Chapter 19

Environmentally Forced Migration and Human Rights

J. M. M. van der Vliet-Bakker
University of Leiden, The Netherlands

ABSTRACT

In an era of accelerating environmental degradation, a growing number of people will be affected by its effects. Some of those people will be forced to migrate, both internally and cross-border. Under current international law, those people are not recognized as a specific category entitled to protection. Many protection gaps in international law can be identified for these ‘environmentally forced migrants’. Human rights law can fill some of those gaps by offering minimum standards of treatment, procedural protection or complementary protection. This chapter systematically assesses these possibilities.

I. INTRODUCTION

The pressure on land and other resources is rising in all regions of the world due to macro-level changes such as rapid growth of populations, urbanization and climate change. On top of that, local causes such as poor governance and monitoring, carelessness and increasing industrial accidents/pollution add to the stress on and the degradation of the environment. It seems obvious that at some point people will have to migrate as a result of e.g. water scarcity and food and energy insecurity, or conflicts over the declining resources. This type of forced migration is often referred to as ‘environmentally forced migration’.

Although not recognized by international law as a specific category of people entitled to protection, the impact itself of environmental degradation on all people and especially vulnerable people has been broadly recognized. As environmentally forced migrants are currently faced with protection gaps, existing law needs to be examined on its capacity to protect those people. This chapter assesses the possibilities of human rights as a form of protection. Human rights can act as a minimum standards of treatment or a procedural protection for environmentally forced displacement within state borders. In case of cross-border migration, human rights may serve as a legal basis for ‘complementary protection’.

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In order to be able to assess the possibilities for applying human rights to environmentally forced migration, this chapter first provides a better understanding of the concept of environmentally forced migration. After that, various types of human rights protection are assessed on their ability to protect environmentally forced displaced persons.

II. BACKGROUND

This section introduces the concept of environmentally forced migration. It discusses more in depth two of the conceptual challenges: causality and the element of force. Finally the legal protection gaps for environmentally forced migrants are identified.

The concept of people moving as a result of environmental degradation is not new. Migration such as circular migration or labour migration to supplement family income are common adaptation strategies. Leaving environmentally degraded and agriculturally unsustainable regions can be seen as a legitimate coping strategy for affected populations. In addition, migration could potentially help slow the process of environmental degradation and allow those who remain in affected communities to adjust their livelihood strategies by changing their agricultural practices or, for instance, shifting to non-agricultural activities. (Morton et al. 2008)

What is new, is the scale and impact of the environmental degradation. Already in the 1990s, the Intergovernmental Panel on Climate Change mentioned migration as one of the major effects of climate change (IPCC 1990). As there is no institution that monitors environmentally forced migration, there is no exact information on how many people are displaced for this reason. The number of people being displaced that are quoted in the literature show a huge variety. This variety can be explained by the fact that there is no generally accepted definition of environmentally forced displacement and thus the scope of ratione personae is unclear. The experts on environmentally forced migration can broadly be divided into two main groups: the alarmists and the sceptics. The alarmists emphasise a causal relationship between climate change or other forms of environmental degradation and displacement. The alarmist school of thought expects hundreds of millions, or even up to a billion, people to be displaced as a consequence of environmental degradation. The estimated numbers of climate or environmental refugees are often used to sensitize public opinion and decision-makers to the issue of global warming. Perhaps the best-known estimate for future forced migration as a result of climate change, was made by alarmist Professor Norman Myers (2005). The critics main arguments are that the concept is simplistic and that the empirical evidence for the causal relationship between environmental degradation and migration is scarce (Black 1998; Wood 2001; Castles 2002). As a result, their estimates on people displaced due to environmental degradation are much lower.

The causal relationship between environmental degradation is one of the main conceptual challenges. The causal relationship is not only relevant to determine how many people can be considered environmentally forced migrants, it is also (and maybe even more) important because current legal protection norms and instruments are predicated on the cause for the (involuntary) movement. Various studies show that decisions to move are informed by many factors and seem to get more complex over time (Boswell 2002; Kolmannskog 2008 and 2009; UNHCR 2010; Zetter 2011). As most environmental degradation will be cumulative and unspectacular, many people will decide to leave in anticipation of worse to come or in order to improve their economic situation which has become dire before a tipping point is reached at which people’s lives and livelihoods come under such serious threat that they have no choice but to leave.
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