in severity depending on factors such as the duration of the treatment and the individual's age, gender, health and overall vulnerability.<sup>171</sup> This comprehensive approach seeks to ensure that all forms of harm, whether physical or psychological, are assessed within the specific context of each case.
131. Moreover, the court has recognized the direct and immediate connection between the rights to life and personal integrity, particularly in the context of health care. For example, the removal of a person could violate a State's international obligations if it results in a real risk of severe harm or a serious deterioration of health, potentially leading to death.<sup>172</sup> 'In order to evaluate a possible violation of the American Convention or the American Declaration, the health status or type of ailment that the person suffers would have to be taken into account, as well as the health care available in the country of origin and the physical and financial accessibility of this, among other aspects'.<sup>173</sup>
132. In the case of *Mortlock*, the Inter-American Commission analysed the *non-refoulement* obligations of the United States concerning the petitioner's impending deportation to Jamaica, given her ongoing HIV/AIDS treatment. The Commission considered the potential for inhuman treatment and adverse health consequences she could face if deported, and found that deportation would violate article XXVI of the American Declaration (the right not to be subjected to cruel, infamous or unusual punishment).<sup>174</sup> Health risks may be significantly exacerbated in the context of climate change and disasters, either because of a lack of availability of health care in the country of origin or because of a heightened risk of disease spreading.

<sup>165</sup> *Guzmán Albarracín et al v Ecuador*, Inter-American Court of Human Rights (24 June 2020) para 155 (reinforcing that the right to life should not be interpreted narrowly).

<sup>166</sup> *La Oroya v Peru*, Inter-American Court of Human Rights (27 Nov 2023) paras 136, 221; *State Obligations in relation to the Environment in the context of the Protection and Guarantee of the Rights to Life and to Personal Integrity*, Inter-American Court of Human Rights Advisory Opinion OC-23/17 (15 Nov 2017) paras 109, 111.

<sup>167</sup> Inter-American Court of Human Rights Advisory Opinion OC-21/14 (n 138) para 221.

<sup>168</sup> See eg CGRS, *Honduras: Climate Change, Human Rights Violations, and Forced Displacement* (Dec 2023).

<sup>169</sup> Inter-American Court of Human Rights Advisory Opinion OC-21/14 (n 138) para 224.

<sup>170</sup> *Ibid*, para 226.

<sup>171</sup> *La Oroya v Peru* (n 166) para 137.

<sup>172</sup> Inter-American Court of Human Rights Advisory Opinion OC-21/14 (n 138) para 229.

<sup>173</sup> *Ibid*.

<sup>174</sup> *Mortlock v United States*, Inter-American Commission on Human Rights, Report No 63/08 (25 July 2008).

# G. Regional frameworks: Europe<sup>175</sup>

## REFUGEE LAW

### EU QUALIFICATION DIRECTIVE

#### Article 2(d)

'[R]efugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country.

133. The European Union (EU) Qualification Directive is based on EU Member States' obligations under international law, but it also creates a supranational set of minimum standards to ensure that Member States 'apply common criteria for the identification of persons genuinely in need of international protection' and to 'ensure that a minimum level of benefits is available for those persons in all Member States'.<sup>176</sup>
134. The EU Qualification Directive offers two forms of international protection: refugee status and subsidiary protection.<sup>177</sup> The former is based on the refugee definition in the 1951 Refugee Convention and seeks to promote a consistent interpretation across the Member States. The latter applies to individuals who face 'a real risk of suffering serious harm'.<sup>178</sup>
135. The EU Qualification Directive refugee definition largely replicates the refugee definition in article 1A(2) of the 1951 Refugee Convention. However, it explicitly includes the internal flight alternative,<sup>179</sup> which has been only implied into the definition elsewhere,<sup>180</sup> and it limits protection under the EU Qualification Directive to third-country nationals – namely, people who are not citizens of an EU Member State.

136. The Court of Justice of the European Union (CJEU) has the authority to interpret the provisions of the EU Qualification Directive and its decisions are binding within the EU.

