

**How the Cartagena +40 Process Can Improve Protection
for Cross-Border Climate Displacement**

*Strengthening International Protection for Climate-Displaced Individuals:
Legal Standards and Human Rights-Centered Policies*

July 31, 2024

Contents

Executive Summary..... 2

Introduction 3

PART I – Protection Under International & Regional Refugee Law..... 4

 A. 1951 Convention on Refugees and its 1967 Protocol..... 5

 B. 1984 Cartagena Declaration on Refugees..... 6

 i. “Circumstances which have seriously disturbed public order” 6

 ii. “Massive violation of human rights” 8

PART II – Applicability of Complementary Forms of International Protection..... 8

PART III – Complementary Pathways as Additional Tools 10

PART IV – Recommendations..... 11

Conclusion..... 12

Appendix – Select Climate-Related Cases from CGRS’s Database..... 13

Executive Summary

As nations in the Americas commemorate the fortieth anniversary of the Cartagena Declaration, they face unprecedented challenges with over 24 million displaced people expected in 2024 alone, driven by factors such as climate change, violence, and instability. Despite commitments under existing frameworks, such as the Brazil Declaration and Plan of Action, responses to these challenges have been inadequate. The Cartagena +40 process is a crucial opportunity for States to prioritize refugee and human rights protections, including for those displaced by climate change and disasters.

We recommend that the Chile Declaration include commitments by States to: (1) Acknowledge the disproportionate impact of climate change on vulnerable populations and commit to a rights-based response; (2) Recognize climate-induced displacement within the refugee definitions under international and regional frameworks; (3) Uphold the principle of *non-refoulement* to prevent returning individuals to life-threatening situations; and (4) Implement rights-centered complementary pathways as additional tools in the response. The successful implementation of these measures, along with our recommendations for the Chile Plan of Action, will ensure compliance with international obligations and set a global standard for addressing climate displacement.

CENTER FOR GENDER & REFUGEE STUDIES' INTERNATIONAL CLIMATE DISPLACEMENT ADVOCACY

The Center for Gender & Refugee Studies (CGRS) at the University of California College of the Law, San Francisco, combines strategic litigation, policy advocacy, and human rights interventions to protect refugees and displaced individuals, including those affected by [climate change and disasters](#). As part of our climate initiatives, we host the first Sérgio Vieira [De Mello Chair](#) in the United States—in partnership with UNHCR's multi-country office in [Washington, D.C.](#), which covers the United States and 18 States and overseas territories in the northern Caribbean—to promote teaching, [research](#), and solidarity for people displaced across borders by climate change and disasters.

In December 2023, CGRS led an [amicus brief](#) on climate displacement before the Inter-American Court of Human Rights and intervened in the court's historic hearings in Barbados in April 2024. At the 2023 Global Forum on Refugees, CGRS pledged to collaborate with partners in Australia and the United Kingdom to develop [practical guidance](#) on applying international and regional frameworks to protect climate-displaced individuals, as part of the Multi-Stakeholder Pledge on [Climate Action](#). This builds on CGRS' [groundbreaking guidance](#) for U.S. practitioners and supports the goals of the [Cartagena +40 Multi-Stakeholder Pledge](#).

Introduction

As nations across the Americas convene to commemorate the fortieth anniversary of the Cartagena Declaration, the region faces unprecedented challenges due to an increase in migration driven by conflict and violence, climate change and disasters, economic instability, and political turmoil.¹ In 2023, the Americas saw over 23 million displaced people, including an increasing number of extra-continental migrants, with higher projections for 2024.² Despite rights-centered commitments made in the Brazil Declaration and Plan of Action (BDPA) and other instruments such as the Global Compact on Refugees and, more recently, the Los Angeles Declaration on Migration and Protection, the response remains entirely inadequate to meet the needs of the moment.

Laudable efforts to expand migration pathways are overshadowed by restrictive entrance or border policies and burden-shifting arrangements that leave refugees trapped and at risk.³ Additionally, xenophobic, anti-refugee rhetoric is rising,⁴ driving support for even more draconian policies. At the same time, those who do reach safety face cumbersome legal procedures and lack essential services like healthcare and education.⁵

The Cartagena +40 process presents a pivotal opportunity for States to demonstrate their commitment to addressing these challenges by prioritizing refugee and human rights protections, including for individuals displaced in the context of the adverse effects of climate change and disasters. This requires not only fulfilling existing commitments, but also building upon them to ensure comprehensive support.

