

A WELL-FOUNDED FEAR OF CLIMATE CHANGE: Providing Relief for Climate-Displaced Persons



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I. EXECUTIVE SUMMARY

This report provides a comprehensive overview of current and projected displacement of peoples as a result of climate change along with accompanying recommendations for policy makers. According to the Intergovernmental Panel on Climate Change (IPCC), the Earth's climate is drastically warming.¹ A 2018 report found that the Earth will warm by 1.5 degrees Celsius over the next five years causing an increase in the number of environmental disasters such as floods, droughts, and wildfires. Consequently, forced migration will also increase in the context of these climate-induced environmental disasters. While the international community recognizes that climate change poses an existential threat, and that the adverse effects are felt most acutely by those already in vulnerable settings, the extent to which “climate-displaced persons” are protected under U.S. domestic or international law is a subject of ongoing legal conversation. Those displaced by climate change currently cannot access asylum or refugee protections that are available to those fleeing persecution—this creates legal dilemmas, but also creates space for policy innovations.

The key takeaways of this report include:

- Climate change will continue to increasingly, though disproportionately, threaten the security and livelihood of those primarily in developing countries. In 2020 alone, disasters triggered a total of **30.7 million** new internal displacements globally (most climate-induced displacement does not directly translate to mass external migration).
- The World Bank estimates that **Latin America** (17 million), **sub-Saharan Africa** (86 million), and **Southeast Asia** (40 million) will generate **143 million** more climate-displaced persons by 2050.²
- Although there is **no universally accepted definition, we adopt the term climate-displaced persons** over environmental migrants, climate migrants, or climate refugees, as climate-displaced persons “are not only those displaced by extreme environmental events but also deteriorating environmental conditions, and that induced movement takes place within and across international borders.”³
- Many countries, including the United States, **have no specific immigration policy mechanism to deal with climate-displaced persons**, partly due to a lack of definitional clarity. However, the Biden administration should expansively utilize existing legal authority, such as the special humanitarian concern provisions of our refugee laws, TPS, DED, prosecutorial discretion, and parole to deal with climate-displaced persons.
- Congress should **create a definition for climate-displaced persons** as well as complementary protection standards for a dedicated form of relief for climate-displaced persons.
- Supporting ongoing research by federal agencies, academic institutions, and additional stakeholders on the causes, consequences, and policy innovations on climate-induced displacement will lead to the greatest **prevention and adaptation** advancements.

¹ Christopher B. Field et al., eds., *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation: Special Report of the Intergovernmental Panel on Climate Change (IPCC)*, (New York, NY: Cambridge University Press, 2012), https://www.ipcc.ch/site/assets/uploads/2018/03/SREX_Full_Report-1.pdf.

² Kanta Kumari Riguard et al., *Groundswell: Preparing for Internal Climate Migration*, (Washington, D.C.: The World Bank, 2018), <https://openknowledge.worldbank.org/handle/10986/29461>.

³ Alice Sironi, et al., eds., *Glossary on Migration*, (Geneva, Switzerland: International Organization for Migration, 2019), https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf.

II. CLIMATE CHANGE IS DRIVING DISPLACEMENT

Climate change accelerates the rate and severity of environmental distress, resulting in slow-, as well as sudden-onset disasters. The latter category is familiar to many, as it comprises environmental disasters such as flooding, windstorms, and mudslides, as well as earthquakes, tsunamis, and volcanic eruptions. Slow-onset disasters, however, relate to environmental degradation processes such as droughts and desertification, increased salinization, rising sea levels, rising average temperatures, and thawing of permafrost. These slow-onset disasters can also cause climate-induced displacement, particularly among those who are most proximately exposed and vulnerable.⁴

The Internal Displacement Monitoring Centre (IDMC) and the Norwegian Refugee Council have estimated that between 2008 and 2015, at least 26.4 million people every year were newly internally displaced, or forced to leave their homes but remain within their country's borders, as a result of climate change.⁵ This demonstrates that climate-induced displacement does not inherently or immediately lead to mass international migration; however, climate change coupled with diminishing living conditions on a large scale can. Climate-induced disruptions also prompt international, or external, migration, but due to the lack of tracking instruments, these numbers are not readily available. Nevertheless, there are multiple names for these groups of external and internally displaced individuals, including climate refugees, environmental migrants, and environmentally displaced persons.

Now, not all these people have been or will be forced to move *solely* because of the effects of climate change, but the consensus is that it is a contributing factor, and in many cases is the major factor forcing people to leave their homes. Therefore, for the purposes of this brief, a climate-displaced person is someone who has been forced from their home or who cannot return home due in large part to an environmental disaster caused by climate change.

A. Climate Change Adversely Affects Already Vulnerable Regions

In the coming decades these forces will increasingly, though disproportionately, threaten the security and livelihood of those in many parts of the world—primarily large swaths of developing countries. According to the World Bank, IPCC, and various think tanks, susceptible regions include sub-Saharan Africa, the Middle East, and South and Southeast Asia.⁶ Africa is especially vulnerable, with up to 250 million people projected to suffer due to the continent's heavy reliance on agriculture and limited institutional capacity to manage the harmful effects of climate catastrophes.⁷ Similarly, many Central American countries will be affected because of negative impacts on the agriculture sector, and in turn livelihoods.