## HUMAN RIGHTS LAW

### EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

#### Article 2

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

#### Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### *Budayeva and Others v Russia* [2008] ECHR 15339/02 (European Court of Human Rights)

In this case, the European Court of Human Rights held that Russia's failure to implement effective disaster warning and emergency relief systems to protect residents from mudslides in a known hazardous area violated their right to life, holding: 'The authorities have thus failed to discharge the positive obligation to establish a legislative and administrative framework designed to provide effective deterrence against threats to the right to life' (para 159).

<sup>175</sup> 'Europe' in this context refers to the 27 Member States of the EU and the 46 Member States of the Council of Europe (which are two separate regional organizations).

<sup>176</sup> EU Qualification Directive, recital 12. The Directive will be replaced by a Regulation, which comes into force on 1 July 2026 and will have direct effect in each Member State. The provisions analysed here remain largely unchanged; there are some additional safeguards for gender-related persecution, for instance.

<sup>177</sup> EU Qualification Directive art 2(a).

<sup>178</sup> *Ibid*, art 2(f) (applies only to third-country nationals).

<sup>179</sup> *Ibid*, art 8.

<sup>180</sup> See paras 62–65 of this Practical Toolkit.

137. Much of the international human rights law analysis above is relevant in the European context as well. However, the extensive *non-refoulement* jurisprudence of the European Court of Human Rights (ECtHR), as well as the legislative framework of the EU Qualification Directive, requires focused attention.

## Right to life

138. In Europe, international protection claims grounded in human rights law are generally decided on the basis of article 3 of the ECHR (torture or inhuman or degrading treatment) rather than article 2 (right to life).<sup>181</sup> As Goodwin-Gill and McAdam have observed, no case has succeeded solely on the basis of article 2 because claims are 'generally raised in conjunction with article 3, and if a violation of the latter is found, then the article 2 claim typically falls away'.<sup>182</sup> It is worth noting that the ECtHR has recognized that the duty to protect life may include protection from environmental harm,<sup>183</sup> including in the context of climate change.<sup>184</sup>

## Torture or inhuman or degrading treatment

139. The prohibition on torture and inhuman or degrading treatment or punishment in article 3 of the ECHR is understood to include an implied *non-refoulement* obligation.<sup>185</sup> Although the ECtHR has not expressly addressed its application in the context of climate change and disasters, the legal principles established in its extensive *non-refoulement* jurisprudence provide important guidance (see Key Consideration 1).<sup>186</sup> In essence, article 3 prohibits removal where 'substantial grounds have been shown for believing that the person concerned ... faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment'.<sup>187</sup>

140. Precisely what constitutes such ill-treatment has been the subject of much scrutiny and analysis. For present purposes, the most relevant jurisprudence concerns the so-called 'health cases', in which applicants have claimed that their removal would constitute a breach of article 3 of the ECHR because they would not have access to an equivalent level of care and treatment in the country of origin. The health cases provide a useful analogue for considering international protection claims concerning

the impacts of climate change and disasters, given the socio-economic dimensions of both. As emphasized throughout this Practical Toolkit, the impacts of climate change and disasters are not simply 'natural' or necessarily indiscriminate. How they are felt may be deeply connected to individual characteristics and/or vulnerabilities (see Key Consideration 3), as well as human acts or omissions (see Key Consideration 4), including the implementation of laws and policies.

141. In 1997, in the first key health case, *D v United Kingdom*, the ECtHR explained that the principle of *non-refoulement* had only been applied to date in cases where the risk of ill-treatment 'emanate[d] from intentionally inflicted acts of the public authorities in the receiving country or from those of non-State bodies in that country when the authorities there [we]re unable to afford him appropriate protection'.<sup>188</sup> However, on account of article 3's 'fundamental importance',

the Court must reserve to itself sufficient flexibility to address the application of that Article (art. 3) in other contexts which might arise. It is not therefore prevented from scrutinising an applicant's claim under Article 3 (art. 3) where the source of the risk of proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country, or which, taken alone, do not in themselves infringe the standards of that Article (art. 3). To limit the application of Article 3 (art. 3) in this manner would be to undermine the absolute character of its protection.<sup>189</sup>

