

Ukraine

Environmental Migration

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The issue of environmental migration has recently gained much attention. The most common causes of migration are economic, such as a desire to improve one's living standards and/or financial situation. Other reasons for migration may be political, religious, cultural or those connected with persecution in one's home country. The 21st century has brought into focus a new, less common than before, type of migration – environmental migration.

Global climate change, or more specifically, the consequences of it, are considered to be the main environmental cause of migration. As far back as 1990, the researchers from the Intergovernmental Panel on Climate Change provided grounds for the claims that the consequences of global climate change would have the biggest impact on the global migration of the population.¹ In *World Migration Report 2018*, climate change (especially its consequences) appears among the causes of migration in African countries:

*Recently, drought influenced by an El Niño climate cycle in 2015 and 2016 has caused a humanitarian crisis related to widespread food shortages and famine, contributing (in addition to other non-environmental factors) to human displacement in a number of countries. Rapid-onset disasters such as flooding in 2016 also displaced around 300,000 people in Ethiopia, 40,000 in Kenya, 70,000 in Somalia, and thousands more in the United Republic of Tanzania and Madagascar.*²

Migration processes are the subject of research of many sciences: political, economic, geographical, legal, etc. Apart from a large number of research papers, analytical material and reports by international organisations (e.g., the International Organization for Migration – IOM) are available online and can be openly accessed. The IOM works to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration challenges, and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.³ Environmental migration is one of the IOM's fields of activity.

Analysis of migration focuses on analysis of, *inter alia*, international migration processes, internal migration

within countries, and the characteristic features of certain types of migration. In Ukraine, the results of migration analysis are presented in many research papers.⁴ The issue of labour migration is of particular importance.⁵ Meanwhile, Ukrainian research papers have recently begun to raise the problem of the connections between environmental crises and migration.⁶ For instance, Ukrainian economists have made attempts to show direct correlations between deterioration of the economic situation and people leaving their place of residence. This correlation was observed by comparing the rate of increase in emissions of hazardous substances, the disposal of polluted reclaimed water into natural surface waters, the amount of waste in the Western regions of Ukraine in 2006–2011, and the rate of migration in these regions during this period.⁷ It may be the first time Ukrainian legal scholars have raised for discussion the problem of the legal status of environmentally vulnerable categories of the population.⁸ Nevertheless, the legal mechanism for regulating environmental migration and the status of environmental refugees and environmentally displaced persons is not fully developed. Meanwhile, laws and regulations on environmentally displaced persons are presented well in Ukrainian legislation. The impetus for this was, first and foremost, the necessity of protecting the population from the consequences of the Chernobyl nuclear disaster.

This article is aimed at systematising the approaches to understanding environmental migration and the legal status of environmental migrants and environmentally displaced persons; analysing the legal regulation of environmental migration and the protection of environmental migrants at international level and in certain countries; and explaining the nature, characteristic features and legal mechanisms of compulsory internal migration caused by adverse environmental changes in Ukrainian legislation.

Understanding of Terminology

The term “environmental migration” is closely related to that used in regard to any migration – “migrant”, “refugee”, “environmental migrant”, “environmentally displaced person”, “climate refugee” and “environmental refugee”. The term “environmental refugee” dates back to the 1930s, although it acquired its scientific meaning in the 1970s when Lester Brown, the founder of the Worldwatch Institute, introduced it into scientific terminology (for a more detailed history of the term see Morrissey (2012)).⁹ The initial official interpretation of the term was presented by El-Hinnawi. He defined environmental refugees as those people who have been

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forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardised their existence and/or seriously affected the quality of their life.¹⁰ One of the first serious academic publications that drew attention to environmentally-induced migration and possible consequences of climate change for the displacement of the population was Hugo's 1996 article on migration and environment in the *International Migration Review*.¹¹

Nevertheless, the terms "environmental refugee" and "climate refugee" are not unambiguous. They are criticised, since from a legal point of view they do not reflect the characteristics of the "refugee" category, as legally defined by the 1951 Refugee Convention. As stated in the document "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective" prepared by the United Nations High Commissioner for Refugees:

*UNHCR has serious reservations with respect to the terminology and notion of environmental refugees or climate refugees. These terms have no basis in international refugee law. The phrase 'refugee' is a legal term. A person who has been determined a refugee will have satisfied the criteria under the 1951 Refugee Convention, the 1969 OAU Convention, or UNHCR's mandate. For this reason, just as a reference to an 'economic refugee' is not a reference to a recognized term under international law, neither are 'climate refugee' nor 'environmental refugee'. While often used, particularly in the media, it would be incorrect to give the words a legal meaning that has not been endorsed by the legal community.*¹²

The term "environmentally displaced person" – used to refer to internally displaced persons – is less disputable.

