

# Legal Action Agenda for Climate Displacement

United States, Latin America & the Caribbean

Spring 2024



# About This Report & Acknowledgments

In 2023, the International Refugee Assistance Project (IRAP) convened and chaired a multi-stakeholder, bilingual working group of legal experts and advocates from climate, migration and refugee organizations in the United States, Latin America and the Caribbean. This community of practice met monthly to research, discuss, and develop recommendations for a regional legal action agenda for people displaced by climate disasters and related structural challenges. Teju-Adisa Farrar facilitated the working group and Julia Neusner supported with drafting. An Advisory Council jointly led by Emerson Collective and IRAP—consisting of academics, philanthropists and intergovernmental organization representatives—gave expert feedback.

For questions about this agenda, please contact Ama Francis at [afrancis@refugeerights.org](mailto:afrancis@refugeerights.org)

## Participating Organizations

International Refugee Assistance Project

Center for Gender and Refugee Studies (CGRS)

Natural Resources Defense Council

Refugees International

Sin Fronteras

Center for Justice and International Law (CEJIL)

Camila Bustos, Assistant Professor of Law, Elisabeth Haub School of Law at Pace University

Black Fraternal Organization of Honduras

The University of the West Indies

Alianza Americas

Cover photos credit Julio César Casma, Igor Castro da Silva Braga, World Bank, and Neil Palmer/CIAT



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# Executive Summary

Climate change is increasingly impacting refugees and migrants, driving them to flee and making their journeys more dangerous, but the law barely offers any protection. This legal action agenda responds to this challenge by outlining concrete steps and interventions to ensure the rights and well-being of climate-displaced people in the Americas through a regional approach. It is the product of a year-long consultation process between nine nonprofit organizations engaged in climate action and migrant and refugee advocacy and is the first of its kind to offer consensus-based recommendations on addressing climate displacement in the region.

This agenda covers frameworks to support climate-impacted people who relocate across borders and those who are internally displaced, as well as strategies for supporting adaptation in place. Based on the authors' expertise in strengthening protection for people on the move, this legal action agenda includes analysis and recommendations on policies that fall into five categories:

## 1. Refugee protection and non-refoulement

While existing refugee protection frameworks and non-refoulement protect displaced people from return to places where they fear persecution, protection has seldom been granted on the basis of climate impacts alone. Our recommendations include advocacy actions to highlight the intersection of climate impacts with other persecution. We also recommend actions to urge states to adopt and monitor compliance with the Cartagena Declaration's expanded refugee definition as the Cartagena +40 process approaches.



Photo credit UN Women Americas and the Caribbean

## 2. Cross-border humanitarian frameworks

A patchwork of national laws, policies, and visa regimes can extend some protection based on humanitarian considerations to climate-displaced individuals who seek protection across borders outside of refugee protection processes. These policies afford limited and often temporary protection, and seldom expressly acknowledge climate change and/or environmental disasters. We recommend advocacy to improve and expand existing humanitarian frameworks, such as Temporary Protected Status, as well as to adopt new policies, such as climate-specific visas, to better protect people displaced across borders by climate change impacts.

### 3. Mobility frameworks

Agreements between neighboring countries allowing for the free movement of people, such as the free movement regime of the Organization of Eastern Caribbean States (OECS), the Eastern Caribbean Economic Union (ECEU), Caribbean Community (CARICOM) Single Market (CSM), and MERCOSUR can enable people fleeing climate disasters to relocate and provide economic stability for people from climate-vulnerable areas. We recommend advocacy to make these frameworks more inclusive and responsive in the climate context. We also recommend expanding access to labor and other non-humanitarian visas, with proper safeguards to protect against exploitation, to provide temporary protection and economic opportunity for people fleeing climate impacts.

### 4. Internal displacement law and policy

Many climate-displaced people in the Americas initially move internally, but countries in the region lack specialized frameworks to manage internal displacement in the context of climate or environmental disasters. We recommend adopting and strengthening internal displacement policies that are responsive to climate change impacts. We also recommend establishing robust planned community relocation processes for at-risk communities that wish to relocate.

### 5. Resourcing the right to stay

People facing climate change impacts who do not wish to move need significant resources and support for adaptation to increase their resilience to climate change impacts. This requires effective coordination among government agencies and civil society within countries as well as significant external support. Our recommendations include advocacy urging states to uphold their commitments to fund the loss and damage agenda and implement adaptation measures that increase resilience and limit the vulnerability of populations to climate and environmental risks.

In a region that demonstrates the [highest link](#) between environmental hazards and migration outcomes, these legal and policy interventions can play a critical role in supporting climate-impacted people, especially when combined with social movement work. Ensuring that all people, regardless of their identities, have access to safety at home or in a new country is an important part of a just response to the climate crisis.



Photo credit Mariana Kaipper Ceratti/World Bank



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## Overview

### Context

Climate change is a defining challenge of the 21st century and increasingly a lead driver of displacement around the world. Environmental disasters triggered more than 32.6 million internal displacements in 2022 according to the Internal Displacement Monitoring Centre, which is 60% more than in 2021. While many climate-displaced people move within their own countries, some people are forced to seek safety across national borders. The U.N. Special Rapporteur on human rights in the context of climate change has [concluded](#) that “there is a major omission in the protection of persons displaced across international borders due to climate change” and that there is “not only [] an absence of international instruments to give proper protection to persons displaced across international borders due to climate change, but also [a] lack of effective implementation of those instruments that exist...”

