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Australian toolkit on international protection in the context of climate change and disasters

Professor Jane McAdam AO and Dr Tamara Wood

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A. Introduction

The *Australian Toolkit on International Protection in the context of Climate Change and Disasters (Australian Toolkit)* serves as a domestic complement to *International Protection for People Displaced across Borders in the context of Climate Change and Disasters: A Practical Toolkit (Practical Toolkit)*. The *Practical Toolkit* provides a detailed, practically-focused analysis of how international and regional refugee law and human rights law apply to international protection claims involving the impacts of climate change and disasters.¹

The *Australian Toolkit* explains how the principles in the *Practical Toolkit* apply within the specific context of Australian law, taking into account domestic legislative requirements and jurisprudential interpretations. It is intended as a ready-reference guide for decision-makers and practitioners dealing with international protection claims – that is, claims for refugee status or complementary protection – in which the impacts of climate change or disasters may play a role.

Climate change and disasters may contribute to an international protection claim in different ways. For example:

- > A person may seek protection because of risks associated with structural discrimination in the context of increasingly precarious environmental conditions in their country of origin.
- > The impacts of a disaster may intersect with, or exacerbate, pre-existing risks of violence or persecution.
- > A person at risk of harm in one part of a country may be unable to move to another part due to the impacts of climate change or disasters there.
- > A person already in Australia may lodge a *sur place* protection claim – for example, if a disaster occurs at home and they fear return because of the conditions there.

The *Australian Toolkit* applies in all these cases. It looks beyond the impacts of climate change and disasters per se to the broader

context in which they occur, and shows how people displaced in these circumstances may meet Australia's criteria for refugee status or complementary protection.

Australia's legal framework

International protection under Australian domestic law is governed primarily by the *Migration Act* 1958 (Cth). While the *Migration Act* partly incorporates Australia's international protection obligations under the 1951 Convention relating to the Status of Refugees,² the 1967 Protocol relating to the Status of Refugees³ and international human rights law, it also includes a number of statutory definitions, qualifications and exclusions. This means that the scope of protection available under Australian domestic law may be different from that recognized under international law. Some of the key distinguishing features of Australia's legal framework are set out below.

Refugee status

Refugee status is determined under section 36(2)(a) of the *Migration Act*, which provides for the grant of a 'protection visa' to any person in Australia who meets the definition of a refugee, as defined in sections 5H–5J. The *Migration Act*'s definition of a refugee is based on article 1A(2) of the Refugee Convention, which provides that a refugee is any person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence ... is unable or, owing to such fear, is unwilling to return to it.

¹ Kate Jastram, Jane McAdam, Geoff Gilbert, Tamara Wood and Felipe Navarro, *International Protection for People Displaced across Borders in the context of Climate Change and Disasters: A Practical Toolkit* (Center for Gender & Refugee Studies, Kaldor Centre for International Refugee Law and Essex Law School and Human Rights Centre, 2025) (*Practical Toolkit*).

² *Convention relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

³ *Protocol relating to the Status of Refugees* (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

The *Migration Act* contains the following key qualifications to this definition:

- > Persecution consists of 'serious harm'⁴ plus 'systematic and discriminatory conduct'.⁵
- > A person has a 'well-founded' fear of persecution if there is a 'real chance' that it will occur if the person is returned to the country where they fear such persecution.⁶
- > For a fear to be well-founded, the real chance of persecution must be present in 'all areas' of the country.⁷
- > One or more of the five protected grounds must be 'the essential and significant reason' for the well-founded fear of persecution.⁸
- > A fear of persecution will not be well-founded if 'effective protection measures' are available in the country of origin.⁹ There is no consideration of the reasonableness of accessing such measures.

Complementary protection

Under section 36(2)(aa) of the *Migration Act*, a person who does not meet the definition of a refugee may be entitled to a protection visa if there are 'substantial grounds for believing that, as a necessary and foreseeable consequence of [their] remov[al] ... to a receiving country, there is a real risk that the [person] will suffer significant harm'. This is Australia's version of human rights-based complementary protection. It does not directly incorporate Australia's obligations under international law but instead stipulates the following:

- > 'Significant harm' is defined exclusively in the *Migration Act* and is limited to the arbitrary deprivation of life; the death penalty; torture; cruel or inhuman treatment or punishment; and degrading treatment or punishment.¹⁰
- > A person will be deemed not to face a real risk of significant harm if it would be reasonable for them to relocate to another part of the country where they do not face such a risk.¹¹
- > A person will be deemed not to face a real risk of significant harm if they could 'obtain, from an authority of the country, protection such that there would not be a real risk' of significant harm.¹²
- > A person will be deemed not to face a real risk of significant harm if 'the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally'.¹³

This document

Following this Introduction (Part A), the document is structured in three parts.

Part B. Common myths and how to address them

This part outlines and unpacks some common myths about displacement in the context of climate change and disasters and the scope of international protection. Many of these myths have contributed to the erroneous view that people displaced in the context of climate change and disasters are not eligible for international protection. This part explains why this view is wrong and outlines the better approach based on up-to-date evidence about the relationship between climate change, disasters and displacement. In doing so, it develops a principled approach to the application of relevant legal principles.

Part C. Scenarios: Sample case study analyses

This part contains a detailed application of the law to two hypothetical case studies that show how people displaced in the context of climate change and disasters may qualify for international protection under Australian law. These case studies invite decision-makers and practitioners to examine the potential role of existing legal frameworks, equipped with the broader understandings gained from Part B. The two case study analyses capture the diverse range of issues that may arise in claims involving the impacts of climate change or disasters, including displacement in the context of both slow- and sudden-onset impacts; intersecting hazards arising from climate change and other social, economic and political factors; and the differential impacts of climate change and disasters on particular groups.

Part D. Additional resources

This part provides additional resources, including a summary of key questions for decision-makers and practitioners interviewing applicants, and a checklist of country of origin information that may assist in the assessment of claims.

⁴ *Migration Act 1958 (Cth)*, s 5J(4)(b) (*Migration Act*).

⁵ *Ibid*, s 5J(4)(c).

⁶ *Ibid*, s 5J(1)(b).

⁷ *Ibid*, s 5J(1)(c).

⁸ *Ibid*, s 5J(4)(a).

⁹ *Ibid*, ss 5J(2), 5LA.

¹⁰ *Ibid*, s 36(2A).

¹¹ *Ibid*, s 36(2B)(a).

¹² *Ibid*, s 36(2B)(b).

¹³ *Ibid*, s 36(2B)(c).

B. Common myths and how to address them

MYTH 1

People displaced by 'natural' disasters are not refugees

Refugee protection has sometimes been viewed as fundamentally incompatible with displacement associated with 'natural' disasters.¹⁴ This is based on the assumption that, unlike persecution, which stems from human acts or omissions, disasters are 'natural', stemming from environmental causes and resembling *force majeure* or an 'act of God'.¹⁵

Why is this wrong?

While the impacts of climate change and disasters *on their own* are unlikely to found an international protection claim, it is wrong to assume that those impacted by natural hazards, disasters and climate change will not meet the criteria for refugee protection.

According to the United Nations Office for Disaster Risk Reduction (UNDRR), there is 'no such thing as a natural disaster'.¹⁶ While *hazards* may be natural, disasters are not. Disasters result from 'hazardous events interacting with conditions of exposure, vulnerability and capacity'.¹⁷ Disasters occur when people lack the capacity to cope effectively with natural hazards – such as floods, storms, earthquakes and droughts – including those triggered or exacerbated by climate change.

Similarly, people displaced across international borders in the context of disasters are generally not forced to move by disasters alone, but rather by the impacts of disasters *combined* with a range of other social, economic and political risks and hazards. Existing patterns of discrimination, marginalization and vulnerability can affect people's capacity to withstand a disaster, as well as access to support and assistance following a disaster. Displacement in the context of climate change and disasters is

multicausal, which is why we refer to displacement *in the context of* (rather than 'caused by') climate change and disasters. While we refer to climate change *and* disasters, this is simply to avoid the more cumbersome use of and/or – it does not mean that both climate change and disasters need to play a role.

Blanket statements about the applicability (or otherwise) of refugee law to people displaced in this context risk overlooking the realities of such displacement and the particular predicaments that individuals may face.

The better approach

In claims involving disasters or the adverse impacts of climate change, decision-makers should not focus narrowly on these impacts alone. Rather, they should consider the 'hazard-scape' as a whole to which the applicant may be exposed.¹⁸ Decision-makers and practitioners should take into account the social, economic and political context in which the impacts of climate change and disasters occur, including existing patterns of discrimination and marginalization that may affect how people experience such impacts.

The full range of hazards should be considered cumulatively through a forward-looking assessment of the risk of persecution or other significant harm. Importantly, 'impacts may emerge suddenly or gradually; overlap temporally and geographically; vary in intensity, magnitude and frequency; and persist over time'.¹⁹ As the United Nations High Commissioner for Refugees (UNHCR) has cautioned, 'a narrow focus might fail to recognize the social and political characteristics of the effects of climate change or the impacts of disasters or their interaction with other drivers of displacement'.²⁰

In short, there is no general rule that people displaced in the context of climate change and disasters will, or will not, be entitled to refugee status or complementary protection. Each

¹⁴ See eg *Applicant A v Minister for Immigration and Ethnic Affairs* [1997] HCA 4, (1997) 190 CLR 225; *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* [2000] HCA 55, (2000) 204 CLR 1.

¹⁵ *Applicant A* (n 14) 248, where Dawson J observed that, '[n]o matter how devastating may be epidemic, natural disaster or famine, a person fleeing them is not a refugee within the terms of the [Refugee Convention]'; see also 283 (Gummow J).

¹⁶ United Nations Office for Disaster Risk Reduction (UNDRR), '#NoNaturalDisasters', <https://www.undrr.org/our-impact/campaigns/no-natural-disasters>.

¹⁷ UNDRR, 'Sendai Framework Terminology on Disaster Risk Reduction: Definition: *'Disaster'*' (emphasis added).

¹⁸ See *AW (Kiribati)* [2022] NZIPT 802085, para 62. This also means understanding how 'local variability in natural conditions shape risks associated with impacts of generally occurring climate hazards': para 66.

¹⁹ United Nations High Commissioner for Refugees (UNHCR), *Legal Considerations regarding Claims for International Protection made in the context of the Adverse Effects of Climate Change and Disasters* (2020) para 9, citing Adrienne Anderson, Michelle Foster, Hélène Lambert and Jane McAdam, *Imminence in Refugee and Human Rights Law: A Misplaced Notion for International Protection* (2019) 68 *International and Comparative Law Quarterly* 111, 133–35.

²⁰ UNHCR (n 19) para 5.

protection claim should be considered on its merits through a principled application of the relevant legal criteria, taking into account the conditions in the applicant's country of origin, as well as their individual predicament and characteristics. Systemic issues of discrimination or structural inequity may affect if and how different people experience harm.

SEE FURTHER

Practical Toolkit, Key Consideration 1:

There are no special rules for international protection claims involving climate change and disasters.

Practical Toolkit, Key Consideration 2: The hazard-scape should be considered as a whole.

MYTH 2

Climate change and disasters are indiscriminate

Because the impacts of climate change and disasters can be far-reaching and affect large numbers of people, it is sometimes assumed that they are indiscriminate. This can lead to the misconception that the risks they generate affect the population of a country generally, rather than individuals personally, and therefore cannot give rise to an international protection claim.²¹ The idea that disasters are 'natural' (Myth 1) also feeds into this assumption.

Why is this wrong?

Although the impacts of climate change and disasters may be widespread, they are not indiscriminate. The nature and extent of such impacts depend on the capacity of affected individuals and communities to cope.

Frequently, those who are marginalized or discriminated against will be at an increased risk of harm compared to the rest of the population, due to pre-existing vulnerabilities and/or structural inequalities. The differential risks faced within the population may be exacerbated by government responses (or a lack thereof) to climate change and disasters – for instance, where disaster risk reduction or climate adaptation activities favour particular groups, or where disaster relief and humanitarian assistance are withheld from certain parts of the population. 'Resourcing is not neutral: the distribution of resources for both disaster preparedness and recovery may be unjust because of inbuilt structural biases.'²²

Even where there is a degree of risk to a population generally, there may also be an increased risk, or a more specific risk, to particular individuals or groups.