To quantify the destabilizing consequences of climate change, the Stockholm Environmental Institute estimates that countries in Eastern Africa, such as Kenya, will lose almost three percent of its annual GDP by 2030.⁸ Additional economic repercussions include billions spent in

⁴ Christopher B. Field et al., eds., *Managing the Risks*.

⁵ Norwegian Refugee Council and International Displacement Monitoring Center, *Global Report on Internal Displacement 2019*, <https://www.internal-displacement.org/global-report/grid2020/>.

⁶ Intergovernmental Panel on Climate Change, "Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report," 2014, https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap21_FINAL.pdf.

⁷ Michael Werz and Laura Conley, "Climate Change, Migration, and Conflict: Addressing Complex Crisis Scenarios in the 21st Century," *Center for American Progress* (2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/01/pdf/climate_migration.pdf.

⁸ Ian Christoplos et al., *Human Rights Perspectives on Climate Change Adaptation: Civil society experiences in Cambodia and Kenya*, Danish Institute for International Studies (January 2014), pp. 11-18, <https://www.econstor.eu/bitstream/10419/120401/1/81845475X.pdf>.

damages, widened socioeconomic gaps, a decline in trade, and reductions in labor productivity.⁹ Moreover, severe social impacts include food insecurity, deteriorating health, abject living conditions, increased sexual and gender-based violence, and forced displacement.

As of December 2020, the top ten nations producing the largest number of climate-induced displacements include Afghanistan, India, Pakistan, Ethiopia, Sudan, Bangladesh, Niger, Yemen, Kenya, and Vietnam.¹⁰ These countries are especially vulnerable to climate change due to their geography, infrastructure, institutions, and fragile and conflict-affected status; all of which are not mutually exclusive, but have compounding effects. Countries with smaller populations like Nauru, Tuvalu, and Kiribati, however, will be completely submerged due to rising sea levels.¹¹

The people who are most vulnerable to the negative impacts of climate change have the fewest resources and legal routes available to move outside their countries. Those who can more easily migrate away from environmental hazards are often linked to pre-existing communities from their origin countries already living in the receiving state, and nations where there are also existing routes for migration, such as family reunification and labor migration schemes. A prime example includes affected communities in Central America migrating to the southern U.S. border after the devastation of hurricanes Eta and Iota. This is contrasted with nations such as Bangladesh where the community in the United States is smaller and mobility is limited by geography. In addition to the lack of legal routes, there are also trapped populations who lack the financial resources to move, further contributing to internal migration rather than external migration.

B. Limitations of International Law in the Context of Climate Change

Further exacerbating this problem is the absence of substantial humanitarian aid from international organizations as well as limited funding in preexisting agencies such as the United Nations Framework Convention on Climate Change (UNFCCC). National governments have jurisdiction over internally displaced persons (IDP), not international law, though millions are displaced internally by climate change events every year.

Additionally, “climate-displaced persons” occupy an ambiguous space within the 1951 Geneva Convention Relating to the Status of Refugees (Refugee Convention). The Convention states that a refugee is an individual that has “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”¹² Therefore, those who flee or who are unable to return to their home due to the consequences of climate change and consequent environmental disasters have no legal right under the 1951 Refugee Convention to benefit from current asylum or refugee protections due to the lack of direct persecution. Further, there is no universally accepted definition for climate-displaced persons, making it difficult to pinpoint who exactly a law might cover.

⁹ Joel B. Smith, et al., “Vulnerability to Climate Change and Reasons for Concern: A Synthesis,” in *Climate Change 2001: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change*, page 915-967, <https://www.ipcc.ch/site/assets/uploads/2018/03/wg2TARchap19.pdf>.

¹⁰ Norwegian Refugee Council, *Global Report on Internal Displacement 2019*.

¹¹ Migration Data Portal, “How Climate Change Affects the Pacific,” September 19, 2019, <https://migrationdataportal.org/blog/how-climate-change-affects-pacific>

¹² United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, (Geneva, Switzerland: United Nations, 1992), <https://www.unhcr.org/4d93528a9.pdf>.

There are other limitations of international law, particularly human rights law, in the context of climate-induced displacement, especially when it results in crossing a border. First, human rights law does not regulate refugees' admission to a foreign territory, nor their continued stay there due to a country's right to control its borders.¹³ Second, human rights law is limited by a 'timing' element.¹⁴ Human rights cases must demonstrate the threat to human rights as direct and imminent; this does not reflect the risks that are emerging from climate change which can take years to materialize. As specified above, refugee and human rights law also require a clear connection between the victims and the persecutor, but such a link is often impossible to pinpoint in the context of climate change.¹⁵

Despite these limitations, there have been several developments like the 1969 Organization of African Unity (OAU) Convention and the 1984 Cartagena Declaration that are non-binding agreements, but include a broader definition of refugee, recognizing them as persons who, owing to "events seriously disturbing public order" are compelled to leave their country, including climate change and disasters.¹⁶ Under additional advancements, as outlined by UNHCR, climate displaced persons can be considered vulnerable if "members of such populations may have a well-founded fear of being persecuted...as resources may diminish and access may be denied in a discriminatory manner, amounting to persecution for one or more convention grounds."¹⁷ With the number of climate-displaced persons expected to increase rapidly, expanding beyond sub-Saharan Africa and Latin American borders, there is a need to establish both national and international frameworks to provide adequate protection.

