



Climate Displacement Legal Strategy Convening

Synthesis Report

January 26, 2023

About IRAP

he International Refugee Assistance Project (IRAP) is a global legal aid and advocacy organization working to create a world where refugees and all people seeking safety are empowered to claim their right to freedom of movement and a path to lasting refuge.

Everyone should have a safe place to live and a safe way to get there. IRAP is working to expand legal protections for climate displaced people. Using existing legal tools and building on our expertise providing legal services to refugees and displaced people, as well as our work on legal

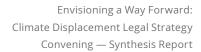
advocacy and impact litigation, we will identify and advocate for pathways to safety for people displaced by climate change.

For more information about IRAP's climate displacement work, contact Ama Francis at **afrancis@refugeerights.org**.

Acknowledgements

Thank you to the contributing writers of this report, Laika Abdulali and Ama Francis, and to the convening attendees.







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Below Photo Credit Malith Gayan Hettiarachchi



Preface

e are on a fast-track to a hotter world. Even with current commitments to cut global carbon pollution, we can expect 3°C of warming and continuing catastrophic effects to communities and our natural ecosystem if the status quo continues. The recent win at the United Nations climate talks to establish a fund through which wealthy countries can pay "loss and damage" to those countries most affected by climate disasters reminds

us that we can indeed change course and work to support communities in responding to the devastating effects of climate change, including forced displacement.

In our changing climate, the reality is that some people have already been forced to

flee home, many more will have to flee without transformational change, and no one should have to do so. When I learn that Tuvalu plans to upload its island culture to the metaverse in the face of existential loss from sea level rise. I am heartbroken. I am also called to ingenuity. We convened activists, state partners, and advocates to envision a world where all people can safely

be at home, no matter what identities they embody, and engage in the deep challenge of ensuring the freedom to stay and the freedom to move. I am honored to have been able to steward the conversation and humbly invite you to join the work.

> — Ama Francis Climate Displacement Project Strategist, IRAP



Photo Credit George Ntonya/UNDP



Executive Summary

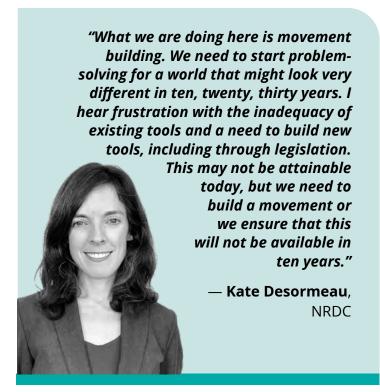
limate change exposes the fault lines of injustice. This is especially clear when it comes to displacement. Many people forced to flee home by climate disasters are already facing other structural challenges, including inadequate access to safe housing, economic marginalization, and racial/ethnic discrimination. Climate impacts such as heavy rains, drought, and sea level rise annually displace 20 million people within their own countries. Yet those displaced experience such precarity without adequate legal protections.

Given both the stakes and scale of this challenge, the International Refugee Assistance Project (IRAP) hosted a convening to cultivate regional expertise and build networks to support the emergence of a legal protection framework. With a focus on the Americas, the two-day online gathering on October 25-26, 2022 brought together over four dozen legal scholars, practitioners, activists, and advocates to collectively advance actionable and enforceable solutions for climate displacement. Emerson Collective and the National Resources Defense Council (NRDC) co-hosted the event, adding important insights from both the philanthropic community and environmental movement.

The discussion surfaced several key strategic points. Participants cautioned against normalizing displacement while building a legal framework that allows people to move, and noted the limitations of law in bringing about change given a culture of xenophobia, limited political will, and a history of racism and colonization in many countries. The convening

further highlighted just how much work needs to be done to create an equitable legal framework that responds to the needs of the most marginalized people.

Yet the gathering also energized participants. To confront these challenges, attendees brainstormed **future projects** to create regional, multi-sectoral solutions—including collaborating to create a database of climate displacement case law, engaging narrative tools to support legal change, and advocating for stronger legal protections in regional forums. IRAP is launching a multi-organizational working group to carry this work forward and continues to identify where climate displaced people can be protected, where pathways can be strengthened, and where new legal structures are necessary.





