

Protection of people displaced for environmental reasons and the problems arising from regulatory asymmetry in Latin America*

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1. *Introduction*

The intensification of extreme climate events combined with the excessive exploitation of natural resources has brought alarming consequences for the global ecological balance. Environmental degradation compromises not only biodiversity but also the basic conditions for a dignified life for thousands of people. In this context, environmental displacement emerges as one of the most pressing manifestations of the climate crisis, highlighting historical and structural inequalities.

This scenario is exacerbated because most of these populations, already vulnerable, are affected in their environmental human rights, resulting in displacement, which deepens the violation of their human dignity and has the potential to cause various adverse effects in the regions receiving these individuals.

Although migration due to environmental causes is not a new phenomenon, its current magnitude requires immediate attention and response from States and the international community. In this context, the search for adaptation and mitigation strategies that consider ecological, social, and economic aspects becomes essential.

From the regulatory point of view, we are living in a reality where the absence of international *hard law*, besides asymmetrical national regulation, causes a weak protection of human rights for those who are affected by environmental displacement.

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2. *Environmental Crisis and Forced Displacement*

The unbridled economic exploitation of the environment results in serious and, mostly, irreversible damage to environmental heritage, which impacts the direct subsistence of the current generation, its culture, economy, quality of life, and, consequently, also impacts future generations.¹ This scenario is a global product of the impacts of modernization and industrial progress.² The United Nations Framework Convention on Climate Change (UNFCCC) defines “Climate change” as “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods”³ The objective of the document is to allow ecosystems to adapt to climate change naturally to preserve food production, allowing economic development to proceed sustainably.

Natural disasters include floods, landslides, droughts, hurricanes, among others, and are severe natural phenomena strongly influenced by regional characteristics such as rock, soil, topography, vegetation, and weather conditions. When these intense phenomena occur in places where humans live, resulting in damage (material and human) and losses (socio-economic), they are considered “natural disasters.”⁴

In this sense, while economic growth represents an increase in life expectancy and well-being of people in some global regions, for other places it is characterized by increased extreme poverty, absence of access to basic resources and increased income inequality, generating the expansion of vulnerabilities, especially, for the present study, of these populations in the face of climate change.⁵ The climate crisis also deepens

¹ L. F. TONET, L. G. A. CONCI, L. C. DE LAURENTIIS, *Deslocamentos e deslocados ambientais: déficit de regulação e problema de interação entre o doméstico e o internacional*, in *Revista Digital Constituição e Garantia de Direitos*, v. 17, n. 2, 2024, 240-262.

² U. BECK, *La sociedad del riesgo*, Barcelona, Paidós, 2002, 28.

³ ORGANIZAÇÃO DAS NAÇÕES UNIDAS NO BRASIL, *Convenção-Quadro das Nações Unidas sobre Mudanças Climáticas*, available at <https://www.onu-brasil.org.br/>.

⁴ M. KOBIYAMA, Masato et al. *Prevenção de desastres naturais: conceitos básicos*, Curitiba, Organic Trading, 2006.

⁵ IPCC, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Geneva, IPCC, 2023, 35-115, DOI: 10.59327/IPCC/AR6-9789291691647.

pre-existing inequalities and discrimination against already vulnerable and minority groups in society.⁶ In this sense, poverty is a determining factor for the distribution of environmental costs as it directly relates to individuals' capacity to prevent themselves against environmental damage, mainly affecting their mobility.⁷

Therefore, the intersection between the themes of environmental fragility and the protection of human rights remains evident, given that exposure to the effects and damage of the climate crisis are considered a violation of these rights, especially in relation to groups that are already in situations of greater vulnerability.⁸ The compromise of well-being and quality of life of the community due to degradation and environmental risks results in an ecological dimension that integrates the content of the legal principle of human dignity.⁹

These intense climate changes are the result of alterations not only natural, but also impacted by human action,¹⁰ characterizing environmental displacement as multi-causal related to the lack of survival conditions in a given location.¹¹

3. *Forced Displacement and Environmental Displaced Persons*

Environmental displaced persons are people forced to abandon their places of origin, temporarily or permanently, due to natural disasters,

⁶ T. AFEI ET AL., *Climate change, vulnerability and human mobility: Perspectives of refugees from the East and Horn of Africa*, Bonn, United Nations University – Institute for Environment and Human Security, 2012.

