

## Towards Legal Recognition and Protection of Environmentally Displaced Persons Under Refugee Law

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### *Abstract*

*Natural and environmental disasters have been a cause of people crossing borders from their home countries into nearby states seeking refuge. The volcanic eruption of Mount Nyiragongo in the DRC is a recent example of this situation as some of the residents fled to the nearby Rwanda for safety. These incidences warrant a discussion as to the legal status of those who have to leave their homes and seek refuge in another state either permanently or temporarily as a result of natural environmental disasters and whether there is an appropriate framework in place to address such occurrences. This article particularly focuses on the legal status of persons who have been displaced due to natural and environmental disasters and therefore seek refuge in neighbouring countries and whether they are legitimately considered refugees under the existing refugee framework. This article argues that there is a need to broaden the definition of a refugee under the Refugee Convention as so to provide adequate protection for environmentally displaced persons under the current Refugee Legal Framework.*

**Key Words: Environmentally Displaced Persons, Natural and Environmental Disasters, Non-Convention Refugees, Refugees, Rights**

### **1. Introduction**

On the evening of 22<sup>nd</sup> May, 2021 residents of Goma in the Democratic Republic of Congo (DRC) were treated to a rude shock as Mount Nyiragongo erupted.<sup>1</sup> Its two streams of lava flows left 32 people dead, destroyed over 3,900 households and other structures such as hospitals and schools in the area.<sup>2</sup> The eruption of Mount Nyiragongo occurred barely 19

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<sup>1</sup> United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), DR Congo: Volcanic Eruption in Goma, Situation Report No. 1, 25<sup>th</sup> May, 2021.

<sup>2</sup> United Nations High Commissioner for Refugees (UNHCR), Emergency Update on Volcano Nyiragongo #1 3<sup>rd</sup> June, 2021 available at

years after a similar volcano eruption in January 2002 which caused around 250 fatalities and resulted in the displacement of hundreds of thousands.<sup>3</sup> The fear of yet another volcanic eruption and the subsequent earthquakes/tremors necessitated the partial evacuation of nearby areas in Goma leaving an approximated number of 400,000 people homeless.<sup>4</sup> The United Nations High Commissioner for Refugees (UNHCR), which is the main UN Refugee Agency, has been a key actor in addressing the plight of those displaced by the volcanic eruption by providing basic needs such as rescue shelters, food and water.<sup>5</sup> According to the UNHCR, around 8,000 residents who were displaced either as a direct or indirect cause of the volcanic eruption crossed the borders to the nearby Rwanda seeking refuge.<sup>6</sup> This adds to over 139,000 refugees currently hosted by Rwanda, majority of who are from the DRC.<sup>7</sup>

From the above, it is evident that the natural disaster did not only cause an internal displacement of people but also resulted in the migration of some of the residents from their country into the nearby Rwandan state in a bid to preserve their lives. This occurrence is not uncommon. Natural and Environmental disasters have been a cause of people crossing borders from their home countries into nearby states. These incidences warrant a discussion as to the legal status of environmentally displaced persons who have to leave their homes and seek refuge in another state either permanently

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<https://reporting.unhcr.org/sites/default/files/Emergency%20Update%20on%20Volcano%20Nyiragongo-3%20June%202021.pdf> accessed on 17<sup>th</sup> June, 2021.

<sup>3</sup> Komorowski J-C and Karume K, “Nyiragongo (Democratic Republic of Congo), January 2002: A Major Eruption in the Midst of a Complex Humanitarian Emergency” in Susan C Loughlin and others (eds), *Global Volcanic Hazards and Risk* (Cambridge University Press 2015).

<sup>4</sup> United Nations Children Fund (UNICEF) DRC| Volcano Eruption (Goma) Situation Report, 26<sup>th</sup> May, 2021 available at <https://www.unicef.org/media/99886/file/DRC-Humanitarian-SitRep-No3-Volcano-Eruption-Goma-May-2021.pdf> accessed on 15<sup>th</sup> June, 2021.

<sup>5</sup> United Nations High Commissioner for Refugees (UNHCR), External Emergency Update on Volcano Nyiragongo, 8<sup>th</sup> June, 2021 available at [https://reliefweb.int/sites/reliefweb.int/files/resources/External%20Emergency%20Update%232\\_Volcano%20Nyiragongo\\_080621.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/External%20Emergency%20Update%232_Volcano%20Nyiragongo_080621.pdf) accessed on 15<sup>th</sup> June, 2021.