As highlighted in the "Concept Note – Third Thematic Consultation of the Cartagena +40 Process: Protection in the Contexts of Forced Displacement due to Disasters" (hereinafter, Concept Note), climate displacement is recognized in various cooperation frameworks,⁶ including the BDPA, which set the foundation for States in the region to take measures over the past decade to better understand this phenomenon.⁷ Building on this foundation, the inclusion of climate and disaster

¹ United Nations High Commissioner for Refugees (UNHCR) and Government of Brazil, [Brazil Plan of Action Final Implementation Report 2014-2024](#), at 22 (2024).

² UNHCR, [Global Report 2023: The Americas](#) and [Global Appeal 2024: The Americas](#).

³ See, e.g., U.S. Department of Homeland Security, [United States Signs Arrangement with Panama to Implement Removal Flight Program](#) (2024); Instituto para las Mujeres en la Migración (IMUMI), [Factsheet: Removal and Return of Non-Mexican Nationals from the United States to Mexico](#) (2024); Women's Refugee Commission, [Visa Regimes: A Threat to Migrants' Access to Safety and Asylum](#) (2022); and CGRS et al., [Memo: Impacts of U.S. and Mexican Migration Enforcement on Migrant and Refugee Rights in Mexico](#) (2021).

⁴ See, e.g., Paula Dupraz-Dobias, [Latin America Makes it Harder for Venezuelan Refugees as Xenophobia Mounts](#), *The New Humanitarian* (Apr. 2024).

⁵ See, e.g., CGRS, [Far from Safety: Dangers and Limits to Protection for Asylum Seekers Transiting Through Latin America](#) (hereinafter *Far from Safety*) (Apr. 2023).

⁶ Cartagena +40, [Concept Note–Third Thematic Consultation of the Cartagena +40 Process: Protection in the Contexts of Forced Displacement due to Disasters](#) (June 2024).

⁷ Brazil Plan of Action Final Implementation Report, *supra* note 1, at 150–155.

displacement as one of the pillars of Cartagena +40 underscores the urgent need for robust, rights-centered policies that can effectively address the complex and evolving dynamics of climate displacement over the coming years.

This policy memo focuses on measures to strengthen international protection for cross-border displacement by addressing key questions that have guided the Cartagena +40 process, particularly those related to host countries as highlighted in the second segment of the Concept Note. It presents recommendations for States to effectively apply refugee and human rights frameworks to climate-displaced individuals. Specifically,

- **Part I** discusses the application of international refugee law, emphasizing the need to correctly interpret the 1951 Refugee Convention, its 1967 Protocol, and the 1984 Cartagena Declaration on Refugees to protect climate-displaced individuals;
- **Part II** examines how human rights law, through the principle of *non-refoulement* and mechanisms of complementary protection, safeguards those at risk upon return due to the effects of the climate emergency;
- **Part III** explores additional pathways crafted with a human rights perspective to address the protection needs of individuals affected by climate change; and, finally,
- **Part IV** provides recommendations for the Chile Declaration and Plan of Action.

As detailed below, we call for an ambitious application of legal standards and human rights principles for climate-displaced persons—an approach supported by the United Nations High Commissioner for Refugees (UNHCR), advocates, and scholars.⁸

PART I – Protection Under International & Regional Refugee Law

Despite the pressing need for robust protection mechanisms, States in the Americas have been reluctant to fully invest in their asylum systems.⁹ This underinvestment has led to significant gaps in the protection and support available to asylum seekers and refugees across the region.¹⁰ Strengthening these systems is the basis for a forward-looking approach to managing the challenges presented by displacement in the region, including those related to climate change and disasters.

As the Concept Note points out, UNHCR recognizes that climate-displaced individuals should, in some instances, be recognized as refugees.¹¹ Emphasizing the importance of this understanding

⁸ See, e.g., Walter Kälin and Hannah Entwisle Chapuisat, [Protection of Persons Displaced Across Borders in the Context of Disasters and the Adverse Effects of Climate Change: A Review of Literature, Legislation and Case Law to Support the Implementation of the Global Compact on Refugees](#), Research Paper No. 43, UNHCR (June 2024).

⁹ Omar Hammoud Gallego and Luisa Feline Freier, [Symbolic Refugee Protection: Why Latin America Passed Progressive Refugee Laws Never Meant to Use](#) (2022).

