



**CLIMATE & MIGRANT JUSTICE
CASE STUDY SERIES**

21st Century Law for 21st Century Migration:

The Climate Displacement Program

at the International Refugee Assistance Project





When faced with the reality that human movement is in fact inevitable, countries have two choices. ***They can build walls and prisons and separate children from their parents, or they can create fair and transparent legal systems that facilitate safe and organized migration and resettlement.*** Functional rights-based legal systems help everybody.

Becca Heller
Executive Director
International Refugee Assistance Project
TED Talk | April 2022

The Climate Displacement Program

21st Century Law for 21st Century Migration
International Refugee Assistance Project

When confronted with the reality that human movement is in fact inevitable, countries face two choices, says Becca Heller, Executive Director of the International Refugee Assistance Project (IRAP). In her April 2022 TED Talk, she asserts: “[Countries] can build walls and prisons and separate children from their parents, or they can create fair and transparent legal systems that facilitate safe and organized migration and resettlement. Functional rights-based legal systems help everybody.”

Not having a safe and legal pathway for migration—as is the case currently for climate-displaced people—not only harms those trying to migrate, but has wider implications for the health of our democracy and our planet. Viewing human migration rather than climate change as a threat, the US and other countries pour billions of dollars into border surveillance and enforcement, fueling these industries as well as underground ones like smuggling— instead of investing in climate finance. IRAP believes that, instead, these resources should be directed to addressing climate change and other root causes of migration; updating our immigration system so that it is fair, transparent, and responsive to today’s needs; and investing in climate adaptation strategies.

In 2021, IRAP launched the Climate Displacement Program to utilize existing legal pathways—and establish a new legal framework—to help climate-displaced people migrate. This approach recognizes migration as part of humanity’s adaptation to climate change and ensures that we plan for and create systems to support it. IRAP is uniquely positioned to address climate-related displacement, drawing on its expertise as an international leader in providing legal aid for displaced people, helping them understand and assert their legal

rights, and achieving policy change through advocacy and impact litigation.

CLIMATE-RELATED DISPLACEMENT IS HAPPENING NOW

Climate-related displacement is often thought of as a far-off issue to contend with in the future, but in fact it is happening now. If you ask a farmer in Central America why they’ve left their home for nearby cities, they will tell you that it’s because they haven’t been able to feed their family. A steady succession of hurricanes and torrential rain have destroyed their crops, and droughts along what’s now being called the Dry Corridor have decimated their maize and beans so that they have nothing left. While climate is not typically the sole reason that someone is forced to move, climate acts as a threat multiplier for vulnerabilities like civil conflict, poverty, and racial discrimination.

In 2021, climate and other environmental disasters were responsible for three-quarters of the world’s 40.5 million new internal displacements, surpassing conflict as the main driver. Even in the best-case scenario with a global effort to slow the planet’s warming, the number of climate-displaced people will increase in the coming years. An estimated 1.2 billion people are at risk of displacement by 2050.



Climate-displaced people

Climate-displaced people are people who must leave their home in part due to climate stressors. They may be internally displaced within their own country, or migrate across international borders.

The law has not yet caught up with the current and anticipated scale of climate-related displacement. Currently, there are no multilateral treaties or domestic laws that specifically aim to protect climate-displaced people. Legal definitions of what it means to be a refugee do not clearly include climate-related displacement. And lawyers do not yet have the training or resources to represent climate-displaced individuals.

“We’re in the 21st century, but our immigration laws are not set up to meet the challenges of 21st century mobility,” says Ama Francis, who leads the Climate Displacement Program at IRAP. “People are moving because of a range of factors that work in concert with each other. It’s clear that people are on the move related to climate, but we don’t have any laws that recognize climate-displaced people. Our vision is to shift that so the law matches the reality.”

““ We are unprepared for a world in which climate change and other factors compel millions more people to flee for survival. The choice we face in the United States of how to respond—with border walls or with a welcoming culture—will be a defining political fault line for our generation.