IOM's 2014 dictionary, *Migration, Environment and Climate Change: Evidence for Policy* (currently being renewed and expanded), offers the following definitions:

- "Environmental migrants": *persons or groups of persons who, predominantly for reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad;*
- "Environmentally displaced persons" – *persons who are displaced within their country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one. This term is used as a less controversial alternative to environmental refugee or climate refugee [in the case of those displaced across an international border] that have no legal basis or *raison d'être* in international law, to refer to a category of environmental migrants whose movement is of a clearly forced nature;*

- "Migration influenced by environmental change" – *where environmental change can be identified as affecting the drivers of migration, and thus is a factor in the decision to migrate.*¹³

Common Approaches (International, Regional and National Law)

Researchers of environmental migration agree on the conclusion that adverse climate change can be a contributory reason for displacement of the population along with other reasons. It is often the driving force behind other drivers of migration, as it can lead to a food crisis, property destruction, *etc.*¹⁴

In recent literature, a broad academic agreement has emerged on five key points regarding the relationship between migration and environmental change. Milan *et al.*, in their article "Migration and Global Environmental Change: Methodological Lessons from Mountain Areas of the Global South", generalise current scientific approaches and emphasise those points in the correlation between migration and climate change.¹⁵ The authors would emphasise, however, that most migration related to climatic and environmental factors is and will be internal rather than international. Therefore, it is important to enshrine efficient legal mechanisms for protecting the rights of environmentally internally displaced persons in domestic law and to enforce such laws.

Internationally, in addition to regulating migration and protecting the rights of persons forced to change their place of residence, special attention is attached to measures aimed at eliminating the factors contributing to migration. The final document of the international UN conference on migration that took place on 10–11 December 2018 in Marrakesh (Morocco) – "Global Compact for Safe, Orderly and Regular Migration" – defined for the first time the mutual international-level obligations of States to develop adaptation and resilience strategies against sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation whilst minimising the adverse drivers and structural factors that compel people to leave their country of origin (Objective 2).¹⁶ Thus, environmental migration is closely connected to the efficiency of State and inter-State environmental policy and the resolution of global and national environmental problems. In this article, the authors do not aim to analyse the legal mechanisms for regulating environmental migration in such a wide context, but focus on interpreting the provisions on granting special status to persons, who due to sudden-onset and slow-onset natural disasters, are forced to change their domicile, along with State obligations, and procedures for their implementation.

One of the important international documents defining approaches to protection against involuntary displacement, help during displacement, guarantees of a safe return, migration and reintegration is "Guiding Principles on Internal Displacement", developed by order of the UN General Assembly and the UN Human Rights Committee

in 1998.¹⁷ These principles are not legally binding, but serve as international guidelines and standards for States. For these purposes, internally displaced persons are *persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.*

In EU legislation, the Committee of Ministers of the Council of Europe adopted “Recommendation Rec(2006)6 of the Committee of Ministers to member states on internally displaced persons”,¹⁸ which approved a list of 13 recommendations concerning internally displaced persons, based on the UN “Guiding Principles on Internal Displacement”. The Recommendation not only integrates the UN Guiding Principles into the European context, but also places emphasis on the additional obligations of EU Member States.