In the context of climate impacts and environmental disasters, individuals have a right to relocate to find a safe haven in the aftermath of a disaster and when the gradual degradation of the environment has threatened their livelihoods to the extent that remaining

in place is no longer a viable option. Multiple international law instruments protect the right of individuals to choose their residence and imply the existence of the right not to be displaced, including Article 13 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Civil and Political Rights, and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Despite existing international obligations and the current and anticipated scale of climate displacement, legal protection frameworks have lagged behind. There are not yet any effective multilateral treaties or implemented domestic laws that specifically protect climate-displaced people. While Latin American and Caribbean countries have developed promising normative frameworks, these have not yet translated into reliable legal pathways to safety on the ground. As climate change and environmental disasters increasingly drive displacement in the Americas, the need to improve protection pathways is urgent.

## **Purpose**

This document identifies promising legal and policy pathways for climate-displaced people in the Americas. It undertakes a detailed analysis of various legal and policy avenues to address technical considerations, evaluate feasibility, and assess equity and access issues. This document takes a careful consideration of existing programs and new proposals from across the region. It aims to develop improved knowledge in relation to the legal issues that relate to displacement and climate justice, and to provide concrete actions advocates and stakeholders can take to improve protection.

## **Considerations**

The recommendations proposed represent present-day entry-points for relevant stakeholders and intersect with efforts to increase climate adaptation, reduce carbon pollution, and other climate justice initiatives. All interventions should incorporate safeguards within international human rights law, including due process protections and protection of the right to life and the right to life with dignity, which implies access to sufficient food, housing, healthcare, and education. While this document focuses on policies that are responsive to climate-related disasters or disasters that can be intensified by climate change, most frameworks discussed here are also relevant for other environmental disasters (such as earthquakes).

Please note that this document uses the term “climate-displaced” broadly to refer to individuals who relocate or are under threat of having to relocate due in whole or in part to climate change. We acknowledge that human mobility is multicausal and that climate change interacts with and exacerbates other threats. While any movement in the context of climate change has an element of coercion,



Photo credit Leti Galeano/UN-REDD Programme

this document uses the term “displacement” to refer to movement that is primarily forced; “migration” to refer to movement that is primarily voluntary; and “planned relocation” to refer to the planned movement of entire communities, typically within the same country. We use the term “refugee” only to refer to those eligible for protection under the United Nations 1951 Refugee Convention and its 1967 protocol and/or domestic refugee protection laws.

While climate-related displacement often takes place within countries, this document’s analysis is weighted towards cross-border movement, as its authors are primarily migration and refugee protection experts who believe that a full commitment to climate justice requires supporting climate-displaced people in their full range of options, including the freedom to access protection in other countries. Any interventions to protect climate-displaced people must center the agency of those impacted.

# Using This Document



Each subsection of this legal action agenda lists

**recommendations for action** to improve protection and specifies the most relevant actors and subregions. Stakeholders can use it to develop concrete action steps and interventions that best leverage their competencies and address challenges in their specific subregion.



This document discusses existing and proposed

**legal frameworks** to support and protect climate-displaced people. Users can incorporate its contents into international, regional & domestic forums taking place that address climate adaptation, mitigation and other intersecting issues. This analysis can also be used as a knowledge-product for other advocates and for tertiary education purposes.



This document may serve as an advocacy

**tool** for policymakers in countries where participating organizations are based and throughout the Americas, as well as to build consensus among advocates in the Americas on advancing legal protection and pathways for climate-displaced people.



Photo credits Jessica Belmont, UN Women, UNDP, Yosef Hadar, Mariana Kaipper Ceratti, Angels Masó



# Legal & Policy Frameworks with Recommendations

This section details existing and proposed legal and policy frameworks that can provide protection for climate-displaced people. Each framework comes with actionable recommendations by subregion for legal practitioners, international government organizations, government officials, media, academics, and civil society.

## Sub-regions Key

- ★ **All Regions**
- **Mexico**
- **Central America**
- ▲ **Caribbean** (including: Guyana, Suriname & Belize)
- ◆ **South America**
- ◆ **U.S. and Canada**

## Advocate Key

LP	Legal practitioners
IG	International government organizations
GO	Government officials
M	Media
AC	Academia
CS	Civil society

## Acronym Key

ACHR	American Convention on Human Rights
CARICOM	Caribbean Community
DRR	Disaster Risk Reduction
IA Court	Inter-American Court of Human Rights



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## Acronym Key (continued)

IACHR	Inter-American Commission on Human Rights
IAHRS	Inter-American Human Rights System
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally displaced persons
IOM	International Organization for Migration
LAC	Latin America and the Caribbean
NAP	National Adaptation Plans
NDC	Nationally Determined Contributions
OAS	Organization of American States
OECS	Organization of Eastern Caribbean States
RSD	Refugee Status Determination
RTB	Revised Treaty of Basseterre
SIDS	Small Island Developing States
UNHCR	United Nations High Commissioner for Refugees
UNFCCC	United Nations Framework Convention on Climate Change

### **Refugee Protection & Non-Refoulement**

In the absence of a dedicated protection framework for climate-displaced people, it is crucial to explore how existing law may be applied and improved to address their protection needs. Refugee protection and international human rights law provide crucial safeguards for those who seek safety abroad. States are also bound by non-refoulement obligations under international human rights law to ensure climate-displaced people, including those who may not qualify for refugee protection, are not returned to places where they fear irreparable harm.

Extensive safeguards within existing refugee and human rights law—such as guarantees of access to territory, access to protection-sensitive screening mechanisms, and non-penalization of irregular entry—are crucial for ensuring the safety of climate-displaced people. Furthermore, countries must guarantee adequate due process protections when reviewing the claims of climate-displaced people seeking refugee protection. These protections are particularly important for individuals affected by sudden-onset disasters, persecution, or other circumstances that immediately endanger their lives or well-being. In these situations, the opportunity to attain legal status within the host country is often a vital safeguard.