C. Intersecting Identities and Global Climate Change

In fragile and conflict-affected settings, climate change also acts as a "threat multiplier," aggravating underlying tensions while increasing political, social, and economic insecurity. For example, extreme weather events force East African pastoralists, who traditionally move from one area to another in search of pasture and water for livestock during the dry season, to engage in migration as a coping and survival strategy.¹⁸ However, environmentally driven pastoral conflict is increasing between groups. As they vie for access to grasslands and water, pastoralists have requisitioned private and communal land, displacing current owners, often after violent conflict, and further displacing local wildlife. Consequently, rising tensions and conflict can force some pastoralists to abandon their lifestyle in pursuit of work and food in urban centers.¹⁹ Meanwhile, farmers in the United States are working to prevent such agricultural disruption

¹³ Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches*, (Bern, Switzerland: United Nations High Commissioner for Refugees, 2012), <https://www.unhcr.org/4f33f1729.pdf>.

¹⁴ Jane, McAdam, "Disappearing states, statelessness and the boundaries of international law," in *Climate Change and Displacement: Multidisciplinary Perspectives* (Oxford, England, United Kingdom: Hart Publishing, 2010).

¹⁵ Avidan Kent and Simon Berhman, *Facilitating the Resettlement and Rights of Climate Refugees: An Argument for Developing Existing Principles and Practices*, (Oxfordshire, England, United Kingdom: Routledge, 2018).

¹⁶ Organisation of African Unity, "AU Convention Governing the Specific Aspects of Refugee Problems in Africa," (Geneva, Switzerland: UNHCR, 1969), <https://www.unhcr.org/en-us/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>; Organization of American States, "Cartagena Declaration on Refugees," (Cartagena, Colombia: Colloquium on the International Protection of Refugees, 1984).

¹⁷ UN High Commissioner for Refugees, "Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters," October 1, 2020, <https://www.refworld.org/docid/5f75f2734.html>

¹⁸ Mohamed Adow, "Pastoralists in Kenya: Climate Change and Displacement," *Forced Migration Review* (Oxford, England, United Kingdom: Refugee Studies Center, 2008).

¹⁹Ibid.

from climate change, by urging Congress to pass legislation to provide incentives for climate-friendly farming practices to reduce greenhouse gas emissions.²⁰

The climate-migration nexus is also prevalent in other parts of the world. In Latin America, rising temperatures have reduced Colombia's glaciers by almost 20 percent. Increased population growth coupled with 7.3 million internally displaced people and two million Venezuelan refugees has generated a higher demand for water greater than what the ecosystem can provide. The situation has created opportunities for rebel groups to take control of territories that are rich in resources and strategically advantaged in their war against the government.²¹ Further, recent hurricanes Eta and Iota hit several Central American countries, causing widespread devastation across Nicaragua, Guatemala, El Salvador, and Honduras adding another ground, in addition to armed conflict, that necessitates a humanitarian response.²²

Climate change is also undermining the sustainability of sustenance farming in Southeast Asia. The United Nations' Food and Agriculture Organization has found that climate shocks in South Asia have significant impacts on economic access to food by disrupting jobs and cutting incomes. Studies also show such shocks worsen child malnutrition and health by damaging vital infrastructure and increasing migratory pressures.²³

Gender also plays a salient role. Research shows that women and girls face a disproportionate burden due to their different types of marginalization, and structural inequality and gender roles limit the capacity of communities to adapt to climate change, resulting in violence and sometimes changes to migration patterns.²⁴ For example, water scarcity forces women to take longer, perilous journeys to water holes where the chances of assault increase; faltering livelihoods could encourage men to join armed groups; and families in search of alternatives may decide to migrate, increasing their own vulnerability to violence.²⁵

Children, who comprise half of those displaced, have been forcibly recruited by armed groups and others have been deprived of an education. Additionally, the elderly and those with disabilities are particularly vulnerable to discrimination in camps, trafficking, and physical barriers.²⁶ Ultimately, the mechanisms behind demographic intersections such as age, gender, and ability are similar, in that the destabilization that comes with climate shocks exacerbates existing discrimination and vulnerabilities.

²⁰ Dan Charlesw, "Farmers Are Warming Up To The Fight Against Climate Change," *NPR News*, November 20, 2020, <https://www.npr.org/2020/11/20/936603967/farmers-are-warming-up-to-the-fight-against-climate-change>.

²¹ International Crisis Group, *Colombia's Armed Groups Battle for the Spoils of Peace*, (Brussels, Belgium: International Crisis Group, 2017), <https://www.crisisgroup.org/latin-america-caribbean/andes/colombia/63-colombias-armed-groups-battle-spoils-peace>.