At the national level, certain States (Finland, Sweden, the US, Australia and others) have adopted provisions governing, to a certain extent, environmental migration (including international migration); although, according to researchers, these provisions are narrow and have not been put into practice. Several countries have developed domestic laws and policies on environmentally related migration, although this has been limited and, in some cases, untested.¹⁹

Among the former Soviet States, the regulation of environmental migration is of current importance to those that have a history that includes large-scale environmental disasters, although it is presented differently. For instance, the legislation of the Russian Federation does not contain such terms as “environmental migration” and “environmental migrants”. It is based on issues of legal support of environmental safety, the protection of the population from the effects of environmental emergencies, and specific protection from industrial and natural disasters.²⁰

In the Republic of Kazakhstan, the 2011 Law “On Migration of the Population”²¹ governs the legal, organisational, economic and social aspects of migration and displacement, including internal displacement. The first draft of this law adopted the mechanism for organised displacement of citizens from places with especially unfavourable environmental conditions on the basis of government quotas. It defined the terms “internal migration”, “internal migrant” and “migrant”. Environmental migrants belonged to the last category, as persons who migrated inside the Republic of Kazakhstan according to the quota on internal displacement. The quota on internal displacement was established by the government of the Republic of Kazakhstan to fix the maximum number of families of citizens of the Republic of Kazakhstan allowed to migrate from places with especially unfavourable environmental conditions and low potential for development to economically viable regions of the Republic for permanent residence. The

establishment of the corresponding quotas and displacement of persons from certain regions on their basis were not put into practice, and these provisions were excluded from the Law in 2015.

The Republic of Tajikistan has an extensive legal framework and active practical activity as regards State regulation of environmental migration. The term “environmental migrants” is legally defined in the law “On Migration”²² as “persons forced to change their domicile due to environmental disasters”. In 2010, the government of the Republic of Tajikistan ratified “The Procedure for Implementing Environmental Migration”²³ that outlines the competence of the State authorities responsible for displacement, the grounds for environmental migration, the procedure for compiling a list of priority environmental migrants, their resettlement in safe regions, and material and financial support. The Republic regularly ratifies three-year plans for organised displacement of environmental migrants. According to these plans, during 2012–2016, 1,446 families of environmental migrants were moved to safe locations.²⁴ In 2016, the government of the Republic of Tajikistan ratified a new “Medium-term Plan for Organized Displacement of Environmental Migrants for the Years 2017–2020”.²⁵

Ukrainian Legislation Protecting Environmentally Displaced Persons

The current Ukrainian migration legislation does not include the terms “environmental migration”, “environmental migrants”, “environmental refugees”, *etc.* Ukraine does not have a separate law “On Migration”. Migration issues are governed by the following laws: the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”;²⁶ the Law of Ukraine “On Refugees and Persons in Need of Subsidiary Protection or Asylum”;²⁷ the Law of Ukraine “On Immigration”;²⁸ the Law of Ukraine “On the Procedure of Ukrainian Citizens Entry in Ukraine and Departure from Ukraine”;²⁹ the Law of Ukraine “On External Labour Migration”;³⁰ and others. In 2017, the “Strategy for the State Migration Policy in Ukraine for the Period up to 2025”³¹ was ratified, defining the improvement of migration policy as one of the priorities of State policy. Environmental migration is not mentioned in the Strategy. Nevertheless, the legal status of persons that can be referred to as environmental migrants is defined in detail.

Article 1 of the Law of Ukraine “On Refugees and Persons in Need of Subsidiary Protection or Asylum”, includes the concepts of “persons in need of temporary protection” as “foreigners or Stateless persons who are forced in large numbers to seek protection in Ukraine due to external aggression, foreign occupation, civil war, ethnic confrontations, natural or industrial disasters, and other incidents disturbing civil order in some parts or on the whole territory of the country of origin” along with the terms “refugee” and “persons in need of additional protection”. According to the law, “temporary protection” is “an exclusive practical measure, limited in time,

granted in Ukraine to foreigners and Stateless persons who arrived in Ukraine in large numbers and cannot return to the country of their permanent residence due to the circumstances stated above". Temporary protection can also be granted to foreigners who left their country due to environmental emergencies. Chapter 4 of the Law defines the grounds and the procedure for granting official status to persons in need of temporary protection, their rights and responsibilities on Ukrainian territory. For instance, according to Article 20 of the Law, persons who have been granted temporary protection have the right to free residence in places suitable for temporary protection; the provision of sufficient nutrition, medicine, clothes, taking into consideration the special needs of children, including the newborn, the ill and the elderly; a job in Ukraine for the period of temporary protection; financial help if they do not receive other incomes in Ukraine, *etc.* These measures of temporary protection are financed from the Ukrainian State Budget.

