



# Center for Gender & Refugee Studies

## Asylum Claims for Individuals Fleeing the Adverse Effects of Climate Change and 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 the adverse effects of climate change and disasters. While most people move within their own countries, there is a clear need to address cross-border climate-related displacement in order to protect and provide safe haven for people who must flee elsewhere. Both the [U.S. government](#) and the [United Nations refugee agency](#) have acknowledged that people displaced in these circumstances may fit within the refugee definition.

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 effects 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 and has released two advisories for practitioners on *Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters* and *Investigating Climate-Related Aspects of Fear-of-Return Claims*.

The first practice advisory outlines ways in which displaced individuals may be able to avail themselves of protection under U.S. law, utilizing thoughtful, carefully crafted legal arguments and persuasive evidence. The second practice advisory provides strategies to elicit relevant facts and proceeds through a hypothetical case illustrating climate-sensitive approaches to client screenings and country conditions research.

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 advisories build 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 valid claims under the Refugee Convention and Protocol. For example, advocates may argue that the harm is on account of a

protected ground such as political opinion, race, or particular social group 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.

***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 a slow or even sudden onset event like a disaster. Accordingly, individuals impacted by climate-related 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 and even protection under CAT is flexible enough to embrace these new circumstances.

### **Access our Resources and Learn More**

Individuals interested in reading the full practice advisories may request *Analyzing Asylum Claims for Individuals Fleeing Climate Change* through [this link](#), and *Environmental Disasters and Investigating Climate-Related Aspects of Fear-of-Return Claims* through [this link](#). Advocates looking to use these or other CGRS resources in individual fear-of-return cases should request access through our [Technical Assistance Library](#). Those interested in CGRS's climate displacement advocacy may visit our [webpage](#) or write to [CGRS@uclawsf.edu](mailto:CGRS@uclawsf.edu).