

POLICY BRIEF

# Keeping the Refugee Convention Relevant: Expanding Protection for Environmentally Displaced Populations

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## Introduction

Migration is not a new phenomenon. Historically, it has been a mechanism for adapting to deteriorating environmental conditions.<sup>1</sup> Given the increasingly detrimental impacts of climate change, environmental migration is expected to increase.<sup>2</sup> According to the 1990 First Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), the greatest impact of climate change could be human migration.<sup>3</sup> By 2050, 150 million people could be displaced by climate change-related phenomena such as desertification.<sup>4</sup>

Given that climate change will affect the lives and fates of millions of people who will be forcibly displaced, addressing the plight of environmentally displaced populations is of crucial importance. This topic is particularly significant for the Middle East and North Africa (MENA) region, which is expected to be one of the regions most affected by climate change.<sup>5</sup> Inhabitants of the MENA region already face numerous environmental challenges, such as desertification, water scarcity, and heat waves, all of which are predicted to worsen in the near future.<sup>6</sup> Intense weather events driven by climate change, such as droughts, floods, and storms, will all impact migratory flows across the region.

The ability — or inability — of the 1951 Convention Relating to the Status of Refugees, known as the Refugee Convention, to address the plight of people displaced by climate change impacts has been a critical area of discussion among legal scholars and practitioners. The use of the terms “climate refugee” and “environmental refugee” has been a topic of contention, as the current legal definition of “refugee” does not explicitly mention environmental displacement.<sup>7</sup> Further, some actors have expressed concern that expanding the Refugee Convention to include environmental refugees could indirectly reduce the protection afforded to conventional political refugees.<sup>8</sup>

One existing view in international refugee law is that the Refugee Convention is but a peripheral instrument for addressing the legal status of populations who are displaced by natural disasters and climate change. By contrast, this brief argues that the relevance of the Refugee Convention to such situations is limited to how natural disasters are conceptualized.<sup>9</sup> Drawing on the recent legal literature of scholars who adopt a social perspective to understand disasters and climate change, it finds that as a living document, the Refugee Convention remains relevant in these contexts.

First, this brief presents the dominant view among scholars and practitioners, which is influenced by what Mathew Scott calls the “hazard paradigm.”<sup>10</sup> Next, it presents the “social paradigm” as an alternate way of understanding natural disasters with its own implications for how refugee status is determined in these contexts. Lastly, the brief provides policy recommendations for relevant stakeholders working to address the plight of populations displaced because of climate change.

## Discussion

### Theoretical Frameworks: The Hazard Paradigm Versus the Social Paradigm

#### The Hazard Paradigm

How a disaster is conceptualized has important implications for the relevance of the Refugee Convention for populations displaced by natural disasters and climate change. The “hazard paradigm,” which today is the dominant perspective, focuses on a hazard independently of its social context.<sup>11</sup> Within this paradigm, affected populations are construed as passive victims of indiscriminate and uncontrollable forces of nature, which are granted agency.<sup>12</sup> Human agency is absent from this perspective.<sup>13</sup> Such a conception of natural disasters has consequences for the determination of refugee status.

Through the hazard paradigm, populations impacted by natural disasters do not satisfy the definition of “refugee” stipulated in the Refugee Convention. According to the convention, a refugee is “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”<sup>14</sup> Given that discrimination is an integral feature of the definition, and that the hazard paradigm views disasters as being inherently indiscriminate, this dominant view holds that the Refugee Convention does not apply to people displaced by climate change impacts.<sup>15</sup> Furthermore, the definition of “refugee” requires the existence of a persecuting agent, which the context of environmental displacement lacks.<sup>16</sup> The hazard paradigm frames harm as being inflicted by forces of nature,

which do not qualify as agents of persecution and thus disqualify environmentally displaced populations from the definition enshrined in the Refugee Convention. While this perspective has made its way into jurisprudence, another perspective for understanding natural disasters could offer an avenue for protecting these populations that satisfies the convention's definition.

### The Social Paradigm

By contrast, the “social paradigm,” which was developed within the field of disaster risk reduction, understands disasters as social phenomena.<sup>17</sup> This perspective holds that natural disasters result from the interaction of natural hazards with social vulnerability, which is formed within social and historical contexts.<sup>18</sup> As such, the social paradigm accounts for the presence of human agency and looks to the social root causes of a disaster. It recognizes that vulnerability is differentiated based on preexisting structural patterns of discrimination against particular marginalized groups.<sup>19</sup> Thus, it largely rejects the hazard paradigm's assumption that a disaster's impacts are indiscriminate.<sup>20</sup> By recognizing the differentiated experiences of vulnerability and discrimination within a social context, the Refugee Convention can be relevant for the environmentally displaced.