Introduction

limate displacement is of immense concern. Climate-related disasters such as drought, floods, wildfires, storms, and sea level rise are increasingly displacing people, disproportionately affecting marginalized populations facing other structural challenges in climate-vulnerable regions and countries. This is especially the case in the Americas; Latin American and the Caribbean countries demonstrate the strongest relationship between environmental hazards and migration outcomes globally.1 Yet, existing levers and legal instruments in the region are inadequate to address the needs of affected people. To respond to this challenge, IRAP held our 2022 Climate Displacement Legal Strategy Convening: US, Mexico, Central America & the Caribbean ("the Convening") in partnership with Emerson Collective and the National Resources Defense Council (NRDC) to bring together regional advocates and work across organizations to effect actual change.

The Convening's central goals included building consensus and moving towards multi-organizational solution-oriented work, with an eye toward launching a working group. A regional focus was crucial, as was an intersectional lens foregrounding the most vulnerable and marginalized people, including Indigenous individuals.

KEY TAKEAWAYS

There is an urgent need to take the following steps:

- **Integrate** climate-specific language into regional treaties and domestic law
- Create new pathways for cross-border climate displaced people that account for slow-onset disasters
- Prevent forced displacement by expanding resources, protections, and state action to enable people to stay in their homes
- Cultivate connections among climate experts, migration specialists, scientists, and impacted communities
- Center vulnerable groups, including Indigenous people, in shaping and strengthening climate displacement protections



Photo Credit Daniel Arauz

¹ Roman Hoffmann, Anna Dimitrova, Raya Muttarak, Jesus Crespo Cuaresma & Jonas Peisker, "A meta-analysis of country-level studies on environmental change and migration," Nature Climate Change 10 (2020): 1–9, https://doi.org/10.1038/s41558-020-0898-6.



Day One: Stage-Setting Sessions

ay One set the stage for multiorganizational, region-wide work on climate displacement. Panelists and participants discussed the scope and stakes of the issue, highlighting the laws and practices that protect climate displaced people today and the gaps that remain across the Americas.

DAY ONE STAGE-SETTING SESSIONS: KEY TAKEAWAYS

Steps Forward:

- Press states to support the freedom to stay and to move
- Recognize small island states' deep vulnerability to climate displacement
- Expand emerging free-movement law within regional organizations
- **Increase** the use of Temporary Protected Status and humanitarian visas
- **Strengthen** internal displacement policies, leverage the refugee definition in the Cartagena Declaration, and make U.S. asylum law climate inclusive
- Support a loss and damage fund to advance climate justice

Defining the Issue and Pointing Towards Solutions: Climate Displacement in the United States, Mexico, Central America, & the Caribbean

Everyone is not yet guaranteed a safe place to live in our changing climate. In this opening panel discussion, community, national, and regional leaders described how climate impacts



Photo Credit Boris Heger/European Union/EC/ECHO

worsen existing structural injustices, highlighting that climate displacement is already an urgent challenge. Representing a range of perspectives and methods—from grassroots organizing to state-led processes, academia to advocacy, and North America to the Caribbean—panelists also pointed to promising solutions and emphasized the importance of a regional approach. The panel featured Miriam Miranda of the Black Fraternal Organization of Honduras, Dr. Natalie Dietrich Jones of the University of West Indies, and Juan Carlos Méndez Barquero of the Platform on Disaster Displacement. Ama Francis of IRAP moderated.







Photo Credit CityAdapt

One key message from the panel was that in discussing a rights-based approach to climate displacement, advocates should be careful not to normalize the loss of one's home or country; in other words, the freedom to stay is as important as the freedom to move. Panelists urged states to take concrete actions, including cutting carbon emissions and preventing foreseeable, avoidable disasters, like annual river flooding, through timely management. They also framed migration as an important adaptation strategy. Panelists converged on emphasizing that, for all steps forward, keeping human dignity in mind and centering communities in this work is important.

"I want to live in a small developing island state for the rest of my life. As such ... thinking about how we can pursue climate justice and contribute to reducing the impacts of climate change is personal. The small actions we take might have ripple effects around the globe.

Think about small island states when you do your work."

