

# Displacement and International Protection in a Warming World

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## Executive Summary

As environmental disasters and the impacts of climate change worsen, their effects on migration and displacement are becoming increasingly clear. Most climate-related displacement remains within a country's territory, but when people cross borders, it poses particularly tricky challenges. Policymakers in destination countries face the task of simultaneously managing borders and migration while being sensitive to arriving migrants' emergency assistance and international protection needs. However, the migration and refugee policy tools available are rarely, if ever, designed with climate displacement in mind.

While the international protection system, anchored by the 1951 Refugee Convention, offers some options for responding to cross-border climate displacement, it sets a high threshold for the circumstances in which it applies. The system can grant protections from forcible return, legal status, and access to certain services and benefits for some climate-displaced individuals who meet specific grounds for protection, such as environmental defenders (considered to be facing persecution based on political opinion) and people fleeing conflicts in Sudan and South Sudan, where access to dwindling fertile land is one of the conflicts' drivers (and where the state is unable or unwilling to protect them from persecution). But in most cases, climate-displaced

people are not eligible for refugee status or another form of international protection. This system is also already straining under the weight of massive numbers of people (both those eligible for international protection and not) who view it as their only means of gaining entry to destination states, leading to asylum backlogs. When combined with the limited capacity of national refugee resettlement programs, trying to fit more climate-displaced people into this system may mean crowding out others.

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Instead, policymakers should seek to cultivate a wider set of tools not grounded solely in international protection, and to understand their trade-offs. Broader options that can be used to proactively enable safe climate mobility—thereby providing alternatives to irregular migration and relieving pressure on asylum systems—include:

► **Facilitating safe, orderly entry for climate- and disaster-displaced persons.**

Governments already have several tools at their disposal to allow such persons to enter their territory in a managed way,

including streamlining entry procedures by waiving certain documentation and visa requirements, expediting visa processing, and issuing humanitarian visas. These tools have primarily been used in response to a specific disaster, such as a hurricane or earthquake, rather than as standing mechanisms to allow climate- and disaster-affected people, in general, to seek admission (though Argentina has tried to create a standing disaster displacement humanitarian visa). These have proven to be important tools to facilitate entry, but their ad hoc nature means they mostly benefit disaster-displaced people whose cause garners sufficient attention from destination states, leaving many out.

- ▶ **Providing flexible forms of status.** Many climate- and disaster-displaced people do not qualify for asylum, but governments may opt to offer other, often temporary, forms of legal status. Examples include the U.S. government's use of Temporary Protected Status for the nationals of certain countries following environmental disasters (such as Hondurans and Nicaraguans after Hurricane Mitch). Similarly flexible approaches to providing protection have been used in response to large-scale displacement from Syria, Venezuela, and Ukraine. The challenge, however, is that these temporary measures often become permanent, leaving immigrants in protracted legal limbo and unable to fully contribute to their new communities without the certainty and rights of a more permanent status.
- ▶ **Strengthening climate-affected people's access to mainstream mobility options.** Some people from climate-vulnerable communities may be able to migrate via existing work, study, or family reunification immigration pathways. For example, seasonal

worker and other programs have enabled some Pacific Islanders to move safely to Australia and New Zealand, and such pathways can promote climate resilience if migrants choose to invest earnings and remittances in climate adaptation measures. And in regions where free movement agreements exist, these can facilitate movement in the wake of disasters (such as in the Caribbean after hurricanes in Dominica). Such options, however, may leave those most vulnerable behind; for example, labor pathways often require certain skills and credentials. And a focus on regional mobility agreements shifts the burden of addressing climate impacts and supporting displaced people away from high-income countries, which have contributed the most to climate change, and to similarly climate-vulnerable neighboring countries in the Global South.

- ▶ **Creating bespoke climate mobility pathways.** While visa programs meant specifically for climate mobility are rare, both out of a lack of political will and difficulties defining who would qualify, some destination-country governments have begun to explore innovative ways to enable migration and relocation from the most climate-impacted countries. These include New Zealand's attempt to launch a "climate refugee" visa (which failed after resistance from Pacific Islander communities that preferred to stay rather than move), and an agreement adopted in 2023 that would allow 280 Tuvaluans to permanently move to Australia each year. It will be important to glean lessons from these experiments, including about the importance of local consultations, as climate impacts increasingly factor into why people move.

As policymakers work to build out this diversified toolbox, they should be aware of the limitations and trade-offs of existing policy tools. The international community should seek to clarify what role, albeit likely limited, the international protection system should play in responses to climate displacement, especially in Africa and Latin America where regional refugee instruments may provide more flexibility. More work is also needed to ensure climate-displaced persons who qualify for international protection are able to access it, including by ensuring asylum adjudication officers are fully trained on the intersections between climate and protection issues. Thus, while maintaining safeguards and addressing the humanitarian needs of climate-displaced people, policymakers should be thinking proactively about how they can use existing migration policy tools to address climate vulnerability in ways that are sustainable, fair, and scalable.

## 1 Introduction

Climate displacement—forced movement triggered in part or primarily by the pressures of climate change and environmental degradation—is increasingly common. There were 26.4 million internal disaster displacements recorded in 2023, mostly due to extreme weather events, and models predict internal migration will grow further as the impacts of climate change worsen.<sup>1</sup> While this movement primarily occurs within countries, climate-displaced people also cross international borders. When they do, they fall into a gap in the global mobility system: there is no consensus on what status they should receive, what rights and benefits they are entitled to, and how states should respond if climate change has rendered their homes uninhabitable. And unless policymakers proactively manage the challenge of climate displacement, these movements threaten to further weaken already fragile migration management systems.

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The instinct has been to turn to the international protection system for answers, given the popular assumption that all people moving because of climate change are displaced and should be treated as refugees or asylum seekers. As a result, the policy field tackling the nexus of climate change, displacement, and protection has grown quickly, with numerous legal and policy proposals emerging. But the field faces a challenge in building consensus or generating widespread policy reforms that could help close this gap, which becomes more glaring as climate displacement grows in scale and unpredictability and layers on top of record levels of global displacement from other causes. And with international protection systems straining amid the weakening of territorial asylum, persistent mixed migration, and waning public support,<sup>2</sup> the question is whether and how climate displacement fits within a protection landscape that is rapidly evolving. The phenomenon of climate displacement is highly diverse and complex, and the absence of conceptual clarity and empirical grounding has meant that policymakers lack a clear agenda for responding to its different forms. Thus, the field has struggled to move beyond its opening bid: a rejection of creating a legal definition of “climate refugees” and reopening the 1951 Refugee Convention that serves as the foundation of the international protection system.<sup>3</sup>

This issue brief explores what role the international protection system can and should play in responses to cross-border climate displacement. It begins by outlining how climate displacement can pose the

kinds of concerns often addressed via the international protection system, and when it might not. To make this discussion more concrete, the brief then offers four scenarios of climate-related mobility that pose different types of protection concerns and require different policy responses. The final sections outline five policy approaches to climate displacement and their protection implications, and highlight steps policymakers could take to diversify the policy toolkit in this area.

## 2 The Meaning and Value of International Protection

There is a general acknowledgement among the international community that people displaced across borders by climate change should receive some form of support and have certain rights safeguarded. This includes prevention of trafficking, upholding the rights of the child, and some type of assistance, whether it be emergency financial assistance and social service provision, permission to enter a country, or non-return to disaster-stricken areas.<sup>4</sup> But in many cases, under the current international protection regime, governments are not legally or normatively obligated to provide this support. This is by design: international protection places significant obligations on host states not to return beneficiaries to places where they are at risk of harm, to grant them legal status, and to provide a set of rights and benefits. As such, there is a high legal threshold for someone to qualify for international protection, and governments have implemented policies and practices to adjudicate who has access. Because the system—the foundations of which were laid more than half a century ago—was not established or developed to specifically account for the effects of climate change, climate-displaced persons often have a difficult time meeting the legal threshold to qualify for protection

and, in some cases, to even have their claims heard in the first place.