142. Accordingly, the court held that, given the 'exceptional circumstances' of the case and 'the critical stage now reached in the applicant's fatal illness', implementing the decision to remove him would amount to inhuman treatment in violation of article 3.<sup>190</sup>

143. Since that time, the case law has developed further, albeit in ways that can be difficult to reconcile. In essence, where the alleged harm relates to a lack of resources rather than an intentional act or omission by the State, removal will be precluded 'only in a very exceptional case, where the humanitarian grounds against the removal are compelling'.<sup>191</sup> This was the court's conclusion in *N v United Kingdom*, where the risk of harm 'emanate[d] not from the

<sup>181</sup> Article 3 of the ECHR is reflected in article 15(b) of the EU Qualification Directive, discussed below.

<sup>182</sup> Goodwin-Gill and McAdam (n 62) 378. The court has also indicated that the article 3 analysis 'applies equally to the risk of violations of Article 2': *Z and T v United Kingdom* [2006] ECHR 27034/05, 6.

<sup>183</sup> See eg *Öneryıldız v Turkey* [2004] ECHR 48939/99, paras 71–72; *Budayeva and Others v Russia* (n 50) paras 152–54; European Court of Human Rights, *Environment and the European Convention on Human Rights* (Apr 2024).

<sup>184</sup> See generally *Verein KlimaSeniorinnen Schweiz* (n 43) para 511.

<sup>185</sup> *Soering v United Kingdom* (1989) 11 EHRR 439.

<sup>186</sup> The starting point is *Soering v United Kingdom*, *ibid.* See also *Chahal v United Kingdom* (1996) 23 EHRR 413; *Saadi v Italy* [2008] ECHR 37201/06; *Jabari v Turkey* [2000] ECHR 40035/98; *NA v United Kingdom* [2008] ECHR 25904/07; *D v United Kingdom* (n 103).

<sup>187</sup> *Soering v United Kingdom* (n 185) para 91.

<sup>188</sup> *D v United Kingdom* (n 103) para 49 (citation omitted).

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*, para 53 (emphasis added). See also RLI Declaration (n 11) para 31.

<sup>191</sup> *N v United Kingdom* [2008] ECHR 453, para 42.

intentional acts or omissions of public authorities or non-State bodies, but instead from a *naturally occurring illness and the lack of sufficient resources* to deal with it in the receiving country'.<sup>192</sup>

144. By contrast, in *Sufi and Elmi*, the court considered the applicants' prospective removal to dire humanitarian conditions in Somalia and stated that although such conditions were partly the result of 'a naturally occurring' drought, they were 'predominantly due to the direct and indirect actions of the parties to the conflict'.<sup>193</sup>

If the dire humanitarian conditions in Somalia were solely or even predominantly attributable to poverty or to the State's lack of resources to deal with a naturally occurring phenomenon, such as a drought, the test in *N. v. the United Kingdom* may well have been considered to be the appropriate one. However, it is clear that *while drought has contributed to the humanitarian crisis, that crisis is predominantly due to the direct and indirect actions of the parties to the conflict*. The reports indicate that all parties to the conflict have employed indiscriminate methods of warfare in densely populated urban areas with no regard to the safety of the civilian population ... This fact alone has resulted in widespread displacement and the breakdown of social, political and economic infrastructures. Moreover, the situation has been greatly exacerbated by al-Shabaab's refusal to permit international aid agencies to operate in the areas under its control, despite the fact that between a third and a half of all Somalis are living in a situation of serious deprivation.<sup>194</sup>

145. In determining whether article 3 was breached, the court said it was necessary to assess 'an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame'.<sup>195</sup>

146. For present purposes, it is important to highlight that the court's bright-line distinction between drought as 'a naturally occurring phenomenon',<sup>196</sup> on the one hand, and the deliberate actions of parties to the conflict, on the other, is flawed. This is because it overlooks the inherently social, political and economic nature of disasters and other adverse environmental or climatic conditions (see Key Consideration 2). For instance, the effects of drought can exacerbate

food shortages and other vulnerabilities individuals may face.<sup>197</sup> Once this is recognized, the very high 'naturally occurring' threshold in *N v United Kingdom* – and the later cases, discussed below – may have less of a role to play in international protection claims concerning the impacts of climate change and disasters.