Photo credit UN Women Americas and the Caribbean

### The 1951 Refugee Convention

The [1951 Refugee Convention and its 1967 Protocol](#) may provide protection to climate-displaced people, including those who have experienced persecution tied to government action or inaction based on protected grounds. To establish eligibility for refugee protection an applicant must demonstrate “well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion.” Most countries in the Americas, including the United States, have codified this refugee definition or standards providing more expansive protection into domestic legal frameworks.

While refugee protection is often considered too narrow to cover climate impacts alone, the United Nations High Commissioner for Refugees has clarified how climate change and disasters can lead to human rights violations and affect a state’s ability and willingness to provide protection to their population. More than [90 percent](#) of the world’s refugees come from the countries most impacted by climate change. Some individuals who are fleeing due to environmental disasters and the effects of climate change meet the criteria of ‘refugee’ as currently defined by [UNHCR](#).

Rather than assuming that refugee protection is unavailable for climate-displaced individuals, it is crucial to individually examine each case to consider how climate factors can interact with the different elements of the refugee definition—including by exacerbating persecution on account of one of the protected grounds. As UNHCR and [scholars](#) have recognized, the impacts of climate change extend beyond natural hazards. Vulnerability to these events is intertwined with discrimination and persecution, often influenced by race, ethnicity, Indigeneity, gender, and other forms of identity. This discrimination emerges in the context of man-made government and societal responses to climate events. Overlooking these complexities and framing disasters as “natural” can lead to erroneous denials of protection.

The Center for Gender and Refugee Studies (CGRS) published a [practice advisory](#) with guidance on how U.S. practitioners can analyze cases through a climate lens. However, across the Americas, additional interpretive efforts, guidelines for practitioners, and jurisprudence are necessary to ensure access to protection.

## Case Examples

The degradation of land and natural resources, intensified by both climate change and certain governmental policies, can lead to increased tensions and conflicts. This often results in the persecution of those defending their rights, land, and environment. The following cases highlight the frequent link between environmental challenges and the risk of persecution as climate change and climate-related disasters increasingly constrain land and natural resource availability. Each applicant was granted asylum in the United States based on persecution on account of their race, particular social group, and political opinion (respectively).

\*Names and photos have been changed



**“Sara,”** an Afro-descendent Garifuna land rights activist from Honduras, was granted asylum in the U.S. due to race-based persecution following her stance against land encroachments and environmental degradation. (CGRS Case No. 35711)



**The “García Family,”** a rural farming family from Mexico, received asylum in the U.S. after facing threats and intimidation from cartel members. Their opposition to the cartel’s illegal logging activities contributed to their persecution. (CGRS Case No. 38157)



**“Isabel,”** an indigenous leader from Honduras, was awarded asylum in the U.S. in 2020 after resisting government attempts to seize tribal lands in her climate-vulnerable community. Her activism led to persecution based on ethnic discrimination and political beliefs. (IRAP [report](#))

Photo Credits Jessica Belmont

RECOMMENDATIONS	ADVOCATES	REGION
Represent and support applicants for refugee protection in cases where climate impacts intersect with and/or compound persecutory government action or inaction based on protected grounds.	LP, CS	★
Develop adjudication guidelines, trainings, and other materials to ensure broader and correct application of the refugee definition in the context of climate displacement.	IG, GO, CS	★
Document and publicize case examples of climate-related refugee protection claims to help advocates and adjudicators frame better approaches to these types of cases.	LP, CS, IG	★
Conduct awareness campaigns targeting policymakers, government officials, and the public emphasizing the legal obligations of states to climate-displaced individuals under existing law.	CS, IG, M	★
Advocate for the Inter-American Human Rights System to provide clear interpretations and recommendations regarding the legal status and protections for climate-displaced individuals in line with established human rights and refugee law principles.	LP, CS, IG, GO	★
Collaborate with the Inter-American Commission on Human Rights' (IACHR) Rapporteurship on the Rights of Migrants to monitor and report on the treatment of climate-displaced people within the Americas. Identify protection gaps and suggest improvements based on human rights and refugee law principles.	LP, CS, IG, GO	★
Train media on protected grounds and appropriate use of displacement and refugee terminology in reporting.	M, AC, CS	★



Photo credit UNDP





### The Cartagena Declaration and +40 Process

**Many** Latin American and select Caribbean countries have **adopted** the broader refugee definition developed in the 1984 **Cartagena Declaration**, which defines refugees as people “who have fled their country because their lives, safety or freedom have been threatened by . . .”, among others, “massive violations of human rights” or “other circumstances which have seriously disturbed the public order.” This definition **can be used** to extend refugee protection to individuals displaced by climate-related and environmental disasters. For instance, Mexico has **applied** the broader refugee definition to extend protection to some Haitians affected by the

2010 earthquake. The Cartagena Declaration symbolizes a significant achievement at the regional level to address gaps in protection afforded by the 1951 Convention, as well as the power of regional coordination to advance international refugee protection.

Despite the incorporation of the Cartagena definition into domestic legal frameworks of various Latin American countries, its effective application remains a **challenge** for the region. Focused advocacy is needed for states that have adopted the Cartagena Declaration to effectively protect people displaced by climate change and environmental disasters. Ongoing regional coordination can address these challenges. The 2014 Cartagena +30 and the forthcoming 2024 +40 processes refer to commemorative, multilateral follow-up **processes** where countries of the region consult with governments and civil society to assess the Declaration’s application and assume

additional commitments. The +30 process resulted in the **Brazil Declaration and Plan of Action**, which sets forth guidelines to respond to challenges in international protection for displaced people and reaffirms commitments to deepen coordination and cooperation. A single line recognizes challenges posed by climate change and environmental disasters, underscoring the need to prioritize addressing the reality of climate displacement during the upcoming +40 process. Future guidelines on the Cartagena Declaration’s application should contemplate how the effects of climate change can generate “massive violations of human rights” or circumstances that “seriously disturb[] the public order.” In addition, the training of decision makers, the strategic litigation of cases, and other actions that raise visibility are promising actions to strengthen the Cartagena Declaration’s application in the region.