²² Silva Mathema, "TPS Can Promote Stability and Recovery for Central American Countries Hit by Recent Hurricanes," *Center for American Progress*, December 21, 2020, <https://www.americanprogress.org/issues/immigration/reports/2020/12/21/493979/tps-can-aid-recovery-central-american-countries-hit-recent-hurricanes/>.

²³ Food and Agriculture Organization of the United Nations, *Asia and the Pacific Regional Overview of Food Security and Nutrition -- Accelerating progress towards the SDGs*, (Bangkok, Thailand: FAO, 2018).

²⁴ UN Environment Programme (UNEP), UN Women, the UN Development Programme (UNDP), and the UN Department of Political and Peacebuilding Affairs (UNDPPA). *Gender, Climate, and Security: Sustaining Inclusive Peace on the Frontlines of Climate Change*, (Nairobi, Kenya: UN Environment Programme, 2020), <https://wedocs.unep.org/bitstream/handle/20.500.11822/32638/GCS.pdf?sequence=1&isAllowed=y>.

²⁵ Ibid.

²⁶ Norwegian Refugee Council, *Global Report on Internal Displacement 2019*.

D. Making Predictions: Present and Future Climate Displacement Trends

In 2020, weather-related and geophysical disasters triggered a total of 30.7 million new displacements, largely internal (see Figure 1). In sub-Saharan Africa there were 4.3 million displaced in the region as a result of unusually long and intense rainy seasons, especially in South Sudan, Burkina Faso, Cameroon, Mali, Nigeria, and the Democratic Republic of the Congo. This caused flooding in areas already affected by violence, prompting secondary displacements. The floods of 2019 and 2020 also helped to fuel eastern Africa's worst locust infestation, further disrupting agriculture yield.²⁷ In the Middle East and North Africa, there were 341,000 forced to flee (see Figure 2). Yemen's humanitarian crisis was aggravated further by devastating floods and storms during two intense rainy seasons. Floodwaters also overwhelmed sewage systems in displacement sites, contaminating water sources and heightening the risk of waterborne diseases in a country already dealing with a significant cholera outbreak.²⁸

Asia and the Pacific islands experienced the largest number of new displacements with over 21.3 million displaced. Typhoons, floods, earthquakes, and volcanic eruptions triggered most of the movement. In South Asia, Cyclone Amphan caused nearly five million evacuations across Bangladesh, India, Myanmar, and Bhutan in May 2021, making it the largest disaster displacement event of the year globally.²⁹ Lastly, in the Americas, devastating wildfires and hurricanes prompted the mass displacement of 4.5 million individuals with the United States, Guatemala, Honduras, and Nicaragua particularly hit hard (see Figure 2).³⁰

As climate change increases the frequency and severity of these environmental disasters (in addition to driving slow-onset displacement), estimates of the displacement impacts number in the hundreds of millions. Further, climate-displaced persons lack a path to leave externally and are often trapped in dangerous conditions. Many seeking relief through existing humanitarian avenues must also contend with inequitable adjudication and discrimination endemic to the current systems, as migrants from regions most heavily affected by climate change are overwhelmingly people of color.

The World Bank estimates that three regions—Latin America (17 million), sub-Saharan Africa (86 million), and Southeast Asia (40 million)—will generate 143 million more climate migrants by 2050.³¹ Additionally, a model developed by IDMC shows that the risk of displacement due to floods is expected to double until 2099, with low-income countries in sub-Saharan Africa, South and South-east Asia, Oceania, and Latin America disproportionately affected.³² Storms are also expected to become more frequent and intense, meaning more category 4 and 5 hurricanes. And as sea levels rise, coastal flooding associated with tropical cyclones is also expected to increase. Subsequently, more than 150 million people around the world now live on land that will be below sea level or regular flood levels by the end of the century.³³

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Rigaud et al., "Groundswell."

³² Internal Displacement Monitoring Centre (IDMC), *A Crisis Foretold: Assessing the impacts of climate change on flood displacement risk*, (Geneva, Switzerland: IDMC, 2019), <https://www.internal-displacement.org/media-centres/first-of-its-kind-study-reveals-the-risk-of-future-climate-related-displacement-could>.

³³ A bill to establish a Global Climate Change Resilience Strategy, to authorize the admission of climate-displaced persons, and for other purposes, S.2565, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/2565>.