147. The ECtHR sought to clarify the application of the different tests that had emerged in relation to 'naturally occurring' predicaments.<sup>198</sup> In relation to health cases, it stated that the relevant test was whether removal would give rise to 'a real risk ... of being exposed to a serious, rapid and irreversible decline in [the applicant's] state of health resulting in intense suffering or to a significant reduction in life expectancy'.<sup>199</sup>

148. The cases of *Paposhvili* and *Savran* took this analysis further.<sup>200</sup> In *Paposhvili*, the court observed that 'although not at imminent risk of dying, [the applicant] would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy', and that the country of asylum had a 'negative obligation not to expose persons to a risk of ill treatment proscribed by Article 3', regardless of the source of that risk.<sup>201</sup> Significantly, the court stated that 'the impact of removal on the person concerned must be assessed by comparing his or her state of health prior to removal and *how it would evolve after transfer* to the receiving State'.<sup>202</sup> This 'longer timeframe for the risk assessment'<sup>203</sup> is particularly pertinent to cases concerning the future impacts of climate change. As scholars have observed,

[t]he concession in *Paposhvili* that a decision-maker must consider the evolving situation post-transfer is significant, although there is no precise framing of the outer limits of the relevant temporal period. However, it clearly allows for a longer-term assessment than the more limited test articulated in *N v United Kingdom*.<sup>204</sup>

149. While *Savran* affirmed *Paposhvili*, it also held that the *Paposhvili* test requires a more all-embracing approach, namely,

a wider concept that is capable of encompassing a multitude of factors, including the direct effects ... as well as its more remote consequences.

<sup>192</sup> Ibid, para 43 (emphasis added).

<sup>193</sup> *Sufi and Elmi* (n 103) para 282.

<sup>194</sup> Ibid (emphasis added).

<sup>195</sup> Ibid, para 283, referring also to *MSS v Belgium and Greece*, App No 30696/09 (ECtHR, 21 Jan 2011) para 254.

<sup>196</sup> *Sufi and Elmi* (n 103) para 282.

<sup>197</sup> *AC (Tuvalu)* (n 39) para 75; see also Austrian Supreme Administrative Court decision in W251 2137996-1 (2017), cited Ammer et al (n 71) 14.

<sup>198</sup> *SHH v United Kingdom*, App No 60367/10 (ECtHR, 29 Jan 2013).

<sup>199</sup> *Paposhvili v Belgium*, App No 41738/10 (ECtHR, 13 Dec 2016) para 183.

<sup>200</sup> Ibid; *Savran v Denmark*, App No 57467/15 (ECtHR, 7 Dec 2021).

<sup>201</sup> *Paposhvili v Belgium* (n 199) paras 183, 188–92.

<sup>202</sup> Ibid, para 188 (emphasis added).

<sup>203</sup> Anderson et al (n 27) 130.

<sup>204</sup> Ibid, 131.



Moreover, it would be wrong to dissociate the various fragments of the test from each other. ... It is on the basis of all those elements taken together and viewed as a whole that the assessment of a particular case should be made.<sup>205</sup>

150. In April 2024, the Grand Chamber of the ECtHR delivered three judgments concerning climate change and human rights.<sup>206</sup> While these were not international protection cases, they could have implications for such claims. In particular, the court acknowledged that ‘the question is no longer whether, but how, human rights courts should address the impacts of environmental harms on the enjoyment of human rights’.<sup>207</sup>
151. However, it is important to note that some of the procedural matters in these cases were specific to climate change impacts *within* the territory of the State against which the claim was brought.<sup>208</sup> By contrast, for the purposes of this Practical Toolkit, the relevant issue is the risk of ill-treatment that would arise if the Member State were to remove the applicant from its territory. The ECtHR has consistently made clear that removal to a State outside Europe is not contingent on an applicant receiving an equivalent standard of treatment there.<sup>209</sup> In *Carême v France*, the court highlighted the importance of an applicant needing to demonstrate an individual risk.<sup>210</sup> However, for a violation to be found – including in the *non-refoulement* context – a person does not have to show a risk above and beyond that faced by a particular group within society (see Key Consideration 3).