RECOMMENDATIONS	ADVOCATES	REGION
Support climate-impacted applicants to create stronger precedents to establish climate-related disasters as constituting circumstances that have caused “massive violations of human rights” or “disturbed the public order.”	LP, CS, AC	
Urge states to apply the Cartagena Declaration refugee definition to protect people fleeing climate change impacts and environmental disasters. Document and track relevant cases. Engage in litigation and other advocacy as necessary to place the issue on the public agenda.	LP, IG, GO, CS	
In countries where the Cartagena Declaration refugee definition is not applied, engage in advocacy efforts to include it in legislation. In countries where it is part of the legislation, advocates should continue to defend the expanded refugee definition so that it remains in the legislation and monitor compliance with its commitments.	CS	
Train civil society organizations and government officials on the proper application of the refugee definition according to the Cartagena Declaration. Provide tools and updated information on protection procedures and best practices, especially for cases involving environmental and climate-related factors.	CS, IG, GO	

Remain informed about human mobility in the region. Understand the experiences of people who are displaced for reasons such as violence and climate change—in order to support the peaceful coexistence of local and foreign populations. Participate in actions focused on fulfilling the Cartagena Declaration’s commitments.	<b>CS, AC, LP</b>	★
Identify gaps in access to refugee status as a result of environmental disasters and the effects of climate change, on the basis of which existing treaties, agreements or declarations can be updated, and new regional agreements can potentially be formed.	<b>LP, IG, GO, CS</b>	★
Advocate for the inclusion of climate considerations in the Cartagena +40 process.	<b>CS, IG, GO</b>	■ ● ▲ ◆



### Private Refugee Sponsorship

Private sponsorship arrangements can harness the private resources and volunteer capacity of non-governmental organizations and communities to provide financial and logistical support for the resettlement of climate-displaced people through refugee protection programs. Private sponsorship arrangements can create additional resettlement slots for privately sponsored refugees, which may include climate-displaced people who qualify for refugee status.

For example, the United States recently launched the [Welcome Corps](#) program, which enables groups of individuals and organizations to support those seeking refugee protection with initial resettlement support, which is typically administered by resettlement agencies. The program also enables groups of private individuals and organizations to identify specific refugees they would like to sponsor and support. Certain organizations may also be able to refer applicants into the initial pipeline for protection.

RECOMMENDATIONS	ADVOCATES	REGION
Offer direct financial aid or direct sponsorship of climate-impacted refugees.	<b>CS</b>	◆
Actively identify and recommend climate-impacted individuals for protection and support externally (i.e. by providing other groups with recommendations of climate-impacted individuals they can sponsor or by referring climate-impacted individuals who meet the refugee definition into the pipeline for protection).	<b>CS</b>	◆
Raise public awareness about the support needs of climate-displaced people.	<b>M</b>	★

## Non-refoulement

For climate-displaced people who move across borders, the principle of **non-refoulement** “prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.” The principle “applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status,” and the feared harm need not be tied to a protected ground under refugee law.

The **non-refoulement principle**, rooted in human rights, is explicitly articulated in the 1984 Convention Against Torture (CAT) and the 1985 Inter-American Convention to Prevent and Punish Torture. International human rights treaty bodies have also incorporated the principle into interpretations of the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1969 American Convention on Human Rights (ACHR), and the 1948 American Declaration on the Rights and Duties of Man (ADHR). Depending on the context, non-refoulement may be the only avenue to extend protection to certain climate-displaced individuals. Many countries in Latin America have incorporated broad non-refoulement protections into their asylum legislation, which constitutes a positive practice.



Photo credit Charlette Kesl

The Inter-American System has established **clear precedent** on the application of the non-refoulement principle outside of refugee contexts. Likewise, in **Teitiota v. New Zealand**, the UN Human Rights Committee (UNHRC) found that the obligation to not extradite, deport, or transfer in accordance with Article 6 (right to life) of the International Covenant on Civil and Political Rights may possess a broader scope than the non-refoulement principle in international refugee law and extend protection to non-refugees. This is an important decision, as it is the first clear acknowledgment by the UNHRC that human rights law forbids governments from sending people to places where they could face life-threatening risks due to the effects of climate change.

RECOMMENDATIONS	ADVOCATES	REGION
Create/advocate for legislation explicitly recognizing broad non-refoulement protections.	<b>GO, IG, CS</b>	★
Utilize international human rights mechanisms to hold states accountable for violating non-refoulement obligations.	<b>LP, CS, IG</b>	★



Request comprehensive interpretations, advisory opinions, and other updated guidance on the application of non-refoulement principles in cases of climate-related displacement from the Inter-American Human Rights System and other human rights bodies .	<b>LP, CS, GO, AC</b>	★
Engage in advocacy to get countries to recognize the non-refoulement obligations contained in the ICCPR, ACHR, and other international instruments.	<b>CS</b>	★
Monitor immigration enforcement officers and other government officials to ensure the principle of non-refoulement is upheld, particularly in its everyday application at points of entry and in immigration enforcement actions. Engage in advocacy to end border pushback policies and practices and to prevent the arbitrary detention of noncitizens that may result in illegal refoulement to places where they face danger.	<b>GO, IG, LP, CS</b>	★
Conduct educational campaigns to inform policy makers, legal practitioners, and adjudicators about the specific risks and vulnerabilities faced by climate-displaced persons, and the critical role of non-refoulement.	<b>LP, CS, IG, AC</b>	★
Engage in public education campaigns and media engagement about the principle of non-refoulement and the need for policies that protect displaced people from return to danger.	<b>M, CS, AC</b>	★



Photo credit F Keery/UN Photo

## **Cross-Border Humanitarian Frameworks**

In addition to refugee protection processes, a patchwork of national laws, policies, and visa regimes can extend some protection based on humanitarian considerations to climate-displaced individuals who seek protection across borders in the Americas. This section will discuss these existing humanitarian provisions in addition to proposing climate specific legislation.

