

Human mobility, rights and international protection: responding to the climate crisis

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UNHCR discusses the range of options for international legal protection in the context of cross-border displacement triggered by the impacts of climate change. It also underscores the need for a broader approach to addressing human mobility.

Conflict, violence, resource scarcity, environmental degradation, and sudden- and slow-onset events combine to create highly challenging situations that demand collaboration from sectors and actors across policy areas and society. These scenarios are particularly complex where, in moving towards safer areas and better livelihoods, people cross international borders and seek international protection in neighbouring countries. What provisions are there in international refugee and other applicable law to provide international protection, where this is needed? What strategies and approaches could enable a more effective response to human mobility¹, in line with human rights and international law and in ways that avoid protection gaps?

Assessing provisions and options for international legal protection

In October 2020, UNHCR issued its *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, providing guidance for States and other stakeholders.²

These recall that people compelled to cross international borders in such contexts may, in some cases, fall within the refugee definition under the 1951 Convention Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, or the 1984 Cartagena Declaration on Refugees in the Americas. Where a State is unwilling or unable to provide protection, the victims of violence may have a well-founded fear of being persecuted – grounds for international refugee protection under the 1951 Convention.

Furthermore, where government structures and institutions are weak, natural

hazards may interact with conflict and lead to risks of harm, including famine, for populations relying on natural resources for their livelihoods. UNHCR's legal considerations note that in such situations, a well-founded fear of persecution may arise under the 1951 Convention for groups or individuals denied access to assistance based on discrimination linked to ethnicity, caste, social group or political opinion. Adverse effects of climate change may also heighten political or religious tensions and social and ethnic divisions, resulting in persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

The legal considerations highlight that beyond situations where the 1951 Convention applies, people affected by climate change and disasters living in Africa or the Americas may also be refugees under the broader refugee definition in the 1969 OAU Convention and the 1984 Cartagena Declaration. This is notably when climate change and disasters result in events or circumstances “seriously disturbing public order”, compelling people to seek refuge across borders.³ In general, following a disaster, the State must be able to demonstrate ability and willingness to address the impact of the disaster and offer aid to stabilise the situation as soon as possible. If not, and where public order breaks down as a result, affected people may be compelled to leave and seek protection in another country, where they may be refugees under these regional instruments.⁴

UNHCR's legal considerations also state that international protection may also be needed based on human rights law, including the principle of *non-refoulement*. If a person has been displaced in the context of climate change or disasters and faces a real risk of

March 2022

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The region of Minawao in Cameroon faces critical deforestation. Nigerian refugees are working with UNHCR, and its partners Land Life Company and LWF, to plant 20,000 trees.

being subjected to serious harm upon return, that person may be protected from removal under the principle of *non-refoulement*. In 2020, the UN Human Rights Committee recognised, in the landmark case of *Teitiota v New Zealand*,⁵ that the adverse effects of climate change and disasters can pose a serious threat to the enjoyment of the right to life, for example, because of scarcity of habitable land or lack of potable water. This reasoning may prove particularly significant in countries which are not signatories to regional or international refugee instruments, but where human rights law provides the basis for an obligation to grant international protection.

Acknowledging that international refugee law will only be relevant in limited situations of climate change and disasters, UNHCR's legal considerations nevertheless highlight the need for asylum authorities to carefully examine its application wherever a person claims international protection in such contexts. This is particularly so when underlying stressors such as conflict, violence, discrimination or other tensions are prevalent in the country of origin. For displaced people who are not eligible for refugee status,

complementary forms of international protection under human rights law may be relevant. UNHCR's guidance has also highlighted the potential value of temporary protection and stay arrangements,⁶ including to ensure access to safety immediately after a disaster, when affected States may struggle to respond and their citizens may be compelled to seek shelter abroad.

UNHCR's legal considerations do not purport to expand the criteria for international protection but rather to provide guidance on the correct interpretation of international law in contemporary conditions. They do not refer to 'climate refugees', a term that does not appear in international instruments and which could create the misleading impression that a new legal category or obligations are proposed. They aim to provide the foundation for further work to underpin comprehensive guidance in future, addressing other legal questions and factual scenarios, including through research on displacement patterns, state practice and jurisprudence.

Additional research is needed, including on how climate change, environmental degradation and disasters impact public

order and result in displacement. This would aid the interpretation and application of the regional refugee criteria in the OAU Convention and the Cartagena Declaration. Different risk paradigms that may emerge in the context of climate change, environmental degradation and disaster need to be examined from human rights angles, including ways in which distinct groups and individuals' rights are affected and how this might give rise to international protection needs. Analysis is also needed of how inequality, inter-communal tensions and discrimination related to 1951 Convention grounds arise. Furthermore, discrimination in risk mitigation, adaptation and support to affected communities merits additional research. Assessment of whether and how these phenomena emerge in asylum claims, and how authorities approach them, will inform the development of further guidance for decision-makers as well as of broader policies and law.

Wider forms of human mobility, climate change and disaster

Beyond those in need of international protection, many people move when confronted with adverse conditions linked to climate change, when these affect their livelihoods or their access to rights in far-reaching and irreversible ways. Some may be admitted to other countries temporarily or on discretionary grounds, but many will not. Those moving across borders in such cases may lack guarantees of treatment that reflects international standards or a secure right to stay in safe conditions. Addressing such people's needs, and assisting States affected by these population movements, requires a broader set of policy and practical responses and tools, complementing and consistent with legal approaches. State and non-State actors, including UNHCR, civil society and academics, can contribute to discussions at national, regional and international levels, building on work already under way in various forums.