¹⁰ CGRS *Far from Safety*, *supra* note 5.

¹¹ UNHCR, [Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters](#), ¶ 3 (hereinafter *Legal Considerations*) (Oct. 1, 2020).

for the region, the Inter-American Commission on Human Rights (IACHR) has urged States to fulfill their refugee protection obligations in the context of climate displacement.¹²

This section explores questions posed in the second segment of Concept Note. They are,

In what specific circumstances can cross-border displaced people be protected under the refugee definition of the 1951 Convention and/or its 1967 Protocol? What interpretation of the regional refugee definition of the 1984 Cartagena Declaration may allow its application in the context of displacement due to disasters and the adverse effects of climate change?¹³

A. 1951 Convention on Refugees and its 1967 Protocol

The adverse effects of climate change and disasters should be understood in the context of other conditions that force people to flee their homes, rather than in isolation. These effects do not occur as indiscriminate hazards disconnected from social determinants but can severely impact State and societal structures, individual well-being, and human rights.¹⁴ For instance, a drought does not necessarily lead to famine for a marginalized group if the State responds adequately and equitably. The Convention and Protocol may apply when these effects intersect with conflict, violence, or persecution, as climate change can directly influence each legal element of the refugee definition.¹⁵

Significantly, as a positive State practice that may be helpful to other countries in the region, the U.S. Government has issued the “Report on the Impact of Climate Change on Migration,” which considered refugee law as a tool in the response. The report called for an assessment of how climate change may intersect with the existing criteria for refugee status, including cases where (1) individuals are at risk due to environmental defense or climate change activism; (2) individuals may not have a viable internal relocation alternative because of the impacts of climate change; (3) individuals may experience the withholding or denial of relief from climate change impacts based on a shared protected characteristic, such as race or ethnicity; and (4) climate change may impact the State’s willingness or ability to protect individuals fleeing persecution.¹⁶

In 2023, the U.S. Department of Homeland Security included climate considerations in the training materials provided to asylum and refugee officers, specifically incorporating these factors into three lesson plans that address elements of the refugee definition: well-founded fear, persecution, and nexus or the causal link.¹⁷ States in the region have several policy options to address climate

¹² Inter-American Commission on Human Rights (IACHR), [States Must Strengthen National Protection Systems for Refugees](#) (June 2024).

¹³ Concept Note, *supra* note 6, at 8.

¹⁴ UNHCR *Legal Considerations*, *supra* note 11, ¶ 5.

¹⁵ *Id.*, ¶¶ 6–12.

¹⁶ The White House, [Report on the Impact of Climate Change on Migration](#), at 30–31 (Oct. 2021).

¹⁷ U.S. Citizenship & Immigration Services, Officer Training, [Nexus](#) (2023), [Well-Founded Fear](#) (2023), and [Persecution](#) (2023).

displacement, and refugee protection is just one of the tools that must be employed to ensure a comprehensive approach.¹⁸

CGRS has issued resources to assist U.S. advocates in analyzing and investigating how climate change and disasters can implicate different elements of the refugee definition.¹⁹ CGRS also maintains a database of U.S. asylum claims presenting a wide range of scenarios, including individuals fleeing for climate-related reasons. These cases are often multidimensional, implicate different elements of the asylum definition, and have resulted in positive determinations.²⁰ See the Appendix for a select compilation of climate cases in CGRS' database.

B. 1984 Cartagena Declaration on Refugees

The broader refugee definition of the Cartagena Declaration is relevant to displacement caused by climate change and disasters, particularly as they can cause or exacerbate “circumstances which have seriously disturbed public order” or lead to “massive violation of human rights.” The use of the Cartagena Declaration to protect some Haitians displaced after the 2010 earthquake demonstrates its potential.²¹

i. “Circumstances which have seriously disturbed public order”

This element of the Cartagena refugee definition should be understood to include disasters, displacement events, and hazards linked to the climate emergency.²² UNHCR has analyzed similar language in the 1969 Organisation of African Unity Convention, which was the inspiration and is essential for understanding this ground for protection in the Cartagena Declaration.²³ The aim of “public order” is rooted in the State’s obligation to protect “the rights to life, physical integrity, and

Prima Facie Recognition

In cases of large-scale arrivals, which can overwhelm individual refugee status determination, States may want to use *prima facie* recognition to facilitate protection under the Convention and the Cartagena Declaration. This measure is relevant for climate and disaster-induced displacement and offers a timely protection tool for States.