## **Humanitarian Considerations in Immigration Law**

The laws of many countries in the region include provisions providing for the protection of people whose cases raise [humanitarian](#) considerations but fall outside regular migration pathways and refugee law. In many cases, immigration laws provide minimal or no guidance on the scope of the humanitarian considerations concept but do not preclude its application in the context of climate change and environmental disasters. Indeed, some countries' laws explicitly include environmental or climate-related events. For instance, humanitarian protection provisions in Mexico's immigration law expressly [cover](#) an individual who "finds herself in a situation of danger to her life or integrity owing to . . . a duly accredited natural disaster" or is a "victim of a natural catastrophe." Similarly, Guatemala's immigration law [lists](#) the existence of a "natural

catastrophe in neighboring countries, which obliges the persons or group of persons to flee for their lives” among humanitarian reasons for legal entry and stay. These provisions [differ](#) by country, but in all circumstances, they provide temporary protection from removal at the outset, and apply based on the individual circumstances of the case at issue. In practice, the application of these frameworks to climate-displaced people has been limited and advocacy is needed to expand and strengthen their application.

RECOMMENDATIONS	ADVOCATES	REGION
Urge governments with humanitarian considerations provisions in immigration law to expressly extend protection to people displaced due to climate change impacts.	LP, GO, CS, AC	★
Engage in advocacy to ensure people granted temporary protection based on humanitarian considerations have a path to permanent residency.	LP, GO, CS, AC	★

### Climate-specific Visas

Special visa programs can offer protection to people fleeing climate-impacted disasters who move across borders. Visa regimes that specifically target climate change impacts can mitigate loss and damage for impacted people by facilitating durable pathways for voluntary migration and cross-border planned relocation. These visa programs must respect human rights and ensure non-discrimination in access to rights and services. Further, these programs should be logistically and financially accessible and should offer a pathway to permanent residency and family reunification.

While some new developments are promising, significant gaps exist. For instance, Argentina recently introduced a visa program to protect

citizens from Central America, Mexico and the Caribbean who are fleeing environmental disasters. UNHCR and International Organization for Migration (IOM) partnered with the Argentinian government to develop a referral system that enables citizens of disaster zones—designated by the Argentinian government—access to temporary or permanent residence. However, more than a year after the program was introduced, it has yet to be implemented (as of this writing). In the United States, U.S. Senator Markey and U.S. Representative Velasquez have proposed [legislation](#) that, among other measures, would create a complementary pathway specifically for climate-displaced people who are physically present in the country or who apply from abroad.

RECOMMENDATIONS	ADVOCATES	REGION
Engage in legislative advocacy to establish new visa programs specifically designed to provide protection to people fleeing climate and environmental impacts.	LP, CS, AC	★
Monitor and publicize the progress of existing climate-specific visa programs, such as Argentina’s.	GO, LP, CS, M	◆

## Temporary Protection

Temporary protection programs can provide temporary legal status for whole groups of noncitizens who cannot safely return to their countries, including due to climate change impacts. While the previous subsection describes humanitarian protection frameworks requiring individualized assessments and may facilitate entry into a host country, this subsection describes frameworks for broad protection from removal for nationals of certain designated countries who are already present in a host country. These frameworks are pragmatic measures that acknowledge the presence of noncitizens who are temporarily unable to return to their countries of origin, and who are granted an immigration status that allows them to work and remain in the host country. Temporary protection programs are also conceived as a form of economic assistance to the impacted country, as beneficiaries of these programs regularly send remittances to relatives and friends in the country of origin.

In the United States, the [Temporary Protected Status](#) (TPS) program allows foreign nationals of designated countries to access aforementioned temporary protections due to conditions in their country that make return unsafe, which may include environmental or climate-related factors. However, TPS does not offer a route to attain lawful permanent residency, and TPS holders typically do not qualify for resettlement assistance. Additionally, to benefit from TPS, individuals must reside within the United States and be physically present during the TPS designation period—meaning that TPS does not extend protection to individuals escaping sudden-onset disasters unless a later redesignation for their country is declared.



Photo credit Paul Salazar

Other programs providing temporary legal status for humanitarian or other reasons have been implemented elsewhere in the region. For instance, Colombia implemented a temporary protection program for Venezuelan nationals (called [El Estatuto Temporal de Protección para Migrantes Venezolanos \(ETPV\)](#)). Temporary protection can also be implemented on an *ad hoc* basis, as was the case when Canada [agreed](#) to receive and not return Haitian nationals affected by the 2010 earthquake. In the wake of the earthquake, Haitians in Mexico received one year of legal presence and permission to work. Haitians in Brazil could get five year humanitarian residence permits and permission to work. However, like TPS in the United States, the absence of a path to permanent residency is a significant shortcoming of these programs.