The better approach

The assessment of international protection claims involving climate change and disasters should consider the full range of risks that may arise, including the specific risks facing particular individuals or groups. As UNHCR notes:

Climate change and disasters will often impact entire communities. The fact that many or all members of a community are impacted does not undermine the validity of any individual member's claim. An individual claiming refugee status is not required to establish a risk of persecution over and above that of others similarly situated. The test is whether an individual's fear of being persecuted is well-founded. In some cases, the adverse effects of climate change and disasters on an entire community may strengthen rather than weaken the evidence that justifies the fear of an individual being persecuted.²³

In complementary protection claims, the requirement in section 36(2B)(c) of the *Migration Act* that a real risk be faced by the applicant personally, and not 'faced by the population of the country generally', is therefore not an automatic barrier to protection if decision-makers appreciate the ways that risk can manifest in the context of climate change and disasters. This includes understanding the intersectional nature of harms and the broader hazard-scape.

While general country of origin information may be relevant to this assessment, it may not be sufficient on its own. A comprehensive assessment will require disaggregated information about the risks to particular individuals and groups, including (but not limited to) the risks to women and girls, children and young people, older people, people with disabilities, Indigenous peoples, ethnic and religious minorities, LGBTQIA+ people and rural and outer-island communities.

SEE FURTHER

Practical Toolkit, Key Consideration 3:

Climate change and disasters affect people in different ways.

²¹ See *Migration Act* (n 4) s 36(2B)(c).

²² Jane McAdam, 'A Sign of Precarity or Protection? Understanding the Role of Evacuations from Disasters in International Protection Claims' [2026] *International Journal of Refugee Law*, <https://doi.org/10.1093/ijrl/eeag023>, 13 (citation omitted).

²³ UNHCR (n 19) para 8, citing, for each of the last three sentences respectively, UNHCR, *Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees* (April 2001) para 21; *AF (Kiribati)* [2013] NZIPT 800413, para 65; UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the Regional Refugee Definitions*, HCR/GIP/16/12 (December 2016) para 17.

MYTH 3

There is no perpetrator in the context of climate change and disasters

This is linked to Myth 1 – the idea that disasters are natural. In Australia, an element of motivation or intent on the part of the perpetrator is generally required to substantiate a refugee or complementary protection claim.²⁴ This is sometimes viewed as a barrier for claims involving climate change or disasters on the assumption that these are 'natural' phenomena and there is no perpetrator.

Why is this wrong?

As explained above, the impacts of disasters and climate change depend not merely on naturally occurring phenomena but rather on a combination of intersecting environmental, social, political, economic and associated factors. Once this is appreciated, it is easier to see how people may be impacted as a result of a government's intentional action or inaction in addressing known risks, or in withholding assistance from particular groups, for example.

It is important to remember that a decision-maker examining an international protection claim in this context is not trying to assess or apportion responsibility for climate change per se. Rather, as in any protection claim, the focus is on the nature of the harm feared (that is, the predicament of the applicant(s)), whether this harm reaches the threshold of persecution or other significant harm, and whether there is a real chance that the applicant will be exposed to that harm if removed.

The better approach

As noted in Myth 1, decision-makers should consider the hazard-scape as a whole and assess the risk of harm cumulatively, taking into account the role that government action or inaction plays and the influence of pre-existing discrimination, marginalization or structural inequities.

For instance, in the context of climate change and disasters, people's rights to life, food security, shelter and health may be adversely impacted by the effects of climate change and disasters. Livelihood opportunities may decrease significantly or become obsolete, and cultural heritage and practices may be at risk or lost. These are not necessarily just unfortunate

consequences of natural hazards: they may result from intentional government policies or practices, such as deliberate exclusion from disaster mitigation programmes or the withholding of assistance following a disaster.

As UNHCR explains:

[I]n the risk reduction/preparedness phase, before a disaster occurs, or in the aftermath of a disaster, particular populations may be left out, leading to some being disproportionately affected or even targeted. As a result, members of such populations may have a well-founded fear of being persecuted, for example, as resources may diminish and access may be denied in a discriminatory manner, amounting to persecution for one or more Convention grounds. The willingness or ability of a State to prevent the adverse effects of climate change and disasters, as well as to respond adequately to them if they occur, may vary for particular groups, reflecting differences in race, ethnicity, religion, politics, gender or social groups. This may include situations where social pressures result in violence against – or trafficking of – persons with specific needs or in situations of pre-existing vulnerabilities, especially women. It could also include situations in which a government withholds, or de-prioritizes protection by denying relief aid to specific populations; where post-disaster relief is politicized; or where the environment, its natural resources or ancestral lands are deliberately destroyed to persecute particular populations, ie promoting or deliberately failing to prevent environmental degradation as a weapon of oppression. Also relevant are situations where a government does not establish appropriate measures for preventing disasters whereby a particular population is disproportionately affected.²⁵

SEE FURTHER

Practical Toolkit, Key Consideration 2:

The hazard-scape should be considered as a whole.

Practical Toolkit, Key Consideration 4:

Human agency contributes to the impacts of climate change and disasters.

²⁴ For a refugee claim, this is captured by the requirement that persecution comprise 'systematic and discriminatory conduct': *Migration Act* (n 4) s 5J(4)(c). For a complementary protection claim, this is captured by the requirements for 'significant harm': *Migration Act* (n 4) ss 36(2A), 5(1).

²⁵ UNHCR (n 19) para 10 (citations omitted).

MYTH 4

The harm is not significant enough

Sometimes it might be thought that the harm feared is not sufficiently severe to reach the threshold of persecution or other 'significant harm', especially if it is of a socio-economic nature.

Why is this wrong?

A risk of persecution or other significant harm does not need to stem from a single disaster or climate change-related event. Rather, it can arise from a range of lesser harms that cumulatively reach the requisite threshold, including over time. For instance, the impacts of poverty or underdevelopment alone might not be regarded as an adequate risk. However, when considered alongside the hazard-scape as a whole and in light of the applicant's circumstances, a protection need may well arise.

Importantly, sections 5J(5)(d), (e) and (f) of the *Migration Act* are particularly helpful in the context of disasters and climate change, given their express acknowledgment that 'serious harm' (which is a requirement of 'persecution' under section 5J(4)(b)) includes:

- d. significant economic hardship that threatens the person's capacity to subsist;
- e. denial of access to basic services, where the denial threatens the person's capacity to subsist; and
- f. denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

The better approach

It is essential to consider the hazard-scape as a whole and to take a cumulative approach to assessing the risk of harm.

As noted above, in the context of climate change and disasters, people's rights to life, food security, shelter and health, among many other things, may be adversely impacted by the effects of climate change and disasters. In some situations, or for some people, the combined impacts may threaten their capacity to subsist. Furthermore, the trajectory of risk may increase over time if the impacts of climate change and disasters are not effectively addressed. The New Zealand Immigration and Protection Tribunal has explained that, in assessing risk, it is necessary to consider:

the forward looking nature of the inquiry, the nature of the hazard, including its intensity and frequency, as well as any positive changes in disaster risk reduction and operational responses in the country of origin, or improvements in its adaptive capacity ...²⁶

SEE FURTHER

Practical Toolkit, Key Consideration 2:

The hazard-scape should be considered as a whole.

Practical Toolkit, Key Consideration 3:

Climate change and disasters affect people in different ways.

MYTH 5

Disasters are only temporary

Because disasters may occur suddenly – for example, floods, cyclones or bushfires may manifest rapidly and without much warning – they are often viewed as discrete events with no ongoing or lasting impacts. It might be assumed that people can return home once the disaster is over, and that there is no *future* risk of harm.

Why is this wrong?

While some disasters occur suddenly, others take place over much longer periods of time. For example, drought, desertification and sea-level rise may develop gradually and continue well into the future, or even indefinitely.

Even when a disaster is relatively short-lived – for example, a cyclone that lasts only hours or days – the *impacts* (including psychological impacts) may be felt for a much longer period of time.

Further, some of the risks that result from disasters may even increase over time and long after the disaster itself has passed. For example, challenges in restoring water and sanitation facilities may generate increased risks of disease following disasters. Temporary shelters and inadequate protection may lead to increased risks of sexual and gender-based violence for those who have lost their homes. Even evacuations – which may save lives by moving people out of immediate danger – may exacerbate other risks, including risks of psychological harm.²⁷

The better approach

Consideration of an international protection claim should take into account not only the immediate, or most obvious, impacts of natural hazards and disasters, but also the longer-term impacts following a disaster, including risks that may arise in temporary shelters or in contexts where assistance and protection is limited. For instance, the Austrian Federal Administrative Court granted subsidiary protection to an applicant from Somalia because his life and physical integrity were at risk from ongoing drought and a precarious food supply, especially given his subsistence lifestyle and lack of any alternative means of earning a living.²⁸

²⁶ *AC (Tuvalu)* [2014] NZIPT 800517, para 69. See also *AW (Kiribati)* (n 18) para 108, referring to the 'trajectory of risk'.

²⁷ See *McAdam* (n 22).

²⁸ *W251 2137996-1*, Bundesverwaltungsgericht (Austria, 7 June 2017). See also *Practical Toolkit* (n 1) paras 45, 83.

Even if people return home after a disaster, this does not necessarily mean that they have found a durable solution. In fact, it may mean 'moving back into the same set of environmental, socio-economic and political conditions that heightened the risk of displacement originally'²⁹ – or into even more precarious conditions.

SEE FURTHER

Practical Toolkit, Key Consideration 5:

The risk of harm may manifest over time.

MYTH 6

People can relocate to avoid the impacts of climate change and disasters

When disasters occur in only part of the country of origin, it may be assumed that those affected can simply move to another part of the country that has not been affected.

Why is this wrong?

The impacts of climate change and disasters may be widespread and affect a whole country. Without mitigation, adaptation efforts and other interventions, these impacts will worsen over time and become increasingly severe. Climate change also exacerbates the risk and frequency of disasters occurring. Given the future-oriented nature of international protection, this is a very important consideration – whole areas of a country may not be suitable for relocation into the future.

Furthermore, even if the impacts of climate change or disasters are themselves localized, a country's resources to address them may be extremely strained, diverting assistance from other policy areas and programmes across the country. In addition, where disaster- or climate change-related risks arise in the context of structural discrimination, such discrimination may also be present across the country as a whole. Localized climate change or disaster impacts do not automatically mean that the risk of harm is also localized.

The better approach

If the adverse impacts of climate change and disasters are felt across the applicant's whole country – or the trajectory of risk suggests they will be felt in this way – then the relevant risk of harm may be present in all areas of the country. As UNHCR observes, 'slow-onset effects of climate change, for example

environmental degradation, desertification or sea level rise, initially affecting only parts of a country, may progressively affect other parts, making relocation neither relevant nor reasonable'.³⁰

Even if the impacts of disasters and climate change are localized, decision-makers should carefully consider the country conditions and potential risks of harm – whether arising from disasters, climate change or other factors – to an applicant across the country as a whole. For complementary protection claims, potential relocation to a safe part of the country will only justify rejection of a claim if it is 'reasonable' for the applicant to relocate there.³¹ This involves consideration of a much broader range of factors than the criteria for significant harm.

It is important to understand that the impacts of climate change and disasters may be relevant to the assessment of an applicant's potential to relocate elsewhere in the country, even if they do not form part of the protection claim itself. For example, in a case where climate change and disasters were not part of the main protection claim, the Federal Court of Australia observed that '[i]t cannot be reasonable to expect a refugee to avoid persecution by moving into an area of grave danger, whether that danger arises from a natural disaster (for example, a volcanic eruption), a civil war or some other cause'.³²

SEE FURTHER

Practical Toolkit, Key Consideration 2:

The hazard-scape should be considered as a whole.

MYTH 7

Governments cannot control the impacts of climate change and disasters

Many governments would like to protect people from the impacts of climate change and disasters, but they simply lack the resources to do so. It is sometimes argued that international cooperation and financing, not international protection, are the more appropriate responses.

Why is this wrong?

It is true that many governments are willing, but simply unable, to adequately protect people from the impacts of climate change and disasters. This could be due to insufficient resources or the overwhelming nature of the impacts. International cooperation and financing are certainly needed to support these States. However, this does not automatically mean that people are not in need of international protection.

²⁹ Jane McAdam, Erica Bower, Sanjula Weerasinghe and Tamara Wood, *Submission to the UN Secretary-General's High-Level Panel on Internal Displacement on Internal Displacement in the context of Disasters and Climate Change* (6 May 2020) 4.

³⁰ UNHCR (n 19) para 12.

³¹ Migration Act (n 4) s 36(2B)(a).

³² *Perampalam v Minister for Immigration and Multicultural Affairs* [1999] FCA 165, (1999) 84 FCR 274, 284 (Burchett and Lee JJ), cited with approval in *MZYLV v Minister for Immigration and Citizenship* [2011] FMCA 888, para 133.