— Natalie Dietrich Jones, University of West Indies



Panelists centered small island states, which are especially vulnerable to climate events. The eye of a hurricane can exceed the entire square footage of some microstates, causing immense harm. For example, Hurricane Irma (2017) forced almost the entire population of Antigua and Barbuda to evacuate. This scale of displacement can cause massive cultural loss, especially if young people do not return. Second, many island communities organize their livelihoods along the coast, leaving them vulnerable to sea level rise and other climate effects. Finally, the relatively small amount of land mass available for settlement also drives communities to live in unsafe areas such as previously reliable dry riverbeds, where climate-intensified floods now regularly occur. Small island states contribute less than 1% of global greenhouse gas emissions, yet bear the brunt of such climate effects.

"We demand real solutions.
Fake solutions are no longer allowed, the situation is bad enough."

— Miriam Miranda,
Black Fraternal
Organization of Honduras

In all geographies, panelists stressed the importance of considering an array of factors, including poverty and food insecurity, to understand and address climate displacement. For example, climate change exacerbates drought, which increases food insecurity, resulting in migration within and from Central America. This is one instance of displacement



Photo Credit Oxfam International

due to a complex interaction of factors. Because of this complexity, and because people typically move within their region, multisectoral, regional solutions to climate displacement are critical.

Emerging Practices from the Americas

Although the law on climate displacement is still nascent, many organizations have already begun deep work that partners can learn from and replicate. This panel outlined emerging regional laws and practices used to support climate displaced people across the Americas. Dr. Clarence Henry of the Organisation of Eastern Caribbean States (OECS), Helena Olea of the Alianza Americas, and Sandra Elizabeth Álvarez Orozco of Sin Fronteras IAP participated in this panel discussion led by Kate Desormeau (NRDC).



The first highlighted framework was free movement agreements. OECS, for example, an economic union of Eastern Caribbean states, currently allows for some free movement, and the union is working on strategies to strengthen this right. Another avenue for future advocacy is to expand the Caribbean Communities' (CARICOM) free movement regime to all people,

not just skilled workers. As of now, CARICOM allows individuals who possess 12 particular skill sets to travel freely across member territories. Finally, panelists stressed the need to train frontline immigration and border officials on the protection needs of climate displaced people.

Second, panelists spotlighted Temporary Protected Status (TPS).² They called on advocates to push for new TPS designations, including for Guatemala, especially given recent disasters like Hurricane Eta (2020). Simultaneously, panelists stressed that the United States and other state governments must strengthen rebuilding efforts within countries of origin to support people's freedom to stay or to return. Panelists underscored the role that TPS work permits play in allowing TPS-holders to send remittances back to their home countries, which can support recovery from climate events.



Photo Credit Ainhoa Goma/Oxfam





Third, participants pointed to the Supreme Court of Colombia, which issued a landmark ruling in the case of *Future Generations v. Ministry of the Environment and Others*, ordering the state to take concrete actions to combat climate change, including through reforestation in the Amazon and cutting greenhouse gas emissions.³ Panelists underscored that such legal decisions support the freedom to stay, by reducing climate effects that force migration. Panelists also highlighted work by litigators, including Sin Fronteras, toward building complementary protections for crossborder climate displaced people and creating a strong body of supportive case law from domestic courts regionally.

Finally, participants stressed that any sustainable, equitable movement toward stronger legal protections rests on cross-sectoral communication. Therefore, building connections between affected communities,

academics, environmental scientists, and migration specialists is key. Panelists also noted a need to translate Spanish digital journalism into English, with the goal to increase cross-regional communication and support.

Group Strategy Session: Legal Relief for Climate Displaced People

This session highlighted five existing legal protection mechanisms for climate displaced people, identifying strengths, weaknesses, and entry points for future work. Ama Francis of IRAP presented, drawing on IRAP's pre-convening advocacy memo.

MECHANISMS

- 1. Humanitarian Visas
- 2. Temporary Protected Status
- 3. The Cartagena Declaration
- 4. U.S. Asylum Law
- 5. Internal Displacement Policies

The panel introduced two mechanisms that advocates can leverage in the short term. The first mechanism, humanitarian visas, is one of the most frequently used mechanisms in the region to offer temporary protection in the aftermath of environmental disasters. Advocates should promote the use of humanitarian visas since they allow entry and temporary stay in a host state, and in some cases, domestic laws specify that environmental or climate-

³ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Lab. abril 5, 2018, M.P: Luis Armando Tolosa Villabona, Expediente STC4360-2018, Gaceta Judicial [G.J.] (Colom.).