RECOMMENDATIONS	ADVOCATES	REGION
Advocate for increased use of temporary humanitarian protection by many countries explicitly for those whose displacement is caused by the effects of climate change.	<b>LP, CS, AC, GO</b>	★
Advocacy should include pushing for redesignation of TPS when climate-related factors continue to result in forced flight after an initial TPS designation, so as to protect later arrivals.	<b>LP, CS, GO</b>	◆
Advocate for legislation authorizing a pathway to permanent residence for those who have had temporary protection for more than five years.	<b>LP, CS</b>	★
Provide multilingual resources and support that ensure climate-displaced people know how to and can apply for temporary protection, and know how to access the labor market once they have the status.	<b>LP, CS</b>	★



Photo credit World Bank

## Mobility Frameworks

Expanding non-humanitarian migration pathways, including labor mobility frameworks, can provide protection for climate-impacted people, as the [Nansen Initiative](#) has advised. Agreements between neighboring countries allowing for the free movement of people and labor visas, for example, can enable people fleeing climate disasters to relocate and provide economic stability for people from climate-vulnerable areas.

### Free Movement Agreements (Visa-free mobility regimes)

Free movement agreements allow citizens of different countries to move and work freely

across borders within a designated region. Within Latin America and the Caribbean (LAC), the free movement regime of the Organization of Eastern Caribbean States (OECS), serves as a useful best practice for the accommodation of cross-border displaced people. In 2010, the signing of the Revised Treaty of Basseterre (RTB) constituted the Eastern Caribbean Economic Union (ECEU), a financial and economic space in which people, goods, services, capital and enterprises are able to move freely throughout the Economic Union Area. The ECEU currently comprises seven member states: Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. OECS citizens (along with families, spouses and dependents) of the OECS may move freely within, reside in, and work in any Protocol Member State indefinitely, and have equal access to rights and freedoms without the need for a work permit. This Protocol is especially relevant during times of disaster and has recently [enabled](#) free movement of persons displaced by climate events and other types of disasters (for example, volcanic eruptions). Developments, such as the draft

Bill on Contingent Rights, which considers the application of Contingent Rights for OECS citizens, their spouses and dependents within disaster scenarios, demonstrates member states’ recognition of the impact of climate disasters on the region. In 2023, OECS member states approved a [Ministerial Declaration on Migration, Environment, and Climate Change](#) with commitments to support people affected by climate change hazards, including those who move across or within borders.

The Caribbean Community (CARICOM) Single Market (CSM) provides for a similar arrangement allowing for free movement between borders. The CSM supports functional cooperation of CARICOM member states (Antigua and Barbuda, Barbados, Belize, The Commonwealth of Dominica, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines) except for the Bahamas and Montserrat. At present, the Revised Treaty of Chaguaramas (RTC), which establishes the CSM, allows for hassle free travel for all nationals of CSM participating states (except Haiti) for six months and indefinite entry for recognized categories of skilled professionals. Despite this

limitation, people displaced by disasters have been [accommodated](#) within the CSM. The announcement, following the meeting of the forty-fifth Heads of Government of CARICOM, that member states should move towards full freedom of movement by 2024 provides some optimism regarding operationalization of the CSM for disaster displaced people.

[MERCOSUR](#), or the Southern Common Market, provides another useful example. MERCOSUR is a South American trade alliance formed through the Treaty of Asunción in 1991 and the Protocol of Ouro Preto in 1994 with the purpose of promoting free trade and the fluid movement of goods, services, currency, and people. Its core members include Argentina, Brazil, Paraguay, and Uruguay (Venezuela, previously a full member, has been suspended). Associate countries include Bolivia, Chile, Colombia, Ecuador, Guyana, Peru, and Suriname. In 2002, the MERCOSUR member countries, along with Bolivia and Chile, [agreed](#) to establish a “free residence area.” This arrangement allows the citizens of these countries to acquire residency and work rights within the participating nations without the need for a visa.

RECOMMENDATIONS	ADVOCATES	REGION
Advocate for inclusion of Haiti and other majority Black countries in free movement arrangements in the region.	GO, CS, IG	★
Provide training for border officers and other government officials on the implementation of free movement agreements in the context of environmental and climate-related disasters.	GO, CS, IG	★
Ensure that receiving states uphold the contingent rights of those affected by climate change impacts who move within visa-free movement zones, including access to healthcare and education.	GO, CS, LP, IG, NP	★

## Labor Visas

Visas providing temporary or permanent legal status for workers can help host countries provide safety and stability for people from climate-vulnerable regions. However, existing temporary labor visa arrangements fall short in that they do not provide pathways to permanent residence and are available only to working adults without including families. For example, the [Colombian Temporary and Circular Labour Migration](#) project, which ran from 2006-2012, enabled Colombian farmers to engage in seasonal agricultural work in Spain. It was specifically focused on recruiting workers from communities highly susceptible to environmental events, such as volcanic eruptions. Similarly, in the United States, the [H-2A visa program](#) enables certain U.S. employers to sponsor noncitizens for temporary visas for seasonal agricultural work. However, the H-2A program and similar work visa regimes often [lack](#) sufficient oversight, leaving workers vulnerable to abuse and exploitation.

With proper safeguards, temporary labor arrangements can provide temporary refuge to people impacted by sudden-onset environmental disasters who intend to return to their home countries. They can also [benefit](#) climate-vulnerable communities by providing opportunities for community members to gain new skills and knowledge abroad and send remittances home, which can help their communities to better withstand climate impacts. Countries with labor shortages in particular areas can also benefit by receiving skilled workers to fill areas of need. Some



Photo credit Ana Rivera/CCAFS

promising new programs offer the potential for permanent protection by matching skilled migrant or displaced workers with positions in other countries that make use of their competencies. The nonprofit organization [Talent Beyond Boundaries](#), for instance, matches refugees with companies in need of their skills in the United States, Canada, Europe, and Australia. Governments could fund and operate similar programs.