Image courtesy of Adobe Stock

Under international law, all States must meet certain minimum standards to protect human rights, implement disaster risk reduction and management strategies, and address climate change. This does not mean that they need to reduce the risk to zero, but for the purposes of international protection, it must be below the threshold of a real chance of persecution or other significant harm.

The better approach

Decision-makers need to examine what action or inaction the home government is taking to address known risks.³³ For example, the duty to protect the right to life includes an obligation on States to protect people from foreseeable disaster-related risks. If the authorities fail to safeguard against known risks, this could support an international protection claim – at least where risk reduction activities would not pose ‘[a]n impossible or disproportionate burden’ on the government.³⁴ By contrast, if the authorities are able and willing to provide protection at an effective level, then there may be no real risk of harm.

The ‘progressive realization’ approach to socio-economic rights may be a useful way to distinguish between States that

are unwilling to protect people and those simply unable to do so. This approach treats States’ obligations with respect to health, education and housing, for example, as relative to their resources and capacities – although there is always a minimum core obligation to each right. In addition, States’ responsibilities concerning climate change and disaster risk management are also relevant to assessing whether a State has failed to act, including with respect to mitigation, adaptation and disaster risk reduction.

Since the impacts of climate change are constantly evolving, measures that are currently considered adequate to protect people may no longer be so in the future. As such, decision-makers must use the most current evidence available in the assessment of each case.

SEE FURTHER

Practical Toolkit, Key Consideration 4:

Human agency contributes to the impacts of climate change and disasters.

³³ For deeper analysis, see Michelle Foster, Jane McAdam and Hélène Lambert, *The Time Trap in International Protection: The Misplaced Notion of “Imminence”* (2024) 56 *Georgetown Journal of International Law* 273, 307–09.

³⁴ See *Practical Toolkit* (n 1) para 76, referring to *Budayeva and Others v Russia* [2008] ECHR 15339/02, para 135.

C. Scenarios: sample case study analyses

The two scenarios analysed in this section illustrate how the principles articulated above might apply in practice. Through a detailed application of Australia's domestic legal framework to two fictional case studies, these scenarios show how the impacts of climate change and disasters intersect with other risks and hazards, such that those affected may qualify for international protection.

For both scenarios, the outcome of an international protection claim – whether successful or not, and whether assessed according to the refugee or complementary protection criteria – would depend on the available evidence and would require more information than is provided here. However, the analyses below illustrate how a close analysis of claims involving the impacts of climate change and disasters may reveal a range of risks and hazards, some of which provide the basis for a successful protection claim. They are intended to encourage decision-makers and practitioners to look beyond the adverse effects of climate change and disasters per se, to the broader context in which they occur.

SCENARIO 1

Lilia (drought)

Facts

Lilia lives with her five children in the southern region of Kalunda, a large semi-arid country in Africa. The southern region is mostly inhabited by minority ethnic groups, who have been historically marginalized in the country and who are either nomadic pastoralists or rely on subsistence farming. Kalunda's highly centralized government largely ignores the southern region, due to the high population of ethnic minorities there who have traditionally supported the country's opposition political party. Government resources are directed mostly to the capital city and nearby areas. Poverty is high among residents of the southern region and there exists limited infrastructure or available basic services.

Each year, from August to October, Lilia relies largely on food handouts from her neighbours and community leaders to get her and her children through the dry season. But things are getting harder. Over the last few years, the Kalundan government has repossessed large parcels of land in the region to use for large-scale cattle farming, so even the food reserves that usually support families through the dry season are rapidly dwindling.

This year, the dry season began early, and by June, the small block of land owned by Lilia's family was producing almost no food. Lilia visited her neighbours, but they also had little or no food. Even before the drought, many were struggling. Lilia also visited the local government offices to ask for help, but they just laughed and suggested she go to the capital city to ask for help.

Malnutrition was increasing among children in the region and, as the weeks continued, several elderly people in Lilia's village died due to food shortages. Feeling desperate, and knowing that things were only likely to get worse, Lilia sold all her possessions and flew with her children to Australia to stay with a cousin. While in Australia, she applied for a protection visa.

Q: Is Lilia eligible for refugee status or complementary protection under the *Migration Act*?

Analysis: Refugee claim

1. Persecution

In order to qualify for protection as a refugee under the *Migration Act*, Lilia must have a well-founded fear of persecution involving 'serious harm'³⁵ and 'systematic and discriminatory conduct'.³⁶

1.1 Serious harm

Serious harm includes threats to life³⁷ and economic hardship where it 'threatens the person's capacity to subsist'.³⁸ For economic hardship to qualify as serious

³⁵ *Migration Act* (n 4) s 5J(4)(b).

³⁶ *Ibid*, s 5J(4)(c).

³⁷ *Ibid*, s 5J(5)(a).

³⁸ *Ibid*, s 5J(5)(d).

harm, it must 'challenge the ability of the individual to continue to exist or remain in being'.³⁹ According to the Administrative Review Tribunal's *A Guide to Refugee Law in Australia (ART Guide)*, economic hardship may be 'more detrimental' to some applicants than others, depending on their 'personal attributes or circumstances such as age or frailty'.⁴⁰

In the context of severe drought and with no access to assistance, the lack of food is a severe form of economic hardship that may threaten Lilia's capacity to subsist, involving serious physical impacts, including malnourishment and even loss of life. The severity of the harm may be even greater for Lilia's children, owing to their young age and greater nutritional needs.

1.2 Systematic and discriminatory conduct

Systematic conduct involves a pattern of conduct that is "non-random" in the sense of being deliberate, pre-meditated or intended'.⁴¹ This requires an element of 'motivation' on the part of the persecutor,⁴² but does not require enmity or malignity.⁴³ Discriminatory conduct includes conduct in which 'persons who are not different, in a relevant sense, are treated in a different manner'.⁴⁴ According to the *ART Guide*, '[m]ere inaction would not suffice – however discriminatory inaction would not amount to mere inaction'.⁴⁵

The Kalundan government's failure to provide basic services or food assistance to the drought-affected southern region occurs in the context of long-term neglect of this part of the country, when compared with other parts of the country. It has been compounded by the government's repossession of land, which has reduced the region's capacity to cope. The consistency of the government's neglect of this specific region over time suggests it is not 'random'. The fact that other parts of the country have been much better supported indicates that it is not solely due to a lack of resources, but likely connected to the ethnic minorities there and their perceived support for the opposition political party. The government's discriminatory inaction in the face of severe drought may therefore be characterized as systematic and discriminatory conduct, and thus persecution.

1.3 Agent of persecution

Human agency is required in order to establish an international protection claim.⁴⁶ For a refugee claim, this involves identifying the agent of persecution and whether it is a State or non-State actor.⁴⁷ Identifying the agent of persecution does not mean identifying who is responsible for climate change or a particular disaster, but rather who is responsible for the risk of harm (persecution) to the applicant.⁴⁸ According to the *ART Guide*, '[f]ailure of state protection can ... constitute persecution within the meaning of the Convention, where such failure is itself for a Convention reason'.⁴⁹ The failure of a State to provide adequate aid or assistance in response to a drought may therefore establish the requisite human agency.⁵⁰

In Lilia's claim, the risk of serious harm amounting to persecution arises not simply from the drought in Kalunda, but from the total absence of food or other assistance to deal with the drought, as well as actions by the Kalundan government that have reduced the availability of food. The agent of persecution in Lilia's claim is therefore the State itself, via its contribution to the risk of harm and its failure to provide adequate aid or assistance to those affected.

SEE FURTHER

Myth 4: The harm is not significant enough.

Myth 7: Governments cannot control the impacts of climate change and disasters.

Practical Toolkit, Key Consideration 4:

Human agency contributes to the impacts of climate change and disasters.

Practical Toolkit, paragraph 42:

'For many international protection claims, the human agency requirement is captured by the inability or unwillingness of the applicant's State to protect the applicant from harm. In the context of climate change and disasters, this could include the government's failure to evacuate people at risk; provide life-saving assistance; ensure equitable access to aid; or even to take disaster risk reduction or adaptation measures that would reduce the risk.' (citations omitted)

³⁹ *SZIGC v Minister for Immigration and Citizenship* [2007] FCA 1725, para 23, cited in Legal Services Section, Administrative Review Tribunal (ART), *A Guide to Refugee Law in Australia* (October 2024) ch 4, 7.

⁴⁰ *ART Guide* (n 39) ch 4, 11.

⁴¹ *Ibid*, ch 4, 14, citing *Haji Ibrahim* (n 14) 30 (McHugh J); see also Department of Home Affairs, *Refugee Law Guidelines* (reissued 27 November 2022) pt 3.10.3.1 (*Refugee Guidelines*).

⁴² *ART Guide* (n 39) ch 4, 15, discussing *Ram v Minister for Immigration and Ethnic Affairs* [1995] FCA 1333, (1995) 57 FCR 565, 568 (Burchett J).

⁴³ *ART Guide* (n 39) ch 4, 15.

⁴⁴ *Refugee Guidelines* (n 41) pt 3.10.3.2, citing *Haji Ibrahim* (n 14).

⁴⁵ *ART Guide* (n 39) ch 4, 18 (emphasis omitted).

⁴⁶ *Practical Toolkit* (n 1) paras 39–42 (Key Consideration 4).

⁴⁷ *Refugee Guidelines* (n 41) pt 3.10.5; *ART Guide* (n 39) ch 4, 16ff, citing *Minister for Immigration and Multicultural Affairs v Respondent S152/2003* [2004] HCA 18, (2004) 222 CLR 1, 8 (Gleeson CJ, Hayne and Heydon JJ), following *Minister for Immigration and Multicultural Affairs v Khawar* [2002] HCA 14, (2002) 210 CLR 1. See also *Respondent S152/2003* (n 47) 27 (McHugh J), 40 (Kirby J).

⁴⁸ *Practical Toolkit* (n 1) paras 39–42.

⁴⁹ *ART Guide* (n 39) ch 4, 18.

⁵⁰ *Practical Toolkit* (n 1) para 42, citing *Case of Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [2024] ECHR 53600/20, esp paras 544ff.

2. Well-founded fear

Lilia will have a 'well-founded fear' of persecution if there is a 'real chance' that it will occur if she returns to Kalunda.⁵¹ The real chance of persecution must be present in 'all areas' of the country.⁵²

2.1 Real chance

According to the High Court of Australia, a real chance of persecution entails a 'substantial, as distinct from a remote' chance,⁵³ although it may be well below a 50 per cent chance.⁵⁴ This is a forward-looking assessment of risk to be determined at the time the application is decided,⁵⁵ based on the chance of persecution not only in the short term but also in the 'reasonably foreseeable' future.⁵⁶

If there has been no significant change in circumstances at the time when Lilia's claim is determined – that is, if the drought remains ongoing and no food assistance is available to her – there is a real chance that Lilia would face persecution if returned. Even if the drought has ended, Lilia may still face a real chance of persecution if food supplies remain below normal levels and she is unable to access assistance.

Moreover, access to food may remain limited, or even worsen, for a period of time following the end of the drought. Severe drought leads to widespread loss of crops and livestock. It may take a long time for these to recover or be replaced and for food production to resume. In addition, the impacts of climate change may increase the likelihood of further severe droughts in the future, or may mean that food production never returns to pre-drought levels. Conversely, if the government starts to provide substantial food assistance to residents in the southern provinces, the risk of serious harm resulting from the government's systematic and discriminatory conduct may reduce, or even disappear.

An assessment of the risk of persecution to Lilia therefore requires careful consideration of the future impacts of drought in southern Kalunda and the likely government response. Without a significant change in at least one of these factors, Lilia is likely to face a real chance of persecution if returned.

2.2 All areas of the country

Even if a well-founded fear of persecution can be demonstrated, refugee protection is precluded under the *Migration Act* if there are other areas of the country 'where there is safe human habitation and to which safe access is lawfully possible' for the applicant.⁵⁷ While the reasonableness of relocating to another part of the country is not relevant for refugee claims under the *Migration Act*,⁵⁸ a majority of the Full Federal Court held that there must still be a genuine possibility of living there, and that areas where a person would face 'a likely inability to find food, shelter or work' should not be considered for relocation.⁵⁹

The risk of persecution to Lilia appears to be most significant in the southern provinces of Kalunda due to the drought there. However, careful consideration of the conditions Lilia is likely to face elsewhere in Kalunda is required in order to determine whether the risk of persecution to Lilia is limited to the southern provinces, or whether she faces similar (or different) risks elsewhere in the country. In particular, given that the inaction of the government in the southern provinces appears to reflect more generalized discrimination against ethnic minorities and/or those perceived to support the opposition political party, it is possible that Lilia may face systematic and discriminatory conduct elsewhere in the country as well.