The protection of internally displaced persons is an issue of particular importance for Ukraine, which first encountered the problem of environmental migration after the Chernobyl nuclear disaster. Research on the migratory movement caused by the Chernobyl disaster identified the following forms of migration: evacuation (urgent organised forced displacement), organised displacement (voluntary or compulsory) and spontaneous migration (urgent, independent departure).³²

The displacement of the population from the territory, subject to the adverse impact of the accident, underwent several stages. The first stage began immediately after the accident. Evacuation from the 30 km zone around the Chernobyl Nuclear Power Plant started on 27 April 1986 when the citizens of Prypiat were sent away. During the first 50 days after the accident, 91,200 people were evacuated from 71 localities. At that time, there were no laws and regulations governing a plan of action and the protection of the population in such situations. Measures were taken upon immediate decisions of the USSR and Ukrainian SSR leadership. The first statutory documents appeared in 1989; among them were those regulating the second stage of the displacement. Nonetheless, they were restricted in time and were applicable only to a limited number of people.³³ In general, according to official data, over 162,000 people were evacuated and displaced from their places of permanent residence.³⁴

As stated in Ukrainian research papers, government help was given to the victims without officially granting them the status of internally displaced persons.³⁵ Nevertheless, from the legal point of view, granting the person a certain legal status gives grounds for their coming within the purview of the corresponding legislation, receiving additional rights, social benefits, *etc.* The system of the legislation defining the legal regime of the affected territory and the protection of the victims of the Chernobyl accident was not established until 1991.³⁶ It divided the territory into zones: the exclusion zone, the zone of compulsory evacuation, and the zone of voluntary evacuation. The third stage of

evacuation from the Chernobyl zone took place under the new coordinated system of laws.

The Law of the Ukrainian SSR "On the Status and Social Protection of the Victims of the Chernobyl disaster"³⁷ was adopted on 28 February 1991. Article 1 of this Law enshrined the aim of protecting the victims of the Chernobyl disaster and resolving problems of a medical and social nature that arose due to the radioactive contamination of the territory. On 27 February 1991, the "Strategy for Living on the Territories of the Ukrainian SSR with an Elevated Level of Radioactive Contamination due to the Chernobyl Disaster"³⁸ was adopted. It defined the grounds for and stages of evacuation of the population: unconditional (compulsory) and guaranteed (voluntary). According to Ukrainian legislation, the State shall be obliged to create the conditions for the evacuation of citizens who have decided to leave the zone of guaranteed voluntary evacuation. To abide by Article 4 of the Law of Ukraine "On the Status and Social Protection of the Victims of the Chernobyl Disaster", the Cabinet of Ministers of Ukraine in 1992 ratified the "Procedure for Evacuation and Independent Migration of Citizens from the Territories Subject to Radioactive Contamination due to the Chernobyl Disaster".³⁹ It regulated the issues of material compensation and the provision of accommodation for people who were evacuated from the contaminated territories.

Quantitative data on the volume of organised evacuation from the radioactively contaminated territories during 1990–2006 indicate that compulsory migration reached its peak in 1992 (over 6,000 people), and voluntary migration – in 1990 (almost 8,900 people). In 1990–1991, the volume of voluntary migration was higher than that of compulsory migration, while in 1992–1997, compulsory migration was higher. Later, due to a gradual reduction in the volume of migration, the comparative volume of voluntary migrants remained higher. In 2007, the financing for the migration programme was discontinued.⁴⁰

The above-mentioned laws concerned only the problem of dealing with the consequences of the Chernobyl disaster and did not appear appropriate to other types of industrial or natural accidents or disasters. In 2000, the Law "On Emergency Ecological Situation Zones"⁴¹ was adopted that stated, among other measures that could be taken in zones of environmental emergency, the possibility of evacuating people from dangerous places with the obligatory provision of accommodation for temporary or permanent residence. A detailed procedure for evacuating people from dangerous places is stated in the Code of Civil Protection of Ukraine⁴² and in its subordinate laws. These regulations basically became the legal basis for regulating the procedure for internal compulsory migration that might be as a result of environmental emergencies.

