



Center for Gender & Refugee Studies

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Submission to the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change

Access to Information on Climate Change and Human Rights

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The Center for Gender & Refugee Studies (CGRS) is grateful for the opportunity to contribute this input to inform your thematic report on the access to information on climate change and human rights, to be presented at the 79th session of the United Nations General Assembly. Specifically, our submission addresses question 6 of the call for input, related to the impacts on human rights of inadequate access to information from public authorities,¹ particularly in the context of cross-border displacement caused or exacerbated by the climate emergency.

Drawing from various CGRS advocacy resources introduced in Part I, Part II addresses the right to access information for climate-displaced individuals who cross borders. Part III outlines how States are obligated to protect this population under existing international refugee and human rights frameworks. Part IV analyzes the practices of several countries in the Americas, highlighting their shortcomings in recognizing the rights of asylum seekers and climate-displaced individuals, including the right to access information. Finally, Part V presents a conclusion and brief recommendations. Additionally, the Annex includes copies of documents referenced in Part I.

¹ *Call for inputs: Access to information on climate change and human rights*, SPEC. RAPPOREUR ON CLIMATE CHANGE Question (last accessed on May 28, 2024), <https://www.ohchr.org/en/calls-for-input/2024/call-inputs-access-information-climate-change-and-human-rights>, (“What are the impacts on human rights of inadequate access to information from public authorities and/or business? Are there concrete examples of, or specific challenges in, collecting and sharing information on disproportionate levels of actual and potential harm from climate change and climate change response measures (disaggregated data on Indigenous Peoples, women, children, local communities, persons with disabilities, older persons, persons living in extreme poverty, others)?”).

I. CGRS ADVOCACY RESOURCES

This submission draws upon the following resources prepared by the CGRS, individually or in collaboration with partner organizations, which provide analyses and information relevant to the call for input. Copies of these resources are included in the Annex.

- [*Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters: Making the Best Use of Existing Legal Frameworks*](#) (2023). This document summarizes CGRS's Practice Advisory: Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters (Practice Advisory), which is available upon request;
- An amicus curiae brief to the Inter-American Court of Human Rights (IACtHR) to inform the Court's upcoming Advisory Opinion regarding States' human rights obligations in the context of the unfolding climate emergency: "[*On Issues Related to the Response to Climate Displacement in the Request for an Advisory Opinion Submitted by the Republics of Colombia and Chile*](#)" (Amicus Brief, 2023);
- [*Far from Safety: Dangers and Limits to Protection for Asylum Seekers Transiting through Latin America*](#) (Transit Countries Report, 2023);
- [*Precluding Protection: Findings from Interviews with Haitian Asylum Seekers in Central and Southern Mexico*](#) (Precluding Protection, 2024);
- [*Making a Mockery of Asylum: The Proposed Asylum Ban, Relying on the CBP One App for Access to Ports of Entry, Will Separate Families and Deny Protection*](#) (Asylum Ban Report, 2023).

II. ACCESS TO INFORMATION FOR INDIVIDUALS DISPLACED ACROSS BORDERS IN THE CONTEXT OF THE CLIMATE EMERGENCY

Timely access to information is a fundamental human right for migrants and refugees,² which includes individuals displaced in the context of the climate emergency. In 2020 alone, nearly three million people were displaced in Central America and the Caribbean in the aftermath of Hurricanes Laura, Eta, and Iota.³ UNCHR estimates an average of 21.5 million

² *Guidance On Registration And Identity Management*, UNHCR (last accessed on May 21, 2024), <https://www.unhcr.org/registration-guidance/chapter4/introduction/#:~:text=Access%20to%20information%20must%20be,own%20protection%20and%20well%2Dbeing>.