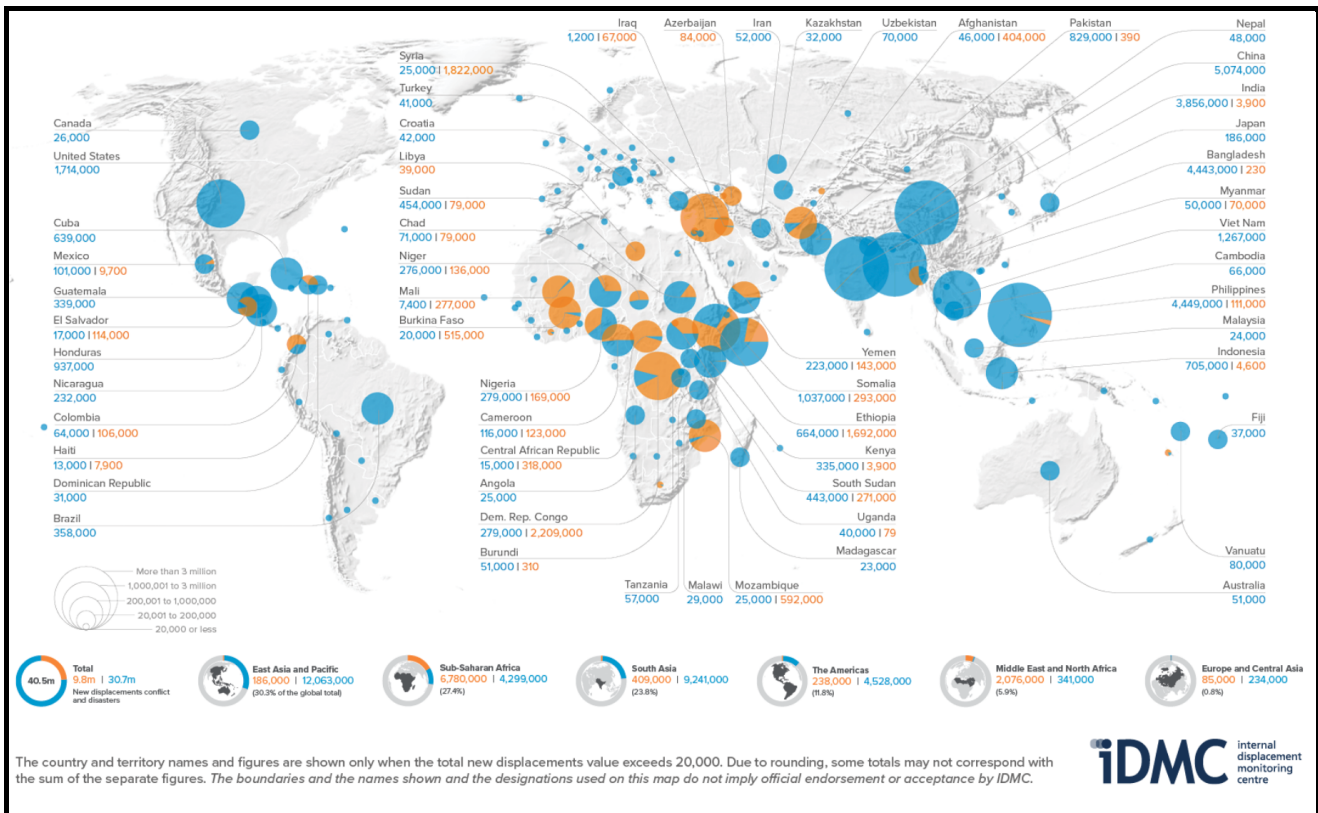
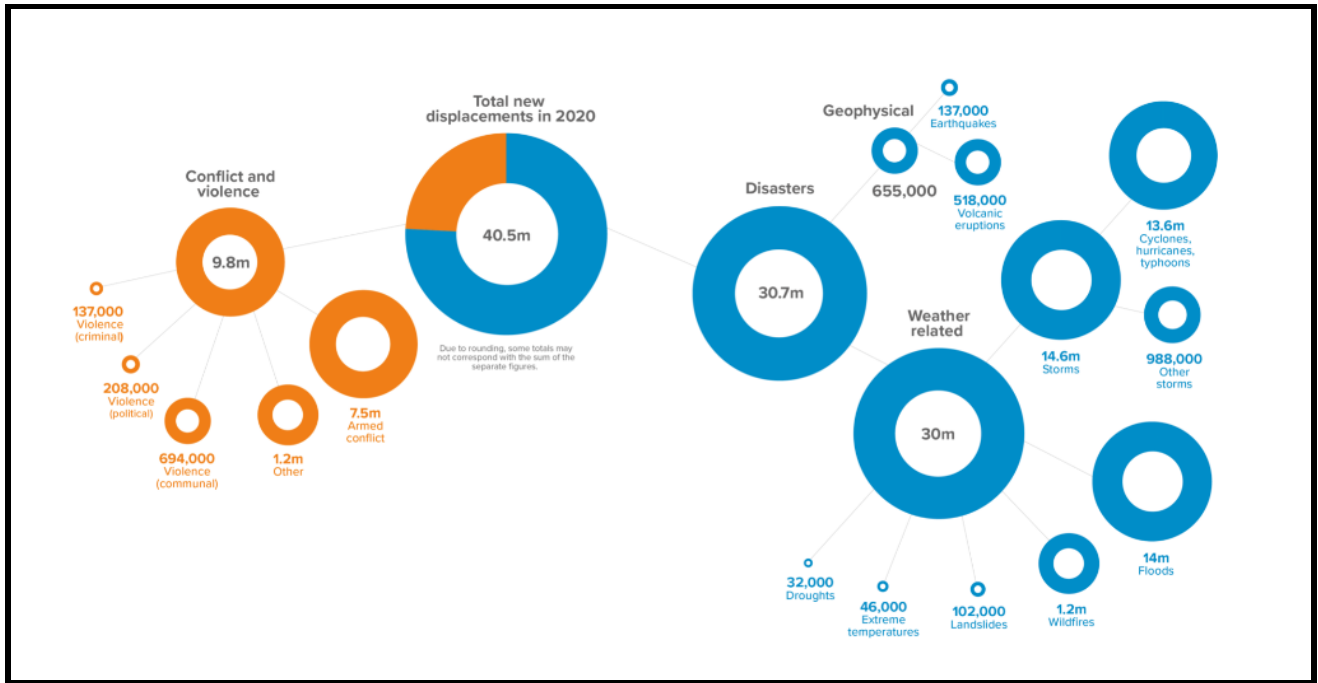