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Beneficiaries of international protection receive a variety of rights and benefits, but the core of the regime is the concept of nonrefoulement: the obligation for receiving states not to return a noncitizen who is on their territory to that person's country of origin under certain circumstances. This concept is outlined in a range of international legal instruments, most notably the 1951 Refugee Convention and its 1967 Protocol.<sup>5</sup> While each instrument has its own specific criteria for determining when someone's return would constitute refoulement, the general principle is that people cannot be returned to a country where, as the United Nations Office of the High Commissioner for Human Rights describes it, "there are substantial grounds for believing that the person would be at risk of irreparable harm . . . including persecution, torture, ill-treatment, or other serious human rights violations."<sup>6</sup> The principle of nonrefoulement applies in all states that are party to the relevant conventions and is considered by many to be a part of customary international law,<sup>7</sup> meaning it applies even to non-signatory states. Nevertheless, countries must codify the principle in domestic law in order to operationalize it.<sup>8</sup>

When determining whether returning someone would constitute refoulement, and thus whether that person qualifies for protection, decisionmakers must ask four questions, each of which has implica-

tions for whether climate-change-related displacement can be addressed under the protection regime.

► **What type of harm would that person suffer?**

To qualify for protection from refoulement, a person needs to be able to point to a specific rights violation or ground for protection that they fear will occur if they were to return to their country of origin. This differs based on the specific legal instrument invoked: under the 1951 Refugee Convention, protection seekers must fear persecution based on their “race, religion, nationality, membership of a particular social group, or political opinion,”<sup>9</sup> while the International Covenant on Civil and Political Rights refers to violations of the right to life and the prohibition of cruel and inhuman treatment, among others.<sup>10</sup> Regional human rights and refugee regimes provide additional grounds, with refugee protection agreements in Africa and Latin America including conflict and the existence of public disorder as relevant harms.<sup>11</sup> Except in extreme circumstances, these harms must be felt as an individual—one cannot point to a general situation in their country of origin and claim they would generally face harm.<sup>12</sup> While climate change can create or intensify the conditions for all of these harms to occur, the right to life and the presence of public order are likely the only grounds that climate change can directly threaten.

- **What is the role of the state?** International protection is typically only considered to be merited if the country of origin is unwilling or unable to provide the individual protection from these harms.<sup>13</sup> This presents in three scenarios: state actors proactively causing the harm; the state choosing not to prevent harm caused by other actors; and the state, despite its desire to prevent harm, being unable to do

so, often due to lack of capacity or resources. In the case of climate change, a state’s relevant actions (or lack thereof) are largely those that occur in the context of responding to climate-related disasters and adapting to the effects of climate change.

► **Is the potential harm sufficiently severe?**

To qualify for international protection, the prospective violation of rights must be sufficiently severe. The threshold of severity varies, however, depending on the source of international law and how each state implements protection in its own system. Under the human rights regime (the Convention Against Torture and the International Covenant on Civil and Political Rights, among others), the level of harm needs to be quite severe, if not irreparable. Under the refugee regime, however, the threshold may be lower, as refugee status determination takes into account a wider array of harms that can together amount to persecution.<sup>14</sup>

- **How likely is the potential harm?** The principle of nonrefoulement by definition protects against potential future harms, rather than addressing harms that have already occurred, meaning that the likelihood of harm occurring upon someone’s return is a critical part of protection adjudication. While different protection regimes use different thresholds for determining what likelihood of harm warrants protection from refoulement, a key consideration is whether an individual’s fear of harm is reasonable based on a holistic analysis of factors on the ground in their origin country.<sup>15</sup> In some cases within the human rights regime, decisionmakers have interpreted the relevant standard of “real risk” to include an analysis of whether harm is imminent.<sup>16</sup> In these cases, decisionmakers

tend to hold that the harm must be likely to occur at the time of or soon after return, rather than further in the future. In the case of the slow-onset effects of climate change, this would mean that decisionmakers would likely view protection as unwarranted until the most severe effects are about to occur.<sup>17</sup>

These four factors significantly limit who is eligible for international protection, in particular among people who are climate displaced. A person is only likely to qualify for protection if they have already entered the destination country (something many climate-displaced individuals do not do; see Box 1), are facing a severe enough harm, their country of origin is unwilling or unable to stop it (or is perpetrating it), and there is a reasonable risk that the harm would occur upon return. For a climate-displaced person to meet these conditions, they would have to draw a link between the effects of climate change and the specific harms they risk facing. Proving this link is even more difficult because, in the case of climate change, it is not easy to identify a persecuting actor or the motives for persecution. This is on top of

the broader challenges protection seekers often face to having their claims processed and recognized, including those related to the complexity of asylum processes, lack of support to navigate them, and immense backlogs in many destination countries.<sup>18</sup>

These challenges have implications for the rights and benefits associated with different protected statuses. While all who qualify for protection should not be returned, only some (primarily those who qualify for refugee or a similar status) will receive the social and economic rights and benefits they need to resume their lives: education, health care, and labor market access, among others.<sup>19</sup> Other forms of status, such as temporary protection, offer a more restricted set of rights; these may, for example, exclude the right to family reunification, some social benefits, or a path to permanent residence or citizenship.<sup>20</sup> In short, while refugee status offers more robust rights and benefits than other forms of protection, it is also harder for someone displaced by climate change to obtain.

### BOX 1 The Internal Dimension of Climate Displacement

The best data available point to climate displacement being, at least for now, primarily internal. There is significant modeling and evidence on the vast scale of internal disaster- and climate-related movements, since it is generally easier to move within one's country (and that is often the migrant's preference). But internal displacement involves a different set of protection obligations than cross-border displacement. Notably, internally displaced people (IDPs) cannot apply for asylum and receive refugee status, since this requires crossing an international border, but they can still receive the protections outlined in international human rights law and the United Nations Guiding Principles on Internal Displacement that, while nonbinding, have broad support in the global community. Internal climate displacement still raises protection concerns, such as the right to life, education, and freedom of movement, and other countries may provide humanitarian and development support to protect climate IDPs. But while overlapping, the types of questions governing the protection of internally and internationally displaced people are different, and this brief focuses primarily on the distinct protection concerns raised by cross-border displacement.

Sources: Internal Displacement Monitoring Centre (IDMC), *Global Report on Internal Displacement 2024* (Geneva: IDMC, 2024); Viviane Clement et al., *Groundswell Part 2: Acting on Internal Climate Migration* (Washington, DC: World Bank, 2021); Christelle Cazabat, *Addressing Internal Displacement in the Context of Climate Change* (Geneva: IDMC, 2021); International Federation of Red Cross and Red Crescent Societies, "Position Paper on the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters" (position paper, July 20, 2023).

**BOX 2****Refugee Resettlement and Climate Vulnerability**

While this brief focuses on protection options for people displaced by climate impacts, a related challenge is that refugees and other displaced people are often highly climate vulnerable. Rohingya refugees in Bangladesh, for example, face frequent typhoons that have led to deaths and destruction of shelters. While humanitarian and development actors can support this population by integrating displaced people into their climate resilience programming and strengthening climate adaptation measures in refugee camps and settlements, another option is to prioritize climate-vulnerable populations in refugee resettlement.