³ *World Migration Report 2022*, INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), 107 (2023), <https://worldmigrationreport.iom.int/wmr-2022-interactive>.

people worldwide are annually displaced by disasters and climate events.⁴ While most of this displacement is internal, approximately 1 out of 4 individuals cross borders in search of safety.⁵ Inadequate access to information for displaced individuals severely infringes upon human rights, hindering their ability to access the international protection they may be entitled to, and basic services necessary for their survival and integration into their host community.

States have recognized the critical importance of access to information for migrants and refugees. For instance, the Global Compact on Refugees underscores the need to provide comprehensive information about rights, services, and procedures to support refugees effectively.⁶ Similarly, the Global Compact for Safe, Orderly, and Regular Migration aims to ensure accurate and timely information is available throughout all stages of migration, acknowledging it as essential for reducing vulnerabilities.⁷ Notably, though to different extents, both instruments also recognize the climate crisis as a significant driver of migration and displacement, highlighting the need for informed, proactive responses to the challenges it poses.

The absence of a dedicated framework to address the needs of cross-border displaced individuals can lead to the misconception that they are not entitled to any form of protection, thereby restricting their right to access information. However, this view arises from considering climate events and disasters as isolated events, detached from human actions and experiences.

On the contrary, as detailed in our Amicus Brief, the effects of the climate emergency do not occur in a vacuum and instead are shaped by State policies and existing societal structures. For instance, the aftermath of a hurricane is largely influenced by State policies on resilience, preparedness, relief, and recovery. Climate change and disasters exacerbate existing social and economic inequalities, acting as catalysts for broader societal challenges.⁸ The most

⁴ *Frequently Asked Questions: Climate Change And Disaster Displacement*, UNHCR (Nov. 6, 2016), <https://www.unhcr.org/news/stories/frequently-asked-questions-climate-change-and-disaster-displacement> .

⁵ *Climate Change could displace 216 million by 2050: Report*, AL JAZEERA (Sep. 14, 2021), <https://www.aljazeera.com/news/2021/9/14/climate-change-could-displace-216-million-by-2050-report> .

⁶ *Global compact on refugees*, UNITED NATIONS, 50 (2018) <https://www.unhcr.org/media/global-compact-refugees-booklet> .

⁷ Resolution adopted by the General Assembly on 19 December 2018: Global Compact for Safe, Orderly and Regular Migration, United Nations Res. A/RES/73/195, 6 (Jan. 11, 2019), <https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf?token=PpRRBzeDcfHPsUSUO9&fe=true> .

⁸ United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, A/HRC/53/34, ¶¶ 11, 14, 16 (Apr. 18, 2023).

vulnerable and marginalized bear the brunt and have their human rights violated.⁹ When we understand the comprehensive effects of this crisis, particularly on human beings, the applicability of existing human rights instruments becomes clear.

In practice, insufficient information about the effects of climate change and protection avenues for those displaced across borders prevents them from reaching or remaining in safety. They may not know they may be eligible for protection or may struggle to understand or articulate how climate change has contributed to their displacement. For example, as shown in our Practice Advisory, asylum seekers often identify their displacement as primarily related to “‘general’ violence, economic hardship, or a desire to seek a better life.” However, the underlying reason for those factors can frequently be traced back to climate change fact patterns. Similarly, without clear guidelines, those adjudicating protection claims may erroneously interpret the law without considering how climate change impacts a host of human rights and can directly or indirectly lead to displacement.

III. CLIMATE-DISPLACED INDIVIDUALS QUALIFY FOR INTERNATIONAL PROTECTION

As demonstrated by UNHCR¹⁰ and exemplified by CGRS’s advocacy, individuals displaced across borders in the context of the climate emergency may qualify for protection under international refugee and human rights law. Therefore, to respond to climate displacement and ensure the right to access information, States should establish or expand procedures to process the claims of climate-displaced individuals, clarify guidelines for their adjudication, and make the process accessible.

This section will analyze the applicability of existing international refugee and human rights instruments, drawing heavily from CGRS’s Amicus Brief on climate displacement to the Inter-American Court of Human Rights.