### The Case of the Bantu and Reewin During the 2011 Somalia Drought

The relevance of disasters to the Refugee Convention can be highlighted by applying the social paradigm to the predicament of the Reewin and Bantu people living in Somalia during the 2011 famine. Due to drought and crop failure, 750,000 people were living in famine conditions in South and Central Somalia by October 2011.<sup>21</sup> It is reported that the marginalized Bantu and Reewin people were disproportionately affected by the disaster.<sup>22</sup>

Understood through the hazard paradigm, which does not account for the historical and social context in which a disaster occurs, the Reewin and Bantu people were exposed and vulnerable to the famine simply because they happened to have insecure livelihoods.<sup>23</sup> This perspective would look to the onset of drought to explain the starvation of hundreds of thousands of people. On the other hand, the social paradigm considers the root socio-structural causes that generate vulnerabilities within the context of drought and famine.<sup>24</sup> In other words, the predicament of the Reewin and Bantu people is inseparable from the broader social context in which the disaster unfolded.<sup>25</sup>

Scholars who have studied these Somalian communities assert that they have historically endured systemic marginalization and discrimination within the wider society. For example, members from their community were excluded from important government positions, and their economic and social opportunities were restricted.<sup>26</sup> Further, during the 1991–92 famine, the Bantu and Reewin people, along with their livestock and food stores, were violently targeted by the militias of more powerful clans.<sup>27</sup>

According to Scott, the differential vulnerability experienced by the Bantu and Reewin people, whose discriminatory treatment exacerbated their vulnerability to drought and famine, may have been capable of satisfying the convention's definition of “refugee” (by having a well-founded fear of persecution under the convention).<sup>28</sup> This determination, however, is predicated upon the application of the social paradigm, rather than the hazard paradigm, in the context of drought and famine.

## Policy Recommendations

- Policymakers, academics, and individuals involved in the processes of determining refugee status should apply the social paradigm when understanding cases linked to such natural disaster contexts. The hazard paradigm falls short of fully capturing the vulnerabilities and discriminatory realities of individuals exposed to harm in these contexts, thereby excluding them from potential protection mechanisms that they could otherwise be eligible for.
- The above actors should apply the social paradigm to the case of Syria, which experienced a severe multiyear drought before the 2011 uprising. This perspective would consider the negative impacts of the drought (the hazard) to be a result of the interaction between drought and social vulnerability within the social and political contexts. Furthermore, some scholars have argued that the desertification seen in Syria was itself caused by poor governmental policies and mismanagement.<sup>29</sup> These policies harmed particular social groups who were made more vulnerable to the drought and became forcibly displaced.

- In order to better understand the harm facing a person seeking protection through the Refugee Convention, actors involved in refugee status determination should make use of updated reports written by international humanitarian organizations that provide insights into conditions in the field.<sup>30</sup> Additionally, these actors should utilize in-depth ethnographic studies and reports on particular contexts and situations, since factors covered by the Refugee Convention are highly context-specific.<sup>31</sup> In particular, in-depth qualitative investigations can provide “thick” description and insights which quantitative and statistical methods might not manage to capture.
- International organizations, academic institutions, and governments should encourage more publicly accessible anthropological research into the contexts of climate change and natural disasters to better inform policymakers and refugee status determination processes.
- Academic institutions, international organizations, and civil society organizations should develop shared strategies and networks to build off each other’s efforts to expand protections for the environmentally displaced. Donors should target these institutional networks to foster a more participatory conversation around the issue.

## Conclusion

The point of departure for this brief is that the Refugee Convention is a living document. It retains its relevance amid our increasing awareness of environment or disaster-driven displacement, even if such displacement was not at the forefront of the minds of its drafters.

This brief fleshes out two disaster paradigms with different implications for the determination of refugee status and offers the recommendations above in light of the discussion. Clearly, the social paradigm can keep the Refugee Convention relevant in the context of environmental displacement. As such, we need not “reinvent the wheel.” Rather, as legal scholar Jane McAdam notes, “The trick is to apply existing law principles to the facts at hand.”<sup>32</sup>

## Notes

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