For example, advocates in the United States have called for the government to create within the U.S. refugee resettlement program a P-2 category for climate-vulnerable refugees, such as the Rohingya in Bangladesh and refugees in drought-affected East African countries. Such an approach would not require legislative or policy reforms; instead, the U.S. Department of State would simply add this doubly vulnerable group to the list of other categories prioritized for resettlement. While this could be relatively easily accomplished, since it fits within existing resettlement rules, the question is whether climate-vulnerable refugees should claim higher priority than other vulnerable refugees, for instance those with specific medical needs, religious minorities, or those with connections to the resettling country (e.g., Afghans who worked with the United States were prioritized following the fall of Kabul). As of 2024, the United States is working with the United Nations High Commissioner for Refugees to develop guidance on climate considerations for refugee referrals.

Source: Refugees International et al., [“Leaders of Refugee, Policy Organizations Call on Biden Administration to Prioritize Climate Impacted Populations for Resettlement”](#) (advocacy letter, September 8, 2022).

States do not have an obligation to proactively provide protection for at-risk individuals outside their territory, whether in a country of origin or in a neighboring state. There may, however, be pragmatic and moral reasons to do so, in line with the concept of global responsibility sharing articulated in the 1951 Refugee Convention and reaffirmed by the 2018 Global Compact on Refugees.<sup>21</sup> Governments can choose to open safe and orderly admissions pathways for refugees and other displaced persons and facilitate their use, including refugee resettlement and complementary pathways (education, labor, and family reunification opportunities). These pathways, however, are difficult to implement at scale and are currently nowhere near large enough to meet the global need for protection solutions. Additionally, there is a question of which populations should be prioritized. Historically high-polluting countries could, for example, adopt climate vulnerability among other resettlement criteria as a means of redress for past harms in line with principles of climate

justice, even if they are not obligated as a matter of international law to do so,<sup>22</sup> though this may mean deprioritizing other vulnerable refugee groups (see Box 2).

### 3 Four Scenarios of Climate-Related Mobility: Which Are Protection Problems?

The impacts of climate change on migration and displacement vary widely, covering everything from Floridians evacuating from a flood, to changing pastoralist movements in the Sahel for better access to water, to Fiji relocating entire communities. This diversity makes it difficult to find policy solutions, and the nature of the international protection regime means that many climate-displaced individuals

do not qualify for its protection—though some do. This section lays out four broad, noncomprehensive mobility scenarios to help illustrate when someone might have a right to protection and when there are gaps in policy coverage.

- 1 **Refugees who move in the context of climate change:** In the first scenario, the effects of climate change and environmental shocks do not trigger displacement itself, but rather create the conditions for someone to be persecuted by creating opportunities for discrimination, neglect, or conflict—for example, if a government chooses not to direct climate resilience or disaster response resources to a particular community because of the identity of its residents or sides with one group over another in a conflict over resources. A 2020 case in the United States provides an example: an Indigenous environmental defender who resisted Honduran government officials' efforts to take tribal land and resources received asylum in the United States because she was persecuted based on her membership of a particular social group, one of the recognized grounds under the 1951 Refugee Convention.<sup>23</sup> In other cases, cross-border displacement may become more likely if governments are unable or choose not to adequately respond to the causes of climate-related displacement, systemically underinvest in climate adaptation measures in ethnic minority regions, or favor one group over others in disaster responses. In 2008, for example, the UK Asylum and Immigration Tribunal held that because the governing party in Zimbabwe routinely denied and disrupted food assistance to supporters of the opposition party (in the context of drought-induced food insecurity), in certain cases, returning someone to the country would expose them to political persecution.<sup>24</sup>

Finally, resource scarcity driven by climate change can provoke conflict, causing displacement and potential persecution, with the government unwilling or unable to respond. For example, in Sudan and South Sudan, access to natural resources has been a strategic objective in ethnic conflicts that have led some people displaced across borders to qualify for refugee status.<sup>25</sup>

In each of these examples, the forcibly displaced person faces a real threat of persecution in their country of origin. The state is either the perpetrator of the persecution or is unwilling or unable to prevent it. And the persecution is based on one of the grounds outlined in the Refugee Convention, often persecution due to race or political opinion, or on more generalized conflict as recognized under regional refugee instruments. Climate change may have played a role in shaping the context for each case, but it is these other key factors that qualify individuals for international protection.<sup>26</sup>

- 2 **Cross-border disaster displacement:** In the second scenario, a person is displaced across borders due to a sudden-onset disaster, such as a flood, storm, or earthquake.<sup>27</sup> Sudden disasters can be so severe that they force people to flee to another country, especially when they occur near the border. In Latin America, for example, mudslides and flooding in Chile's border regions have displaced Chileans into Argentina, and flooding in southern Colombia has displaced Colombians into northern Ecuador.<sup>28</sup> And following the 2010 earthquake in Haiti, thousands of Haitians fled across the border to the Dominican Republic and to other nearby countries.<sup>29</sup> In each of these cases, people who were displaced needed to flee across a border to reach safety, and residents of the

affected areas who were out of the country at the time could not safely return home.

In most cases, a disaster-displaced person is not at risk of persecution, torture, or inhuman treatment in their country of origin and, as such, is not eligible for protection from *refoulement* on those grounds.<sup>30</sup> There are exceptions, such as Panama and Peru granting refugee status to a small number of Haitians because of the threat posed by nonstate actors following the earthquake. In other cases, disaster-displaced people may find protection under regional refugee instruments. For example, some Haitians in Ecuador and Mexico received protection under the Cartagena Declaration on Refugees' public disorder grounds.<sup>31</sup> Similarly, in 2011 and 2012, some Somalis fleeing drought and famine were granted refugee status in Ethiopia and Kenya under the Organisation of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa, which expands the definition of a refugee to include those compelled to move by "events seriously disturbing public order."<sup>32</sup> These are exceptions to the norm, however, and courts in Latin America and Africa have not had the opportunity to interpret whether these climate-related cases are true to the intent of these regional instruments. Moreover, the threshold for disasters to lead to public disorder could be quite high; some scholars argue this could require a government to be completely unable or unwilling to respond, and that the presence of even a weak disaster response could be seen as maintaining public order and, thus, negate the need for international protection.<sup>33</sup>

Similarly, it could be argued that disaster-displaced individuals cannot be returned

until their country or community of origin has recovered sufficiently so as not to threaten their right to life, in accordance with the right to life under the International Covenant on Civil and Political Rights. But again, this argument in the context of disaster displacement has not been legally tested.<sup>34</sup> And if protection is warranted due to a threat to life, this raises further questions around what level of disaster damage is severe enough to merit protection, what amount of recovery is needed for return to the country to be permissible, and whether and at what point truly severe damage that takes long periods to rebuild from (or is not rebuilt from at all) might obligate host countries to provide a more durable status.

**3 Long-term uninhabitability:** In the third scenario, a person is displaced because climate impacts have made their home permanently uninhabitable.<sup>35</sup> The issue of habitability is increasingly front of mind as sea level rise threatens the existence of entire low-lying atoll states, though other climate impacts, such as drought and desertification, can also render homes uninhabitable. In the cases of Tuvalu, Kiribati, and some other island nations, the entire nation state is predicted to be submerged by rising sea levels in the coming decades, raising existential questions about their sovereignty, statehood, and social, cultural, and political identity.<sup>36</sup> But even short of the destruction of a nation state, the uninhabitability of some climate-affected communities will lead to cross-border displacement as these areas' residents face the prospects of living on smaller and smaller stretches of land and are at higher risk of disasters.