⁷ L. R. VEDOVATO, C. J. FRANZOLIN, L. R. ROQUE, *Deslocados ambientais: uma análise com base na dignidade da pessoa humana*, *Revista Direito e Práxis*, v. 11, n. 3, 2020, 1654-1680.

⁸ L. R., VEDOVATO, C. J. FRANZOLIN, L. R. ROQUE, *Deslocados ambientais: uma análise com base na dignidade da pessoa humana*, *Revista Direito e Práxis*, v. 11, n. 3, 2020, 1654-1680.

⁹ I. W. SARLET, T. FENSTERSEIFER, *Estado socioambiental e mínimo existencial (ecológico): algumas aproximações*, in I. W. SARLET, (ORG.), *Estado socioambiental e direitos fundamentais*, Porto Alegre, Livraria do Advogado, 2010, 11-38.

¹⁰ A. P. PACÍFICO, M. R. B. GAUDÊNCIO, *A proteção dos deslocados ambientais no regime internacional dos refugiados*, REMHU – *Revista Interdisciplinar da Mobilidade Humana*, v. 22, 2014, 133-148.

¹¹ A. P. PACÍFICO, *A necessidade de criação de um regime ambiental internacional: o caso dos deslocados ambientais*, *Meridiano 47 – Boletim de Análise de Conjuntura em Relações Internacionais*, v. 13, n. 133, 2012.

environmental degradation or climate change of great impact, representing one of the most dramatic expressions of the current ecological crisis. This is a reality in which “people, domestic groups, social segments and/or ethnicities are obliged to leave their habitual dwellings, their historical places of immemorial or dated occupation, through constraints, including physical ones,” without being able to resist proportionally, so as to oppose such pressures, as a result of uncontrollable circumstances (Almeida, 1996).

Very similar concepts coexist with those of environmental displaced persons. This is the case of “environmental refugee” and “environmental (i)migrant,” which are all identified by a real framework of changes that occur forcibly, that is, they are species of forced displacement.

The first of them, gaining strength in legal discourse with that of “environmental refugees,” caused regulation, doctrine and jurisprudence to advance with its use. This is an attempt at appropriation and redescription of what is provided for in the Convention Relating to the Status of Refugees (1951), with the amendments of the Protocol Relating to the Status of Refugees (1966), of the United Nations, which launches the concept of refugee in international law.¹² However, the conditions provided for in the aforementioned Convention for refugee status to be used will not include important characteristics, as was already verified in 1984 in the “Colloquium on International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems,” held in Cartagena, Colombia, where the Cartagena Declaration was elaborated, which already pointed to the insufficiency of the then existing doc-

¹² Art. 1º – Definition of the term “refugee” A. A. For the purposes of the present Convention, the term “refugee” shall apply to any person who: (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organisation; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section; (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

uments to assess refugee status to an individual, including assessing that this expansion should reach every person who fled their country because “their life, security or freedom were threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order,” which could expand the legal concept of refugee.

This would allow integration between global, regional, and national mechanisms for dealing with the theme. This conceptual expansion would produce an important advance, as it would be able to include people who left their countries due to “other circumstances that have seriously disturbed public order,” and could thus include natural disasters in this origin. It becomes clear that to be a refugee, the following conditions are required: a) there must be persecution for reasons of race, religion, nationality, social group or political opinions; b) leave their country (nationality) if they have one¹³ or if not, the country where they had habitual residence; c) cannot return because they cannot find an instance in the State to protect them; d) have committed the acts listed in item F, of letter A, of the aforementioned Convention.¹⁴ Therefore, the greatest contribution of this Declaration was the expansion of the concept of refugee.¹⁵

Despite the good will of interpreters, some elements are missing, because, unlike usual refugees, environmental displaced persons do not necessarily fulfill the requirements of well-founded fears of persecution or the effective occurrence of persecution, extraterritoriality and real support by another State¹⁶, necessarily. On the other hand, the domestic facet

¹³ If you have more than one nationality, it depends on whether both can protect you.

¹⁴ F. The provisions of this Convention shall not apply to persons in respect of whom there are serious reasons for considering that: a) they have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; b) they have committed a serious non-political crime outside the country of refuge prior to their admission to it as refugees; c) they have been guilty of acts contrary to the purposes and principles of the United Nations.