Figure 1: Displacement Breakdown by Conflict and Disaster Type³⁴
 Figure 2: New Displacements by Conflicts and Disasters in 2020³⁵

³⁴ IDMC, "Internal displacement."
³⁵ Ibid.

Though risk assessments and forecast models are helping us to prepare, predictions are complicated by a variety of factors, including the fact that there is no comprehensive system in place to track climate migratory movements.

III. UNDERSTANDING THE LEGAL FRAMEWORK

U.S. Commitment to Addressing Climate Change

The Biden-Harris administration has repeatedly emphasized the importance of human security and ensuring that America’s foreign policy protects the world’s most vulnerable populations. In conjunction with the United Nations and its various agencies, the administration has furthered its goals of responding to climate change and its resulting displacement. In his first month in office, President Biden took swift action to “put the climate crisis at the center of United States foreign policy and national security” by reentering the Paris Climate Agreement and hosting a Climate Summit. Two events are important to note: the Presidential Address to the United Nations General Assembly in September and November’s COP26—the 26th annual Conference on Climate Change, where climate induced displacement could play a leading role, especially in talks involving the United States.

The administration has also developed a cohesive adaptation plan through the Climate Task Force and created positions to tackle the climate crisis at home and abroad, including the Special Presidential Envoy for Climate, the White House Office of Domestic Climate Policy (Climate Policy Office), and the White House Environmental Justice Interagency Council (Interagency Council).

Climate change’s scale and wide-ranging impact demand multilateral cooperation to effectively confront; properly understanding the interplay between climate change and migration is of critical importance for policymakers. Actors’ responses have implications for hundreds of millions of migrants and forcibly displaced people. Currently, under U.S. immigration law, people displaced by natural disasters and environmental degradation—including those displaced by the impacts of climate change—have traditionally not been considered eligible for protection as refugees.³⁶ However, in recent years there have been efforts to change this, both administratively and legislatively.

A. The U.S. Refugee Program Ceiling

Historically, the United States has been one of the largest refugee resettlement countries in the world. The U.S. Refugee Admissions Program (USRAP), overseen by the Bureau of Population, Refugees, and Migration and the Office of Refugee Resettlement, began in the post-WWII era and formalized its modern program with the Refugee Act of 1980.³⁷ The President, in consultation with Congress, determines the numerical ceiling for refugee admissions each year. At the start of the program over 200,000 refugees were resettled in a single year.³⁸ While this number has yet to be reached again, the Biden-Harris administration has committed to enhancing programs to resettle refugees. One executive order from President Biden states,

³⁶ Amali Tower, *The United States used to have a pathway that covered ‘natural calamity’ prior to the 1980 Refugee Act*, (New York, NY: Climate Refugees, 2021), <https://www.climate-refugees.org/reports/policybrief-to-biden-eo>.

³⁷ National Immigration Forum, *Fact Sheet: U.S. Refugee Resettlement*, (Washington, D.C.: National Immigration Forum, 2020), <https://immigrationforum.org/article/fact-sheet-u-s-refugee-resettlement/>

³⁸ Claire Felter and James McBride, *How Does the U.S. Refugee System Work?*, (New York City, NY: Council on Foreign Relations, 2018) <https://www.cfr.org/backgrounder/how-does-us-refugee-system-work>.

“USRAP should be rebuilt and expanded, commensurate with global need.”³⁹ Moreover, bills have been introduced in the Senate, such as the Guaranteed Refugee Admission Ceiling Enhancement Act or the GRACE Act, which establishes that the maximum number of refugees admitted each fiscal year must be at least 95,000 and that the maximum number be treated as the numerical goal for refugee admissions for the applicable fiscal year.⁴⁰

Currently, the U.S. refugee program does not provide protection for those displaced by climate change. The Biden administration has requested that relevant agencies prepare and submit a report on climate change and its impact on migration, including forced migration, internal displacement, and planned relocation. “This report shall include, at a minimum, discussion of the international security implications of climate-related migration; options for protection and resettlement of individuals displaced directly or indirectly from climate change; and mechanisms for identifying such individuals.”⁴¹ As directed, experts and refugee advocates assembled by Refugees International have weighed in to inform the administration’s report and have encouraged protection for climate displaced people at home and abroad.⁴²