Labor visas and other non-humanitarian visas, such as family and student visas, provide important complementary pathways for climate-impacted and displaced people. However, States must act to address concerns about exploitation and corruption in recruitment practices. Additionally, they must not rely on labor pathways to the detriment of specialized climate pathways and access to international humanitarian protection.

RECOMMENDATIONS	ADVOCATES	REGION
Expand labor visa programs with robust worker protection mechanisms.	GO, CS, IG	★
Advocate for pathways to permanent legal status and family reunification in labor visa programs.	GO, CS, IG	★

Advocate for government partnership programs to enable skilled workers to fill areas of need across borders.	<b>GO, CS</b>	★
Expand the availability of other non-humanitarian migration pathways, such as student and family visas.	<b>GO, CS, IG</b>	★



Photo credit UN Women

## Internal Displacement Law & Policy

While this document focuses primarily on addressing cross-border displacement, many climate-displaced people [move internally](#) before seeking protection outside their country's borders. In 2022, environmental disasters [caused 32.6 million](#) internal displacements. States are obligated to assist and protect people displaced within their borders and ensure the protection of their rights. The Human Rights Council has [expressed concern](#) that internal displacement caused by sudden and slow-onset disasters is "exacerbated by the adverse effects of climate change, poverty and other factors that are expected to continue to increase displacement, undermine development and affect the enjoyment of human rights owing to more frequent and severe disasters."

[The Guiding Principles on Internal Displacement](#) (hereinafter the "Guiding Principles"), though non-binding, describe international legal standards on internal

displacement and provide some of the only internationally recognized standards for the protection and assistance of Internally Displaced Persons (IDPs). Significantly, the Guiding Principles recognize displacement in the context of "human-made or environmental disasters." The Principles also articulate how States must take all measures available to minimize displacement in the first place.

### Support for Internally Displaced Persons

Adopting and strengthening national law and policy on IDPs to include climate change and environmental considerations would help protect the rights and needs of those fleeing environmental events within national borders. IDP frameworks may provide more permanent solutions for internally displaced nationals to access services and be part of a broader strategy to help relocate individuals before they are forced to migrate. Several states in Mexico and the governments in El Salvador and Guatemala have some form of law or policy governing the protection of IDPs, with the state of Chiapas in Mexico, among others, addressing disaster-related mobility. In 2023, a group of legislators in Colombia introduced the first-ever [bill on climate displacement](#) in Latin America. While still in early stages, the proposed legislation seeks to "recognize the existence of internal forced displacement related to climate change and environmental degradation." However, most countries in the region lack a specialized framework to manage internal displacement in the context of climate or environmental displacement.

## Case Example



Colombia has seen one of the first examples of strategic litigation in domestic courts on climate displacement. After Hurricane Iota destroyed the islands of Providencia and Santa Catalina, members of the Raizal community sued the national government for failure to properly relocate and protect the communities rights to housing, health, sanitation, and water. In 2022, the Constitutional Court **concluded** that the government breached prior agreements with the affected residents regarding reconstruction, disregarded their participation in the process, and failed to consider the islands' vulnerability to climate impacts.

Photo credit Jairo Bedoya

RECOMMENDATIONS	ADVOCATES	REGION
Recognize internal climate displacement and its implications for rights protected under domestic and international law.	GO	★
Promote the adoption or modification of legislation on internal displacement to include climate-displaced people.	LP, CS, AC	★
Advocate for policies at the city and local levels to ensure displaced people have access to adequate housing, healthcare, and other support.	LP, CS, GO, AC	★

### Planned Community Relocations

Planned community relocations are a critical element of managing internal displacement in situations where entire communities are exposed to the effects of climate change. For instance, the Panamanian government is currently working to support the **planned relocation** of more than 1,300 Guna Indigenous residents of the small island Gardi Sugdub, which is becoming uninhabitable due to increasingly frequent heavy rains and flooding. While this community relocation process exemplifies many best practices such as robust community participation in the planning and process, significant delays threaten the project's effective execution of and the affected people's safety. In the United States, community relocation through an **adaptive governance framework** that maintains human rights principles is one feasible solution to protect dozens of indigenous communities in the Arctic.



Photo credit PNUD Panama



RECOMMENDATIONS	ADVOCATES	REGION
Integrate a human-rights based approach to relocation, resettlement and planned migration that centers the needs and experiences of affected populations in line with the Guiding Principles on Internal Displacement and other relevant guidance.	GO	★



Photo credit Maria Fleischmann

## Resourcing the Right to Stay

Providing adequate resources to climate-vulnerable communities is essential to prevent displacement and accommodate adaptation-in-place. While the focus of this document is addressing displacement and relocation in the context of climate change, states must also recognize the right of individuals and communities to stay, their resistance to being pushed out, and that responses to climate impacts must center the agency of those impacted. People facing climate change impacts who do not wish to move need significant resources and support for adaptation to increase their resilience to climate change impacts and minimize their vulnerability. For instance, people in climate-vulnerable regions require resources to strengthen and rebuild physical infrastructure to withstand disasters. States must also support communities whose economies and food systems are threatened by climate change impacts.

## Loss and Damage

Resourcing the right to stay requires effective coordination among government agencies and civil society within countries, as well as significant external support. The loss and damage agenda addresses the question of what is owed to developing countries who are most vulnerable to climate impacts from countries emitting the most greenhouse gas emissions. The loss and damage agenda developed, in part, as a result of negotiations within the [UN Framework Convention on Climate Change](#), (UNFCCC). Recently, as part of the loss/damage negotiations, the parties agreed to establish a new funding mechanism for addressing loss and damage, the [scope](#) of which will include “finance for addressing... displacement, relocation [and] migration.”