Can such long-term risks allow people to qualify for protection? This question was

raised to the United Nations Human Rights Committee by Ioane Teitiota, a citizen of Kiribati who lived in New Zealand and was deported to Kiribati after he overstayed his visa. He claimed that New Zealand had refouled him because his right to life was threatened in Kiribati due to climate change. In its 2020 decision, the committee acknowledged that severe flooding and rising sea levels could render an island uninhabitable, and that returning a displaced islander would violate their right to a life with dignity. But in this case, the committee agreed with New Zealand that the risk of harm to Teitiota in Kiribati was not high enough to qualify for protection.<sup>37</sup> Thus, the question becomes: when will the slow-onset impacts of climate change be sufficiently imminent that the threat to a person's right to life warrants protection from refoulement?<sup>38</sup> As climate impacts increase and compound, and as disasters become even more frequent, does this hasten when protection kicks in? This also raises questions about what to do in the short term, and what steps to take in anticipation of cross-border displacement. Should those whose homes will become uninhabitable have to wait until that point, suffering along the way?

- 4 Movement indirectly triggered by climate change:** Climate change can also trigger movement indirectly, by affecting livelihoods and other drivers of migration. Agricultural workers might find their incomes declining or becoming less predictable as rainfall patterns change, average temperatures increase, desertification and salinization worsen, and competition for arable land grows.<sup>39</sup> In Guatemala, for example, extended periods of drought, followed by flooding and even more drought caused by El Niño, wrecked harvests,

leading some farmers to flee to the United States.<sup>40</sup>

Unless they can also claim persecution on one of the qualifying grounds for refugee status, torture, or another severe human rights violation, people who move when faced with such socioeconomic conditions, even if compounded by climate factors, have no international protection claim. While the socioeconomic conditions in their countries of origin are difficult, they do not rise to the level of uninhabitability, either in the short term or more permanently. Some may be eligible for regular mobility pathways such as employment visas, but for nationals of many low- and middle-income countries—including those most affected by climate change—these opportunities can be few and far between. This leaves irregular migration to and submission of an asylum claim in a destination country as one of the few viable options to enter another country and, at least while the case is pending, to obtain status there, though this crowds the system with cases unlikely to succeed and disadvantages those with valid protection claims.

Each of these scenarios, while simplified, contains immense complexity and raises a range of policy questions. Is a country still habitable if people are required to leave outlying islands and move to higher islands? Across the scenarios, there is also wide overlap. For example, when declining crop yields make young people decide to move rather than build long-term agricultural livelihoods, is this a matter of habitability or a matter of movement indirectly triggered by climate change—or simply economic migration? Such complexity is not new. In fact, the strict binary between migration and displacement has never held. But human movement in all its complexity becomes even harder to categorize as it increasingly takes place in a warming world.

What is clear is that, by and large, the international protection system as currently implemented will not resolve these challenging questions. The murky waters of this issue—including the types and levels of harm climate change creates, and whether states are able or willing to adequately respond—mean that most cases of climate mobility will fall outside the purview of the protection system. Some advocates, scholars, and policymakers are considering whether and how to expand the international protection system to accommodate climate displacement. But doing so in the current political environment, and in a way that does not broaden international protection so widely as to wholly dilute it, seems impossible. Nonetheless, people moving in the context of climate change, for whom the international protection system offers few solutions, may still be unable or unwilling to return home. Governments should thus look beyond refugee and asylum law and consider other policy options for promoting regular rather than irregular movement and for safeguarding the rights of people displaced by climate impacts.

## 4 Filling the Gaps: Protection and Migration Policy Options

The diversity of climate mobility underscores the need for a holistic response, with different policy options for different scenarios. Managing the movement of people who cross borders because of a disaster will require different (perhaps short-term, primarily humanitarian) pathways than those who move because climate change has made their livelihoods untenable. Given this variety, policymakers are faced with an interlocking set of policy problems. A core need is for policies and practices to effectively identify those eligible for protection (including but not limited to refugee protection)

and to ensure they can access the appropriate status and rights. Governments could also proactively offer pathways to enable safe mobility, rather than waiting for people to arrive and make protection claims. When doing so, they could aim to help the most climate vulnerable, including by addressing climate immobility, since often the most vulnerable are not able to move.<sup>41</sup> And rather than reaching just the limited subset of people with protection needs as defined by the existing international protection regime, policymakers could consider options for growing other mobility pathways, especially as the scale of climate impacts increases.

This section outlines a suite of policy options to respond to different climate mobility scenarios, ranging from small bespoke visas to broader migration pathways, and highlights the trade-offs inherent in each. Importantly, many of these policy options have precedent and are being implemented in multiple countries, albeit not always for situations of climate and disaster displacement.

### A. *Facilitate Entry in the Context of Climate and Disaster Displacement*

People displaced by climate impacts, especially sudden disasters, generally do not have immediate and easy options to move across an international border in search of safety. Applying for a visa, as is usually required to enter a country, is often expensive and time-consuming. (Notable exceptions include those covered by free movement protocols or visa-free travel policies; see Section 4.C.) As such, states sometimes proactively take steps to help climate-displaced people enter their territory, both for compassionate reasons to help those worst affected and sometimes out of a pragmatic need to bring order to and manage migration pressures that might otherwise result in disorderly, unauthorized border crossings.

There is growing momentum and significant precedent behind facilitating entry in response to climate-related disasters.<sup>42</sup> When disasters are severe enough to force people to move across borders, destination countries may respond by using their discretion to streamline entry procedures at borders, such as by waiving documentation or visa requirements and not trying to assess each individual's protection needs directly at the border.<sup>43</sup> This is particularly important in regions without robust reception systems at borders, where processing large groups of people would be difficult for governments to manage. In 2010, for example, following the Haitian earthquake, the Dominican Republic allowed hundreds of thousands of displaced Haitians to enter its territory. Similarly, severe drought and cyclones in southern Africa have led neighboring countries to allow displaced people to enter while also working with their countries of origin to provide assistance.<sup>44</sup>

One common policy tool is expedited visa processing for applicants from countries struck by sudden, large-scale disasters. After the 2010 earthquake in Haiti, Canada fast-tracked visa applications for Haitians, ultimately allowing 2,300 Haitians to reunite with family in Canada.<sup>45</sup> More recently, Switzerland, Germany, and other countries fast-tracked or set up short-term visitor visa programs in response to earthquakes in Turkey and Syria, targeted specifically to those who could prove their homes were in the disaster zone.<sup>46</sup> Such approaches are relatively easy policy levers to pull, although they only benefit a small subset of a displaced population, typically people with family in the destination country and with the means to apply for a visa and cover travel costs. They could, however, be built upon or accompanied by experimentation with other options, such as community sponsorship initiatives, to expand their reach.<sup>47</sup>

Another approach to enabling climate-displaced people to move is issuing humanitarian visas. Humanitarian visas grant permission to enter the issuing country outside of normal visa processes,

often with reduced application requirements and waived fees. Such visas do not necessarily confer status upon arrival in the destination state; rather, they enable a person to get to the country and then apply for a status (for which they will likely qualify). These visa programs are typically only used in extraordinary circumstances where there is a clear humanitarian need and those seeking entry would face significant harm if they had to wait to go through the full visa process. On this basis, humanitarian visas have been primarily used in response to conflict and persecution, for those who would likely qualify for refugee or a subsidiary form of protection. For example, Brazil has issued humanitarian visas for Syrians, Afghans, and Ukrainians, and Canada created an authorization for emergency travel specifically for Ukrainians that grants a free tourist visa valid for an extended period of time and with the right to work.<sup>48</sup> Similarly, Italy's Humanitarian Corridor program, a collaboration between the Italian government and civil-society organizations, has used a humanitarian visa to facilitate entry into the country for several thousand refugees.<sup>49</sup>

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*In 2022, Argentina put forward a first-of-its-kind proposal for a broader disaster displacement humanitarian visa.*

Humanitarian visas have been less common in the context of climate displacement, but they could be well suited in certain circumstances. For example, they could be especially useful when climate events strike geographically isolated areas (e.g., islands where people are unlikely to be able to move to neighboring countries) and when a more distant destination state may have greater capacity to support movement. Several Latin American countries did utilize tourist visas to facilitate the relocation of Haitian earthquake victims in 2010.<sup>50</sup> And in 2022, Argentina put forward a first-of-its-kind proposal for a broader disaster displacement humanitarian visa.