SEE FURTHER

Myth 5: Disasters are only temporary.

Practical Toolkit, Key Consideration 5:
The risk of harm may manifest over time.

Practical Toolkit, paragraph 43:

'While the assessment of future risk must be made at the time the claim is determined, there is no limit on the future timeframe in which the risk is assessed. The impacts of climate change and disasters may emerge suddenly or gradually, and their effects may be felt over time.'

⁵¹ *Migration Act* (n 4) s 5J(1)(b). See also *Chan v Minister for Immigration and Ethnic Affairs* [1989] HCA 62, (1989) 169 CLR 379, 389 (Mason CJ), 396–98 (Dawson J), 406–07 (Toohey J), 428–29 (McHugh J).

⁵² *Migration Act* (n 4) s 5J(1)(c).

⁵³ *Chan* (n 51) 389 (Mason CJ).

⁵⁴ *ART Guide* (n 39) ch 3, 5.

⁵⁵ *Minister for Immigration and Ethnic Affairs v Singh* [1997] FCA 17, (1997) 72 FCR 288, cited in *ibid*, ch 3, 7.

⁵⁶ *ART Guide* (n 39) ch 3, 8, citing *SZQXE v Minister for Immigration and Citizenship* [2012] FCA 1292, para 7.

⁵⁷ *ART Guide* (n 39) ch 3, 24, citing *FCS17 v Minister for Home Affairs* [2020] FCAFC 68, (2020) 276 FCR 644, 652 (Allsop CJ), 666 (White and Colvin JJ).

⁵⁸ While the reasonableness of relocation is a common consideration in other jurisdictions, it is not part of the assessment for refugee claims under the *Migration Act* (n 4): *Explanatory Memorandum*, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Caseload Legacy) Bill 2014 (Cth), 10–11, para 1183 (2014 Explanatory Memorandum), cited in *ART Guide* (n 39) ch 3, 24.

⁵⁹ *FCS17* (n 57) 666 (White and Colvin JJ), cited in *ART Guide* (n 39) ch 3, 26.

3. Nexus with a protected ground ('for reasons of')

To qualify as a refugee, the risk of persecution to the applicant must be 'for reasons of' one of five protected grounds – race, religion, nationality, membership of a particular social group or political opinion.⁶⁰

3.1 'For reasons of'

Establishing that the risk of persecution is for reasons of one of the five protected grounds involves identifying an element of motivation on the part of the persecutor,⁶¹ which may be based on the perceived or imputed (rather than actual) characteristics of the applicant.⁶² According to the *ART Guide*, the decision-maker should consider any potentially relevant grounds raised by the facts and evidence, 'even if [they are] not expressly claimed by the applicant'.⁶³

It is well recognized that climate change and disasters can have differential impacts on specific groups of people and that these may reflect pre-existing discrimination and marginalization. For example, the former Administrative Appeals Tribunal (replaced by the Administrative Review Tribunal) noted that governments may withhold support in a discriminatory manner after disasters.⁶⁴ In another case, the Tribunal considered evidence of discrimination against the LGBTQIA+ community in times of disaster.⁶⁵ Several protected grounds arise in Lilia's case. These include her race, perceived (imputed) political opinion, or membership of a particular social group, such as residents of southern Kalunda.

3.2 Race

Race is understood broadly and includes ethnic origin.⁶⁶ If the absence of State support for residents of the southern provinces is due to discrimination against the ethnic minority groups that reside there, then the risk of persecution to Lilia may be for reasons of race. This is the case if Lilia is in fact a member of an ethnic minority, or if she is perceived as such due to her residence in an area that is predominantly populated by such minorities.

3.3 Membership of a particular social group

Lilia may also be a member of a particular social group consisting of residents of the southern provinces of Kalunda. Because residence in a particular part of the country is arguably not innate or immutable,⁶⁷ nor so

fundamental to a person's identity or conscience that they should not be forced to renounce it,⁶⁸ residence of the southern provinces will need to be distinguishable as a group from society if it is to qualify as a particular social group.⁶⁹

Residing in a particular region of the country readily constitutes a shared attribute. The longstanding marginalization of such residents, which pre-dates the impacts of the present drought, may suggest these residents are distinguishable as a group from society, so long as the government's neglect is not the key uniting feature, since a shared risk of persecution cannot be the defining feature of a particular social group.⁷⁰

3.4 Essential and significant reason

One of the five protected grounds must be the 'essential and significant reason' for the persecution.⁷¹ It need not be the sole reason,⁷² but cannot be merely a 'minor or non-central' reason.⁷³

The persistent neglect of the southern provinces of Kalunda over time seems likely to be connected to the high population of ethnic minorities there and/or their perceived support for the opposition political party. The relatively higher degree of support for other parts of the country suggests that it is not simply a matter of limited resources, but instead is deliberate and discriminatory. While further information may be needed to establish the connection between the government's neglect and these factors, the relatively higher level of support provided by the government in other parts of the country suggests that they are significant reasons for the risks faced by Lilia.

SEE FURTHER

Practical Toolkit, Key Consideration 3:

Climate change and disasters affect people in different ways.

Practical Toolkit, paragraph 61:

'[D]iscriminatory policies and practices that leave people disproportionately exposed to hazards and disasters – for example, because they are forced to live in particularly dangerous areas or are excluded from risk mitigation or adaptation responses – may be relevant in establishing the nexus with a Convention ground.' (citation omitted)

⁶⁰ Migration Act (n 4) s 5J(1)(a).

⁶¹ See *Ram* (n 42) 568 (Burchett J); *Applicant A* (n 14) 284 (Gummow J); *Haji Ibrahim* (n 14) 32–33 (McHugh J); *ART Guide* (n 39) ch 5, 5.

⁶² *Chan* (n 51) 416 (Gaudron J), 433 (McHugh J); *Applicant A* (n 14) 240 (Dawson J), 284 (Gummow J); *Minister for Immigration and Ethnic Affairs v Guo* [1997] HCA 22, (1997) 191 CLR 559, 570–71 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ); *ART Guide* (n 39) ch 5, 6–7.

⁶³ *ART Guide* (n 39) ch 5, 11.

⁶⁴ *2403061 (Refugee)* [2024] AATA 2998, para 23. In this case, the Administrative Appeals Tribunal held that, on the facts, there was insufficient evidence to support the claim that the government would withhold support on a discriminatory basis in the future.

⁶⁵ *2111877 (Refugee)* [2024] AATA 2649.

⁶⁶ *ART Guide* (n 39) ch 5, 11–12, citing *Calado v Minister for Immigration and Multicultural Affairs* [1997] FCA 1490, (1998) 81 FCR 450, 455.

⁶⁷ Migration Act (n 4) s 5L(c)(i).

⁶⁸ Ibid, s 5L(c)(ii). There may be cases where a person's connection to land could satisfy this test (eg Indigenous peoples).

⁶⁹ Ibid, s 5L(c)(iii); *Applicant S v Minister for Immigration and Multicultural Affairs* [2004] HCA 25, (2004) 217 CLR 387.

⁷⁰ Migration Act (n 4) s 5L(d). See also *ART Guide* (n 39) ch 5, 21, citing *Applicant A* (n 14) 242 (Dawson J), 263 (McHugh J).

⁷¹ Migration Act (n 4) s 5J(4)(a).

⁷² *Refugee Guidelines* (n 41) pt 3.10.2.

⁷³ *ART Guide* (n 39) ch 5, 9.

4. Effective protection

The question of effective protection arises in two main ways. First, a person will only be entitled to protection as a refugee if they are unable or unwilling to avail themselves of the protection of their country of origin.⁷⁴ Secondly, a person will be held not to have a well-founded fear of persecution 'if effective protection measures are available' to them.⁷⁵ The availability of effective protection takes into account protection by non-State actors,⁷⁶ where such an actor 'controls the relevant State or a substantial part of [its] territory'.⁷⁷ Effective protection must be accessible and durable.⁷⁸

Australian case law suggests that effective protection does not need to reduce all risk.⁷⁹ Protection that meets international standards may be sufficient.⁸⁰ While it is not necessary for a decision-maker to specify the relevant 'international standards' against which the available protection is assessed,⁸¹ effective protection is not available if a government fails to meet its positive protection obligations, at least where meeting such obligations would not impose a disproportionate burden.⁸² In the context of climate change, jurisprudential developments such as the International Court of Justice's Advisory Opinion on the *Obligations of States in respect of Climate Change* could help to identify and articulate relevant obligations in this context.⁸³ In any event, 'the required system of protection is one of reasonable, but not perfect, efficiency'.⁸⁴

There is no indication that an international organization or other non-State actor has assumed control of the southern region of Kalunda. The question in the present scenario is therefore limited to whether effective State protection exists.

The persistent discrimination and marginalization over time of ethnic minority groups in southern Kalunda, which has extended to discriminatory inaction in the context of severe drought, indicates that effective protection is not available to Lilia. As already noted, this may suggest that effective protection will be unavailable elsewhere in Kalunda as well. If further information indicates that effective protection is available to Lilia, for example in the capital of Kalunda or

elsewhere in the country, difficulties in travelling to or living in other parts of the country – particularly with three young children in the absence of family or social support – may mean that such protection would not be accessible and durable for Lilia.

SEE FURTHER

Myth 7: Governments cannot control the impacts of climate change and disasters.

Practical Toolkit, Key Consideration 4:

Human agency contributes to the impacts of climate change and disasters.

Analysis: Complementary protection claim

5. Complementary protection

Where a refugee claim is unsuccessful, an applicant may be eligible for complementary protection if there are 'substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm'.⁸⁵

The assessment of future risk is the same under both the refugee and complementary protection criteria.⁸⁶ The requirement that there be 'substantial grounds for believing' overlaps significantly with the 'real chance' requirement, with the former simply referring to the evidentiary burden for the latter.⁸⁷ The requirement that the significant harm be a 'necessary and foreseeable consequence' of the applicant's removal may preclude claims where the risk of harm is dependent on something other than the person's removal from Australia – for example, on their actions once returned.⁸⁸

While Australia's complementary protection regime is intended to reflect certain *non-refoulement* obligations under international human rights law,⁸⁹ the *Migration Act* does not directly incorporate relevant provisions from the Convention

⁷⁴ *Migration Act* (n 4) s 5H(1).

⁷⁵ *Ibid*, s 5J(2). See also *Chan* (n 51) 430 (McHugh J), cited in *ART Guide* (n 39) ch 4, 16.

⁷⁶ *ART Guide* (n 39) ch 8, 19.

⁷⁷ *Migration Act* (n 4) s 5LA(1)(a)(ii).

⁷⁸ *Ibid*, s 5LA(2)(a), (b).

⁷⁹ See eg *Respondent S152/2003* (n 47) 11, cited in *ART Guide* (n 39) ch 8, 10. There, Gleeson CJ, Hayne and Heydon JJ stated that '[n]o country can guarantee that its citizens will at all times, and in all circumstances, be safe from violence'.

⁸⁰ See eg *Respondent S152/2003* (n 47). See also the discussion of relevant case law in *ART Guide* (n 39) ch 8, 12–13.

⁸¹ *ART Guide* (n 39) ch 8, 11.

⁸² *Ibid*, citing *Osman v United Kingdom* (1998) 29 EHRR 245, 116.

⁸³ International Court of Justice, Advisory Opinion on the *Obligations of States in respect of Climate Change* (23 July 2025).

⁸⁴ *ART Guide* (n 39) ch 8, 13, citing *Respondent S152/2003* (n 47) 117.

⁸⁵ *Migration Act* (n 4) s 36(2)(aa).

⁸⁶ *ART Guide* (n 39) ch 10, 7, citing eg *Minister for Immigration and Citizenship v SZQRB* [2013] FCAFC 33, (2013) 210 FCR 505. See also Department of Home Affairs, *Complementary Protection Guidelines* (reissued 7 November 2025) pt 3.5.1 (CP Guidelines).

⁸⁷ *ART Guide* (n 39) ch 10, 8. See also CP Guidelines (n 86) pt 3.5.5.

⁸⁸ *ART Guide* (n 39) ch 10, 11. For example, in *EJC18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCCA 3171, a claim of serious harm relating to the applicants' land claim was rejected because it depended on the applicants' choice to pursue the land claim and was therefore not a 'necessary' consequence of their removal: see paras 60–64.