## Other rights

152. Finally, it should be noted that articles 2 and 3 are not the only provisions of the ECHR that may give rise to a *non-refoulement* obligation. The ECtHR has expressly acknowledged that articles 4, 5, 6, 8 and 9 may also entail such a duty.<sup>211</sup> However, a particularly high threshold is required, namely a ‘flagrant denial’ or a ‘flagrant breach’ of a right, because ‘it would be difficult to envisage a case where such a violation would not already be encompassed by the prohibition of return to “inhuman or degrading treatment”’.<sup>212</sup> In essence, this very high standard envisages a breach ‘which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed’.<sup>213</sup>

## HUMAN RIGHTS LAW

### EU QUALIFICATION DIRECTIVE

#### Article 2(f)

‘[P]erson eligible for subsidiary protection’ means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15.

#### Article 15

Serious harm consists of:

- (a) the death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

### **Tribunale di Milano, Decree, RG n 8753/2020, 13 Mar 2024 (Italy)**

In this case, the Tribunal of Milan granted subsidiary protection to an applicant from Bangladesh on the basis of the risks he faced as a result of living in one of Bangladesh’s ‘chars’ – temporary sand islands that emerge following flooding and which can be submerged again with future flooding. The Tribunal held that severe flooding, erosion and landslides in the applicant’s place of origin, which had already resulted in the applicant being displaced from his home multiple times, generated a risk of serious violations of the applicant’s rights to life, physical integrity, health, a healthy environment, food and housing. It held that these risks amounted to inhuman and degrading treatment within the meaning of the EU Qualification Directive, and that the applicant was disproportionately affected due to his belonging to a disadvantaged social class. In holding that the risks posed to the applicant by environmental factors constituted ‘treatment’, the Tribunal found that the risks had been aggravated by the State’s failure to implement effective environmental risk management policies or basic assistance programs for affected populations.

<sup>205</sup> *Savran v Denmark* (n 200).

<sup>206</sup> *Verein KlimaSeniorinnen Schweiz* (n 43); *Duarte Agostinho and Others v Portugal and 32 Others*, App No 39371/20 (ECtHR, 9 Apr 2024); *Carême v France*, App No 7189/21 (ECtHR, 9 Apr 2024).

<sup>207</sup> *Verein KlimaSeniorinnen Schweiz* (n 43) para 451.

<sup>208</sup> *Ibid*, para 550.

<sup>209</sup> *D v United Kingdom* (n 103) para 54.

<sup>210</sup> *Carême v France* (n 206) para 84.

<sup>211</sup> See cases and discussion in Goodwin-Gill and McAdam (n 62) 380–84.

<sup>212</sup> *Ibid*, 381 (citations omitted).

<sup>213</sup> *Mamatkulov and Askarov v Turkey*, App Nos 46827/99 and 46951/99 (ECtHR, 4 Feb 2005) 537, para 14 (joint partly dissenting opinion of Judges Bratza, Bonello and Hedigan), adopted by the court in *Othman (Abu Qatada) v United Kingdom*, App No 8139/09 (ECtHR, 9 May 2012) para 260.

153. International protection claims linked to the impacts of climate change and disasters have been considered in a number of EU Member States.<sup>214</sup> For instance, a study of Austrian and Swedish cases revealed that such impacts tended to be factored into the overall context of the claim (eg drought resulting in a lack of supplies, combined with the personal circumstances of the applicant<sup>215</sup>), rather than analysed separately. In the Austrian cases, they have been considered as part of the ‘real risk’ assessment, and also with respect to the availability of an internal flight alternative.<sup>216</sup> Cases in Germany, France and Italy also indicate some willingness by decision-makers to recognize the impacts of climate change and disasters as part of an international protection claim.<sup>217</sup>