¹⁸ See, e.g., Kate Jastram, [Climate Change and Cross-Border Displacement: What the Courts, the Administration, and Congress Can Do to Improve Options for the United States](#), 56 Case W. Res. J. Int'l L. 309 (2024).

¹⁹ CGRS, [Asylum Claims for Individuals Fleeing the Adverse Effects of Climate Change and Disasters: Making the Best Use of Existing Legal Frameworks](#) (July 2024) [This document summarizes and provides access to CGRS's advisories on asylum claims related to climate change: *Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters* (2023) and *Investigating Climate-Related Aspects of Fear-of-Return Claims* (2024)].

²⁰ CGRS, *Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters*, at 16–17 (Feb. 2023).

²¹ Sanjula Weerasinghe, [In Harm's Way: International Protection in the Context of Nexus Dynamics Between Conflict or Violence and Disaster or Climate Change](#), UNHCR (Dec. 2018).

²² UNHCR *Legal Considerations*, *supra* note 11, at ¶ 15.

²³ Cleo Hansen-Lohrey, [Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change](#), UNHCR, at 6 (Sep. 2023).

liberty,” which entails maintaining a certain level of administrative, social, and political order according to the rule of law and basic human dignity.²⁴

Consider the massive upheavals in Venezuela, attributed to hyperinflation, scarcity, and political turmoil, which have led to the displacement of nearly 8 million Venezuelans, with more than 6.5 million hosted in Latin America and the Caribbean.²⁵ Experts have recognized these as events that “seriously disturb the public order,”²⁶ and UNHCR has called for the protection of Venezuelan refugees under this ground.²⁷ Similarly, the same consideration may apply to conditions in Haiti following the assassination of President Moïse in 2021 and the ensuing collapse of government institutions in the face of gang violence.²⁸ In the case of Honduras, we have documented how, in a similar way, climate-induced adversities—ranging from intensifying natural disasters to shifts in agriculture—can yield similar large-scale displacements and societal disturbances profoundly impacting human rights.²⁹

UNHCR has also clarified that the origin of the “circumstances,” whether human or from other causes, does not determine their capacity to seriously disturb public order. The primary focus lies not on the cause of the disturbance but on the *effect* of a given situation.³⁰ Therefore, a State’s response, or lack thereof, to climate-driven effects, including displacement, is relevant in determining refugee status.

In light of this, for example, it can be argued that Haiti experiences circumstances that seriously disturb public order due to the impact of climate change and disasters. The government’s inability to prepare for and assist after these disasters, as evidenced by the 2010 earthquake and 2016 Hurricane Matthew, caused widespread devastation, deepened institutional instability, and led to displacement.³¹ Similarly, in Guatemala, droughts and hurricanes have led to significant displacement, with the government failing to ensure the rights of those impacted. Years after these events, many displaced Guatemalans still lack access to adequate shelter and food,³² highlighting the State’s inability or unwillingness to provide basic services.

²⁴ *Id.*, at 46–47.

²⁵ UNHCR, [Venezuela Situation](#).

²⁶ See, e.g., Luisa Feline Freier, Isabel Berganza & Cécile Blouin, [The Cartagena Definition and Venezuelan Displacement in Latin America](#), 60 Int’l Migr. 19, at 25 (2020).

²⁷ UNHCR, [Majority fleeing Venezuela in need of refugee protection](#) (May 2019).

²⁸ Centro de Derechos Humanos Fray Matías Córdoba and Global Justice Clinic, [The Time is Now: Mexico Must Grant Refugee Protections to Haitians Under the Cartagena Declaration](#), at 26 (Apr. 2024).

²⁹ CGRS, [Honduras: Climate Change, Human Rights Violations, and Forced Displacement](#) (hereinafter *Honduras*) (Dec. 2023).

³⁰ UNHCR *Legal Considerations*, *supra* note 11, ¶ 16.

³¹ CDH Fray Matías, *supra* note 28, at 27.

