# Drowned in definitions?

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**Refugees or migrants? In need of new forms of legal protection or adequately protected by existing instruments? No obvious or absolute answers.**

Some say that those displaced as a result of environmental or climate change are refugees and advocate for the expansion of the definition of a refugee in the 1951 Refugee Convention in order to include them; others call for the adoption of new instruments to provide them with protection similar to that provided for refugees. And then there are those who believe that any notion of the existence of 'environmental refugees' and their need for refugee-like protection is at best exaggerated and at worst politically motivated and dangerous. According to them, such ideas serve only to confuse the traditional concept of a refugee and play into the hands of those – governments – who wish to classify all as economic migrants and thereby avoid their obligation to provide refugee protection.

The fierceness of the debate strongly recalls the one twenty years ago about the existence, definition and need for protection of the internally displaced. In those days, there were those who vehemently opposed the 'creation' of this category of people because they considered it would

provide an excuse to governments to contain them in their own country. Yet the wide acceptance and adoption of the Guiding Principles on Internal Displacement since 1998, and the increasing recognition by governments, UN agencies and NGOs of the needs of the internally displaced, and their competence and obligation to help alleviate some of them, tell a different story: that bringing issues to the surface and giving them a name may serve a good purpose. The internally displaced are no longer invisible. While sceptics may still contend that refugee protection has suffered globally in the last two decades, it remains to be proven that this is due exclusively or primarily to the 'creation' of the IDP category. The concern that refugee protection would be weakened, therefore, does not seem to be a good enough reason for rejecting the notion of 'environmental refugees' outright.

## In fear of persecution?

There is nothing inherent in the ordinary meaning of the word 'refugee' that would suggest that people fleeing flooded homes or homes destroyed by an earthquake or forest fire should not be considered as refugees. And it is also hardly contestable that such people should not be sent back to their flooded or destroyed homes unless and until it would be safe for them to do so, from an ethical if not always a legal point of view. However, this is where any similarity with the refugees as defined in the 1951 Refugee Convention ends.

It is widely assumed that the great majority of people who flee natural disasters remain in their own country, and while they may be in need of humanitarian assistance, they do not fear persecution. The paradigm of victims of natural disasters being readily assisted by their governments has its exceptions. Where they find themselves on the other side of an international border, then international obligations of the host country may come into play; indeed many countries would offer some form of protection. Or they may qualify as refugees, in the legal sense, if their own governments are intentionally destroying their environment, are discriminating against them in the provision of assistance and/or are using the consequences of the disaster in ways that amount to persecution for one or more of the reasons of the 1951 Refugee Convention. And, with the advances of technology, people will increasingly expect their governments to take measures to protect them from the effects of disasters and to take measures to minimise their consequences. Conversely, there are many situations of gradual environmental degradation, such as desertification, where people adapt and may eventually migrate, and where the imperative to perceive or treat them as refugees is not obvious. Last but not least, there is a plausible scenario according to which sooner or later some states may disappear altogether, leaving their citizens not only without a home and obliged to seek refuge elsewhere but also stateless. Perhaps this is the most compelling scenario from an international protection perspective.

Inevitably the debate reverts to the original question: Why did a person leave? Human migration rarely has a single cause and it is now well established, theoretically as well as empirically, that voluntary and forced movement are sometimes hard to distinguish. Legally, however, the distinction is important to make. When migration is forced, and when this is combined with absence of protection by one's own state, then international protection considerations arise. And this is the point where theoretical exercises and generalisations come inevitably to a halt. A case-by-case determination of causes and needs is unavoidable in the debate about 'environmental refugees', as it is in the case of all refugees and displaced persons.

The Guiding Principles on Internal Displacement offer a yardstick for considering when displacement (not just internal) becomes a human rights issue of international concern even in the case of causes linked to environmental damage. Guiding Principles 5 to 9[1] describe the parameters of the right not to be arbitrarily displaced. These include guarantees to be observed in case displacement is unavoidable in order to minimise its effects, and the particular obligation of states to protect against displacement of groups with a special dependence on and attachment to their lands.[2]

The need for international protection will be present whenever the principles concerning protection from arbitrary displacement are not respected. In these cases the people of concern will be not just victims of natural disasters but also arbitrarily displaced, either internally displaced or refugees. Defining them further as 'environmental refugees' or 'climate change refugees' appears not to serve any purpose other than raising the profile of the issue. By extension, most 'environmental refugee' situations do not seem to warrant new international legal regimes.

Two areas, however, seem to call for additional legal measures: firstly, the 'disappearing states' scenario[3] and, secondly, a prohibition of deportation of people from countries hit by a natural disaster who are not refugees under the 1951 Convention yet should not be returned for humanitarian reasons.

## Conclusion

Even though the term 'environmental refugee' is legally inaccurate, it is more compelling than the term 'environmental migrant' because it evokes a sense of global responsibility and accountability, as well as a sense of urgency for impending disasters. The term 'climate change refugee', on the other hand, seems to be going too far. It will generally be impossible to say whether a degradation in ecosystems leading to displacement has climate change as a major causative factor. What is important is that the debate remains on the right track, namely, that the paramount objective is not a new refugee regime but genuine efforts for better accountability, international cooperation, environmental protection standards and good governance.

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1. Guiding Principles online at www.brookings.edu/projects/idp/gp_page.aspx
2. See article by Sternberg and Chatty, pp25-6
3. See article by Kelman, pp20-1.