154. On its face, article 15(b) of the EU Qualification Directive reflects article 3 of the ECHR. However, in cases concerning ‘the risk of deterioration in the health’<sup>218</sup> of an applicant, ‘which is not the result of that person being intentionally deprived of health care’,<sup>219</sup> the CJEU has stated that article 15(b) must be read in light of article 6 of the EU Qualification Directive, which contains a non-exhaustive list of ‘actors of persecution or serious harm’. This means that article 15(b)

must be interpreted as meaning that serious harm ... does not cover a situation in which inhuman or degrading treatment ... to which an applicant suffering from a serious illness may be subjected if returned to his country of origin, is the result of the fact that appropriate treatment is not available in that country, unless such an applicant is intentionally deprived of health care.<sup>220</sup>

This could have implications for claims invoking the impacts of climate change and disasters if an intentional act or omission cannot be shown.

155. Importantly, however, the language of ‘deterioration’ suggests that the risk of harm need not be acute at the moment of removal, but could instead encompass a more gradual decline. The CJEU has stated that return is prohibited ‘where such removal would result in a real and demonstrable risk of significant and permanent deterioration in the state of health of the person concerned’.<sup>221</sup> This is highly pertinent to the context of climate change and disasters, where adverse effects may materialize over the longer term in alignment with the ‘trajectory of risk’.<sup>222</sup>

156. Finally, the ‘internal flight alternative’, which has at times been read into the 1951 Refugee Convention’s refugee definition, applies explicitly to subsidiary protection claims under the EU Qualification Directive.<sup>223</sup>

<sup>214</sup> See eg Ammer et al (n 71).

<sup>215</sup> See Austrian Supreme Administrative Court decision in W211 2172503-1 (2018), cited in Ammer et al (n 71) 15.

<sup>216</sup> Ammer et al (n 71) 13.

<sup>217</sup> Scissa (n 10); Foster et al (48); Goodwin-Gill and McAdam (n 62) 661ff.

<sup>218</sup> *Mohamed M' Bodj v État belge* (CJEU, 18 Dec 2014) para 36.

<sup>219</sup> *Ibid*, para 31.

<sup>220</sup> *Ibid*, para 41; see also para 43.

<sup>221</sup> *MP v Secretary of State for the Home Department* (CJEU, 24 Apr 2018) para 41.

<sup>222</sup> *AW (Kiribati)* (n 22) para 108.

<sup>223</sup> EU Qualification Directive, art 8. See paras 62–65 of this Practical Toolkit.

# H. Conclusion

157. The legal analysis and case law examples in this Practical Toolkit provide a starting point for decision-makers and practitioners engaged in preparing or assessing international protection claims arising in the context of climate change and disasters. The Practical Toolkit shows how the interaction of natural hazards and other climate impacts with broader social, economic and political factors can generate a complex hazard-scape and a range of harms that may give rise to an international protection claim.

158. While this Practical Toolkit focuses on international and regional protection frameworks, these are necessarily applied within a domestic legal context. For this reason, the development of detailed national-level guidance, such as the existing guidance for the United States<sup>224</sup> and forthcoming guidance for Australia,<sup>225</sup> would be useful.



Photo credit: World Bank / Khasar Sandag

<sup>224</sup> CGRS (n 15).

<sup>225</sup> Under development by the Kaldor Centre for International Refugee Law, UNSW Sydney.

# Appendices



## APPENDIX A: FACT-FINDING QUESTIONS

These fact-finding questions may be used to guide decision-makers and practitioners in preparing for or assessing a claim for international protection that arises in the context of climate change and disasters.<sup>226</sup> When adapted to specific country situations, they may be relevant to identifying the risk of harm faced by the applicant if removed, or to identifying other issues, such as the availability of State protection or the existence of an internal flight alternative. These questions are intended as a guide only: they are not exhaustive and should be used in addition to more general fact-finding questions that are relevant to all international protection claims. Different or more specific questions may be necessary or helpful in specific jurisdictions.