³² Refugees International, [Two Years after Eta and Iota: Displaced and Forgotten in Guatemala](#) (Feb. 17, 2023).

ii. “Massive violation of human rights”

The Cartagena Declaration emphasizes the protection of life, security, and freedom, providing a broad and adaptable framework to address various associated human rights violations.³³ This permits a wide-ranging interpretation, including social, economic, and cultural rights that might be violated by the adverse impacts of climate change.³⁴ Both sudden and gradual climate impacts disrupt natural ecosystem cycles, causing droughts, floods, heatwaves, fires, and coastal erosion, among other effects. These changes pose a significant threat to various rights, including the right to life, food, housing, health, water, and a healthy environment.³⁵

When referring to “massive violation of human rights,” the Inter-American Court of Human Rights (IACtHR) has found that “massive” relates to the magnitude of the human rights violation, regardless of duration, which can result from a single event or a series of events.³⁶ Massive violations of human rights unfold in environments that allow “the denial of civil, political, economic, social and cultural rights in a grave and systematic manner [...]”³⁷ While the IACtHR has analyzed this concept in cases of extreme violence—such as extrajudicial killings—the legal reasoning also applies in the context of climate change and disasters, which can destabilize and devastate entire communities at a time.

Once again, the focus must be on the *impact* of climate events on the population. As noted by the IACHR, these threats disproportionately affect groups already vulnerable and marginalized due to existing discrimination, exclusion, or inequalities, a situation that can worsen in the context of climate change and disasters.³⁸

PART II – Applicability of Complementary Forms of International Protection

In the context of cross-border climate displacement, international and regional human rights law offer critical protections for affected individuals. This section examines “how can (...) domestic legislation on complementary or temporary protection be strengthened to address [climate displacement]?”³⁹

³³ UNHCR, [Expert Meeting. Interpretation of the expanded definition of refugee contained in the Cartagena Declaration on Refugees of 1984](#), ¶ 21 (2013).

³⁴ See, e.g., CGRS Honduras, *supra* note 29.

³⁵ [Climate Emergency: Scope of Inter-American Human Rights Obligations](#), Inter-Am. Comm’n H.R., Res. No. 3/2021, 5 (hereinafter *Climate Emergency*) (adopted Dec. 31, 2023); REDESCA, [Poverty, Climate Change and ESCER in Central America and Mexico, in the Context of Human Mobility](#) (July 28, 2023).

³⁶ [Case of the “Las Dos Erres” Massacre v. Guatemala](#), Judgment, Inter-Am. Ct. H.R. (ser. C), ¶¶ 73, 79, 152, (2009).

³⁷ International Conference on Central American Refugees, [Principios y criterios para la protección y asistencia a los refugiados, repatriados y desplazados en América Latina](#), CIREFCA 89/9, ¶ 34 (Apr. 1989).

³⁸ IACHR, *Climate Emergency*, *supra* note 35, at 5.

³⁹ Concept Note, *supra* note 6, at 8.

The principle of *non-refoulement*, which prohibits returning individuals to places where they face threats to their life or freedom,⁴⁰ protects climate-displaced individuals. The obligation not to return individuals to danger extends beyond refugees to include those whose lives or personal integrity would be at risk upon return.⁴¹ For example, expelling or returning a person violates international obligations if it would harm or seriously deteriorate their health, or potentially lead to their death.⁴²

In 2020, the U.N. Human Rights Committee recognized that the prohibition of *refoulement* inherent in the International Covenant on Civil and Political Rights may encompass irreparable harm to the right to life and the prohibition against torture and cruel, inhuman, or degrading treatment caused by the effects of climate change.⁴³ This opinion highlights both the obligation and the potential of using a broad human rights framework to protect individuals from being returned to environments where they face threats due to climate change.

This year, the IACtHR is poised to issue an advisory opinion on the “Climate Emergency and Human Rights.” Although it remains to be seen how the Court will address cross-border climate displacement, it has a clear call to affirm that individuals should not be returned to places where their lives and personal integrity are at risk due to foreseeable threats caused or exacerbated by the climate emergency.⁴⁴

Confronting Racism and Discrimination

Haitian and other Black refugees face significant barriers to protection due to [systemic racism](#) and discrimination. This includes [challenges](#) in receiving refugee recognition and regularization options, difficulties in obtaining [basic services](#), and heightened exposure to [violence](#). Those who do not speak Spanish encounter further obstacles due to the lack of language services. [Addressing](#) these [structural](#) deficiencies must be a central part of the response to the challenges posed by displacement in the region, including due to climate change and disasters.

⁴⁰ Office of the High Commissioner for Human Rights (OHCHR), [The Principle of Non-Refoulement under International Human Rights Law](#) (2018).