Photo Credit Periodismo de Barrio

related events may serve as the basis for relief. However, humanitarian visas are designated on a discretionary and *ad hoc* basis, based on administrative decisions, and offer a pathway to permanent protection only in some cases.

Second, TPS grants temporary protections for up to eighteen months to some foreign nationals in the United States who are prevented from safely returning home due to conditions including environmental factors. TPS legislation expressly provides for environmental disasters, and it applies to sudden- and slow-onset events. Further, it allows beneficiaries to work in the United States. However, it only applies to people who are already in the United States at the time of TPS designation, and it is granted on an *ad hoc* basis.

Three solutions advocates can leverage in the medium-term include, first, the refugee definition in the Cartagena Declaration.⁴ This relatively expansive refugee definition, and specifically the clause "circumstances that have seriously disturbed the public order" has protected Haitians fleeing the 2010 earthquake. However, it does not specifically mention environmental disasters or climate change, the United States and many Caribbean countries have not integrated it into national law, and protection is granted only based on a state's socio-political response to a disaster. A promising opportunity for advocacy, however, is the 40th anniversary of the Declaration's adoption in 2024.

A second, medium-term solution lies in U.S. asylum law. In many cases, people fleeing climate impacts may be able to claim protection based on intersecting marginalization, citing established grounds such as race, political opinion, or membership in a protected social group as reasons for their persecution. U.S. asylum law provides access to permanent status and grants relatively robust benefits. However, it enshrines narrow legal requirements that act as a barrier for climate displaced people, and few beneficiaries receive it, following an arduous process and backlog.

Domestic policies that protect internally displaced people (IDPs) are key to complementing these cross-border protections and offer a third, medium-term solution. These

⁴ Cartagena Declaration on Refugees § 3, (3), (1984), https://www.oas.org/dil/1984 cartagena_declaration_on_refugees.pdf.

⁵ Note that earthquakes are not a disaster exacerbated by climate change.



Photo Credit Daniel Arauz

policies are responsive to the reality that many climate displaced people move within borders, and the Guiding Principles on Internal Displacement offer an international normative standard. However, IDP policies suffer from poor implementation, they may not explicitly mention environmental disasters, and countries with large IDP populations often have limited capacity to support the human rights of these populations.

In responding to these five mechanisms through polls, participants noted that a lack of political will might limit the improvement of these mechanisms, and that existing law is prone to excluding Indigenous people in particular. Participants also highlighted promising geographical areas for advocacy. They were most optimistic about Central American countries outside the Northern Triangle (Belize, Costa Rica, Nicaragua, Panama) using humanitarian visas, followed by Mexico. They viewed Mexico as open to strengthening IDP policies, and South

American signatories as potentially willing to integrate climate change considerations into national refugee procedures. Attendees also indicated their view that the United States is most likely to designate TPS for Northern Triangle countries. In sum, existing law and policy provides some building blocks for a legal framework, but a much more robust protection infrastructure is still needed.



Given that existing measures do not account for the fact that some displaced people will not be able to return home, permanent legislation, a long-term solution, remains necessary. New law could respond to slow-onset disasters, codify protection as opposed to the current ad hoc approach, and provide an opportunity to create pathways before disaster strikes. While acknowledging these possibilities, participants expressed concern that the xenophobia-fueled political climate in various countries might stymie efforts to create new laws and require movement building to overcome.



Day Two: Legal Strategy Sessions

urrently, no country offers a right of entry to anyone fleeing climate impacts alone, and few legal structures are in place to protect the rights of climate-affected IDPs. On Day Two, participants envisioned ways to strengthen existing legal pathways and create new laws through multisectoral advocacy, networking, and narrative shaping.