The issue of internally displaced persons assumed significant importance in Ukraine in 2014, when the country underwent external military aggression. The population of the occupied Autonomous Republic of Crimea, Donetsk and Luhansk Oblasts began to leave in

large numbers for the State-controlled territories. The government had to adopt a series of laws and regulations, designate the corresponding State authorities and undertake organisational preparations to solve the problem. On 20 October 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Ensuring the Rights and Liberties of Internally Displaced Persons”.⁴³ Adopted in response to the occupation, this law has a wider scope of regulation and can be applied to all internally displaced persons and to internal migration in general.⁴⁴ According to Article 1, an internally displaced person is a citizen of Ukraine, a foreigner or a Stateless person who legally resides on the territory of Ukraine and has the right to permanent residence and was forced to leave their domicile as a result of, or with the aim of avoiding, the negative consequences of an armed conflict, temporary occupation, ubiquitous manifestations of violence, human rights violations, and environmental or industrial emergencies. Ukrainian researchers have concluded that the provisions of the current Ukrainian legislation on the protection of the rights and interests of internally displaced persons comply, for the most part, with the content of the UNHCR’s “Guiding Principles on Internal Displacement”.⁴⁵

From the moment that a person acquires “internally displaced” status (by being so registered), the State ensures his/her rights and liberties, guaranteeing, first and foremost, his/her social and economic welfare. According to the official data of the Ministry of Social Policy of Ukraine, as of 4 March 2019, 1,364,578 people were registered as internally displaced persons from the occupied territories of the Donetsk and Luhansk Oblasts and the Autonomous Republic of Crimea.⁴⁶ Ukrainian legislation contains detailed provisions governing the mechanisms for ensuring the rights of registered internally displaced persons to employment, social services, education and electoral rights; and defines the powers of the Cabinet of Ministers of Ukraine, and other State and local authorities in ensuring the rights of internally displaced persons. Ukraine has a Ministry for Temporarily Occupied Territories and Internally Displaced Persons of Ukraine. A number of subordinate laws and regulations have been adopted to implement the provisions of the Law. The important measure of the State’s legal support of internally displaced persons is the provision of targeted financial aid, accommodation, medical aid and employment. The problems and deficiencies, discovered during its implementation, necessitated introducing amendments to the adopted laws. At present, the legal mechanisms for protecting the rights of internally displaced persons in Ukraine are daily tested in real life.

Conclusions

An objective analysis of environmental migration hardly provides grounds for explaining the need for international or European laws and regulations aimed at defining the special legal status of environmental migrants (environmental refugees). Nevertheless, attention to this issue from researchers, international

governmental and non-governmental bodies additionally testifies to the necessity for the subsequent coordination of the mutual efforts of the global community in order to regulate environmental migration.

Today, both at national and international levels, the issues of institutional, organisational and material protection of the rights and interests of victims of adverse climate change, and providing support and help in adapting to their new environment, are of significant importance. It is not only the traditional mechanisms for combating illegal migration, the status of the refugee *etc.*, that are important for environmental migration, but also the mechanisms aimed at eliminating the causes of this migration – a reduction in adverse anthropogenic effects on the environment and the restoration of natural ecosystems. These measures have to be implemented to the same extent both within each State and as part of international cooperation. The necessity to invigorate and advance the battle against negative environmental and climate changes is determined by the fact that these factors along with the phenomenon of environmental migration directly violate the natural human right to live in a clean, healthy, safe and balanced environment.

The national organisational and legal mechanisms for regulating environmental migration are grounded in the objectives of ensuring environmental safety and protecting the population and territories in environmental emergencies. In Ukraine, internal environmental migration is common; its *de facto* beginning was the Chernobyl disaster and it led to the adoption of a series of laws and regulations defining the legal regime of the contaminated territories and the victims of the accident. Ukraine regulated and implemented compulsory and voluntary displacement from the territories adjacent to the Chernobyl Nuclear Power Plant; and the various forms of the State’s social support of internally displaced persons.

Ukrainian legislation and current practice also protect internally displaced persons forced to change domicile due to the military aggression in the east of the country. This legislation also applies to possible cases of internal environmental migration. These regulatory mechanisms can become a good example for other States and contribute to streamlining State policy and managing internal environmental migration.

Notes

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