⁴¹ [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), ¶ 186 (May 30, 2018).

⁴² See, e.g., [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), ¶ 229 (Aug. 19, 2014); IACHR, [Report No. 63/08, Case No. 12.534, Andrea Mortlock v. United States](#), ¶ 94 (July 25, 2008); and Human Rights Committee, [C. v. Australia](#), Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Communication No. 900/1999, U.N. Doc. CCPR/C/76/D/900/1999 (2002).

⁴³ Human Rights Committee, [Teitiota v. New Zealand](#), Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Communication No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (2020).

⁴⁴ Felipe Navarro, [How the Inter-American Court Could Advance Protection for Climate-Displaced Individuals](#), Just Security (June 2024); and CGRS *et al.*, as [Amici Curiae On Issues Related to the Response to Climate Displacement](#)

Given this context, the full scope of *non-refoulement* obligations as recognized in the Inter-American Human Rights System should apply to protect climate-displaced individuals.⁴⁵ These obligations encompass the extraterritorial application of the principle and ensuring due process guarantees—such as allowing entry and access to protection procedures, non-discrimination, non-criminalization, and adapted procedures for vulnerable groups.⁴⁶

PART III – Complementary Pathways as Additional Tools

This section addresses “how [States] can strengthen domestic legislation to establish protection mechanisms, such as complementary admission arrangements, humanitarian or entry visas, or stay permits.”⁴⁷ While there has been a dramatic increase in temporary forms of protection in the region, there remains a lack of focus on clear paths that enable displaced individuals to find lasting solutions and fully integrate into society.⁴⁸ Notable examples are the temporary protection program in Colombia for Venezuelans and in the United States for nationals of different countries, including several in Latin America and the Caribbean.

Complementary pathways should be rooted in international refugee and human rights law and offered in addition to, not as a substitute for, access to a fair and efficient asylum process.⁴⁹ They must provide a durable solution, have clear eligibility criteria, and ensure the preservation of fundamental rights,⁵⁰ in fulfillment of States’ duties to respect the rights of all migrants, regardless of their status.⁵¹ Complementary pathways can include humanitarian visas, admissions and temporary protection programs, family reunification, and labor mobility. These measures can be specifically extended or formulated for individuals at risk of, or displaced due to, climate factors, such as through climate visas.

In 2024, a group of experts from North and Central America, as well as the Caribbean, developed a consensus-based legal action agenda to protect climate-displaced individuals.⁵² This agenda incorporates analysis and recommendations on how these pathways and other measures can be applied as tools in the response to climate displacement.

in Request for an Advisory Opinion Submitted by the Republics of Colombia and Chile, Advisory Opinion OC-32, Inter-Am. Ct. H.R. (Dec. 18, 2023).

⁴⁵ See, e.g., IACHR, *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking* (Dec. 2019).

⁴⁶ Advisory Opinion OC-25/18, *supra* note 41, ¶¶ 97, 211, 233, 244.

⁴⁷ Concept Note, *supra* note 6, at 8.

⁴⁸ Brazil Plan of Action Final Implementation Report, *supra* note 1, at 45.

⁴⁹ Tamara Wood, *The Role of Complementary Pathways in Refugee Protection*, UNHCR (Nov. 2020), at 12.

⁵⁰ *Id.*, at 24–27.

⁵¹ *Juridical Condition and Rights of Undocumented Migrants*, Inter-Am. Ct. H.R., Advisory Opinion OC-18/03, (Ser. A) No. 18, ¶ 173 (Sept. 17, 2003).

⁵² International Refugee Assistance Project, *Legal Action Agenda for Climate Displacement, United States, Latin America & the Caribbean* (Spring 2024).

PART IV – Recommendations

The following recommendations build on the Brazil Declaration and Plan of Action, the Global Compact on Refugees, and the Global Refugee Forum Multi-Stakeholder pledges for Climate Action and the Cartagena +40 process. They are presented to guide States in enhancing protection for climate-displaced individuals through the application of international and regional refugee and human rights law.

Beyond these recommendations, the Chile Declaration and Plan of Action should incorporate the insights and experiences of people with lived experience, civil society, academia, and other stakeholders, ensuring a participatory and inclusive approach. This involvement should be continuous, spanning ten years, rather than simply a decadal event. Furthermore, it should effectively integrate the process's three pillars—protection for refugees, lasting solutions, and addressing climate and disaster displacement—ensuring a comprehensive and cohesive response.