Deepak Bhargava

“Social Democracy or Fortress Democracy?
A 21st Century Immigration Plan”
A New Labor Forum | August 2021



Water security, and ensuring equitable access to water, is a major concern as the planet continues to warm and droughts become more severe and more frequent.

WE HAVE SOLUTIONS AT OUR FINGERTIPS

While a new legal framework must be created to protect climate-displaced people in the long term, IRAP believes that utilizing two existing legal pathways— asylum and Temporary Protected Status—is also important to helping climate-displaced people more immediately.

Asylum

“We know that people are showing up at the southern US border, having fled climate-related disasters and are needing protection now,” says Francis. “We believe these migrants are covered by current US law, but they are being de-facto rejected because US officials automatically assume they are not eligible for asylum.” Francis asserts that both US officials, as well as attorneys and judges, often have a “knee-jerk” reaction because they think that climate doesn’t fall under the asylum framework.

IRAP is working to advance the use of asylum law for climate displacement through data collection, legal research, and training. First, they are collecting hard evidence, rather than anecdotal stories, to create a persuasive, information-based argument for using asylum law to protect more people. Second, they are doing legal research to map out asylum eligibility under current law for people with climate-related claims, as well as creating strategy documents that answer key legal questions on climate and asylum. And third, they are working with Refugees International to develop training materials for attorneys and judges on climate and asylum.



Asylum

Asylum is a protection granted to foreign nationals already in the United States or arriving at the border who meet the international law definition of a “refugee”: a person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the future on account of race, religion, nationality, membership in a particular social group, or political opinion.

Many countries in Central America are grappling with drought, severe storms, and crop failure, which are contributing to forced displacement.

Temporary Protected Status (TPS)

TPS is the second existing legal tool that provides a temporary safe haven for people in the US who cannot safely return to their home countries due to environmental disaster, armed conflict, or other extraordinary conditions. Much of IRAP's TPS work is in partnership with other organizations, together advocating for TPS designation from certain countries. In their August 2021 co-authored Op-Ed "[Adaptation and Migration: The Human Face of Climate Change](#)," in *The Hill*, Francis and Kate Desormeau of the National Resources Defense Council advocate that TPS be reinstated for people from El Salvador, Honduras, and Nicaragua (it was rescinded by the Trump administration), and extended to those from Guatemala. These Central American countries are all grappling with drought, severe storms, and crop failure. IRAP also successfully advocated for House

members to join onto a [letter](#) calling for TPS designation for these countries. "While TPS can provide a measure of relief in the immediate term," explains Francis, "it is not a holistic solution because it does need to lead to a path to permanent residence. We think it's important to have pathways for lasting refuge."



Temporary Protected Status (TPS)

Temporary Protected Status (TPS) is a temporary immigration status provided to nationals of specifically designated countries that are confronting an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions.



IRAP successfully advocated for House members to join onto a letter calling for Temporary Protected Status designation for several Central American countries.

A NEW LEGAL FRAMEWORK FOR A NEW ERA

While it's critical to find and utilize existing legal pathways, IRAP ultimately believes new legal pathways will be needed to support climate-displaced people. "There are some ways to shoehorn climate-displaced people into existing pathways," says Becca Heller, Executive Director of IRAP. "But the immigration pathways that we have available are not going to be sufficient to cover the scale of climate-related displacement that's coming. There will have to be new pathways created that are specific to climate."

One bold idea that IRAP has started to develop is a climate visa. The US would designate certain regions as climate-vulnerable, and people from those regions would need to meet certain eligibility criteria, such as level of vulnerability and particular contributions to receiving communities. Private sponsorship, straddling existing and new laws, is another idea that IRAP is developing to eventually position private organizations working on climate change to identify people who might be eligible for resettlement through the US refugee assistance program.

These ideas and others will feed into a collaborative process that IRAP is leading in partnership with the Natural Resources Defense Council and the Emerson Collective to develop legal protection strategies for people in Central America and the Caribbean who are already experiencing, or will experience, displacement due to intensified climate impacts and who may seek shelter in the U.S. or other nearby countries. The first part of the process— a legal strategy convening— will engage lawyers, legal scholars, policy experts, and other practitioners to develop and carry forward recommendations.