Using the visa, any disaster-displaced person from Latin America could enter and stay in Argentina for three years, with socioeconomic support and the right to work, and then eventually have a path to long-term residence.<sup>51</sup> Additionally, potential beneficiaries would be able to apply from their home countries, which could help the involuntarily immobile.<sup>52</sup> The election of a new government has cast uncertainty over whether or when the visa will be implemented. Still, this proposal, with its clear criteria and disaster focus, shows the promise humanitarian visas could have in facilitating climate-displaced people's entry into a safe country.

## **B. Provide Flexible Forms of Status**

Once a disaster-displaced person has crossed a border, or if they are already in a different country and cannot return home due to the disaster, they face the challenge of obtaining a legal status. Looking beyond asylum systems, which are built around international protection criteria few climate-displaced individuals meet, some states may opt to offer more flexible forms of status that can accommodate displaced people in larger numbers, usually on a temporary basis and without the full suite of services typically available for refugees. These flexible statuses, usually designed for rare and exceptional circumstances, are already being increasingly used for conflict-driven displacement situations and could be extended for climate shocks. However, relying on such statuses carries risks.

In some cases, these types of policies are used for nationals of an affected country who are already in the destination state at the time of the disaster. The United States, for example, has given Temporary Protected Status (TPS) to nationals of several countries affected by environmental disasters, including Hondurans and Nicaraguans in response to Hurricane Mitch in 1998 and Haitians, Nepalis, and Salvadorans due to earthquakes. This status grants protection

from deportation as well as work authorization.<sup>53</sup> Italy similarly has a provision that allows people whose home countries have experienced a calamity to obtain a temporary residence permit, which provides access to the labor market (in the country and across the European Union), but it only lasts for six months.<sup>54</sup>

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*While these flexible statuses can provide important rights and protections to disaster-displaced persons, they assume that, eventually, return will be feasible—an assumption that has not always proven true.*

These approaches are similar to some countries' policy responses to large-scale displacement caused by other types of emergencies (such as conflict and political upheaval), notably displacement from Syria, Venezuela, and Ukraine. In responses to each of these displacement crises, destination countries provided a temporary form of legal status that largely prevented refoulement and granted access to socioeconomic rights and services. These approaches were useful for several reasons, including that many members of these displaced populations would not have qualified for refugee status under top destination countries' asylum legislation, displacement was so large and rapid that regular protection systems could not keep up, and it was politically easier to provide only a temporary form of status, with the expectation that its recipients would return home eventually.<sup>55</sup>

While these flexible statuses can provide important rights and protections to disaster-displaced persons, they assume that, eventually, return will be feasible—an assumption that has not always proven true. For example, the United States has extended TPS for Hondurans, Nicaraguans, and Salvadorans

for more than two decades, allowing them to stay in the country but making it hard to plan their lives beyond the 18-month renewal cycles. Similarly, Syrian beneficiaries of temporary protection in Turkey have had this status for a decade. Because these flexible statuses do not grant permanent residency or offer a direct path to transition to a longer-term status, many recipients eventually find themselves in a protracted legal limbo that both hinders their ability to restart their lives and, often, keeps receiving communities from fully benefiting from their participation. This explicit temporariness is due, in part, to the perception that these provisions would only be used in exceptional circumstances; however, as the frequency and intensity of environmental disasters increases, destination countries may end up providing these protection opportunities more frequently, and for more extended periods of time. If this happens, governments may need to reassess the purpose and policy logic behind these flexible statuses, accompanying social services, the risks of a growing population on temporary statuses, and potential options for more permanent solutions.

### *C. Strengthen Broader Mobility Opportunities*

A third set of policy approaches leverages existing mobility pathways and works to ensure climate-vulnerable groups can access them. These are perhaps the most scalable of the policy tools discussed in this section. Crucially, using existing, non-protection-based pathways can sidestep the difficulties of defining levels of vulnerability among groups displaced by climate change and enable more people to move in safe and orderly ways, even if they are driven to move indirectly rather than directly by climate change (the fourth scenario in Section 3).

Labor migration pathways are frequently discussed as options for people to move away from climate- and disaster-vulnerable countries of origin, at least

on a temporary or circular basis, while also helping fill destination countries' labor market needs.<sup>56</sup> For example, a 2007–12 temporary labor mobility program for seasonal agriculture workers between Colombia and Spain targeted communities vulnerable to environmental disasters, notably large volcanic eruptions and floods, allowing people to temporarily relocate away from these locations and gain income and skills.<sup>57</sup> Similarly, seasonal worker initiatives between many Pacific Island nations and either Australia or New Zealand have been described as enhancing climate resilience by enabling people from the Pacific Islands (which are largely climate vulnerable) to diversify their skills and livelihoods, albeit on temporary visas.<sup>58</sup> These discussions are similar in some ways to conversations around complementary pathways that enable refugees to access opportunities in third countries via education, labor, or family reunification pathways.

A key strength of such approaches is that these migration pathways already exist, so policymakers do not have to go through the lengthy and politically sensitive process of setting up new ones (see Section 4.D). Instead, governments can focus their efforts on making these pathways accessible to climate-vulnerable communities, including by working with such communities to provide potential migrants with information about available pathways, access to predeparture orientation and post-arrival integration services, and skilling and training support (including in green sectors). Governments could also consider adjusting their visa processes to give climate-vulnerable applicants an advantage, such as additional points within a point-based immigration system.<sup>59</sup>

However, efforts to expand climate-displaced people's use of these broader pathways should be accompanied by targeted, proactive approaches to provide mobility options for the most vulnerable. Even when labor, student, family, and other pathways exist and are of sufficient scale, they are gen-

erally not targeted to specific countries (or specific communities), so there is no guarantee that their requirements and design will align with the characteristics of the most climate-vulnerable individuals. Labor pathways, for example, are designed to attract workers with in-demand skills, not children, older people, persons with disabilities, and women from countries with wide gender-based education disparities. And because such pathways often involve some element of sponsorship (e.g., an employer in labor pathways or an educational institution for student pathways), this relies on would-be migrants developing international connections and securing a job or study offer. Similarly, in the case of family reunification, would-be migrants would need to have family abroad.

*Where they exist, these regional agreements can allow people to move away from climate-vulnerable areas, whether affected by sudden shocks or slow-onset changes.*

In addition to these factors limiting access, the design of these pathways raises potential risks for climate-displaced individuals who use them. These pathways provide fewer rights than those explicitly for refugees or other people with protection needs and are often temporary, making them a less suitable solution if a person's displacement is likely to be protracted or permanent. Some critics of this approach argue it forces people in climate-vulnerable communities (who generally contribute few carbon emissions) to be responsible for finding their own mobility opportunities, rather than placing the responsibility on the governments of countries that contributed most to climate change—although others might argue this provides people agency over their migration choices, especially for those who do not consider themselves refugees.<sup>60</sup> This approach has also been criticized because some of the pathways touted as enabling climate mobility, such as

seasonal worker programs, frequently face reports of exploitation and abuse.<sup>61</sup> Finally, because these pathways are not based in binding international law, they are more vulnerable than protection systems to the winds of domestic politics and may, for instance, be closed after elections and changes in government (though governments are increasingly experimenting with reforms to asylum systems as well).