In the **Chile Declaration**, States should agree to:

1. **Acknowledge** that the effects of climate change and disasters are shaped by State policies and human actions, disproportionately impacting vulnerable populations, necessitating a rights-based response to protect and promote the human rights of all affected individuals.
2. **Recognize** that the effects of climate change and disasters interact with different elements of the refugee definition under the Refugee Convention and Protocol or the Cartagena Declaration, particularly under the grounds of massive violation of human rights or circumstances that seriously disturb public order, thereby qualifying some climate-displaced individuals for refugee protection.
3. **Affirm** the applicability of the principle of *non-refoulement* to protect individuals who would face foreseeable threats to their life and personal integrity due to the effects of climate change or disasters if returned to their countries of origin.
4. **Emphasize** the importance of complementary pathways as essential tools to prevent the return of climate-displaced individuals to danger and to allow them to reach safety, ensuring these pathways are applied in accordance with standards rooted in international human rights law.

To advance these agreements, the **Chile Plan of Action** should include the following actions for States to take:

- (a) Accede, as appropriate, to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, and incorporate the expanded refugee definition recommended in the 1984 Cartagena Declaration on Refugees into domestic legal frameworks.
- (b) Ensure that the application of refugee protection grounds under both the Refugee Convention and the Cartagena Declaration is consistent, non-discretionary, and non-discriminatory.
- (c) Create and implement clear guidance for officers conducting asylum or international protection screenings and adjudications on considering climate factors in the determination process.

- (d) Apply *prima facie* refugee recognition in the events of collective displacement due to climate events or disasters.
- (e) Implement the full scope of *non-refoulement* obligations within the Inter-American Human Rights System to protect climate-displaced individuals, including its extraterritorial application and ensuring due process guarantees.
- (f) Establish complementary pathways such as humanitarian visas, temporary protection programs, family reunification, and labor mobility, tailored to the needs of climate-displaced individuals, ensuring these pathways are provided in addition to access to asylum, offer a durable solution, and preserve fundamental human rights.

Conclusion

It is imperative that States in the Americas make tangible commitments to respond to climate-induced displacement within the Cartagena +40 process. By interpreting refugee and human rights frameworks to account for the climate emergency's impacts on vulnerable populations, upholding the right to seek asylum and the principle of *non-refoulement*, and implementing rights-centered complementary pathways, States can effectively protect climate-displaced individuals. These measures would ensure compliance with States' international obligations and provide durable solutions, reinforcing the region's commitment to international protection and setting an example for the rest of the world in addressing the challenge of climate displacement.

Appendix – Select Climate-Related Cases from CGRS's Database⁵³

Fear of harm due to lack of government protection in the wake of climate-related disasters	
Honduras	Displacement resulting from a climate disaster. (Case No. 53409)
Guatemala	Indigenous Guatemalan family with no access to basic resources as a result of State failures following hurricanes. (Case No. 54004)
Bangladesh	Individual fled in part due to the government's failed response to the effects of climate change. (Case No. 51132)
Environmental activists, land defenders, and journalists asserting land rights or opposing or documenting environmentally harmful corporate or State practices	
Haiti	Haitian video journalist documenting conditions in post-earthquake camps. (Case No. 24594)
Honduras	Garifuna land rights activist was granted asylum due to race-based persecution. (Case No. 35711)
Mexico	Wife of an environmental activist fighting against illegal logging in her community threatened by a gang working on behalf of the government to reveal husband's whereabouts. (Case No. 45926)
Mexico	Rural Mexican farming family granted asylum after being targeted by cartel members for opposing the cartel's illegal logging. (Case No. 38157)
Vietnam	Man granted asylum after expressing opposition to government mismanagement of environmental issues at protest and being arrested and beaten by police. (CGRS No. 28152)
China	Tibetan activist granted asylum after criticizing Chinese environmental policy and being interrogated by government. (Case No. 23003)
Individuals are displaced when land becomes uninhabitable due to lack of access to or contamination of natural resources.	
Jamaica	Individual at risk upon return, including by threats to health and life exacerbated by severe air contamination. (Case No. 48165)

⁵³ CGRS Database collects asylum and other fear-of-return cases from advocates throughout the United States, including information regarding case facts, arguments made, and outcomes. Please note that case descriptions are limited where CGRS does not yet have permission to share additional facts.