

# Temporary Protection

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## Key points

- Temporary protection can be an effective tool for ensuring fast access to protection and services without overwhelming asylum systems, however, it should not be used to discourage or prevent people from seeking asylum
- Temporary protection is NOT a protection scheme replacing existing international obligations, in particular the 1951 Refugee Convention and/or its 1967 Protocol, or regional refugee instruments, such as when prima facie or more favourable protection is available and suitable, nor a substitute for the proper management of mixed flows
- Temporary Protection is NOT suitable if the stay becomes prolonged
- The arrangement must, at a minimum, meet basic needs and minimum standards of treatment which reflect international refugee and human rights law obligations, and ensure protection from expulsion, refoulement and other protection risks
- Temporary protection should not be structured in a way that encourages premature return

## 1. Overview

Temporary protection can be an effective tool for States to respond to humanitarian crises and complex or mixed population movements in situations where other protection responses are in the short term unavailable or inadequate to allow admission and immediate protection from Refoulement. Temporary protection should guarantee basic minimum treatment and access to core rights for the displaced population and be implemented in a streamlined and efficient manner.

In some contexts, temporary protection is given without recourse, at least initially, to [refugee status determination](#) whereas in others temporary protection may be provided as an additional option to asylum (See the Entries on [refugee definition](#), [stateless person definition](#), [UNHCR's mandate for refugees](#), [prima facie recognition of refugee status](#)).

Temporary protection is particularly suited as an emergency response in situations of mass influx<sup>[1]</sup>, or other fluid or transitional contexts.

UNHCR's role may involve advocacy for the provision of temporary protection when appropriate, and support the establishment of a temporary protection response through the provision, for example, of technical advice. The decision to provide temporary protection rests with the responsible authority in the host country. UNHCR does not encourage States to provide temporary protection when it is feasible to recognize refugees through a prima facie approach (see prima facie entry) or through individual procedures (see RSD entry). That said, there are circumstances in which a temporary protection response will be an appropriate complement to an asylum regime. In addition, it may be particularly relevant for non-States parties to the 1951 Refugee Convention/1967 Protocol or a regional refugee instrument, it offers a way to provide immediate protection and thereby respect the principle of **non-refoulement** and other human rights.

<sup>[1]</sup> A mass influx is defined as "significant numbers of arrivals over a short period of time of person from the same country or geographical region, and for whom, due to their numbers, individual refugee status determination is procedurally impractical".

## 2. Relevance for emergency operations

Temporary protection is particularly suited in the following four situations:

- (i) large-scale influxes of asylum-seekers, refugees or other similar humanitarian crises. For example, temporary protection may be particularly suitable in the immediate aftermath of a sudden-onset disaster when the country or origin is mobilizing resources, including international assistance, to respond to the disaster;
- (ii) complex or mixed cross-border population movements, including boat arrivals and rescue at sea scenarios;
- (iii) fluid or transitional contexts [e.g. at the beginning of a crisis where the exact cause and character of the movement may be uncertain, or at the end of a crisis, when the motivation for departure may need further assessment]; and
- (iv) other exceptional and temporary conditions in the country of origin necessitating international protection and which prevent return in safety and dignity.

In each of these four scenarios, individual status determination is either not applicable or feasible, or both.

## 3. Main guidance

In an emergency context, the key issue to be determined is whether temporary protection is a relevant and appropriate mechanism to be advocated for in a particular situation. The following steps should be followed to come to an appropriate decision:

- Collect and analyze information on the profile of individuals arriving, the national legal framework and available options for granting protection and assistance to determine the most appropriate protection response. Consider whether existing protection mechanisms, particularly refugee status determination, including through a group based or prima facie approach, are able to respond before considering temporary protection.
- Individuals moving in mixed flows may fall within different and overlapping categories and differentiated approaches may be needed, particularly when temporary protection has ended.
- Application of temporary protection in fluid or transitional contexts requires careful consideration if transitioning into a prima facie approach is required once the refugee character of the movement is better understood.
- Consider the practicalities of implementing temporary protection, including potential modalities of implementation to assess the feasibility of implementing such an approach.
- Discuss with the relevant Regional Bureau and the Division of International Protection to ensure regional and global consistency.
- If temporary protection is deemed an appropriate approach, advocate and/or advise the authorities on the need, appropriateness and benefits of a temporary protection response.
- States may agree to set timeframes for the temporary protection provided, usually for six months, to be extended as conditions persist. In cases of extended stay, the standards of treatment would need to be gradually improved and decisions taken on when temporary protection will end.
- Make sure that the group that will be eligible for temporary protection is clearly defined. Consideration needs to be given to those sharing the same country of origin or nationality that are already in the territory (**sur place**), who are not able to return nor have other legal means of stay.
- Work with the authorities to develop an efficient procedure for applying and screening/registration for temporary protection as well as issuing documentation. Such procedures should include support for persons with urgent protection risks or vulnerabilities.
- Put in place counselling and information for the affected populations. It is critical to ensure that individuals or groups are regularly informed of the purpose, scope and duration of the protection provided in order to manage expectations and avoid undue movement into and out of the host country.
- In emergencies linked to armed conflict and other situations of violence, active fighters or combatants need to be identified promptly, and separated from the civilian population. (See the Entry on the civilian character of asylum).