Another promising policy option lies in regional free movement protocols. Where they exist, these regional agreements can allow people to move away from climate-vulnerable areas, whether affected by sudden shocks or slow-onset changes. For example, multiple Caribbean governments used the free movement protocols of the Caribbean Community (CARICOM) and Organization of Eastern Caribbean States (OECS) to allow hurricane-displaced residents of Dominica to enter their countries in 2017 (including some without travel documentation), and in the case of OECS countries, to stay indefinitely.<sup>62</sup> The free movement protocol adopted in 2020 by the Intergovernmental Authority on Development's Member States in East Africa contains a specific provision on disaster displacement, allowing the bloc's citizens "moving in anticipation of, during, or in the aftermath of a disaster to enter" and enabling them to stay if their return is "not possible or reasonable."<sup>63</sup>

But free movement protocols are not easy to stand up or maintain. Efforts to establish free movement in various African regions have demonstrated the challenges of fully implementing these protocols (including granting full and permanent residence rights, rights to establish businesses, and more), given frequent reluctance to loosen national control over noncitizens' entry amid economic and security concerns.<sup>64</sup> Such regional arrangements may also see their application limited or membership dwindle; for instance, Haiti has not joined the proposed expansion of the CARICOM free movement protocol, and several West African states have left the Economic Community of West African States (ECOWAS)

bloc. Finally, because these agreements are regional, the burden of receiving displaced people and providing humanitarian support would lie with a climate-affected country's neighbors. Since the regional blocs in which most climate-displaced individuals live (e.g., those in Africa, the Caribbean, and South America) are not the largest contributors to climate change, there may be an argument to also implement measures that would help rectify these inequities. This could include mechanisms for responsibility sharing or financial support from high-income countries that are connected to efforts to expand free movement in climate-vulnerable regions.

#### *D. Create Bespoke Climate Mobility Pathways*

A fourth, and largely hypothetical, set of policy approaches is to create mobility pathways explicitly tailored to helping the climate vulnerable move, enter another country, and gain status. Such proposals have not yet been implemented, but they generally envision long-term immigration as a way to address long-term uninhabitability, for example for the residents of low-lying atoll islands. In such cases, even before a nation loses its entire land territory, many of the islands within its archipelago will submerge, peoples' livelihoods will be lost, and the severity and frequency of disasters will increase, meaning there is a need to plan for worst-case scenarios now.

One such climate mobility pathway is in the process of being established. In November 2023, Australia and Tuvalu agreed to a security and diplomatic agreement that would allow 280 Tuvaluans to permanently move to Australia each year, with work and study rights, as part of a broader security deal giving Australia a say in Tuvalu's international security policy and a pledge by Australia to increase financial support for climate adaptation in Tuvalu.<sup>65</sup> After an election in Tuvalu, both countries are moving ahead with ratification.<sup>66</sup>

A clear lesson from this experiment is the need for long-term engagement with origin-country governments and communities to understand their preferences and secure their buy-in. A similar pathway was proposed in 2017 by New Zealand, specifically framed as a "climate refugee" visa and seen as a way to discharge New Zealand's climate justice responsibilities. This effort failed largely because it was not driven by demand among Pacific Islanders, who prioritized adaptation in place rather than new visas to facilitate emigration.<sup>67</sup> Similarly, as the Australia–Tuvalu agreement was announced, Tuvaluan climate activists reported a lack of consultation with local communities by the Tuvaluan government, although this has not yet appeared to be enough to derail the treaty.<sup>68</sup> Moreover, such visa programs raise practical questions, notably about whether Tuvaluans will apply; how the 280 per year would be selected (in particular to avoid massive brain drain); how Tuvalu's government will be able to maintain services and infrastructure with large proportions of its population (and tax base) moving away; and critically, whether the tiny Tuvaluan diaspora community in Australia will be able to support these new arrivals' integration. While this experiment marks a turning point in the policy discourse on climate mobility, it does not come without criticism or concerns, primarily about the new migration pathway's bundling with provisions giving Australia greater say in how Tuvalu strikes security deals with other international partners such as China.<sup>69</sup>

#### *E. Ensure Access to Refugee Protection for Those Eligible*

Even as stakeholders within and outside government explore other policy options, they should also work to ensure climate-displaced people who do qualify for international protection are able to obtain it. Depending on which international protection treaties a country is party to,<sup>70</sup> how it implements its treaty obligations, and how it structures its pro-

cedures for determining refugee status (and other protected statuses), those who qualify for protection may or may not be able to receive it. By revising and clarifying policies and procedures to ensure decisionmakers understand how to address climate-related international protection claims, governments can reinforce the functionality of their asylum systems while also specifying what forms of climate displacement require alternative policy solutions.

*U.S. Citizenship and Immigration Services has updated its training and guidance for asylum officers on how climate displacement cases should be handled under existing law.*

The most immediate concern is making sure training and guidance for asylum adjudicators clearly addresses how to handle cases involving climate displacement. Because climate-related harms are not explicitly referenced in refugee and human rights law, adjudicators may not be aware of the ways climate change can produce or amplify protection needs. It is unclear how often decisionmakers reject valid claims when an applicant presents their case as related to climate shocks, but some advocates in the United States argue that disaster-displaced people arriving and seeking asylum have been “de facto rejected” because of a “knee-jerk reaction” from asylum officers to the mention of a disaster as part of a broader protection claim.<sup>71</sup> In Sweden, which had an explicit protection category for people displaced by environmental disasters from 1997 until its suspension in 2016, an analysis of cases from 2006 to 2015 revealed that very few claims under this category were successful.<sup>72</sup> To address this, countries could update training materials and issue regular policy communications on how legal standards apply in evolving areas such as climate displacement. For example, U.S. Citizenship and Immigration Services has updated its training and guidance for asylum officers

on how climate displacement cases should be handled under existing law.<sup>73</sup>

Another way to address this information gap is to ensure adjudicators have access to expert analysis on how climate change affects recognized grounds for protection, and how this might vary depending on the context. By updating country-of-origin information reports, which are used as references in determining the likelihood and severity of a rights violation occurring if a protection applicant is returned, decisionmakers could be made aware of any relevant climate impacts; for example, whether resource scarcity is leading to greater ethnic conflict, or if a government is systematically excluding a certain group from disaster response support.<sup>74</sup> Depending on the severity and extent of the climate event, governments could even decide to provide status on a *prima facie* basis (i.e., on a group basis, rather than relying on individual adjudication of claims); this could relieve pressure on an asylum adjudication system in the wake of a disaster and bring greater consistency to the handling of claims.