¹⁵ A. DE CARVALHO RAMOS, *Asilo e refúgio: semelhanças, diferenças e perspectivas, 60 anos de ACNUR*, 2011, 15.

¹⁶ L. D. D. PEREIRA, *O direito internacional dos refugiados: análise crítica do conceito ‘refugiado ambiental’ [recurso eletrônico]*, Dissertação (Mestrado em Direito Público) – Programa de Pós-Graduação em Direito, Pontifícia Universidade Católica de Minas Gerais, Belo Horizonte, 2009.

of those who move internally is also not regulated.

However much one supports the seminal works of El-Hinnawi¹⁷ and Norman Myers¹⁸, also a precursor in the study of the theme, they do not adapt to the provisions of international law.

The concept of environmental migrants also gained space, within the International Organization for Migration, in the 94th Session of its Council, when presenting the Report on Migration in the World (2008), which states that they are “persons or groups of persons who, for momentary reasons or progressive environmental change that negatively affects their lives or living conditions, are obliged to leave their habitual residences or choose to do so, whether temporarily or permanently, and who move within the territory (of a state) or outside it.”

Despite its proximity, as we shall see, such a concept also does not present the capacity to differentiate from economic migrants since scarcity can lead to financial difficulties arising from disasters and environmental degradation¹⁹, especially in cases where there is slow degradation and not abrupt disasters, such as earthquakes, tsunamis etc. In these cases, degradation of the economic and environmental scenario overlap. Such difficulty is especially present in cases of slow environmental degradation,

¹⁷ E. EL-HINNAWI, *Environmental refugees*, United Nations Environment Programme, Nairobi, 1985, 4. The complete citation goes: “those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life. By ‘environmental disruption’ in this definition is meant any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life”. For an insightful critic regarding the aforementioned text, specifically, whether there is any difference on domestic or international displacement, as well as whether human action was the cause of it, see Bates, 2002.

¹⁸ N. MYERS, *Environmental refugees: an emergent security issue*. 13th Economic Forum, Prague, 2005: “There is a new phenomenon on the global stage: environmental refugees. These are people who can no longer earn a living in their traditional homelands due to drought, soil erosion, desertification, deforestation, and other environmental problems, coupled with extreme poverty and persecution. In their desperation, these people feel they have no choice but to seek refuge elsewhere, even if the journey is difficult. Not all of them leave their countries; many are internally displaced. But all of them abandon their traditional homes on a semi-permanent or permanent basis, with little hope of return.”

¹⁹ O. DUN, F. GEMENNE, Climate change and displacement, *Forced Migration Review*, n. 31, 2008, 10-11.

in which it is considered that other socioeconomic factors strongly influence the option for migration. In the occurrence of more sudden disasters, such as earthquakes and volcanic eruptions, it is easier to perceive the natural event as the cause of displacement²⁰.

The choice for the concept of environmental displaced persons, thus, despite being absent from international regulation, in the sense of hard law, has also been provided for domestic legislation, as we shall see. We are thus dealing with environmental displaced persons.²¹

It is important to emphasize that displacement due to environmental changes has coexisted with humanity since always, considering that human displacements across the terrestrial globe were a condition for our own evolution. The distinction between the panorama of past and current displacements resides in the global reach of climate changes, which point to their permanence for the future and in the increase of their global impact, as this will produce effects on a worldwide scale. Furthermore, “human action is indisputably at the center of changes” and is where responses to the problem should come from²².

Also the increase of these environmental transformations, with direct human intervention (fires, exhaustive exploitation of the environment etc.) or without such participation (droughts, earthquakes, floods, tsunamis, etc.), ended up and will end up causing large contingents of people to move, forcibly, in search of survival in other spaces.

In a panorama of exclusion in which we live, especially in the developing world, such human movements are more present in economically fragile countries and end up causing, by reflex, more reflex damages. Environmental displacements generate more displacement, causing social, economic, and political damage. They generate more environmental damage because they can affect other reserves of potable water by increasing, with more exploitation of their use or cause pollution in case of absence of treatment of the waste they produce. They generate unemployment,

²⁰ D. KEMEANE, *The environmental causes and consequences of migration: A search for the meaning of environmental refugees*, *Geo. Int'l Envtl. L. Rev.*, v. 16, 2003.