<sup>6</sup> *Ibid.*

<sup>7</sup> UNHCR, Operational Data Portal: Refugee Situation, Rwanda available at <https://data2.unhcr.org/en/country/rwa> accessed on 17<sup>th</sup> June, 2021.

or temporarily as a result of such disasters and whether there is an appropriate framework in place to address such occurrences.

### **1. Environmentally Displaced Persons and Refugee Law: The Suitability of Refugee Law as an Effective Framework for Protection**

The key legal instrument which governs matters refugee at the International Level is the 1951 Convention relating to the Status of Refugees. Under the 1951 Convention, a refugee is one who ‘as a result of the events occurring before 1<sup>st</sup> January, 1951 and owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his/her nationality and is unable or unwilling to avail himself/herself of the protection of that country or to return to it.’<sup>8</sup>

The 1951 Convention relating to the Status of the Refugee covered those people who had become refugees as a result of the events occurring before January 1951. Evidently, this definition was too restrictive as it could not cater for occurrences after 1951 which might render one as a ‘refugee’. In acknowledgement of the effects of the restrictive nature of this definition, the United Nations Protocol to the Convention on the Status of the Refugee was adopted in 1967 to remedy this defect.<sup>9</sup> The Protocol did away with the time qualifier of January 1951 in recognition of the fact that ‘new refugee situations have arisen since then’ and the need to ensure that all refugees have equal status of protection regardless of the 1951 timeline.<sup>10</sup>

From such developments in the area of Refugee law at the International level, it is clear that the criteria set out under which one must fulfill in order to be considered as a refugee are not conclusive enough to cater for all situations and circumstances that may lead to one becoming a refugee. Indeed, even at the regional level, these parameters as set out in the 1951 Convention have

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<sup>8</sup> UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, December 2011.

<sup>9</sup> United Nations Protocol to the Convention on the Status of Refugees 6 I.L.M 78 (1967).

<sup>10</sup> Ibid.

been expanded to include factors that States consider play a role in the displacement of people.

At the Regional level, the OAU Convention provides that the term refugee shall also apply to persons who are compelled to leave their habitual residence to seek refuge outside their country owing to external aggression, occupation, foreign domination or events seriously disturbing public order.<sup>11</sup> This provision broadened the scope of refugees as envisioned by the 1951 Convention and the 1967 protocol to cover other factors that may be prevalent in the African context.

At the domestic level, countries have modified the definition of a refugee as coined in the 1951 Refugee convention. In Kenya for instance, the Refugee Act<sup>12</sup> adopts the 1951 definition of a refugee yet it also includes ‘external aggression, occupation, foreign domination or events seriously disturbing public order’ as additional factors that may contribute to a person’s refugee status. This modification has been directly borrowed from the OAU Convention. Consequently, the modification at the regional and national level to the definition of a refugee as provided for under International law is manifest of the distinct inadequacy of the 1951 Convention and 1967 Protocol to adequately cater for new refugee situations.

This inadequacy is evident in the rigidity of the definition under the Refugee Convention which specifically sets out who can be accorded refugee status and therefore be accorded certain legal rights and protection. One has to have a ‘well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion.’<sup>13</sup> However in this contemporary era and with the dynamics of modern-day problems, other factors have arisen, besides those explicitly mentioned in the convention, which could actually force persons to flee their countries of

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<sup>11</sup> Organization of African Union (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. Adopted on 10<sup>th</sup> September 1969 by the Assembly of Heads of State and Government and entered into force on 20<sup>th</sup> June 1974, 1001 U.N.T.S. 45.

<sup>12</sup> S. 3 (2) of the Refugee Act, No. 13 of 2006 Laws of Kenya.

<sup>13</sup> Art. 1 of the Convention relating to the status of Refugees, July 18<sup>th</sup> 1951, 189 U.N.T.S. 137, 152.

origin and therefore be in need of protection in their host country. Such persons who seek asylum yet do not fall under the Convention's criteria have been loosely referred to as 'non-convention refugees'<sup>14</sup> and may be deemed as undeserving of the legal rights and protection which accrue under law to conventional refugees as such.