The second challenge is making sure protection seekers are adequately able to explain how climate impacts have caused or exacerbated their displacement and their grounds for protection. Given the complexity of asylum adjudication systems, applicants often need legal and/or casework support to ensure their cases adequately demonstrate their protection needs in line with the country’s legal standards for asylum or similar status. This will likely be particularly true for those whose claims involve climate impacts. Legal representation and assistance can not only help protection seekers with valid claims effectively have those claims heard, but it can also help proceedings move more efficiently as filings are more likely to be complete and applicants are more likely to attend proceedings.<sup>75</sup> In some countries, legal assistance organizations have issued their own guidance for legal advocates on how to

address climate change when preparing protection applications.<sup>76</sup>

Another important step in this area would be to address outstanding legal questions about how international refugee and human rights protections apply to cases of climate displacement. The more clarity and consensus that can be generated, the more predictable government responses to climate displacement can be. For example, the regional refugee regimes in Africa and Latin America could both benefit from a firmer understanding of how climate change could lead to sufficient public disorder to be an acceptable ground for refugee status. In both regions, there are active efforts to draw these lines. The United Nations High Commissioner for Refugees is conducting a project to analyze the public disorder ground in the Organisation of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa, to develop a set of indicators to determine when the ground applies, and to create normative guidance to shape implementation at the regional and country level.<sup>77</sup> In the Americas, the Inter-American Court on Human Rights is considering a request for an advisory opinion to clarify whether climate change and disasters could be grounds for refugee protection under the public disorder provision of the (nonbinding) Cartagena Declaration.<sup>78</sup> Once policymakers and legal practitioners have more clearly delineated eligibility under public disorder provisions, they can focus on implementing this delineation in national legislation, in practice, and in judicial interpretation.

It is unclear, however, how much of a shift such clarifications will lead to in practice. While these exercises could result in a large number of people having clearer claims to international protection, there is reason to doubt that there will be a sizeable increase in the number of persons who receive it. After all, the Teitiota case has not led to a cascade of new claims of the violation of the right to life for the purposes of nonrefoulement. Yet the April 2024 de-

cision by the European Court of Human Rights that Switzerland had violated the rights of its citizens by not doing enough to mitigate climate change could open up new avenues for litigation taking aim at industrialized destination states' responsibility for climate change and its impacts on displacement.<sup>79</sup> Given the uncertainties, this type of litigation—while useful and important—should not be the primary focus of policymaker and civil-society attempts to address the wider challenges of responding to climate displacement.

## 5 Conclusions

Climate-related movement is highly diverse, ranging from short-term flood displacement to situations in which entire neighborhoods (or nations) may become uninhabitable. This wide spectrum of movement means there is no single policy solution to climate displacement, nor a single policy agenda that makes sense for all countries. Of the four scenarios discussed in this brief, some are squarely protection issues (i.e., refugees whose persecution has been shaped by climate change), while others pose protection concerns but are not inherently international protection issues (i.e., people who move because of the indirect impacts of climate change). Some will require a range of humanitarian, temporary, and flexible approaches (i.e., disaster displacement), while others will need larger-scale plans to enable entire communities to move to safety (i.e., long-term uninhabitability). Planning for this array of climate displacement scenarios is a challenge, but one policymakers should start addressing now.

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*This wide spectrum of movement means there is no single policy solution to climate displacement, nor a single policy agenda that makes sense for all countries.*

The international protection system should not be the sole answer to these questions. Seeking asylum requires individuals to cross borders, sometimes taking long, unauthorized journeys, and will only yield solutions for the small subset of climate-displaced people able to make qualifying claims. And with many asylum systems already straining under the pressure of backlogs, this would place further pressure on these processes while putting protection seekers' lives on hold for extended periods. There is simply a limit to how much refugee law can and should help, as the New Zealand Court of Appeals found in the initial, domestic Teitiota case: "The [Refugee] Convention is quite simply not the solution to Kiribati's problem."<sup>80</sup> Tackling this challenge effectively will require a wider set of mobility solutions.

Policymakers should examine the following areas ripe for progress:

- ▶ **Expanding the use of humanitarian visas and temporary protection, while being mindful of the long-term questions they raise.** Many countries already have provisions for providing humanitarian entry and protection in the context of environmental disasters, as well as conflict-induced mass displacement. The policies, ranging from temporary protection against return to humanitarian visas to accelerated visa processing, can enable people to move away from disaster-struck areas without taking costly, dangerous journeys and enable destination countries to manage arrivals in a more orderly way. If such humanitarian policies are increasingly used to address climate displacement, policymakers will need to think through the knock-on implications. This includes what pathways to permanency and options to switch to other visa classes exist (or else tools to avoid people falling into irregular status if they overstay their initial status) as well as the ability of host
- communities to absorb large and sudden influxes.
- ▶ **Increasing the accessibility of regular mobility pathways to climate-vulnerable individuals to enable their safe and orderly movement.** By expanding this population's ability to participate in existing family, student, and work pathways, governments can help the most vulnerable move in safe, regular ways (potentially reducing the need for irregular movement) and in ways that strengthen domestic economies and meet labor market needs. In ideal cases, they can also help mitigate climate vulnerability in migrants' home communities since such movements often result in remittance sending. However, these pathways may still not reach the most vulnerable, since they rely on would-be migrants having family or professional connections abroad, skills that are in-demand among employers, and/or a university admissions offer and since they often have caps and quotas limiting how many can move. Governments could consider promoting recruitment in climate-vulnerable communities or easing conditions on immigration from the most climate-vulnerable countries, without necessarily opening new pathways, as well as measures to help immigrants support their communities of origin through remittances and knowledge transfer.
- ▶ **Experimenting with bespoke climate mobility or disaster displacement visa pathways now, before they become a necessity.** The scale and severity of climate displacement have led only a few destination countries to create bespoke climate or disaster visa programs, at least for now. But governments should seek to learn from high-profile previous or ongoing efforts

to create such programs, notably climate mobility visas in New Zealand and Australia and disaster-related humanitarian visas in Argentina. Key lessons emerging from these initiatives include the importance of local consultation and of planning ahead. Efforts to relocate communities and enable people to migrate with dignity away from increasingly uninhabitable places (e.g., low-lying atoll states) will be needed, and rather than waiting for people to be forced to move, governments should begin planning for such scenarios now by strengthening partnerships and engagement with national and local authorities in climate-vulnerable communities.

► **Investing in intraregional movement.**

Regional free movement agreements have the potential to not only facilitate easier cross-border movement in the wake of a disaster but also to promote climate adaptation by providing a region's residents access to a broader range of socioeconomic opportunities. Industrialized nations, which bear the most responsibility for climate change, can bolster such agreements by supporting regional and national authorities as they strengthen their expertise and policies in this area. They could also support activities to help residents of these regions take advantage of intraregional mobility

options, such as by providing skills training, supporting access to documentation, and sharing information on free movement policies.

► **Ensuring asylum systems sufficiently protect those who qualify, regardless of the role of climate change in their displacement.**

Because the intersection of climate change and international protection is an evolving and poorly understood issue area, some individuals with qualifying protection claims risk having those claims denied if they mention a disaster or climate change. Clearer instructions for status determination, updated country-of-origin information, and support navigating the asylum process provided by legal professionals and caseworkers who are well versed in these issues can help increase the fairness and efficiency of case processing.

Ultimately, most forms of climate mobility may not pose international protection concerns, and there is a real risk that calls to broaden the refugee protection regime to cover climate-related drivers of movement could backfire and instead shrink the protection space. There is thus a need for more clear-eyed pragmatism in the policy discourse on climate displacement that acknowledges that different scenarios of climate displacement will require different, sometimes narrower, policy responses.