According to UNHCR, 1.27 million refugees are in need of resettlement today, a number which is exponentially greater than the number of refugee resettlement slots available in the United States or worldwide.⁴³ As resettlement needs have consistently been greater than the availability or resettlement slots, the United States and other resettlement countries limit access to their resettlement programs. In the U.S. Refugee Admissions Program, this is done through the Secretary of State establishing “processing priorities” to control access to the program, as well as by setting a refugee admissions ceiling, currently set at 62,500, with an increase expected in 2022 to 125,000.⁴⁴

One resettlement priority is “Priority 2 - Groups of Special Humanitarian Concern.” Priority 2 groups are defined by the Secretary of State, with input from USCIS, UNHCR and NGO partners. While it has not done so, the Department could define refugees impacted by climate change as a group of special humanitarian concern, thereby facilitating access to resettlement for those groups. Similarly, UNHCR, which has long been authorized by the Department of State to make individual “Priority One” (P-1) referrals to the U.S. Refugee Admissions Program, could revise its own resettlement criteria to include refugees impacted by climate change within its own resettlement criteria, which serves as the basis for P-1 referrals.⁴⁵

³⁹ “Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration,” *Office of the President*, February 4, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/executive-order-on-rebuilding-and-enhancing-programs-to-resettle-refugees-and-planning-for-the-impact-of-climate-change-on-migration/>.

⁴⁰ GRACE Act, S.1088, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/1088>.

⁴¹ “Executive Order on Rebuilding,” *Office of the President*.

⁴² *Task Force Report to the President on the Climate Crisis and Global Migration: A Pathway to Protection for People on the Move*, (Washington, D.C.: Refugees International, 2021), <https://www.refugeesinternational.org/reports/2021/7/12/task-force-report-to-the-president-on-the-climate-crisis-and-global-migration-a-pathway-to-protection-for-people-on-the-move>.

⁴³ *UN Refugee Agency releases 2022 resettlement needs*, (Geneva, Switzerland: UNHCR, 2021), <https://www.unhcr.org/en-us/news/press/2021/6/60d32ba44/un-refugee-agency-releases-2022-resettlement-needs.html>

⁴⁴ “Statement by President Joe Biden on Refugee Admissions,” *Office of the President*, May 3, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/03/statement-by-president-joe-biden-on-refugee-admissions/>.

⁴⁵ *The Priorities in the US Refugee Admissions Program are described in the FY2022 Emergency Report to Congress on Refugee Admissions for FY2021*, (Washington, DC: Department of State, 2021), <https://www.state.gov/proposed-emergency-presidential-determination-on-refugee-admissions-for-fy21/>.

B. Congressional Efforts

On April 22, 2021, Senator Ed Markey (D-MA) introduced a bill to establish the Global Climate Change Resilience Strategy (S.1335).⁴⁶ The bill, cosponsored by Rep. Nydia Velázquez (07 D-NY), states that global climate change is causing more and more disasters that displace people all over the world and that those people should not be forced to return to a country where return is unsafe due to climate-related disasters. Markey says, “the climate crisis disproportionately affects women, children, Indigenous people, and people of color, and we must take the necessary steps to support those who are forced to leave their homes due to a changing climate.”⁴⁷

The bill would modify the Immigration and Nationality Act (INA) § 101(a) to include the definition for climate-displaced persons presented in the first section, as

“any person who, for reasons of sudden or progressive change in the environment that adversely affects his or her life or living conditions . . . is obliged to leave his or her habitual home, either within his or her country of nationality or in another country . . . is in need of a durable resettlement solution; and . . . whose government cannot or will not provide such durable resettlement solution.”⁴⁸

It further enables the President to enact programs to address persons adversely affected by climate change and instructs the Secretary of State to develop a ten-year Global Climate Change Resilience Strategy designed to address the effects of climate change and disasters caused by climate change. Additionally, the bill sets an admissions goal of not less than 50,000 climate-displaced persons per year. The legislation is generally supported by climate and refugee advocates. According to Abby Maxman, President of Oxfam America, “[B]y creating a new pathway for climate-displaced people to find safe haven in the U.S., Senator Markey’s legislation contributes to the vital effort to humanely welcome people forced to flee their homes. We must confront all aspects of the climate crisis and this bill would provide an important new tool to help address one of its main impacts.”

IV. RECOMMENDATIONS

Currently, the United States addresses climate-displaced persons on an ad-hoc basis through existing executive authority in the U.S. Immigration and Nationality Act—namely temporary protected status (TPS) and Deferred Enforced Departure (DED). Additionally, the agencies responsible for admitting and enforcing regulations within the INA, particularly the U.S. Department of Homeland Security (DHS) and its offices and enforcement arms, USCIS, ICE, and CBP have no set guidance on how to process climate-displaced individuals. Ultimately, while administrative solutions are critical for immediate relief, the United States needs a permanent solution and dedicated mechanism from Congress to provide entry and long-term protection for climate-displaced persons.

⁴⁶ A bill to establish a Global Climate Change Resilience Strategy, to authorize the admission of climate-displaced persons, and for other purposes, S.1335, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/1335>.

⁴⁷ Ed Markey for United States Senator for Massachusetts, “Senator Markey, Rep. Velázquez reintroduce legislation to aid people displaced by climate change and support global resilience,” April 22, 2021, <https://www.markey.senate.gov/news/press-releases/senator-markey-rep-velquez-reintroduce-legislation-to-aid-people-displaced-by-climate-change-and-support-global-resilience>.