Under this broad category of 'non- convention refugees' are those fleeing environmental and natural disasters who have been referred to as 'environmentally displaced persons' or 'environmental refugees'. This article uses the term 'Environmental Refugees' which has been defined as 'people who have been forced to leave their traditional habitat temporarily or permanently because of a marked environmental disruption that jeopardized their existence or seriously affected the quality of their life'.<sup>15</sup> Norman Myers, a British Environmentalist, defined the term as 'persons who no longer gain a secure livelihood in their traditional homelands because of what are primarily environmental factors of unusual scope.'<sup>16</sup> Environmental Refugee is considered a broad classification which entails causes from natural disasters to human induced ones including climate change.<sup>17</sup>

There has been contention as to what the term means and its scope considering the fact that there are divers environmental effects and natural disasters such as earthquakes that could lead to the displacement of people both internally and outside their countries. On the other hand, this term has been considered as an International misnomer<sup>18</sup> devoid of legal legitimacy due to the fact that it lacks legal recognition. While this may be true, it underscores the gap in the law to the extent that persons fleeing from

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<sup>14</sup> Janina W. Dacyl, Europe Needs a New Protection System for Non-Convention Refugees, 7 Int'l J. Refugee L. 579, 605 (1995).

<sup>15</sup> Suzette Brooks Masters, *Environmentally-Induced Migration: Beyond a culture of Reaction*, 14. Geo. Immigr. L.J. 855, 866-67 (2000) (citing Essam El-Hinnawi's definition, Environmental Refugees 4 (1985)).

<sup>16</sup> Amanda A. Doran, Where Should Haitians Go: Why Environmental Refugees are up the Creek without a Paddle, 22 Vill. Envtl. L.J. 117, 140 (2011) pp.125.

<sup>17</sup> Victoria Sutton, Fiji: Climate Change, Tradition and Vanua, pp.363 in Randall S Abate. & Elizabeth Ann Kronk, 'Climate Change and Indigenous Peoples: The Search for Legal Remedies (2013) pp. 369.

<sup>18</sup> Tiffany T.V. Duong, When Islands Drown: The Plight of Climate Change Refugees and Recourse to International Human Rights Law, 31 U. Pa. J. Int'l L. 1239, 1266 (2010).

environmental disasters do not neatly fit under any particular International legal framework.

Clearly, the definition of the term refugee under the 1951 Convention does not cater for those who are out of their country due to environmental factors and natural disasters.<sup>19</sup> For persons fleeing from environmental causes, it therefore becomes an impossible task to prove that they fall within the ambit of the Refugee Convention as the five protected grounds in the Convention do not include environmental factors or natural disasters as reasons for flight. Consequently, such persons remain without legal recognition or protection.

## **2. Recommendation for the Legal recognition and protection of Environmentally Displaced Persons under Refugee Law**

The need for legal status of persons fleeing environmental and natural disasters is important due to the fact that legal status follows legal recognition. An instrument providing for the recognition of such persons would lay out the rights accruing to them. With such provisions clearly laid out in an instrument with legal backing, it would be easier to make a case for those displaced by environmental and natural disasters in the protection of their rights.

This paper suggests the expansion of the definition of refugee under International law through another protocol to the 1951 Convention so as to provide legal recognition and protection to environmentally displaced persons.<sup>20</sup> There is recognition of the fact that the refugee problem has only gotten worse globally with the effect of an increase in the numbers of refugees. This has resulted in host countries being burdened with the mass influx of refugees. Increasingly more developed countries are turning away refugees at their borders and adopting strict migrant policies. A culture of 'Refugee apathy' has characterized most states which are not living up to their commitments and obligations under International Law.

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<sup>19</sup> Bonnie Docherty; Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 Harv. Envtl. L. Rev. 349, 404 (2009).

<sup>20</sup> Victoria Sutton, *Fiji: Climate Change, Tradition and Vanua*, pp.363 in Randall S Abate. & Elizabeth Ann Kronk, *Climate Change and Indigenous Peoples: The Search for Legal Remedies* (2013), pg. 372.

While a broadening of the term refugee to cover more people may be perceived negatively by states at the onset, however, it is needful to recognize that the five protected grounds in the Refugee Convention are not exhaustive of factors that lead to displacement and flight of persons outside their countries of origin. As such it is only appropriate to have the scope of the refugee definition broadened to take into account this fact.

An expansion of the refugee definition under the Convention should not only be limited to include environmentally displaced persons per se but should equally be flexible to cover other situations that may legitimately result in the flight of persons from their countries of origin to seek refuge elsewhere. This will ensure that the Convention remains relevant and responsive in this contemporary era as it has been over the past years with regard to refugees.