### Hazards

1. Are floods/storms/droughts regular events in the place you come from? How often do these events occur? Has the frequency or severity of these events changed?
2. How do you and your community respond to these events? Do you feel safe after an event occurs? Why/why not?
3. Do you or your community ever interact with the government of your home country? When/why?
4. Do you have enough food at home? Does everyone have enough food? Has this changed? If so, what caused the change?
5. Do you have to travel far to meet basic needs after a disaster occurs? Is this travel safe for you?
6. Where do people travel following a disaster? Why do people go there?
7. Are there sufficient natural resources, such as water, where you are from? If not, what are the effects of this?
8. Is conflict or fighting present where you are from? What are the triggers? How is it affected by floods/storms/droughts?

### Government response/actions

9. Does the government provide help to communities affected by floods/storms/droughts? What kind of help is available? Where is it located?
10. Is government help available and accessible to everyone equally or to only some groups? Which groups?
11. How do local authorities, security personnel or police respond to disasters?
12. Is shelter provided and accessible for people whose homes are affected by disasters? What kind of shelter is available and where? Is it safe for everyone? Why/why not? How long can people stay there?
13. Are there measures in place to help people deal with disasters (eg early warning systems, evacuations)?
14. Does the government help your community adapt to environmental decline and changes? Does it help other communities? If the government treats communities differently, do you know why? Why do you think?
15. Does the government provide information about disasters and environmental change to people where you are from? What language is this information in? Is it accessible to everyone?

### Livelihoods

16. What do you do for a living? What is it like? Do you own land? Do you take care of the land? In what way(s)?
17. Has anything changed about how you make your living? Has your business or employment been affected by disasters?
18. Has anything changed about your land? What? When did that start happening?
19. Does the government or anyone help with changes to your livelihood? Do they help your community prepare or adapt to the change or to recover after a disaster?
20. Could you continue to support yourself and your family to meet your basic needs if you return home? If not, why not? What would happen if another disaster were to occur?

<sup>226</sup> These questions draw on the questions in Appendix B 'Sample Climate-Sensitive Intake Questions' in CGRS, *Practice Advisory: Investigating Climate-Related Aspects of Fear-of-Return Claims: Indigenous Miskitu Individuals in Nicaragua* (June 2024).

## APPENDIX B: KEY RESOURCES

This list contains key resources that provide additional guidance for decision-makers and practitioners. These key resources are referenced throughout this Practical Toolkit and listed here for ease of access.

### Key resources on international protection in the context of climate change and disasters

- > Center for Gender & Refugee Studies (CGRS), [Practice Advisory: Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters](#) (Feb 2023)
- > CGRS, [Practice Advisory: Investigating Climate-Related Aspects of Fear-of-Return Claims: Indigenous Miskitu Individuals in Nicaragua](#) (June 2024)
- > European Union Agency for Asylum (EUAA), [Judicial Analysis on Qualification for International Protection](#) (2nd edn, 2023) (section 3.4: Environmental Dangers)
- > Platform on Disaster Displacement (PDD) and United Nations 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)
- > Refugee Law Initiative, [Declaration on International Protection in the context of Disasters and Climate Change](#) (2024) (and Analytical Paper)
- > UNHCR, [Legal Considerations regarding Claims for International Protection made in the context of the Adverse Effects of Climate Change and Disasters](#) (2020)
- > UNHCR, [Climate Change Impacts and Cross-Border Displacement: International Refugee Law and UNHCR's Mandate](#) (Dec 2023)

### Key resources on climate change, disasters and displacement generally

- > International Refugee Assistance Project et al, [Enduring Change: A Data Review of Firsthand Accounts of Climate Mobility Impacts](#) (2024)
- > Jane McAdam and Tamara Wood, [Kaldor Centre Principles on Climate Mobility](#) (Nov 2023)
- > Nansen Initiative on Disaster-Induced Cross-Border Displacement, [Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change](#) (vol 1, 2015)
- > [The Climiglaw Database](#) (Global Strategic Litigation Council, Earth Refuge, the Raoul Wallenberg Institute and the Zolberg Institute for Migration & Mobility)
- > The White House, [Report on the Impact of Climate Change on Migration](#) (Oct 2021) section IV.