²¹ This term defines “people who are displaced within their own country or from their usual place of residence, or who cross an international border, for whom environmental degradation, deterioration, or destruction is the main cause of displacement, even if it is not the only one.” (International Organization for Migration, 2014).

²² C. BOANO, R. ZETTER, T. MORRIS, *Environmentally displaced people, Forced Migration Policy Briefing*, v. 1, 2008, 7-8.

as they end up causing more competition in regions that become more intensely populated due to displacements or scarcity of goods, as the state has to mobilize to divide the scarce goods it already distributes. All this, in the end, can generate political conflicts, as such displacements generate conflicts between those who move, and the communities already based in the places of reception.

Such movements, thus, mainly affect already marginalized groups, who depend on primary activities such as fishing, agriculture, and livestock. These are populations usually based in developing countries, that is, they end up reverberating in more marginalization and have, in these moments, deepened their status as excluded.

Environmental displacements have diverse characteristics and effects, as we shall see.

3.1. *Types of Environmental Displacement*

Environmental displacements can be due to reasons of abrupt or progressive changes, as it is not required that displacements occur due to extreme and abrupt changes in the environment where vulnerable groups are based, but they can also result from changes that end up deteriorating environmental conditions progressively.²³

There are diverse situations that require diverse responses from the communities that move. A large-scale forest fire requires urgent responses and may require the mobilization of a contingent of people in a small number of hours. On the other hand, soil depletion due to ancient agricultural practices may lead to these populations moving definitively, but gradually, from their places of origin over a period of months or years, without expectation or with few expectations of return,²⁴ showing important differences in the proper treatment of the theme. It is perceived that natural exhaustion can come alongside state frailties, such as poor-quality public health, absence of social programs for income distribution or other essential goods, such as water, electricity, food etc., which is why it is perceived that the problem mainly affects those already excluded.

As we have seen, environmental displacements can be intraterritorial

²³ D. KEANE, *The environmental causes and consequences of migration: A search for the meaning of environmental refugees*, *Geo. Int'l Envtl. L. Rev.*, v. 16, 2003.

²⁴ This differs from the displacement of nomadism, for example.

or extraterritorial, that is, they encompass population movements that originate and have their destination place in the territory of the same national state, alongside those that transcend the territory of one national state and reach another.

It is true that abandoning the national territory can cause other consequences of an international nature, but it is perceived that this is a phenomenon that, linked to the environment and its frailties, cannot fear distortions based on national law. Borders are not, in any way, limits for environmental damage.

Furthermore, environmental displacements can be permanent or for a limited time, varying as to the duration.

Some of them may lead to populations traditionally based in a certain region having to abandon, definitively, their traditional places, never to return. Examples of permanent displacements are, for example, natural damage derived from a tsunami that definitively alters the geography of a region, flooding previously dry lands, for example, or dam ruptures that devastate areas changing their geography.

On the other hand, there may be displacements for a limited space of time, when certain communities abandon their traditional areas, but, with time, perceive that there are conditions for return with or without State aid, so as to reconstitute their *modus vivendi*, even if transformed, not to be confused with nomadism, in which the community moves with the expectation of returning, as occurred during a previous period. This is about changing places based on tradition and memory, not about forced displacement.

Environmental displacements can also be the work of direct human intervention, as in the case of natural disasters arising from industrial accidents²⁵ that affect the environment and the subsistence of populations dependent on it. This occurred in Bhopal (India), Seveso (Italy), Chernobyl (former USSR), Mariana (Brazil), among others. Even though the rule makes such displacements internal, with mobilization of these populations to other sites in the territory of the same state, these can also point to the international scenario.

Finally, environmental displacements can result from one's own (free) decision or that of third parties. Despite always being forced into

²⁵ D. KEANE, *The environmental causes and consequences of migration: A search for the meaning of environmental refugees*, *Geo. Int'l Envtl. L. Ren.*, v. 16, 2003.

displacements, they can vary according to the manifestation of will of the populations involved and others in their surroundings. There are displacements that derive from the volitional decision of communities that reach the conclusion that their maintenance in their traditional places is more harmful than the risk of leaving them in search of new spaces for their settlement. These communities can reflect on the need to leave their traditional spaces, and the displacement depends on this negotiation process among members. They can occur in moments of total exhaustion or imminent resource exhaustion, cases in which such a community decides to leave its place to seek other sites for its maintenance.