DAY TWO STRATEGY SESSIONS: KEY TAKEAWAYS

Participants underscored the need to:

- Center human dignity
- Make TPS a consistent, broadly available protection for people facing climate disasters and slow-onset environmental degradation
- Advocate for permanent protection pathways
- Add climate specific language to multilateral agreements, regional instruments (including the Cartagena Declaration), and domestic law
- Press states to incorporate regional treaties into their domestic legislation and create binding protections for climate displaced people
- Train immigration and frontline officials in climate displacement's interaction with recognized asylum grounds & the needs of marginalized climate displaced people



Photo Credit Peg Hunter

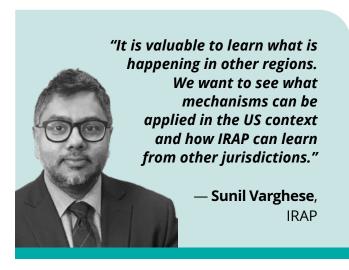
- Collect and share information on cases that win protections for climate displaced people
- Strengthen multisectoral, multiorganizational ties across the region
- Build positive narratives across the media and popular opinion on climate displacement
- Work intersectionally with Indigenous people's groups, climate experts, and unions to build equitable, humane legal protections for climate displaced people





Photo Credit NeilPalmer/CIAT

Small Group Session: Expanding Existing Legal Pathways



Participants brainstormed opportunities to leverage existing mechanisms in this session and identified key partners and resources to use these tools to their fullest capacity. The discussion surfaced several key ideas. For instance, participants proposed integrating climate-specific language and language related to slow-onset events into certain domestic legislation and regional instruments. Participants also converged on the importance of creating a shareable database of case law in which climate claims have been raised before adjudicators. Advocates can learn how and when to effectively use climate claims to support their clients, normalizing climate discourse in adjudications.



Photo Credit Internews Europe

Further, breakout groups underscored the need to train adjudicators and immigration officials on climate displacement and how established protection grounds under asylum law interact with climate effects. Finally, this session advocated for multi-sectoral, regional work to build conditions for transformative change. The session pointed to invigorating developments and promising sites for work on stronger protections across the region. Key areas of focus were humanitarian visas, TPS, IDP policies, the Cartagena Declaration's refugee definition, U.S. asylum law, and international legal developments.

First, on humanitarian visas, Argentina recently created a special environmental humanitarian visa for residents and citizens of Mexico, Central America, and the Caribbean who have been displaced by socio-environmental disasters. Participants discussed pushing for more states to follow suit and for states to expand the scope of humanitarian visas to include slow-onset environmental disasters, such as drought, famine, and sea-level rise.

Second, the session addressed the effectiveness of TPS, proposing to reshape TPS for more inclusive, adequate support. One participant described TPS as a "political weapon." Administrations have unilateral ability to decide to designate or terminate TPS, leaving people to live in deep uncertainty. Participants raised concerns on the racist and discriminatory application of TPS, pointing to Haitians' experience after the earthquake in 2010. Another concern is that administrations have sought to limit the number of TPS grants, demonstrating a lack of political will to expand this pathway. This meeting further highlighted entry points to better the TPS framework. These points include combining TPS with humanitarian parole, shifting eligibility away from countryby-country designation, and forging links to permanent pathways.

A third, strong suggestion by participants was to build up national level frameworks for IDPs. The United Nations' Guiding Principles on Internal Displacement offers a map. Important guidance also comes from climate scientists, as climate change impacts each geographical location and community differently. The Alaska Native people are one example of a particularly vulnerable group that requires climate science input on protections. Alaska is warming at nearly four times the rate of lower latitudes, leaving this community especially at risk of climate displacement.

A fourth area identified for future work was the 1984 Cartagena Declaration. As a strategic question, participants debated whether to invest resources in expanding the Cartagena



Photo Credit S. Billy/European Union

Declaration refugee definition or creating a new tool for climate displaced people specifically. Participants were energized by the opportunity to connect climate displacement to the Cartagena Declaration and to build political will to push states to adopt and implement the Declaration's tenets and updated guidelines. Participants also pointed to a unique feature of the Declaration — that states meet every ten years to ideate and adopt a new complementary instrument — as an opportunity for advocacy.