## Endnotes

- 1 Internal Displacement Monitoring Centre (IDMC), *Global Report on Internal Displacement 2024* (Geneva: IDMC, 2024); Viviane Clement et al., *Groundswell Part 2: Acting on Internal Climate Migration* (Washington, DC: World Bank, 2021).
- 2 Susan Fratzke et al., *The End of Asylum? Evolving the Protection System to Meet 21st Century Challenges* (Washington, DC: Migration Policy Institute, 2024).
- 3 For more on the “climate refugee” discourse, see T. Alexander Aleinikoff, “Climate-Induced Displacement and the International Protection of Forced Migrants,” *Social Research: An International Quarterly* 91, no. 2 (Summer 2024): 421–444.
- 4 See, for example, Principle 2 in Jane McAdam and Tamara Wood, *Kaldor Centre Principles on Climate Mobility* (Sydney: University of New South Wales, Kaldor Centre for International Refugee Law, 2023); The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Volume I* (Geneva: The Nansen Initiative, 2015).
- 5 Nonrefoulement is also provided for under the 1984 Convention Against Torture and regional human rights and refugee instruments. Judicial and human rights bodies have found that further human rights treaties, including the International Covenant on Civil and Political Rights, implicitly protect against refoulement. See Penelope Mathew, “Non-Refoulement,” in *The Oxford Handbook of International Refugee Law*, eds. Cathryn Costello, Michelle Foster, and Jane McAdam (Oxford University Press, 2021), 899–C50.P58.
- 6 United Nations Office of the High Commissioner for Human Rights, “The Principle of Non-Refoulement under International Human Rights Law” (question and answer document, 2018).
- 7 Mathew, “Non-Refoulement.”
- 8 There is thus variation in how the principle is interpreted and adjudicated, and how much leeway governments have in shifting what factors to weigh depending on their policy priorities. As a result, the same person facing the same circumstances in two different countries may be protected from refoulement in one but returned from the other.
- 9 United Nations General Assembly (UNGA), “Convention Relating to the Status of Refugees,” July 28, 1951; UNGA, “Protocol Relating to the Status of Refugees,” January 31, 1967.
- 10 UNGA, “International Covenant on Civil and Political Rights,” December 16, 1966. Under the Convention Against Torture, the harm is the belief of “being in danger of being subjected to torture.” See UNGA, “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” December 10, 1984.
- 11 Organisation of African Unity (OAU), “OAU Convention Governing the Specific Aspects of Refugee Problems in Africa,” September 10, 1969; Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, “Cartagena Declaration on Refugees,” Conclusion III, No. 3, November 22, 1984. The European Union similarly provides a subsidiary form of protection for those fleeing situations of generalized or indiscriminate violence. See Jane McAdam, “The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime,” in *Complementary Protection in International Refugee Law* (Oxford, UK: Oxford University Press, 2007).
- 12 C. W. Wouters, *International Legal Standards for the Protection from Refoulement: A Legal Analysis on the Prohibitions on Refoulement Contained in the Refugee Convention, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Convention Against Torture* (Antwerp: Intersentia, 2009). In many cases of large-scale displacement, states grant international protection on a prima facie basis, meaning that the country typically does not evaluate each individual’s protection claim but rather assumes that because of their characteristics and the circumstances in their home country they qualify for international protection. However, even though a person’s individual claim is not evaluated, the prospective harm they are receiving protection from is still considered an individual harm because it is based on their specific characteristics. See United Nations High Commissioner for Refugees (UNHCR), “Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status” (guidelines, June 5, 2015).
- 13 Wouters, *International Legal Standards for the Protection from Refoulement*.
- 14 Wouters, *International Legal Standards for the Protection from Refoulement*.
- 15 This is often done in a country-of-origin analysis. This determination does not require decisionmakers to have a specific measure of certainty that persecution will take place. Critically, there is not a specific time frame under which the harm must occur, meaning the harm does not need to be “imminent.” See Adrienne Anderson, Michelle Foster, Hélène Lambert, and Jane McAdam, “Imminence in Refugee and Human Rights Law: A Misplaced Notion for International Protection,” *International and Comparative Law Quarterly* 68, no. 1 (January 2019): 111–40.
- 16 Some courts and treaty interpretation bodies have included the concept of “imminence” in their analysis of whether a real risk of a severe harm exists, which some scholars argue should not be a consideration based on the underlying legal documents. See Anderson, Foster, Lambert, and McAdam, “Imminence in Refugee and Human Rights Law.”
- 17 Joyce De Coninck and Anemoon Soete, “Non-Refoulement and Climate Change-Induced Displacement: Regional and International Cross-Fertilization?,” *Review of European, Comparative, and International Environmental Law* 31, no. 3 (November 2022): 421–34.
- 18 Fratzke et al., *The End of Asylum?*

- 19 While the rights afforded refugees and those under similar statuses are relatively robust, they are not absolute, and not necessarily equivalent to what refugees would have in their countries of origin. For example, while refugees are granted the right to education at the same level as nationals of their country of asylum, they are only granted the right to work at the level of a foreigner, which can significantly limit their ability to support themselves. Additionally, state parties to the Refugee Convention may opt out of or place a limit on (have a reservation to) certain parts of the treaty, often those related to the socioeconomic rights of refugees within their territory (by contrast, states cannot have a reservation to the principle of nonrefoulement).
- 20 See, for example, the limited rights aside from protection from refoulement afforded to holders of various non-refugee humanitarian statuses in the United States. Jill H. Wilson, *Temporary Protected Status and Deferred Enforced Departure* (Washington, DC: Congressional Research Service, 2023).
- 21 UNGA, “[Global Compact on Refugees](#),” December 2018.
- 22 For a discussion of why environmental law principles are difficult to apply to climate displacement, see Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches* (Geneva: UNHCR, 2012).
- 23 International Refugee Assistance Project, *U.S. Opportunities to Address Climate Displacement* (New York: International Refugee Assistance Project, 2021).
- 24 *RN (Returnees) Zimbabwe v. Secretary of State for the Home Department*, UKAIT 00083 (UK Asylum and Immigration Tribunal, Immigration Appellate Authority, November 19, 2008). See also examples in UNHCR, “[Climate Change Impacts and Cross-Border Displacement: International Refugee Law and UNHCR’s Mandate](#)” (note, December 12, 2023).
- 25 UNHCR, “[Climate Change Impacts and Cross-Border Displacement](#).”
- 26 See David Cantor et al., “[International Protection, Disasters and Climate Change](#),” *International Journal of Refugee Law* 36, nos. 1–2 (March 1, 2024): 176–97; Refugee Law Institute, “[Refugee Law Initiative Declaration on International Protection in the Context of Disasters and Climate Change](#),” *International Journal of Refugee Law* 36, nos. 1–2 (March 1, 2024): 169–75.
- 27 While earthquakes are not climate related, they nevertheless have similar environmental impacts as climate-related disasters that can cause cross-border displacement. As such, the legal and policy frameworks for responding to these cases is the same.
- 28 David James Cantor, “[Law, Policy and Practice Concerning the Humanitarian Protection of Aliens on a Temporary Basis in the Context of Disasters](#)” (paper presented at States of the Regional Conference on Migration and Others in the Americas, Regional Workshop on Temporary Protection Status and/or Humanitarian Visas in Situations of Disaster, San José, Costa Rica, February 10–11, 2015).
- 29 Cantor, “[Law, Policy and Practice Concerning the Humanitarian Protection of Aliens](#).”
- 30 Jane McAdam, “[Displacement in the Context of Climate Change and Disasters](#),” in *The Oxford Handbook of International Refugee Law*, 1st Edition, eds. Cathryn Costello, Michelle Foster, and Jane McAdam (Oxford, UK: Oxford University Press, 2021), 832–C46. P34.
- 31 Cantor, “[Law, Policy and Practice Concerning the Humanitarian Protection of Aliens](#).”
- 32 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* (Geneva: UNHCR, 2023).
- 33 McAdam, “[Displacement in the Context of Climate Change and Disasters](#).”
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