On the other hand, there are displacements that can occur without such community manifesting the will to leave their places freely, but they cannot remain in them either. There are conflicts that require them to leave these places, as the risks of their maintenance are intolerable.

This pressure can derive from various reasons. It can be political (the community is not tolerated by political majorities who see in them risk of occupation of their spaces or reduction of their influence); economic (the struggle for jobs or the exercise of other activities by the displaced generates conflicts with other communities); religious (communities with different religions that do not tolerate each other), etc. Armed conflicts can also lead to displacements. The struggle for scarce natural resources in a certain region can also lead to certain populations having to leave their places due to the intensity of armed conflict that this clash can generate due to the control of natural resource management, as occurred in El Salvador, when the government used environmental destruction to affect existing guerrillas (Glassman, 1992) or even in Guatemala, in the 1980s.

4. *Better Understanding Environmental Displacement*

According to the Global Report on Internal Displacement (GRID),²⁶ in 2023 alone, 26.4 million people were displaced due to climate-related hazards. This phenomenon has been growing alarmingly and evidence not only the intensification of climate change, but also the insufficiency of public policies and state protection aimed at preventing these events and protecting these vulnerable individuals.

²⁶ <https://www.internal-displacement.org/global-report/grid2024/>

Despite environmental displacement always being present in history as an element necessary for human survival, the current problem arises from the scope and intensity of climate changes that present themselves more frequently, producing effects on a worldwide scale,²⁷ and generating negative future expectations, since it is believed that, in the next 40 (forty) years, there will be between approximately 25 million and one billion environmental displaced persons,²⁸ alongside displacements resulting from economic, sociocultural or political aspects.

These multifactorial aspects, including, enormously hinder data collection and management, given that there is invariably an intersectionality between them, considering that vulnerabilities are plural, most of the time, making displacements unable to be easily analyzed from a single perspective on the vulnerability of environmental displaced persons who, so often, can be poor, from ethnic or religious minority groups and excluded from quality political representation and participation.

The increase of this forced displacement has as a consequence the harm to the environment, as it can affect other ecosystems as a result of population increase and greater need for environmental resources, given that regions already lacking environmental resources can receive large population contingents, worsening the person-balanced environment equation. It can also affect the economy, generating unemployment or scarcity of goods and causing political conflicts between receiving communities or aggravating conflicts already existing between different population nuclei.²⁹ Violence, psychosocial stress, lack of income, social rupture, lack of necessary documents, absence of state protection are also elements that are part of the daily life of the displaced.

The complexity and gravity of the problem presented so far is observed, generating new legal situations that demand national and international regulation, concomitantly, in addition to the creation and strengthening of state mechanisms that, given the dimension that envi-

²⁷ L. F. TONET, L. G. A. CONCI, L. C. DE LAURENTIIS, *Deslocamentos e deslocados ambientais: déficit de regulação e problema de interação entre o doméstico e o internacional*, *Revista Digital Constituição e Garantia de Direitos*, v. 17, n. 2, 2024, 240-262.

²⁸ J. C. C. AGHAZARM, Frank Laczko y Christine Aghazarm (eds.), *Migration, Environment and Climate Change: Assessing the Evidence*, *Foro Internacional*, v. 51, n. 1, 2011, p. 174-178.

²⁹ L. F. TONET, L. G. A. CONCI, L. C. DE LAURENTIIS, *Deslocamentos e deslocados ambientais: déficit de regulação e problema de interação entre o doméstico e o internacional*, *Revista Digital Constituição e Garantia de Direitos*, v. 17, n. 2, 2024, 240-262.

ronmental damage assumes, promote means to manage and protect the environment and its population. In the same way, the state apparatus can be, at some point, a receiver of displaced individuals, which demands shelter and effectiveness in the subsistence and survival of these groups.³⁰

5. *Regulatory Deficits and Asymmetry*

It is relevant to emphasize that the international obligation to protect the rights of migrant persons has been provided for since the Universal Declaration of Human Rights of 1948, which determines the right to free circulation and emigration. As well as in the International Covenant on Civil and Political Rights of 1966, by determining the right to free circulation and the prohibition of arbitrary expulsion. Still within the scope of the United Nations, goal 10.7 of the Sustainable Development Goals of the 2030 Agenda provides for the facilitation of migration and mobility in a safe, regular and responsible manner, originating the Global Compact for Safe, Orderly and Regular Migration.³¹