A fifth area identified for advocacy was U.S. asylum law. The session emphasized a need to push the United States to more consistently follow the existing tenets of international or domestic asylum law. Participants surfaced several ideas for future action to strengthen U.S. asylum law. One idea was to train Customs and Border Patrol officials, asylum officers,

immigration judges, and other key players in climate displacement, emphasizing how climate interacts with structural injustice and established protection grounds. A second idea was to use the Particular Social Group protected ground to press forward climate displacement claims. This session highlighted that there is much to learn from the history of gender based claims in asylum law, including that this work can have a long horizon and movement-building is key.

A sixth path towards change identified was advocacy to push states to follow international legal protections. Exciting new legal developments in the international law sphere include the Human Rights Commission's 2020 communication in *Teitiota v. New Zealand*, which recognizes that it may be unlawful for states to return climate displaced people to situations where their right to life is threatened.⁶ However, international legal norms must be incorporated at the domestic level in order to guarantee the protection of climate displaced people.

Small Group Session: Visioning New Legal Pathways

Utilizing and expanding existing pathways to their fullest capacity is key to ethical legal advocacy for climate displaced people. However, existing mechanisms are inadequate to guarantee safety, preserve dignity, and support people as climate-related disasters continue to escalate. Therefore, this session focused on ideating new legal pathways for climate displaced people.

⁶ Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment, [2014] NZCA 173 (New Zealand).



Photo Credit Ingmar Zahorsky

The session surfaced several strategic questions. First, participants discussed whether a climate-focused legal instrument or tools with more general language that covered all migrants would be more likely to be equitable and effective, especially given that most climate displaced people are moving for intersecting reasons.

Relatedly, to build justice-serving instruments that support all vulnerable people, participants underscored the importance of partnering with economic migrants and labor movements. Further, communications between immigrant and Indigenous communities and advocates are key to envisioning a humane legal system.

Second, the session emphasized that the world is evolving rapidly as climate effects escalate. Advocates must plan for a world with different maps and borders, in which climate will affect geography and communities in ways yet unclear. Bearing this fluidity in mind, participants underscored that working towards new law requires partnerships with many actors. For instance, we must involve climate scientists in the process of visioning new legal instruments on climate displacement in particular.

Third, participants considered the merits of advocating for new law at the international, regional, and/or domestic level. Participants were hopeful about constructing and raising up regional frameworks, guidelines, and goalposts, and then integrating these frameworks into domestic law.

"Can we identify human stories that make people connect?... Some of these human stories are maybe even inside the US. We need to do a better job of connecting the dots of what climate displacement looks like and who it's affecting."

— Kayly Ober, USIP

Finally, the session centered shifting public opinion and building political will as crucial to actualizing change. Participants remarked that an effective narrative might present reparations and climate justice as a moral obligation



Photo Credit J. Arguedas/European Union

and emphasize industrialized nations' role in anthropogenic climate change. Another narrative framing could highlight that climate change affects all countries and communities, emphasizing that human beings must work to survive together and that all migrants are deserving of dignity and access to food, shelter, and other necessities.

Moving the Work Forward

The convening motivated participants to collaborate on projects that will bring together advocates, experts, and communities across the region and center displaced people's needs. Participants were in consensus that learning about emerging regional law and entry points for building new law is crucial to providing cutting edge advocacy for affected communities. Participants saw a deep need for communication across organizations and sectors to build regional pathways, share data on effective legal strategies, and advance civil society recommendations for states and regions.



PROJECT IDEAS

- Create a cross-sectoral, multi-organizational working group to draw on regional knowledge and advocate for legal change
- Create a regional database of cases where climate change effects were raised before an adjudicator, successfully or unsuccessfully
- Select and test cases for strategic litigation in the Inter-American Courts
- Build a cross-regional network of organizations to push to include climate displacement at the Cartagena Declaration's 40th anniversary

- Work with TPS coalitions to integrate climate change more regularly into calls for TPS designation and redesignation
- Build a cross-sectoral network of organizations to share ideas on the science of climate change, the legal needs and experiences of climate displaced and Indigenous people, engineering knowledge, and academic expertise
- Create migrant-facing material for unrepresented climate displaced people and material for advocates



Photo Credit Elias Ramos/PMC



Appendix A: Steering Committee

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Photo Credit iStockphoto



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