A. Refugee Convention and Protocol

The 1951 Refugee Convention on Refugees and its 1967 Protocol, fundamental pillars of international refugee law, serve as crucial instruments for the protection of individuals

⁹ Climate Emergency: Scope Of Inter-American Human Rights Obligations, Inter-American Commission on Human Rights Res. No. 3/2021, 6 (Dec. 31, 2021), https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf.

¹⁰ UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, (Oct. 1, 2020), 3, <https://www.refworld.org/docid/5f75f2734.html>.

displaced across borders. While these instruments are sometimes considered too narrow to cover climate displacement, UNHCR has recognized that “[p]eople fleeing in the context of the adverse effects of climate change may have valid claims for refugee status under the Refugee Convention.”¹¹

The 1951 Convention and its Protocol may apply to situations where the effects of climate change or disasters intersect with significant harm that can be considered persecution based on one of the Convention’s five protected grounds: race, religion, nationality, membership of a particular social group, or political opinion. Understanding adverse climate impacts within the broader context of societal structures is crucial, because it reveals how the climate emergency exacerbates existing inequalities and leads to human rights violations. CGRS’s Practice Advisory demonstrates how the effects of climate change appear and can influence different elements of the refugee definition as applied in the United States and provides guidance on how such cases should be analyzed.

B. Cartagena Declaration

The Cartagena Declaration expands the traditional definition of “refugee” to encompass individuals who have fled their countries due to threats to their life, safety, or freedom stemming from various circumstances, such as generalized violence, foreign aggression, internal conflicts, massive human rights violations, or other circumstances which have seriously disturbed public order.¹² Various member states of the Organization of American States follow Cartagena in their domestic law.¹³ Further, the IACtHR has interpreted the right to seek and receive asylum, enshrined in the American Convention on Human Rights, using the expanded Cartagena definition.¹⁴ This highlights its authoritative significance for states across the Americas.

¹¹ *Id.*

¹² Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Conclusion 3 (Nov. 22, 1984), https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf.

¹³ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A), ¶ 77 (Aug. 19, 2014), <https://www.refworld.org/cases,IACRTHR,54129c854.html>

¹⁴ *Id.* ¶¶ 77-79 ; *see also* The Institution of Asylum and its Recognition as a Human Right in the Inter-American Protection System, Advisory Opinion OC-25/18, Inter-Am. Ct. H.R. (ser. A), ¶ 131-132 (May 30, 2018) https://www.corteidh.or.cr/docs/opiniones/seriea_25_ing.pdf.

Both slow or sudden onset climate events, combined with inadequate governmental responses, can trigger conditions that impact large segments or the entire population, impeding their access to services and hindering the enjoyment of basic human rights. Additionally, these events can prevent the government from guaranteeing the life, safety and liberty of its, thereby compromising public order. Our Amicus Brief argues that such events can be categorized as either a “massive violation of human rights” or “circumstances which have seriously disturbed public order.”

C. International Human Rights Law (*Non-refoulement*)

As detailed in our Brief, people displaced across borders by climate change and related factors can also be protected by international and regional human rights law, particularly by *non-refoulement* provisions that forbid states from returning individuals to places where their lives or well-being might be at risk. For example, the UN Human Rights Committee has interpreted the International Covenant on Civil and Political Rights to include a *non-refoulement obligation*, and in 2020, recognized that this obligation can extend to individuals whose life or personal integrity could be at risk due to the effects of climate change.¹⁵ In the Americas, the IACtHR has interpreted the *non-refoulement* obligation of the American Convention and American Declaration broadly, clarifying that it applies not only to refugees but also to others whose lives or well-being might be at risk due to serious threats to their personal integrity,¹⁶ which can arise in the context of the effects of climate change.

States should interpret their *non-refoulement* accordingly as a matter of duty, including in response to the climate emergency, to guarantee the protection of climate-displaced individuals.