⁸⁹ See generally *Practical Toolkit* (n 1) paras 66–88.

against Torture (CAT)⁹⁰ or the International Covenant on Civil and Political Rights (ICCPR).⁹¹ This means that establishing a complementary protection claim does not require a violation of the CAT or ICCPR per se.⁹²

5.1 Significant harm

'Significant harm' in the *Migration Act* is different from 'serious harm',⁹³ although many forms of harm will qualify as both.⁹⁴ Significant harm is defined exhaustively in the *Migration Act* as the arbitrary deprivation of life; the death penalty; torture; cruel or inhuman treatment or punishment; and degrading treatment or punishment.⁹⁵ There is no general requirement that significant harm be inflicted by a person acting in an official capacity.⁹⁶

Arbitrary deprivation of life is not defined in the *Migration Act*, although it appears to be interpreted more narrowly in Australia than a violation of the 'right to life' under international law.⁹⁷ According to the *ART Guide*, 'judicial comments in Australia have suggested that this kind of harm concerns such things as extrajudicial killing and the excessive use of police force, and does not concern the consequences of scarce medical resources in developing countries'.⁹⁸ There is no requirement for the arbitrary deprivation of life to be intentional or occur as a result of an intentional act or omission.⁹⁹

Cruel or inhuman treatment or punishment will be established where an act or omission causes physical or mental pain or suffering that either is severe¹⁰⁰ or is accompanied by an act or omission that could be reasonably considered to be cruel or inhuman.¹⁰¹ This test takes into account the applicant's 'individual vulnerabilities and characteristics'.¹⁰² A subjective intention on the part of the perpetrator to cause such suffering is required:¹⁰³ mere negligence will not suffice.¹⁰⁴ According to the High Court, the intention to cause significant harm requires an 'actual, subjective, state of mind' and not merely knowledge or foresight that significant harm is likely to occur, although such knowledge may provide evidence of the relevant intention.¹⁰⁵

Degrading treatment or punishment will be established where an act or omission 'causes, and is intended to cause, extreme humiliation' and is inconsistent with article 7 of the ICCPR.¹⁰⁶ Violations of socio-economic rights, such as rights to housing and medical treatment, will qualify as significant harm only in 'exceptional circumstances' and when the results of such violations constitute cruel, inhuman or degrading treatment or punishment.¹⁰⁷

The severity of the drought, the lack of food and the presence of child malnutrition and elderly deaths in southern Kalunda suggest that there may be a risk to Lilia of being arbitrarily deprived of life. This risk does not appear to be simply due to scarce resources, but rather the result of the deliberate and discriminatory inaction on the part of the government, coupled with its positive action to reduce food availability in the southern region. In this context, loss of life as a result of the lack of food could constitute arbitrary deprivation of life.

In addition, Lilia's lack of food is likely to cause severe physical and/or mental suffering and may therefore constitute cruel or inhuman treatment. This will not give rise to significant harm if it is the result of mere negligence and does not include the requisite intent. Establishing the requisite subjective frame of mind here may be challenging. However, this could be inferred from the ongoing discrimination by the government against the southern region over time, coupled with the positive actions of the government in repossessing land in the region.

Without further information, the conditions faced by Lilia do not indicate an intention to cause extreme humiliation.

5.2 Relocation

A person facing the requisite risk of significant harm will nevertheless be precluded from complementary protection if 'it would be reasonable for [them] to relocate to an area of the country where there would not be a

⁹⁰ [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (adopted 10 October 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

⁹¹ [International Covenant on Civil and Political Rights](#) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR). By contrast, New Zealand's domestic legislation refers specifically to these obligations: [Immigration Act 2009](#) (NZ), ss 130, 131 (*Immigration Act*).

⁹² *CP Guidelines* (n 86) pt 3.4.

⁹³ *ART Guide* (n 39) ch 10, 12ff.

⁹⁴ For example, the risk of being killed: see [MZZIA v Minister for Immigration and Border Protection](#) [2014] FCCA 717, para 34.

⁹⁵ *Migration Act* (n 4) ss 36(2A), 5(1).

⁹⁶ *ART Guide* (n 39) ch 10, 20, citing [BPF15 v Minister for Immigration and Border Protection](#) [2018] FCA 964, (2018) 264 FCR 319, 334, 335.

⁹⁷ According to the *ART Guide* (n 39) ch 10, 15, 'case law from other jurisdictions considering a positive right to life (such as the provision of medical treatment or measures to increase life expectancy or reduce mortality) is unlikely to be directly applicable to the interpretation of s 36(2A)(a)'. See further Jane McAdam, 'Australian Complementary Protection: A Step-by-Step Approach' (2011) 33 *Sydney Law Review* 687, esp 694; jurisprudence of the United Nations Human Rights Committee (UNHRC) on the right to life (with dignity) under article 6 of the ICCPR (n 91), including [Teitiota v New Zealand](#), Comm No 2728/2016 (24 October 2019).

⁹⁸ *ART Guide* (n 39) ch 10, 13–14 (citations omitted).

⁹⁹ *CP Guidelines* (n 86) pt 3.4.1.1.

¹⁰⁰ *Migration Act* (n 4) s 5(1)(a).

¹⁰¹ *Ibid*, s 5(1)(b).

¹⁰² *CP Guidelines* (n 86) pt 3.4.5.3.

¹⁰³ *ART Guide* (n 39) ch 10, 18, citing [SZTAL v Minister for Immigration and Border Protection](#); [SZTGM v Minister for Immigration and Border Protection](#) [2017] HCA 34, (2017) 262 CLR 362, 372 (Kiefel CJ, Nettle and Gordon JJ), 400–01 (Edelman J). See also *ibid*, pt 3.4.3.

¹⁰⁴ *ART Guide* (n 39) ch 10, 18, citing [SZSPE v Minister for Immigration and Border Protection](#) [2013] FCCA 1989, paras 68, 72.

¹⁰⁵ *SZTAL* (n 103). See also *CP Guidelines* (n 86) pt 3.4.3.1.

¹⁰⁶ *Migration Act* (n 4) s 5(1).

¹⁰⁷ *CP Guidelines* (n 86) pt 3.4.3.

real risk that [they] will suffer significant harm'.¹⁰⁸ This component of complementary protection entails two questions. First, is there a part of the country where Lilia would not face a real risk of significant harm? Secondly, would it be reasonable for her to relocate there? What is reasonable depends on the applicant's circumstances and the impact on them of relocating.¹⁰⁹

As noted already, further information about the conditions Lilia would face elsewhere in Kalunda is required in order to determine whether the risks she faces are limited to the southern provinces, or whether they (or other risks) exist elsewhere in the country.

If the same or similar risks are not present elsewhere in Kalunda, careful consideration must still be given to whether it would be reasonable for Lilia to relocate there. This should take into account the available support and/or assistance to her elsewhere in the country. It should also take into account the fact that Lilia has three young children. If significant government assistance is not available to support Lilia to relocate, and if she does not have significant family or social support elsewhere, relocating may be very detrimental to Lilia. The fact that she did not already relocate despite her very difficult conditions may suggest that it is not reasonable.

5.3 Protection from an authority

A person will not be eligible for complementary protection if they 'could obtain, from an authority of the country, protection such that there would not be a real risk that [they] will suffer significant harm'.¹¹⁰ This is similar to the consideration of available protection under the refugee criteria, although judicial consideration indicates that a different standard of protection applies in the complementary protection context (where the protection must be sufficient to *remove* the real risk of significant harm)¹¹¹ compared to the refugee context (where

adequate protection in line with international standards will suffice).¹¹²

As noted already, the absence of any government assistance in response to the severe drought suggests that Lilia is unlikely to be able to obtain protection from the authorities.

5.4 Risk to the applicant personally

A person will also be precluded from receiving complementary protection if they face a real risk of significant harm that is 'faced by the population ... generally and is not faced by the [applicant] personally'.¹¹³

Disasters such as drought will usually have at least some impact on the population generally.¹¹⁴ If there is no evidence to suggest that the applicant faces a greater risk than the population generally, then they will not satisfy this component.¹¹⁵ However, the risk of harm relating to the drought may be felt very differently by particular individuals or groups within the population. For example, in a case before the Administrative Appeals Tribunal, the Tribunal recognized that some people faced greater risks than others in the context of generalized flooding, poverty and the COVID-19 pandemic.¹¹⁶ In addition, the Federal Court of Australia held that a risk faced by an applicant due to their residence in a specific part of the country was a risk faced personally.¹¹⁷

The risk faced by Lilia is primarily due to her residence in the southern provinces of Kalunda. As such, it is faced by her personally and not by the population generally, notwithstanding the fact that others in the region may also face the same risk.¹¹⁸ If the risk relates to broader government discrimination or marginalization of minority ethnic groups, the differential treatment that this entails further supports the conclusion that the risk is faced by Lilia personally.

¹⁰⁸ *Migration Act* (n 4) s 36(2B)(a).

¹⁰⁹ *ART Guide* (n 39) ch 10, 31.

¹¹⁰ *Migration Act* (n 4) s 36(2B)(b).

¹¹¹ *ART Guide* (n 39) ch 10, 32.

¹¹² See *Minister for Immigration and Citizenship v MZYYL* [2012] FCAFC 147, (2012) 207 FCR 211, 218–19, cited in *ART Guide* (n 39) ch 10, 33; *ABAR15 v Minister for Immigration and Border Protection (No 2)* [2016] FCA 721, (2016) 242 FCR 11, 27, cited in *ART Guide* (n 39) ch 10, 33.

¹¹³ *Migration Act* (n 4) s 36(2B)(c).

¹¹⁴ See eg *1822222 (Refugee)* [2024] AATA 3637, para 50.

¹¹⁵ See eg *1827364 (Refugee)* [2023] AATA 873, para 122, where the Administrative Appeals Tribunal noted that 'there is nothing to indicate that the applicant would be at greater risk of natural disasters or public health risks (such as contracting COVID-19) than the risks faced by the population of Bangladesh generally'.

¹¹⁶ *2102559 (Refugee)* [2021] AATA 3168, para 60. While this case concerned the risk of ethnic violence in South Sudan, the Administrative Appeals Tribunal noted that the applicant was at increased risk on account of the surrounding conditions, including disasters and food shortages, due to his ethnic identity.

¹¹⁷ *BCX16 v Minister for Immigration and Border Protection* [2019] FCA 465, (2019) 164 ALD 313, 320, cited in *ART Guide* (n 39) ch 10, 34.

¹¹⁸ This was confirmed by the Federal Court in *BCX16* (n 117) 320, cited in *ART Guide* (n 39) ch 10, 34.

SEE FURTHER

Myth 2: Climate change and disasters are indiscriminate.

Myth 3: There is no perpetrator in the context of climate change and disasters.

Myth 6: People can relocate to avoid the impacts of climate change and disasters.

Practical Toolkit, Key Consideration 2:

The hazard-scape should be considered as a whole.

Practical Toolkit, Key Consideration 3:

Climate change and disasters affect people in different ways.

Practical Toolkit, Key Consideration 4:

Human agency contributes to the impacts of climate change and disasters.

Practical Toolkit, paragraph 81:

'In the context of climate change and disasters, food or water shortages, insecure shelter and inadequate health care could potentially create a real risk of inhuman treatment ... especially when considered together.'
(citation omitted)

Summary of claim

Lilia is likely to meet several of the criteria for protection as a refugee. In the context of severe drought and with no access to food assistance, Lilia is at risk of serious harm in the form of economic hardship threatening her capacity to subsist and a threat to life. These risks do not arise from the drought alone, but also from the Kalundan government's failure to provide protection or assistance. The long-term marginalization of the southern provinces and the ethnic minorities who live there suggests that this failure is the result of systematic and discriminatory conduct and that it amounts to persecution for reasons of race. With no indication that this will change in the reasonably foreseeable future, there is a real risk of persecution to Lilia if returned. Further information is needed

to ascertain whether the real risk of persecution extends to all areas of the country.

If Lilia's refugee claim is not upheld, she may have a claim for complementary protection. The government's failure to provide any assistance in the context of severe drought and lack of food, coupled with the repossession of land used to grow food, could amount to arbitrary deprivation of life or to cruel or inhuman treatment. If Lilia would not face similar risks elsewhere in the country, it may be possible for her to relocate but further information is needed to determine whether this would be reasonable. Existing patterns of discrimination and marginalization of ethnic minorities, and the fact that Lilia has three young children, indicate that, without significant family or social support elsewhere in the country, relocation is unlikely to be reasonable.