## **Key management considerations**

The decision to advocate for temporary protection should be based on an analysis of the operational context, including the availability and effectiveness of other protection mechanisms in the host country.

Establishment of a monitoring mechanism and regular assessments of temporary protection are necessary to ensure that the response implemented is adequate for the individuals in different stages of the emergency.

It is important to ensure temporary protection measures include minimum standards of treatment, which are to be improved if the stay is prolonged.

Efficient implementation of temporary protection requires national and/or regional level partnerships for the continued engagement of national partners.

### **Underlying principles and standards**

- Temporary protection (referred to also as "temporary protection or stay arrangements") are pragmatic "tools" of international protection, that should act as a compliment to asylum.
- Providing temporary protection is a humanitarian and non-political act.

As part of a humanitarian response, temporary protection needs to be flexible to react speedily to a crisis or disaster, while providing at least a minimum level of protection.

Temporary protection contributes to a better managed global response system to humanitarian crises as well as complex and mixed cross-border population movements, centred on multilateral co-operation and an equitable sharing of burdens and responsibilities.

If temporary protection can be agreed at the multilateral or regional level, they may also address States' concerns and reduce the motivations for irregular onward movement, mobilizing resources and humanitarian assistance, and building global and regional solidarity.

- Temporary protection should be solutions-oriented and time-limited.

Temporary protection permits admission to the territory for the concerned populations, including through disembarkation for boat arrivals.

Persons benefiting from temporary protection must but allowed to stay in the host country and enjoy a minimum set of standards of treatment, while preserving any more favourable standards that may apply.

Temporary protection is without prejudice to the obligations of States under international law, including particularly the 1951 Refugee Convention and its 1967 Protocol, as well as other human rights and regional refugee instruments to which they are party.

Temporary protection must not be a substitute for other protection mechanisms that respond adequately to the situation at hand, or to replace existing protection schemes that would be applicable or more suitable.

### **Risks**

Legal: denying temporary protection may leave people destitute, at risk of being subjected to various human rights violations, and at risk of refoulement.

Political: Inadequate differentiation between categories of persons requiring protection on a humanitarian basis; Lack of coordinated, efficient and mutually agreed standing arrangements can jeopardize access to required protection; the choice to apply temporary protection should

not undermine other treaty-based protection responses. Reputational: Misinformation about the purpose, scope and duration of temporary protection arrangements may increase fraud risks, which may undermine the effectiveness and integrity of the protection granted; and harm the credibility and reputation of UNHCR.

Hazards: States parties to 1951 Convention and/or 1967 Protocol and regional instruments must be trusted to act in good faith and not apply temporary protection in situations where other Convention-based responses can be applied.

### **Resources and partnerships**

Partnerships: Government officials, including relevant ministries and agencies, relevant regional entities and fora, border management authorities and international organisations such as IOM, NGOs, CSOs, and implementing partners.

### **Post emergency phase**

In fluid or transitional situations, keep under review the transition to either prima facie recognition or individual procedures for determining refugee status or other, complementary, forms of international protection, as appropriate.

### **Protection objectives**

- To ensure that international protection is available to persons in need.
- To ensure a minimum set of standards of treatment and stay are applied to concerned persons and populations, while preserving more favourable standards that may apply.
- To guarantee that appropriate reception arrangements are in place for affected populations that ensure access to territory, immediate needs are met, proper systems for identification, registration and documentation, and that mechanisms are in place to identify persons with specific vulnerabilities or protection needs, such as children, older people, and people with disabilities.
- In the course of application of temporary protection, to make available relevant information on the situation in the country of origin.

### **Annexes**

## **4. Main contacts**

Contact, in the Division of International Protection (HQ), the Protection Policy and Legal Advice Section at DIP (for doctrinal clarification); Asylum Systems Determination Section (for application of temporary protection as part of processing strategies in mandate operations); Asylum-Migration Unit (for advice on operationalization in mixed movement situations).