In the scope of regional protection of the Inter-American Human Rights System, there are two main documents for the protection of migrants, being the American Declaration of the Rights and Duties of Man, of 1948, affirming the right to health, work and education of refugee persons and the Pact of San José de Costa Rica of 1969, bringing the protection of their economic and social rights. More recently, the Declaration of Migratory Principles and General Guidelines of the South American Conference on Migration, of 2010, determines respect for the human rights of migrant persons and their families, extending protection to their political-electoral, social, economic and cultural rights in an egalitarian manner to national individuals.

However, it is important to highlight that the international diplomas for the protection of human rights that deal with the human dignity of refugee persons do not contemplate environmental or climatic factors as motivators of refuge that causes the forced displacement of people,

³⁰ L. R. VEDOVATO, C. J. FRANZOLIN, L. R. ROQUE, *Deslocados ambientais: uma análise com base na dignidade da pessoa humana*, *Revista Direito e Práxis*, v. 11, n. 3, 2020, 1654-1680.

³¹ P. A. C. VALE, T. O. MOREIRA, *Tutela dos direitos humanos dos migrantes em situação de vulnerabilidade: obrigações internacionais, políticas locais*, *Revista Direito das Políticas Públicas*, v. 3, n. 2, 2021.

which characterizes an absence of binding global or regional legal instruments for the security of these individuals.³²

This becomes evident in the Convention Relating to the Status of Refugees, of 1951, the main international document on the theme, with the updates of the Protocol Relating to the Status of Refugees of 1966³³ and in the Cartagena Declaration, elaborated in 1984 in the Colloquium on International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems, which, including, observed the need to expand the concept of refugee to encompass people who have fled their countries due to generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that disturb public order and result in threats to life, security or freedom.

Recently, the described scenario undergoes updates with global international *soft law* instruments such as the New York Declaration for Refugees and Migrants of 2016 and the 24th Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC) that presented recommendations with integrated approaches to avoid, minimize and protect displacement due to impacts of climate change.³⁴

In this sense, it is important to highlight the Regional Agreement

³² Z. Z. LAUDA-RODRIGUEZ, E. P. RAMOS, *A (i) mobilidade humana por fatores ambientais na América Latina: a experiência de trabalho da Rede Sul Americana para as Migrações Ambientais (RESAMA), Diálogos Socioambientais*, v. 7, n. 19, 2024, 60-65.

³³ Art. 1 – Definition of the term “refugee” A. For the purposes of this Convention, the term “refugee” shall apply to any person: 1) Who has been recognized as a refugee under the terms of the Agreements of May 12, 1926, and June 30, 1928, or the Conventions of October 28, 1933, and February 10, 1938, and the Protocol of September 14, 1939, or the Constitution of the International Refugee Organization; Decisions of disqualification taken by the International Refugee Organization during the period of its mandate shall not constitute an obstacle to the recognition of refugee status for persons who fulfill the conditions set forth in paragraph 2 of this section; 2) That, as a result of events occurring before January 1, 1951, and fearing persecution for reasons of race, religion, nationality, social group, or political opinion, they are outside the country of their nationality and are unable or, owing to such fear, does not want to avail himself of the protection of that country, or that, if he has no nationality and is outside the country in which he had his habitual residence as a result of such events, he cannot or, because of such fear, does not want to return to it.

³⁴ L. F. TONET, L. G. A. CONCI, L. C. DE LAURENTIIS, *Deslocamentos e deslocados ambientais: déficit de regulação e problema de interação entre o doméstico e o internacional*, *Revista Digital Constituição e Garantia de Direitos*, v. 17, n. 2, 2024, 240-262.

on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, signed in 2012 by the Governments of Latin America and the Caribbean, with the objective of guaranteeing the rights of access to environmental information, public participation in decision-making processes and access to justice in environmental matters, is a binding legal document of pioneering regional protection in environmental matters and represents the beginning of environmental democratic construction in the region, the only one resulting from the United Nations Conference on Sustainable Development (Rio+20).³⁵

Corroborating with this regional obligation assumed internationally, many Latin American and Caribbean countries have ministries, national norms and, eventually, public policies on the environment that provide for protection and combat against climate change.