Key takeaways

- > Where the impacts of climate change result in economic hardship, this may constitute persecution if such hardship threatens the applicant's capacity to subsist and is the result of discriminatory action or inaction by the government.
- > The impacts of climate change over time mean that, even if there is no real chance of persecution at present, a real chance of persecution may arise in the reasonably foreseeable future.
- > A government's failure to assist people impacted by disasters or climate change may entail systematic and discriminatory conduct and constitute persecution for reasons of one of the five protected grounds.
- > While disasters and climate change may affect the population generally, the risk of significant harm may also be felt personally and may differ between individuals or groups within the population.



SCENARIO 2

Karim and Amina (cyclone)

Facts

Karim and Amina are a married couple living near the coast of the small island nation of Taniora. Taniora is a very poor country and is regularly affected by tropical cyclones. Although the national government has adopted disaster management laws and climate adaptation plans, implementation is limited and corruption is common at the local level. Residents frequently complain that government assistance is distributed through political and family networks. Women and girls face high rates of gender-based violence, particularly outside of major towns. Access to health care, education and social services is limited and there is widespread distrust of police, who are perceived as inactive and uninterested in community concerns.

In April, Cyclone Naree struck Taniora, devastating houses, roads, crops and infrastructure across much of the country. The government declared a state of emergency and international humanitarian organizations began providing assistance, but recovery was very slow. Karim and Amina sought temporary shelter in a makeshift camp, while flood waters took weeks to recede. A few months after the cyclone, the authorities cleared all the camps and Karim and Amina were moved to a post-cyclone settlement centre in a nearby town.

At first, Karim and Amina believed they would be able to return home within a few weeks. Instead, conditions deteriorated. Food and medicine shortages worsened as stored supplies were exhausted, farmland remained unusable and emergency aid was unable to keep up with people's needs. Waterborne diseases spread through the overcrowded settlement centre, and many families lacked access to clean water and sanitation.

Nine months after the cyclone, reconstruction had begun in some areas, but Karim and Amina remained living in the settlement centre. Amina no longer felt safe leaving the centre each day to collect water and firewood, because this forced her through isolated areas where harassment and sexual violence against women were common. There were reports that some community leaders demanded money or sexual favours in exchange for housing allocations and inclusion on aid beneficiary lists.

Fearing that conditions may worsen further, Karim and Amina travelled to Australia on visitor visas and applied for protection.

Q: Are Karim and Amina eligible for refugee status or complementary protection under the *Migration Act*?

Analysis: Refugee claim

Note: This analysis considers Karim and Amina's protection claims together, noting any differences only where relevant.

1. Persecution

To qualify as refugees under the *Migration Act*, Karim and Amina must have a well-founded fear of persecution involving 'serious harm'¹¹⁹ and 'systematic and discriminatory conduct'.¹²⁰

1.1 Serious harm

Serious harm includes threats to life,¹²¹ significant physical ill-treatment,¹²² or economic hardship that threatens a person's capacity to subsist.¹²³ Potential harms should be considered cumulatively, such that 'the cumulative effect of a number of "lesser" harms, which of themselves do not constitute persecution, may lead to the conclusion that the combined effect of the harm is sufficiently serious to constitute persecution'.¹²⁴

In the context of the aftermath of a major cyclone, Karim and Amina face risks arising from a range of hazards. Some hazards – including the lack of food and clean water – are directly linked to the impacts of the cyclone. Other hazards – including the risks to Amina of harassment and sexual violence – are part of the broader social context. Yet other hazards – including the lack of aid and exposure to disease as a result of overcrowded shelters – result from the combined impacts of the cyclone, the broader social context and the government's failure to provide adequate assistance.

Considered cumulatively, the combination of hazards to which Karim and Amina are exposed may constitute significant physical ill-treatment, or even threats to life. This is particularly the case for Amina, given her additional exposure to gender-based harassment and violence.

¹¹⁹ *Migration Act* (n 4) s 5J(4)(b).

¹²⁰ *Ibid*, s 5J(4)(c).

¹²¹ *Ibid*, s 5J(5)(a).

¹²² *Ibid*, s 5J(5)(c).

¹²³ *Ibid*, s 5J(5)(d).

¹²⁴ *ART Guide* (n 39) ch 4, 21.

1.2 Systematic and discriminatory conduct

Systematic conduct involves a pattern of conduct that is “non-random” in the sense of being deliberate, pre-meditated or intended.¹²⁵ This requires an element of ‘motivation’ on the part of the persecutor,¹²⁶ but does not require enmity or malignity.¹²⁷ While the Administrative Appeals Tribunal has observed that ‘[n]atural disasters including cyclones ... do not involve and are not caused by systemic [sic] and discriminatory conduct’,¹²⁸ it has also recognized that discrimination can occur against specific groups in the context of disasters.¹²⁹ As noted already, an assessment of this component of persecution requires consideration of the hazards to which Karim and Amina are exposed as a whole, and not only those posed directly by the cyclone.

The fact that the risk of serious harm to Karim and Amina arises from a range of different hazards could be taken to suggest that it is merely random, and not the result of systematic and discriminatory conduct. However, several aspects of their claims warrant further consideration.

For both Karim and Amina, the risk of harm following Cyclone Naree is not simply the result of strong winds and rain; it is due, in large part, to the government’s failure to provide adequate aid, assistance and shelter. Further information about the reasons for the government’s failure may be required to determine whether this amounts to systematic conduct or is simply the result of a lack of capacity and resources.¹³⁰ Reports of corruption among local authorities suggest, however, that this may not be merely random. Where the risk of harm arises due to such corruption, this may be characterized as ‘deliberate’ and ‘intended’ and therefore qualify as persecution.

For Amina, the risk of serious harm arising from harassment and sexual violence is more clearly the result of systematic and discriminatory conduct. If this risk relates to the authorities – for example, if reports of authorities demanding sexual favours in exchange for aid are true – it will amount to persecution. If this risk relates to non-State actors, such as other residents of the settlement, further consideration will need to be given to whether the government is willing and able to protect Amina.

1.3 Agent of persecution

Where a risk of serious harm is attributable to the government (including local authorities), the agent of persecution is the State itself. However, ‘persecution may be inflicted by persons who are not agents of the state’.¹³¹ Persecution by non-State agents may found a refugee claim where ‘it is official, or officially tolerated or uncontrollable by the authorities’.¹³² This raises similar considerations to the question whether ‘effective protection’ from persecution is available (see below).

There are several factors indicating that harassment and sexual violence against women at the settlement in Taniora are either tolerated or uncontrollable by the authorities. These include the apparent persistence of the risk over time, widespread perceptions of police as unresponsive to community concerns, and reports of official corruption, including sexual misconduct by officials. In combination, these factors indicate that the risk to Amina of serious harm by non-State actors has the requisite official quality to constitute persecution.

SEE FURTHER

Myth 3: There is no perpetrator in the context of climate change and disasters.

Myth 4: The harm is not significant enough.

Practical Toolkit, Key Consideration 2:

The hazard-scape should be considered as a whole.

Practical Toolkit, paragraph 52:

‘Being persecuted in the context of climate change and disasters will often take the same form as in other types of refugee claims, such as serious violations of human rights including physical violence, sexual and gender-based violence, threats and/or psychological harm.’

2. Well-founded fear

Karim and Amina will have a well-founded fear of persecution if there is a real chance that it will occur if they return to Taniora,¹³³ and if that real chance is present in all areas of the country.¹³⁴

2.1 Real chance

A real chance entails a ‘substantial, as distinct from a remote’ chance,¹³⁵ although it may be well below

¹²⁵ Ibid, ch 4, 14, citing *Haji Ibrahim* (n 14) 30 (McHugh J); *Refugee Guidelines* (n 41) pt 3.10.3.1.

¹²⁶ *Ram* (n 42) 568 (Burchett J).

¹²⁷ *ART Guide* (n 39) ch 4, 15.

¹²⁸ *2319833 (Refugee)* [2024] AATA 2288, para 71.

¹²⁹ 2111877 (n 65).

¹³⁰ See eg *2320671 (Refugee)* [2024] AATA 1357, para 31, where the Administrative Appeals Tribunal stated: ‘[N]othing before the Tribunal indicates that the government [of Tonga] would not seek to protect the applicant or other Tongans from the threat of natural disasters. The Tribunal considers the only limit in responding to these challenges is the size of the country and its economy and its reliance on foreign assistance.’

¹³¹ *Respondent S152/2003* (n 47) 8 (Gleeson CJ, Hayne and Heydon JJ) (following *Khawar* (n 47)), cited in *ART Guide* (n 39) ch 4, 16.

¹³² *ART Guide* (n 39) ch 4, 17.

¹³³ *Migration Act* (n 4) s 5J(1)(b). See also *Chan* (n 51) 389 (Mason CJ), 396–98 (Dawson J), 406–07 (Toohey J), 428–29 (McHugh J).

¹³⁴ *Migration Act* (n 4) s 5J(1)(c).

¹³⁵ *Chan* (n 51) 389 (Mason CJ).

a 50 per cent chance.¹³⁶ The determination must be made at the time when the application is decided,¹³⁷ based on consideration of the chance of persecution in the 'reasonably foreseeable' future.¹³⁸ In Australia, the Administrative Appeals Tribunal has recognized the increase in risks of gender-based violence following disasters, observing that 'women faced more violence and harassment' in disaster zones and evacuation centres.¹³⁹

While the cyclone that triggered many of the risks to Karim and Amina occurred many months ago, the risks have not subsided and, in many ways, they have actually worsened over time. The increased risk over time is due to the lack of adequate aid and assistance; overcrowding in settlements; the broader social context and the prevalence of gender-based violence; and potential corruption and inaction among police and local authorities. Unless there has been a significant change in circumstances with respect to these factors, the risks to Karim and Amina are likely to continue into the reasonably foreseeable future, and may even worsen further.

In addition, even if conditions following Cyclone Naree improve, the impacts of climate change mean that cyclones are likely to become more intense in Taniora in the future. Further information about the projected future impacts of cyclones on Taniora may indicate that a real chance of serious harm remains ongoing. This is particularly so given the broader social context, which includes poverty, corruption and significant rates of gender-based violence, and the fact that government action on disaster risk reduction and climate change adaptation has failed to adequately reduce these risks.

2.2 All areas of the country

Even if a well-founded fear of persecution can be demonstrated, refugee protection is precluded under the *Migration Act* if there are other areas of the country 'where there is safe human habitation and to which safe access is lawfully possible' for the applicant.¹⁴⁰

The impacts of a major cyclone on a small island nation such as Taniora are likely to be felt across the country as a whole. Therefore, the risks of persecution arising from the impacts of the cyclone – whether directly or in combination with the broader social context and government failures – are likely to be present in all areas of the country.

The fact that gender-based violence is more prevalent outside of major towns suggests that the risk of harassment and sexual violence to Amina may not be equally present in all parts of the country. However, further information may be needed, particularly given the apparent absence of effective police protection from such violence, which is likely to exist across the country as a whole.

SEE FURTHER:

Myth 5: Disasters are only temporary.

Myth 6: People can relocate to avoid the impacts of climate change and disasters.

Practical Toolkit, Key Consideration 5:

The risk of harm may manifest over time.

Practical Toolkit, paragraph 45:

'Assessing the risk of harm over time is crucial even for apparently "one-off" disasters, given that the impacts of disasters may be felt over a much longer timeframe. That is why it is important to consider the "predicament" of those affected. This includes not only the immediate impacts of a disaster, but also the ongoing social, economic, political and cultural impacts.' (citation omitted)

3. Nexus with a protected ground ('for reasons of')

To qualify as a refugee, the risk of persecution to the applicant must be 'for reasons of' race, religion, nationality, membership of a particular social group or political opinion.¹⁴¹

3.1 'For reasons of'

In the case of persecution by non-State agents, the nexus with one of the five protected grounds may be satisfied by the motivation of the persecutor¹⁴² or by the reasons for the discriminatory failure of State protection.¹⁴³ The decision-maker should consider any potentially relevant grounds raised by the facts and evidence 'even if [they are] not expressly claimed by the applicant'.¹⁴⁴

The impacts of disasters such as cyclones may be felt differently by different groups.¹⁴⁵ This is frequently due to pre-existing marginalization or vulnerabilities.¹⁴⁶ For example, the Administrative Appeals Tribunal has recognized the specific intersection between disaster risks and gender-based violence.¹⁴⁷

¹³⁶ *ART Guide* (n 39) ch 3, 5.

¹³⁷ *Singh* (n 55), cited in *ART Guide* (n 39) ch 3, 7.

¹³⁸ *ART Guide* (n 39) ch 3, 8, citing *SZQXE* (n 56) para 7.