⁴⁸ A bill to establish a Global Climate Change Resilience Strategy, S.1335.

A. Administrative Recommendations

The administration should use existing legal avenues with a coordinated interagency response to prioritize individuals impacted by climate change.

Special Humanitarian Concern: Under INA Section 207(a)(3), admissions under this subsection are allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation. The emergency refugee situation exacerbated by the negative impacts of climate change warrants the U.S. Refugee Admissions Program to allow refugees whose plight of displacement has been aggravated by climate change to access refugee resettlement. This would only pertain to those who both suffer from negative impacts of climate change and already meet the refugee statutory requirements. Likewise, as the largest resettlement country, the United States should encourage the United Nations (1) to revise its own resettlement criteria to facilitate resettlement for those refugees who cannot access another durable solution due to the negative impact of climate change, and (2) to track and report on the number and circumstances of refugees and other displaced persons who are impacted by climate change.

TPS/DED: DHS should more expansively utilize TPS and DED to deal with climate-displaced persons. As part of the Immigration Act of 1990, Congress gave the DHS Secretary the authority to provide TPS to immigrants within the United States who are unable to return to their home country due to an armed conflict, environmental disaster, or other temporary and extraordinary conditions that make return unsafe. In recent years, TPS has been extended to those fleeing the 2010 earthquake in Haiti, the 2001 earthquake in El Salvador, and a 1998 hurricane in Honduras and Nicaragua.⁴⁹ Additionally, with DED, individuals from designated countries and regions facing political or civic conflict or natural disaster are not subject to removal from the United States for a designated period of time.⁵⁰ Currently, Liberia and Venezuela are the only countries designated for DED; however, this form of protection can easily be expanded to incorporate nations that are severely impacted by climate change.

Prosecutorial discretion and parole: The president should also promulgate a memorandum that directs prosecutorial discretion (e.g. to not arrest, detain, or deport) and parole for climate-displaced nationals.

B. Legislative Recommendations

Congress should create a definition for climate-displaced persons as well as complementary protection standards for a dedicated form of relief for climate-displaced persons.

Climate-displaced person definition: Despite difficulties in identifying climate-displaced persons due to confounding displacement factors, identifying countries hardest hit by climate change can facilitate resettlement access for refugees from these countries. Utilizing UNHCR's climate vulnerability standard can also help in this effort.⁵¹ Additionally, if the government of the country experiencing climate change is exacerbating the consequences, then individuals fleeing from these areas should qualify for protection.

⁴⁹ Erol Yayboke and Janina Staguhn, *A New Framework for U.S. Leadership on Climate Migration*, (Washington, D.C.: CSIS Briefs, 2020), <https://www.csis.org/analysis/new-framework-us-leadership-climate-migration>.

⁵⁰ USCIS, "Temporary Protected Status and Deferred Enforced Departure," July 8, 2021, <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/temporary-protected-status-and-deferred-enforced-departure>.

⁵¹ UNHCR, *Vulnerability Screening Tool*, (Geneva, Switzerland: UNHCR, 2016), <https://www.unhcr.org/en-us/protection/detention/57fe30b14/unhcr-ide-vulnerability-screening-tool-identifying-addressing-vulnerability.html>.

Complementary protection standards. Under current standards of the refugee definition, climate-displaced persons do not qualify for protection. However, climate-displaced persons need similar protection that acknowledges the long-term nature of their displacement, unlike programs meant to address short-term conditions like TPS and DED. The UNHCR, a U.S. Embassy, or a participating non-profit organization could refer those experiencing exceptional climate change impacts and qualify as climate migrants.

V. CONCLUSION

The stark reality is that those who are most vulnerable to environmental disasters have the fewest resources and legal routes available to move to safety. And while there have been a series of developments that provide potential solutions, such as the Nansen Initiative, the Paris Climate Accord, and the New York Declaration for Refugees and Migrants/the Global Compact on Safe, Orderly, and Regular Migration—climate change resulting in massive displacement requires us to rethink our laws, policies, and attitudes regarding migration governance. Disaster risk management and adaptation policy can be integrated, reinforcing, and supportive—but this requires careful coordination that reaches across governments, NGOs, and civil society in policy and practice. The interactions among these actors and the legal framework will have a major influence on sustainable protections for climate-displaced persons.

APPENDIX - ABBREVIATIONS

CBP: Customs and Border Protection
COP: Conference of the Parties to the UNFCCC
DED: Deferred Enforced Departure
DHS: U.S. Department of Homeland Security
ICE: Immigration and Customs Enforcement
IDP: Internally Displaced Persons
IDMC: Internal Displacement Monitoring Centre
IPCC: Intergovernmental Panel on Climate Change
INA: Immigration Nationality Act
OAU: Organisation of African Unity
TPS: Temporary Protected Status
UN: United Nations
UNFCCC: United Nations Framework Convention on Climate Change
UNHCR: United Nations High Commission for Refugees
USCIS: U.S. Citizenship and Immigration Services
USRAP: U.S. Refugee Admissions Program