### **3. Conclusion**

The causes and effects of environmental and natural disasters have a global impact with no respect to national or territorial boundaries. Consequently, there is need for legal recognition and protection of those affected by such occurrences. Whether viewed from a human rights lens or in a bid to attain environmental justice, the matter is one that cannot be ignored. The gravity of environmental displacement on individuals, families, communities and nations justifies an intervention. It is from a point of convergence that these grievances can be addressed and this can only be achieved through International Cooperation of States.

The need for legal status of persons fleeing environmental and natural disasters is therefore imperative so as to recognize and protect the rights of those displaced by environmental and natural disasters.

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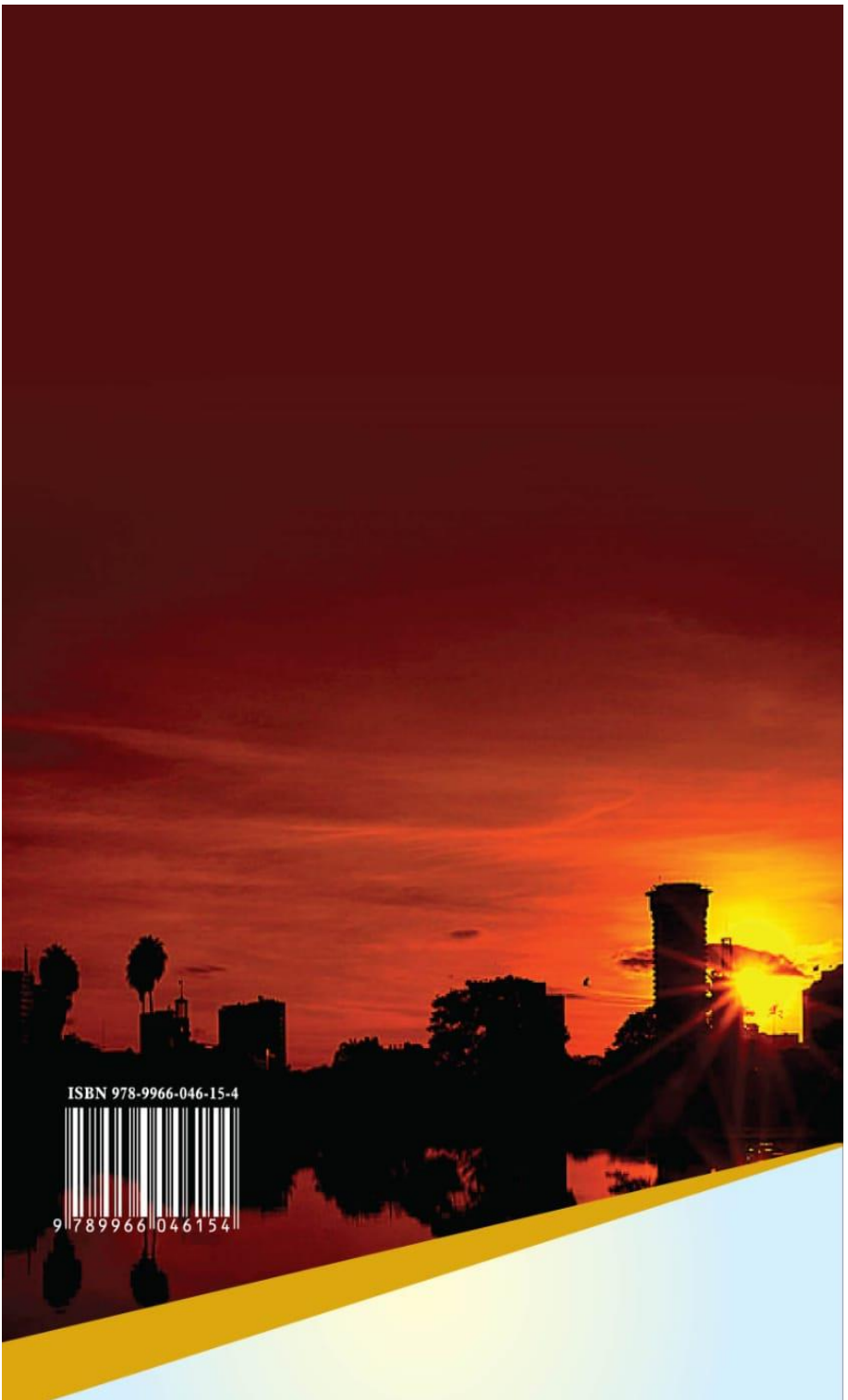
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