¹³⁹ *2403472 (Refugee)* [2024] AATA 2746, para 51.

¹⁴⁰ *ART Guide* (n 39) ch 3, 24, citing *FCS17* (n 57) 652 (Allsop CJ), 666 (White and Colvin JJ).

¹⁴¹ *Migration Act* (n 4) s 5J(1)(a).

¹⁴² See *Ram* (n 42) 568 (Burchett J); *Applicant A* (n 14) 284 (Gummow J); *Haji Ibrahim* (n 14) 32–33 (McHugh J); *ART Guide* (n 39) ch 5, 5.

¹⁴³ *ART Guide* (n 39) ch 4, 18.

¹⁴⁴ *Ibid*, ch 5, 11.

¹⁴⁵ *Practical Toolkit* (n 1) paras 33–38.

¹⁴⁶ *Ibid*.

¹⁴⁷ See *2315773 (Refugee)* [2024] AATA 2738, paras 60–61, where the Administrative Appeals Tribunal noted that, in the context of climate change and planned relocations of communities, relocation to avoid gender-based violence would not be possible for the applicant.

There is no indication that Karim and Amina belong to a marginalized or vulnerable group that has been disproportionately impacted by the cyclone. Without further information, it seems unlikely that the risk of serious harm arising from hazards linked directly to the cyclone or from limitations in available government assistance are for reasons of one of the five protected grounds. There may be additional considerations for Amina, though, arising out of the risk of harassment and sexual violence.

3.2 Membership of a particular social group

A person will be a member of a particular social group if the group shares an 'innate or immutable characteristic'¹⁴⁸ or a characteristic that 'distinguishes the group from society',¹⁴⁹ although the shared characteristic cannot be the fear of persecution itself.¹⁵⁰ Importantly, it does not matter how large or small the group is,¹⁵¹ and the High Court has held that there is 'no requirement of a recognition or perception within the relevant society that a collection of individuals is a particular social group that is set apart from the rest of the community'.¹⁵²

For Amina, the risk of harassment and sexual violence arises due to her gender as a woman, and may therefore arise for reasons of her membership of the particular social group, women. While particular social groups are recognized on a case-by-case basis,¹⁵³ women have often been recognized as a particular social group owing to their shared innate characteristic as women.¹⁵⁴

3.3 Essential and significant reason

One of the five protected grounds must be the 'essential and significant reason' for the persecution.¹⁵⁵ It need not be the sole reason,¹⁵⁶ but it cannot be merely a 'minor or non-central' reason.¹⁵⁷

In the context of a major disaster, such as a cyclone, it may often be the case that insufficient resources, rather than one of the five protected grounds, constitute the 'essential reason' for the risk of serious harm. For Amina, however, her membership of the particular social group of women is more clearly the essential and significant reason for the risk of harassment and sexual violence. Thus, while Karim may have difficulty establishing a risk

of persecution for reasons of one of the five protected grounds, Amina is more likely to be able to establish this component of a refugee claim.

SEE FURTHER

Practical Toolkit, Key Consideration 3:

Climate change and disasters affect people in different ways.

Practical Toolkit, paragraph 50:

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

4. Effective protection

4.1 Effective protection

The question of effective protection arises in two main ways. First, a person will only be entitled to protection as a refugee if they are unable or unwilling to avail themselves of the protection of their country of origin.¹⁵⁸ Secondly, a person will be held not to have a well-founded fear of persecution 'if effective protection measures are available' to them.¹⁵⁹ The availability of effective protection takes into account protection by non-State actors,¹⁶⁰ where such an actor 'controls the relevant State or a substantial part of [its] territory'.¹⁶¹

Australian case law suggests that effective protection does not need to reduce all risk.¹⁶² Rather, protection that meets international standards may be sufficient.¹⁶³ Nevertheless, effective protection must be accessible and durable.¹⁶⁴

There is no indication that an international organization or other non-State actor has assumed control of the territory of Taniora following the cyclone. The question in the present scenario is therefore limited to whether effective State protection exists.

¹⁴⁸ *Migration Act* (n 4) s 5L(c)(i).

¹⁴⁹ *Ibid*, s 5L(c)(iii).

¹⁵⁰ *Ibid*, s 5L(d).

¹⁵¹ *Applicant A* (n 14) 241 (Dawson J), cited in *ART Guide* (n 39) ch 5, 26.

¹⁵² *ART Guide* (n 39) ch 5, 25 (emphasis in original), citing *Applicant S* (n 69) (overruling this aspect of *Minister for Immigration and Multicultural Affairs v Zamora* (1998) 85 FCR 458, 464).

¹⁵³ *ART Guide* (n 39) ch 5, 30.

¹⁵⁴ 2014 Explanatory Memorandum (n 58) para 1220, cited in *ART Guide* (n 39) ch 5, 37.

¹⁵⁵ *Migration Act* (n 4) s 5J(4)(a).

¹⁵⁶ *Refugee Guidelines* (n 41) pt 3.10.2.

¹⁵⁷ *ART Guide* (n 39) ch 5, 9.

¹⁵⁸ *Migration Act* (n 4) s 5H(1).

¹⁵⁹ *Ibid*, s 5J(2). See also *Chan* (n 51) 430 (McHugh J), cited in *ART Guide* (n 39) ch 4, 16.

¹⁶⁰ *ART Guide* (n 39) ch 8, 19.

¹⁶¹ *Migration Act* (n 4) s 5LA(1)(a)(ii).

¹⁶² See eg *Respondent S152/2003* (n 47) 11, cited in *ART Guide* (n 39) ch 8, 10. There, Gleeson CJ, Hayne and Heydon JJ stated that '[n]o country can guarantee that its citizens will at all times, and in all circumstances, be safe from violence'.

¹⁶³ See eg *Respondent S152/2003* (n 47). See also the discussion of relevant case law in *ART Guide* (n 39) ch 8, 12–13.

¹⁶⁴ *Migration Act* (n 4) s 5LA(2)(a), (b).

Further information may be needed in order to determine whether the government's response to the cyclone meets international standards. Expecting a poor country such as Taniora to respond effectively to every risk following a major cyclone may impose a disproportionate burden on the authorities.¹⁶⁵ However, reports of corruption suggest that limitations in the government's response are not simply due to a lack of resources, but rather that the State may be unable or unwilling to provide effective protection for Karim and Amina. Even if further information indicates that the government is willing to provide protection, such protection may not be 'durable' in the context of continuing impacts from the cyclone, as well as the likelihood of future cyclones.

SEE FURTHER

Myth 7: Governments cannot control the impacts of climate change and disasters.

Practical Toolkit, Key Consideration 4:

Human agency contributes to the impacts of climate change and disasters.

Practical Toolkit, paragraph 50:

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

Analysis: Complementary protection claim

5. Complementary protection

Where a refugee claim is unsuccessful, an applicant may be eligible for complementary protection if there are 'substantial grounds for believing that, as a necessary and foreseeable consequence of the [applicant] being removed from Australia to a receiving country, there is a real risk that the [applicant] will suffer significant harm'.¹⁶⁶

The assessment of future risk is the same under both the refugee and complementary protection criteria.¹⁶⁷ The requirement that there be 'substantial grounds for believing' overlaps significantly with the 'real chance' requirement, with the former simply referring to the evidentiary burden for the latter.¹⁶⁸ The requirement that the significant harm be a 'necessary and foreseeable consequence' of the applicant's removal may preclude claims where the risk of harm is dependent on something other than the person's removal from Australia – for example, on their actions once returned.¹⁶⁹

While Australia's complementary protection framework partly reflects Australia's *non-refoulement* obligations under international human rights law,¹⁷⁰ the *Migration Act* does not directly incorporate relevant provisions from the CAT or ICCPR.¹⁷¹ This means that establishing a complementary protection claim does not require a violation of the CAT or ICCPR per se.¹⁷²

5.1 Significant harm

'Significant harm' is different from 'serious harm' in the *Migration Act*,¹⁷³ although many forms of harm will qualify as both.¹⁷⁴ Significant harm is defined exhaustively as the arbitrary deprivation of life; the death penalty; torture; cruel or inhuman treatment or punishment; and degrading treatment or punishment.¹⁷⁵ There is no general requirement that significant harm be inflicted by a person acting in an official capacity.¹⁷⁶

Arbitrary deprivation of life is not defined in the *Migration Act*, although it appears to be interpreted more narrowly in Australia than a violation of the 'right to life' under international law.¹⁷⁷ It is generally applied in Australia in contexts such as extrajudicial killings and excessive use of police force, rather than scarcity of resources.¹⁷⁸

Cruel or inhuman treatment or punishment will be established where an act or omission causes physical or mental pain or suffering that either is severe¹⁷⁹ or is accompanied by an act or omission that could be reasonably considered to be cruel or inhuman.¹⁸⁰ This test takes into account the applicant's 'individual vulnerabilities and characteristics'.¹⁸¹ A subjective intention on the part of the perpetrator to cause such suffering is required;¹⁸² mere negligence will not

¹⁶⁵ See eg *Budayeva* (n 34) para 135.

¹⁶⁶ *Migration Act* (n 4) s 36(2)(aa).

¹⁶⁷ *ART Guide* (n 39) ch 10, 7, citing *SZQRB* (n 86). See also *CP Guidelines* (n 86) pt 3.5.1.

¹⁶⁸ *ART Guide* (n 39) ch 10, 8; *CP Guidelines* (n 86) pt 3.5.5.

¹⁶⁹ *ART Guide* (n 39) ch 10, 11. For example, in *EJC18* (n 88) paras 60–64, a claim of serious harm relating to the applicants' land claim was rejected because it depended on the applicants' choice to pursue the land claim and was therefore not a 'necessary' consequence of their removal.

¹⁷⁰ See *Practical Toolkit* (n 1) paras 66–88.

¹⁷¹ By contrast, New Zealand's domestic legislation refers specifically to these obligations: *Immigration Act* (n 91) ss 130, 131.

¹⁷² *CP Guidelines* (n 86) pt 3.4.

¹⁷³ *ART Guide* (n 39) ch 10, 12ff.

¹⁷⁴ For example, the risk of being killed: see *MZZIA* (n 94) para 34.

¹⁷⁵ *Migration Act* (n 4) ss 36(2A), 5(1).

¹⁷⁶ *ART Guide* (n 39) ch 10, 20, citing *BPF15* (n 96) 334, 335.

¹⁷⁷ According to the *ART Guide* (n 39) ch 10, 15, 'case law from other jurisdictions considering a positive right to life (such as the provision of medical treatment or measures to increase life expectancy or reduce mortality) is unlikely to be directly applicable to the interpretation of s 36(2A)(a)'. See further McAdam (n 97) esp 694; jurisprudence of the UNHRC on the right to life (with dignity) under article 6 of the ICCPR (n 91), including *Teitiota* (n 97).

¹⁷⁸ *ART Guide* (n 39) ch 10, 13–14.

¹⁷⁹ *Migration Act* (n 4) s 5(1)(a).

¹⁸⁰ *Ibid*, s 5(1)(b).

¹⁸¹ *CP Guidelines* (n 86) pt 3.4.5.3.

¹⁸² *ART Guide* (n 39) ch 10, 18, citing *SZTAL* (n 103) 372 (Kiefel CJ, Nettle and Gordon JJ), 400–01 (Edelman JJ); *CP Guidelines* (n 86) pt 3.4.3.



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suffice.¹⁸³ According to the High Court, the intention to cause significant harm requires an 'actual, subjective, state of mind' and not merely knowledge or foresight that significant harm is likely to occur, although such knowledge may provide evidence of the relevant intention.¹⁸⁴

Degrading treatment or punishment will be established where an act or omission 'causes, and is intended to cause, extreme humiliation' and is inconsistent with article 7 of the ICCPR.¹⁸⁵ Violations of socio-economic rights, such as rights to housing and medical treatment, will qualify as significant harm only in 'exceptional circumstances' and when the results of such violations constitute cruel, inhuman or degrading treatment or punishment.¹⁸⁶

Without further information, the conditions faced by Karim and Amina do not indicate a real risk of arbitrary deprivation of life or extreme humiliation amounting to degrading treatment or punishment. However, Karim and Amina are at risk of physical and mental pain and suffering that could constitute cruel or inhuman treatment if they are returned to Taniora, due to the very poor living conditions in the temporary shelter and the lack of adequate aid or assistance. While this is arguably the consequence of inaction by the government, it appears to result from either a lack of capacity or resources, making it difficult to establish a subjective intention on the part of the government to cause such suffering. Reports of corruption, including among local officials responsible for distributing aid, warrant further consideration, but additional information would be required to establish that

¹⁸³ *ART Guide* (n 39) ch 10, 18, citing *SZSPE* (n 104) paras 68, 72.