While this subsection’s recommendations address resourcing the right to stay, it is important to note that the loss and damage agenda is also relevant in the context of people who move internally or across borders. Movement in response to climate change itself is [considered](#) a form of non-economic loss and damage—as well as a consequence of loss and damage, that can have lasting impacts on those who remain in impacted regions. Climate disasters could lead to permanent displacement of populations and the [socio-economic losses](#) related to this displacement will have multi-generational impacts.

RECOMMENDATIONS	ADVOCATES	REGION
Respect, protect, and fulfill populations' right to stay-in-place by implementing climate change adaptation measures that increase resilience and limit the vulnerability of populations to climate and environmental risks.	GO	★
Treat climate displacement comprehensively in NAPs, DRRs and NDCs.	GO	★
Engage with communities to collect data on loss and damage post-disaster scenarios (sudden-onset) and within the context of slow-onset disasters, including the non-economic loss related to migration.	CS, GO, AC	★
Support international court processes—including submission of opinions or amicus briefs—on loss and damage.	CS, AC	★
Advocate for the approval and effective use of the loss and damage fund. Publicly urge states to uphold their commitments to funding redress for loss and damage.	CS, GO, AC, IG	★



## Conclusion: Cross-Cutting Approaches

This document has presented detailed analysis of various legal and policy avenues to protect climate-displaced people in the Americas, giving careful consideration to both existing programs and new proposals. Relevant stakeholders should consider how strategic litigation, legislative advocacy, and administrative action will be essential to promote and successfully adopt a robust and comprehensive framework on climate displacement across all of our recommendations.

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## Tools and Approaches to Increase Safety & Protection

### Domestic Courts

Domestic courts are an essential forum to uphold the existing human rights obligations of States in the context of displacement, as exemplified by the discussion of the Santa Catalina and Providencia case in Colombia above. Rights-based litigation based on existing constitutional protections at the national level could be leveraged by affected communities to demand protection of their rights to housing, shelter, food, and a healthy environment, among others. Similarly, domestic litigation on refugee law (and the application of the Cartagena definition) could secure protection for communities facing cross-border movement. Further, domestic litigation targeting administrative programs related to climate adaptation, resilience, proper land use, risk and hazard mitigation, and relocation/resettlement could further protect communities living in high-risk areas and at risk of future displacement.

### International and Regional Courts / Human Rights Systems

International and regional human rights instruments provide opportunities to develop guidance and binding human rights law on climate change and displacement. For instance, in recent years, advocates have turned their attention to the Inter-American system to advocate for additional guidance on the human rights obligations of member states as they relate to climate change and displacement. IASHR is composed of the Inter-American Commission on Human Rights—an autonomous body of the Organization of American States (OAS) tasked with promoting and protecting human rights in the hemisphere—and the Inter-American Court of Human Rights (IA Court), the judicial body



Photo credit Leandro Hernández

created by the American Convention on Human Rights (ACHR) to interpret that treaty and decide individual cases from States that have accepted the Court's jurisdiction.

The IA Court is currently working on a request for an advisory opinion regarding climate change and States' human rights obligations presented by Chile and Colombia, in which it will have the opportunity to consider obligations related to climate displacement. Organizations and individuals can participate by contributing information to the Court on the subject and by publicizing the standards developed by the opinion. Likewise, organizations and litigants can present strategic cases that highlight the impacts of climate change on human mobility for resolution by the IACHR and IA Court; as well as requests for urgent protective measures for individuals and groups displaced by climate change. There are also many opportunities for advocacy before the IACHR, including public hearings. Specifically, the Rapporteurship on the Rights of Migrants within the IACHR can document the causes, consequences, and human rights impacts of climate displacement and develop further legal guidance for States of the Americas.

In addition, there are opportunities for advocacy within the [Commission of Small Island States on Climate Change and International Law](#) (COSIS). Antigua and Barbuda and Tuvalu established the Commission in 2021 with the purpose of developing international law on



Photo credit Yolanda Vicente

climate change. In 2023, the Commission [requested](#) an advisory opinion from the International Tribunal of the Law of the Sea to clarify state obligations to mitigate loss and damage from the effects of climate change. Similarly, Antigua and Barbuda and Vanuatu have requested an advisory opinion at the International Court of Justice.

### **Legislative Advocacy**

Refugee protection and humanitarian provisions in immigration law may be modified through legislative reforms that adopt additional protection grounds related to climate or environmental disasters. Similarly, legislative proposals creating legal categories of protection for climate-displaced individuals—whether in the form of a visa or other domestic protection framework—will

require the adoption or revision of domestic legislation. As discussed above, some states in the region, including Colombia, Mexico, and Guatemala, have provisions in law that expressly recognize climate and environmental displacement. Advocates can focus on campaigns raising awareness regarding the critical protection gaps for climate-displaced populations and promoting specific proposals to expand protections for both cross-border and internally displaced individuals.

### **Administrative Opportunities**

The implementation of refugee law and the operationalization of diverse programs such as climate-specific visas or labor mobility frameworks will ultimately depend on the relevant agencies or entities charged with implementation. For instance, immigration officers and members of refugee status determination (RSD) committees reviewing asylum applications will need proper training on the intersection between existing refugee protections and climate change. Similarly, administrative guidance promoting the recognition of climate displacement will be essential across agencies overseeing programs affecting populations at risk or displaced in the context of climate and environmental disasters (e.g., housing and land management agencies).

Law, policy, and strategic communication provide ample opportunities to advance the rights of people who are moving due to the effects of climate change. Much more work remains to be done to create an equitable legal framework that responds to the needs of the most marginalized people and ensures people's freedom to stay. Advocates, government officials, other key partners, and stakeholders can take immediate steps to strengthen climate action and rights protection across the Americas.

# IRAP

International Refugee  
Assistance Project

One Battery Park Plaza, 33rd Floor  
New York, NY 10004

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