This wider approach to human mobility would potentially include measures to strengthen preparedness in

affected communities, build resilience, mitigate risk and enable adaptation. While these alone will not address all vulnerabilities or needs, they can help strengthen communities and individuals and reduce or prevent pressure to move.

Planned relocation, based on human rights principles, is receiving increasing attention as a potential means to move people out of harm's way and to proactively avoid displacement.⁷ Centred on the interests, and involving full participation, of communities to be relocated, planned relocation is undertaken when other options have been exhausted. Guidance and toolkits⁸ developed by UNHCR and partners draw on State and community experiences, and aim to support the further development of national and local planned relocation strategies.

More opportunities are also needed for people to migrate as a means of adaptation. Such migration implies voluntary movement, or at least a degree of choice. In this context, people can use regular migration pathways, such as labour or study visa programmes, or where specific visa categories or pathways are available for groups in precarious situations or impacted by disaster or climate change. Migration as an adaptation strategy can also help prevent displacement from occurring. The Global Compact on Safe, Orderly and Regular Migration (GCM) envisages regular migration pathways and other ways to assist people moving in the context of climate change, environmental degradation and disaster. UNHCR is working with partners in the UN Network on Migration – the body mandated to support States in GCM implementation – to advance thinking and action on migration with the aim of reducing the risk of displacement and denial of human rights.

The Platform on Disaster Displacement (PDD) also plays an instrumental role in highlighting needs, supporting knowledge development and promoting policy coherence around disaster displacement. Implementation of the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (the Protection Agenda) is at the core

March 2022

www.fmreview.org/climate-crisis

of its work. With a dedicated working group addressing climate change, PDD is ideally placed to facilitate further examination of effective ways to address the spectrum of human mobility challenges linked to climate change and disaster, including displacement as well as migratory movements, internal planned relocation, and support to resilience, risk mitigation and adaptation.

Within the institutional framework supporting implementation of the UN Framework Convention on Climate Change (UNFCCC), the Task Force on Displacement is part of the Warsaw International Mechanism on Loss and Damage.⁹ The Task Force has issued recommendations (endorsed by UNFCCC parties in 2018) on integrated approaches to avert, minimise and address the adverse impacts of climate change. The Task Force's work builds on key policy frameworks and forums, including the Global Compact on Refugees (GCR), the GCM, the Sendai Framework on Disaster Risk Reduction and the PDD.

To support further research and dialogue on displacement in the context of wider human mobility, UNHCR co-organised a workshop series in 2021 on 'Developing a Research and Policy Agenda for Addressing Displacement and Migration in the Context of Disasters and Climate Change in Africa'. This identified research priorities on displacement and migration linked to disasters and climate change in Africa. The series also aimed to open up opportunities for regional researchers and to amplify the voices of affected.¹⁰

The way forward

A key challenge lies in converting the many words and commitments on paper into action and positive outcomes for affected people's lives. While the legal and factual distinctions between displacement and migration need to be acknowledged, practical linkages emerge in the context of climate change and disaster. Coordinated responses are needed to ensure that the human rights of all are respected regardless of status and that – in accordance with the Sustainable Development Goals – no-one is left behind.

Developing integrated approaches to human mobility requires States, UN agencies, international and national non-governmental bodies and other stakeholders to work together. The discussion is taking place in a swiftly evolving and increasingly securitised context. Actors need to bring to bear their respective mandates, expertise and experience in responding to displacement. Anticipating the need to implement concrete measures to address mobility in localised as well as broader contexts, they must address capacity needs, limited resources and operational and political constraints. In the words of the Least Developed Countries at COP26, "it is not just future generations at risk" – the challenge is here and now.

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1. Human mobility is an overarching umbrella term that refers to three forms of population movement: i) Displacement – the primarily forced movement of persons; ii) Migration – the primarily voluntary movement of persons, iii) Planned relocation – process of settling persons or communities to a new location (See UNFCCC Decision 1/CP.16 Cancun Climate Change Adaptation Framework Paragraph 14f)
2. UNHCR (2020) 'Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters' www.refworld.org/docid/5f75f2734.html
3. Article 1.2 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa bit.ly/OAU-Convention
4. Weerasinghe S (2018) *In Harm's Way: International protection in the context of nexus dynamics between conflict or violence and disaster or climate change*, UNHCR DIP www.unhcr.org/5c1ba88d4.pdf
5. *Teitiota v New Zealand* No. 2728/2016, Human Rights Committee, January 2020 www.refworld.org/cases,HRC,5e26f7134.html
6. UNHCR (2014) *Guidelines on Temporary Protection and Stay* www.refworld.org/docid/52fba2404.html
7. PDD (2021) *Leaving Place, Restoring Home* bit.ly/PDD-Leaving-Place-2021
8. UNHCR, Georgetown and IOM (2014) *A TOOLBOX: Planning Relocations to Protect People from Disasters and Environmental Change* bit.ly/UNHCR-planned-relocation-toolbox; Brookings, Georgetown and UNHCR (2017) *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation* bit.ly/UNHCR-planned-relocation-guidance
9. bit.ly/UNFCCC-task-force-loss-damage
10. bit.ly/Kaldor-workshop-series-concept