Complementary Pathways

Complementary pathways is a term often used to refer to legal pathways, outside of traditional resettlement, to permanent relocation that can be used by refugees and asylum seekers to reach places of safety. These pathways are described as "complementary" because they are additional to, and separate from, government-run resettlement programs.



CONCRETE STEPS FOR THE BIDEN ADMINISTRATION

In its groundbreaking August 2021 report, "[US Opportunities to Address Climate Displacement](#)," IRAP outlines the concrete steps that the Biden administration can take immediately to support the protection and resettlement of climate-displaced people. These steps include:

- Issue a Department of Justice (DOJ) opinion clarifying that climate change can serve as grounds for refugee status under U.S. law.
- Issue policy guidance for immigration officers and judges to help them properly assess climate-related asylum and refugee claims.
- Train immigration officers and judges to recognize climate change's relationship to persecution.
- Develop further research on climate change in the context of asylum and refugee law through the Research Unit at Refugee, Asylum and International Operations.
- Designate additional resettlement slots for climate-displaced people through a private sponsorship program.
- Designate TPS for Guatemala and re-designate TPS for El Salvador, Honduras and Nicaragua.
- Issue Department of Homeland Security (DHS) policy guidance that specifies that TPS can be granted on the basis of slow-onset disasters.
- Operationalize the Regional Conference on Migration (RCM) guide to protection of disaster displaced people through policy guidance.

While the Biden administration has yet to adopt IRAP's recommendations, its "[Report on the Impact of Climate Change on Migration](#)," which was influenced by IRAP's advocacy, "was very clear that climate-displaced people can meet the refugee definition," says Francis. In addition, IRAP's recommendations were endorsed by six major organizations, signaling a positive step towards building an ecosystem of organizations working together on a legal framework for climate displacement. IRAP's core messages have also been reflected in the media, including in "[Climate and refugee organizations say Biden has power to help address climate change-driven displacement](#)" (Rebecca Morin, *USA Today*, August 2, 2021).



TRANSFORMING NARRATIVES ABOUT CLIMATE

“The dominant narrative about climate is there’s nothing we can do about it,” says Francis. “We’re heading towards the apocalypse, and that’s it. The work we’re doing seeks to push back against that narrative.”

As part of an emerging workgroup that is pioneering new narratives, IRAP is educating both climate-focused journalists and immigration-related journalists about climate displacement—and the critical importance of covering the potential solutions, not just the scale of the problem. IRAP and their partners are pushing for media coverage of climate-related migrants who have already settled in the US and are positively contributing to climate resiliency in their communities. Their efforts seek to transform mental models about climate change and migration and ultimately create the political will to codify and implement legal solutions.

CREATING THE WORLD’S MOST ROBUST LEGAL DATA HUB FOR DISPLACED PEOPLE

With a major grant from the [Audacious Project](#), IRAP is scaling up its current work to create the world’s most robust legal data hub for displaced people, which anyone can access from anywhere in the world. At the core of IRAP’s approach is empowering forced migrants with the legal knowledge necessary to activate their legal rights and pursue pathways to safety with dignity and agency. The Audacious grant will enable IRAP and a global network of partners to empower 2.5 million displaced people with the legal aid, information, and advocacy necessary to access pathways to safety, by 2027.

As part of this legal data hub, IRAP seeks to create a database that tracks climate-related factors in immigration cases, to help inform future policy development. Migrants, lawyers, and advocates will be able to upload anonymized information about cases in which climate change was a contributing push factor. IRAP will utilize the insights gained from this database to advocate for policies that address climate displacement. Subsequently, IRAP hopes that the data hub will be a tool for sharing information on legal pathways for people seeking to migrate due to climate.



IRAP seeks to transform the narrative about climate change and migration and ultimately create the political will to codify and implement legal solutions. This is a still from a video they created, [A Refugee's Journey](#).