¹⁸⁴ *SZTAL* (n 103). See also *CP Guidelines* (n 86) pt 3.4.3.1.

¹⁸⁵ *Migration Act* (n 4) s 5(1).

¹⁸⁶ *CP Guidelines* (n 86) pt 3.4.3.

such corruption entails the requisite subjective intention to cause suffering.

For Amina, harassment or sexual violence would likely lead to severe mental and physical suffering. They are the result of acts that could reasonably be considered to be cruel or inhuman. In either case, the subjective intention to cause suffering may be readily deduced from the perpetrators of harassment and sexual violence.

5.2 Relocation

A person facing the requisite risk of significant harm will nevertheless be precluded from receiving complementary protection if 'it would be reasonable for [them] to relocate to an area of the country where there would not be a real risk that [they] will suffer significant harm'.¹⁸⁷ This component of complementary protection entails two questions. First, is there a part of the country where Karim and Amina would not face a real risk of significant harm? Secondly, would it be reasonable for them to relocate there? What is reasonable depends on an applicant's circumstances and the impact on them of relocating.¹⁸⁸ The impacts of disasters elsewhere in the country of origin are well recognized as being relevant in determining whether relocation is reasonable.¹⁸⁹

As noted above, the risk of gender-based harassment and sexual violence may be lower in major towns in Taniora. However, further information is needed about the level of risk and the availability of protection from that risk. Further information is also needed about potential post-disaster assistance available to Karim and Amina in other parts of Taniora in order to ascertain the level of risk there.

Moreover, Karim and Amina's complementary protection claim (unlike their refugee claim) requires consideration of whether relocating elsewhere – including to a major town – is reasonable in the circumstances. Again, more information is needed to determine this, including in relation to the availability of assistance and the capacity of Karim and Amina to support themselves elsewhere. However, the fact that Karim and Amina have not already relocated to a major town when their existing living conditions are so poor may indicate that such relocation is not reasonable.

5.3 Protection from an authority

A person will not be eligible for complementary protection if they 'could obtain, from an authority of the country, protection such that there would

not be a real risk that [they] will suffer significant harm'.¹⁹⁰ This is similar to the assessment of effective protection under the refugee criteria, although judicial consideration indicates that a different standard applies in the complementary protection context (where the protection must be sufficient to remove the real risk of significant harm)¹⁹¹ compared to the refugee context (where adequate protection in line with international standards will suffice).¹⁹²

As noted above, reports of corruption, as well as the lack of assistance and protection available to Karim and Amina within the settlement, indicate that State protection is largely unavailable to them, or – to the extent that it is available – is not sufficient to reduce the real risk of significant harm. This is particularly the case for Amina, given the risk of gender-based violence and widespread reports of police inaction.

5.4 Risk to the applicant personally

A person will also be precluded from receiving complementary protection if they face a real risk of significant harm that is 'faced by the population ... generally and is not faced by the [applicant] personally'.¹⁹³ This requires consideration not only of the existence of a risk of significant harm, but also the applicant's individual exposure to that risk.¹⁹⁴

While disasters such as cyclones may have at least some impact on the population generally,¹⁹⁵ the risk of *harm* following a cyclone may be very different for particular individuals or groups within the population. For example, certain groups¹⁹⁶ or people living in specific regions of a country¹⁹⁷ may face greater risks than others.

The risks relating to the direct impacts of Cyclone Naree, and the government's failure to provide adequate aid and assistance, may be considered as risks faced by the population generally, rather than by the applicants individually, particularly if they also impact people in different circumstances from the applicants (for example, those living outside the temporary shelters). In any event, as already noted, these harms are unlikely to constitute 'significant harm' for the purposes of a complementary protection claim.

For Amina, however, the risks of significant harm in the form of harassment and sexual violence, which more readily constitute significant harm for the purpose of complementary protection, are more clearly risks faced by her personally due to her gender and her

¹⁸⁷ *Migration Act* (n 4) s 36(2B)(a).

¹⁸⁸ *ART Guide* (n 39) ch 10, 31.

¹⁸⁹ See eg 2315773 (n 147) paras 60–61; [1906621 \(Refugee\)](#) [2024] ARTA 567, para 94; [2403649 \(Refugee\)](#) [2024] AATA 4419, para 30.

¹⁹⁰ *Migration Act* (n 4) s 36(2B)(b).

¹⁹¹ *ART Guide* (n 39) ch 10, 32.

¹⁹² See *MZYLL* (n 112) 218–19, cited in *ibid*, ch 10, 33; *ABAR15* (n 112) 27, cited in *ibid*, ch 10, 33.

¹⁹³ *Migration Act* (n 4) s 36(2B)(c).

¹⁹⁴ *ART Guide* (n 39) ch 10, 33, citing *SZSPT v Minister for Immigration and Border Protection* [2014] FCA 1245, paras 11–13.

¹⁹⁵ See eg 1822222 (n 114) para 50.

¹⁹⁶ See 2102559 (n 116) para 60. While this case concerned the risk of ethnic violence in South Sudan, the Administrative Appeals Tribunal noted that the applicant was at increased risk due to the surrounding conditions, including disasters and food shortages, on account of his ethnic identity.

¹⁹⁷ *BCX16* (n 117) 320, cited in *ART Guide* (n 39) ch 10, 34.

particular exposure within the temporary settlement. If Amina's refugee claim is rejected (for example, because women are found not to constitute a particular social group in these circumstances), the differential risk of gender-based violence may nevertheless support her complementary protection claim.

SEE FURTHER

Myth 2: Climate change and disasters are indiscriminate.

Myth 3: There is no perpetrator in the context of climate change and disasters.

Myth 5: People can relocate to avoid the impacts of disasters.

Practical Toolkit, Key Consideration 2:

The hazard-scape should be considered as a whole.

Practical Toolkit, Key Consideration 3:

Climate change and disasters affect people in different ways.

Practical Toolkit, Key Consideration 4:

Human agency contributes to the impacts of climate change and disasters.

Practical Toolkit, paragraph 63:

'The impacts of climate change and disasters may be relevant to the assessment of whether an internal flight alternative exists, irrespective of whether they are also relevant to the central protection claim.'

Summary of claim

Karim and Amina both face risks of harm arising from prolonged displacement, inadequate shelter, food and medicine shortages and disease, which together may constitute significant physical ill-treatment or even threats to life. These risks arise not from the cyclone alone, but also from the broader hazard-scape, including

limitations in the government's disaster response. If such limitations result from systematic and discriminatory conduct, they may support a refugee claim. However, further information may be needed to determine whether government failures are attributable to corruption or discrimination, rather than simply limited capacity and resources. Amina may have a stronger claim to refugee protection, based on the additional risk of harassment and sexual violence, which is more clearly the result of systematic and discriminatory conduct and arises for reasons of her membership of a particular social group (women). While the risk relates to non-State actors, the persistence of the risk over time and the widespread perception of police as unresponsive and even corrupt indicate that effective protection from such harm is unlikely to be available.

If refugee status is not established, Karim and Amina may have claims to complementary protection. Again, Amina has a stronger claim, as the risk of sexual violence and related harm is more readily characterized as cruel or inhuman treatment and is clearly faced by her personally. Karim may also face significant hardship, but this may be the result of insufficient government capacity rather than intentional actions and may thus lack the requisite intention to constitute cruel or inhuman treatment. Moreover, further information is needed to determine whether the harms faced by Karim are faced by the population generally.

Key takeaways

- > The impacts of sudden-onset disasters do not end with the disaster. The risk of harm may continue over time, and may even worsen in the future.
- > The risks of gender-based violence may increase in the context of disasters and climate change.
- > While disasters such as cyclones may have at least some impact on the population generally, the risk of harm following a cyclone may be very different for particular individuals or groups within the population.



D. Additional resources

Questions for applicants

The following questions are for decision-makers and practitioners interviewing applicants for refugee status and complementary protection. They are designed to elicit relevant evidence in claims involving the impacts of climate change and disasters.¹⁹⁸

It is important that in assessing protection claims, decision-makers take a trauma-informed approach, especially since disasters and other hazards can create and exacerbate psychological harm over time.¹⁹⁹

Establishing persecution

- > Apart from the drought, flood, cyclone or other natural hazard, what else has contributed to the harm you have experienced?
- > Did the authorities know about the risks you faced? How do you know?
- > Did you try to obtain assistance or protection from the authorities? What happened?
- > How were other people in your village, region or country affected?
- > What do you think were the reasons for the government's inadequate assistance? Was it a lack of capacity/resources or something else?

Nexus with a protected ground

- > Were you, your family or your community affected more severely than others?
- > Did some people receive more or better assistance than others? If so, who were they?
- > Have you experienced discrimination or marginalization before? If so, how?

Well-founded fear

- > Have conditions improved, deteriorated or remained unchanged since you left?
- > What will happen if you return home? How will you rebuild or re-establish your life?
- > Have you experienced similar disasters or other natural hazards before? Do you expect to experience them again in the future?
- > What would happen if you moved somewhere else in your country? Are conditions the same everywhere?

Availability of effective protection

- > Did you seek protection or assistance from the authorities before leaving? If so, what response did you receive? If not, why not?
- > Is there any government support or assistance available? Why do you believe this would not help you?
- > Are there other examples of discrimination or corruption by the authorities in your country?

Significant harm

- > What physical or psychological impacts have you already experienced? What do you fear will happen if you return?
- > Does everyone in your country face the same risks? How do your personal circumstances affect the risk to you?
- > What evidence suggests the harm is more than general hardship or poverty?

Relocation

- > Could you move to another part of the country? Have you ever attempted to do so? Why or why not?
- > What would happen if you relocated elsewhere? Would you be able to access housing, work, food, health care or education in another area?
- > Do you have family, community or social support outside your home region?

¹⁹⁸ These questions draw on 'Appendix A: Fact-finding and research questions' in the *Practical Toolkit* (n 1). They have been further developed and tailored for the Australian legislative context.

¹⁹⁹ See further Jane McAdam, 'The Enduring Effects of Disaster Displacement: Psychological Harm and International Protection', *Refugee Survey Quarterly*, doi: 10.1093/rsq/hdag027 (forthcoming).

Relevant country of origin information

The following country of origin information may assist in assessing and determining claims for refugee status or complementary protection that arise in the context of climate change and disasters. Some information will be readily available in commonly consulted country of origin materials, while other information may require additional research.

Establishing persecution

- > What evidence is there of climate change and disaster impacts on the country generally, and on particular regions or groups, including impacts on food security, water and sanitation, livelihoods, gender-based violence and intercommunal tensions?
- > What information is available about government responses to climate change and disaster impacts, including humanitarian assistance, disaster risk management, climate change adaptation measures, livelihood support, policing and law and order?
- > Have there been reports of violence, exploitation, gender-based violence or other protection risks arising during or after disasters?

Nexus with a protected ground

- > Is there evidence of discrimination against particular ethnic, religious, political, regional or social groups, including information showing unequal access to humanitarian aid and assistance, climate change adaptation measures and/or development programmes?
- > Is there information about the treatment of environmental activists, political opponents, ethnic minorities or other marginalized groups?

Well-founded fear

- > What evidence is available regarding disaster risk reduction efforts, climate change adaptation measures and disaster recovery that may be relevant to the future impacts of disasters and climate change in the country or region?
- > What are the projected future climate change and disaster impacts in the country or region? Are relevant risks likely to improve, persist or worsen over time?

Availability of effective protection

- > What information is available about access to disaster relief, social services, humanitarian assistance and other financial or social support?
- > Are there reports of corruption, discrimination or inaction among officials, including in the context of disaster response?
- > What does country information indicate about the effectiveness of police, courts and other law and order institutions?

Significant harm

- > Is there evidence of deaths, severe illness, malnutrition or other life-threatening conditions, including in temporary shelters or settlements?
- > Is there evidence of gender-based violence, intercommunal tensions or other forms of exploitation or serious human rights abuses?

Relocation

- > What does country information indicate about climate change and disaster impacts and future risks in the country of origin by region, province or other location?
- > What information is available about general conditions in other areas of the country, including access to housing, livelihoods and basic services?
- > What information is available about local government authorities, including evidence of corruption, the degree of centralization of government policies, and the role of customary governance mechanisms?
- > What does country information indicate about the accessibility of travel and relocation across the country, including infrastructure, transportation, available assistance, registration or other residence requirements, and any restrictions on lawful movement?