IV. STATE PRACTICE SHOWS GAPS IN PROTECTION

States sometimes fail to fulfill their obligation to protect those arriving at their borders, including those displaced due to the effects of climate change. They do this by preventing access to protection mechanisms, neglecting to inform about available forms of protection,

¹⁵ Ioane Teitiota v. New Zealand, Communication No. 2728/2016, Views of 17 January 2020 (CCPR/C/127/D/2728/2016) (Human Rights Comm.) (Jan. 7, 2020), ¶ 9.3, <https://www.refworld.org/cases,HRC,5e26f7134.html>.

¹⁶ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A), ¶ 81, 234 (Aug. 19, 2014), <https://www.refworld.org/cases,IACRTHR,54129c854.html>.

or sustaining inefficient or overwhelmed systems that leave people in limbo, increasing their vulnerability.

CGRS's Transit Countries Report illustrates these shortcomings through various examples from countries across the Americas. For example:

Mexico: The country's asylum system is overwhelmed by a dramatic increase in applications, lacking the resources to handle them effectively. Our report documents that Mexico resolved only 32,189 out of 183,555 cases in one year. Asylum seekers face numerous hurdles, including limited support services, lack of access to information, and unsafe conditions at the southern border, where shelters are full, jobs are scarce, and violence is prevalent. The detention of migrants is a common practice, and most detained individuals never receive any information about their right to apply for asylum or other forms of protection. Moreover, non-Spanish speakers, namely Haitian migrants and extra-continental migrants, face language barriers that further prevent them from accessing the asylum system and basic services such as education and healthcare.

Belize: The asylum system is barely functional. Our research documents that the country had granted asylum protection to fewer than 100 individuals by December 2022. A lack of crucial information on available forms of protection causes more than half of asylum seekers to fail to apply.

Guatemala: The country's asylum system is inefficient and the adjudication of claims involves a bureaucratic interministerial process, leading to significant delays and a minimal number of refugees recognized. The identification and referral mechanisms were inadequate, leaving asylum seekers without clarity of the process.

El Salvador: The asylum process poses many challenges, starting with a short deadline of only five days to apply after entering the country. For people not immediately familiar with the process, especially those needing protection, it is nearly impossible to apply. Moreover, El Salvador's asylum system lacks clarity regarding the criteria for case adjudication.

Panama: The country's migration policy is focused on facilitating the quick transit of migrants rather than increasing the capacity of its protection system. The asylum process lacks procedural guarantees and basic safeguards, resulting in a shockingly low admission and approval rate of just one percent. Our report documents a backlog of over 11,000 cases despite a limited number of applications.

Colombia: The inefficient and cumbersome asylum process has led to a backlog of over 42,000 pending cases. There are many barriers for asylum seekers, including the general lack of awareness and information about the asylum process.

Finally, as noted in our resources Precluding Protection and the Biden Asylum Ban Report:

United States: For the last few years, the U.S. government has used CBP One, an app created to manage access to asylum at the border, with disastrous consequences for many. Our research indicates that the app's shortcomings include appointment scarcity, misinformation, language and accessibility barriers, and technical issues, leaving thousands, notably Haitians, trapped and vulnerable in Mexico.

V. CONCLUSION

The timely access to information for climate-displaced individuals is critically important to enable them to seek protection and reach or remain in safety. International human rights and refugee law provide a framework for protection. However, States too often fail to fulfill their obligations. We urge the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change to address the right to access information of individuals displaced across borders by climate change or disasters in the upcoming thematic report, and recommend that States:

- Abide by their *non-refoulement* obligations to protect individuals whose lives and well-being may be at risk because of the climate emergency.
- Recognize the right to seek asylum as a tool to protect some individuals displaced by climate-related causes.
- Establish or expand procedures to process the claims of climate-displaced individuals and guarantee access to them, including through proper access to information.
- Increase international and regional cooperation to protect the human rights of climate-displaced individuals, including their access to information.