



Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters: Making the Best Use of Existing Legal Frameworks

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There is currently no comprehensive international legal framework to address displacement caused by climate change and disasters, a crisis of increasing magnitude. To date, a large part of this movement has been within affected countries, yet there is a clear need to address cross-border climate-related displacement to protect and provide safe haven for people in the years to come. Having contributed so significantly to the conditions causing global climate change, the United States has a special responsibility to lead in protecting those displaced beyond our borders.

The Center for Gender & Refugee Studies (CGRS) and partner organizations are working to propose solutions to meet the needs of people who must flee their countries due to the adverse effect of climate change and disasters, not only through creating new protection pathways but also by making the best use of existing legal categories. Toward that end, CGRS tracks trends in climate-displacement asylum claims, recently releasing an advisory for practitioners on *Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters*.

The advisory outlines ways in which displaced individuals may be able to avail themselves of protection under U.S. law, utilizing creative, colorable arguments supporting their inclusion. Furthermore, we identify considerations for advocates arguing for eligibility within the existing asylum framework to uncover necessary facts.

Although not all cross-border displacement caused by climate change will give rise to asylum eligibility, climate change often exacerbates existing inequalities in a society by contributing to conflict, violence and severe economic deprivation tied to the Convention's protected grounds. Therefore, rather than assume that asylum, withholding of removal, or Convention Against Torture (CAT) protection is unavailable for climate-displaced individuals, advocates may be able to build cases with careful background research, factual development, and legal analysis to include persons adversely affected by climate change and disasters.

How U.S. Law Can Provide Relief to Climate-Displaced Individuals

Asylum and Withholding of Removal: CGRS's practice advisory builds on UNHCR's [Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters](#) with practical examples of how some people fleeing

adverse effects of climate change and disasters may have valid claims under the Refugee Convention and Protocol. The elements of asylum and withholding claims may be construed in ways that—rather than viewing adverse climate change impacts in isolation—consider the context of the other conditions that force people to flee their countries. For example, advocates may argue that the harm is on account of a protected ground by showing that already marginalized or vulnerable communities such as women, children, LGBTQ+ individuals, rural and Indigenous communities may face particular risks due to climate change and disasters. Or the state may target a marginalized community by excluding them from its planning for risk reduction, disaster preparedness, or disaster response, leaving them at greater risk of harm. Creative advocacy is paramount for developing strong legal arguments of this nature.

Temporary Protected Status (TPS): The U.S. government may designate all or part of a foreign country for TPS, thus protecting nationals of that country who are physically present in the United States from removal. Such a designation can occur when the foreign country is experiencing earthquake, flood, drought, epidemic, or other environmental disaster resulting in a substantial, but temporary, disruption of living conditions. There are currently several countries whose TPS designation is due in whole or in part to natural disasters, including El Salvador, Haiti, Honduras, Nepal, and Nicaragua.

TPS and asylum have different requirements, and an individual may apply for both if they are eligible. Even if a person does not apply for TPS, it is important to bear in mind that TPS designations can be a useful source of country conditions evidence to support an asylum claim, as they contain credible, U.S.-government-vetted facts concerning damage in the foreign state or to its infrastructure, as well as its response capacity.

Analysis of Asylum Claims with a Climate Component

Asylum is structured around a fear of human-instigated harm, not an event like a natural disaster or its aftermath. Accordingly, individuals impacted by climate displacement may initially express a story that does not appear to fall within the refugee definition. By carefully investigating an individual's claim and researching the facts of the case through a climate lens, advocates may identify viable asylum theories within climate change fact patterns. As advocates encounter more applicants fleeing climate and environmental harm, they should feel confident that the refugee definition is flexible enough to embrace many climate change cases as is protection under the CAT.

Individuals interested in reading the full practice advisory, *Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters*, and obtaining additional resources may request access at [this link](#). Those interested in CGRS's climate displacement advocacy may visit [our webpage](#) or write to CGRS@uchastings.edu.