In Brazil, the Migration Law, Law No. 13.445/2017, which in this article 14, §3º provides for the temporary visa acquired due to environmental disaster, which represents the reception of people displaced for environmental reasons. This also occurs in Peru with Law No. 30.754 Framework on Climate Change that recognizes the figure of the environmental migrant and establishes guidelines for an integral, effective, participatory and transparent management of climate change in the country, including articulation, monitoring and evaluation of these policies.³⁶

In the Bolivian case, it was observed that migration and climate change were addressed expressly and the concept of climate migrants was included in its legislation, according to the provisions of Migration Law No. 370 of 2013, Article 65³⁷. The aforementioned legislation, in its

³⁵ M. C. VILLAMAR, *Migraciones ambientales: marcos normativos y políticas públicas en América Latina y el Caribe*, in L. NEJAMKIS, L. CONTI, M. AKSAKAL (EDS.), *(Re) pensando el vínculo entre migración y crisis. Perspectivas desde América Latina y Europa*, Guadalajara, CALAS-CLACSO, 2021, 141-164.

³⁶ *General Law on Climate Change*, disponível em: https://climate-laws.org/document/general-law-on-climate-change_14c5.

³⁷ “Art. 65. El Consejo Nacional de Migración promoverá la suscripción de convenios y acuerdos internacionales en temas de cambio climático y medioambiental con los diferentes Estados, para la protección de bolivianas y bolivianos afectados; asimismo, coordinará las políticas públicas que viabilicen, de ser necesario, la admisión de poblaciones desplazadas por efectos climáticos, cuando exista riesgo o amenaza a la vida, y sean por causas naturales o desastres medioambientales, nucleares, químicos o hambruna”.

Article 4, stipulates definitions such as that of “climate migrants,” defined as a group of people who “ven obligadas a desplazarse de un Estado a otro por efectos climáticos, cuando existe riesgo o amenaza a su vida, sea por causas naturales, desastres medioambientales, nucleares, químicos o hambruna”.

With respect to Argentine legislation, Decree 616 of May 2010, which regulates Migration Law No. 25.971, refers to “temporary residents” under a special category, establishing provisions for persons who “transitoriamente no pueden retornar a sus países de origen” due to consequences “generadas por desastres naturales o ambientales ocasionados por el hombre,” including the utilization of “recomendaciones de no retorno que formular el Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR)”. This signifies that the legislation encompasses both natural phenomena and those resulting from human action and, furthermore, presents an interesting possibility of utilizing global standards established by UNHCR, which reveals a formula of reciprocal interaction between domestic and international legal frameworks, thereby harmonizing the normative structure.

In the Peruvian case, which also incorporates the Argentine advances, the legislation presents the concept of internally displaced persons in an autonomous manner. The provisions derive from both Law 28.223 on internal displacement and, particularly, from Supreme Decree No. 004-2005-MIMDES, which provides, in its Article 4, the definition of internal displacement as the “proceso por el cual una persona o un grupo de personas se ven forzadas u obligadas a abandonar su hogar o lugar de residencia habitual, como resultado”(…) de desastres naturales o provocados por el ser humano y que no ha dado lugar al cruce de una frontera estatal internacionalmente reconocida”.

In Colombia, Law 387 of 1997 establishes, in its Article 10, not only the requirement for policies that prevent environmental disasters, but also that areas affected by the risk of their occurrence be protected by the Public Authority. Moreover, despite the absence of specific regulation regarding environmental displaced persons, there is regulation for cases of environmental disasters and the consequent mobilization of populations affected by them. References can be found in Decree 93 of January 13, 1998, which establishes the National Plan for Prevention and Assistance, accompanied by the norm derived from Decree 919 of May

1, 1989, from which the National System for Disaster Prevention and Assistance is organized, which provides, in its Article 18, the concept of natural disaster and establishes state responses in relation to affected communities, potentially generating a special housing policy, or formulating decisions related to reconstruction and development of the region and affected persons.

Also in Mexico, the General Victims Law of 2013 provides for the state's duty to provide protection and satisfaction to those who suffer various damages, including environmental ones. Such damages may thus result from “pérdidas de ingresos directamente derivadas del uso del medio ambiente incurridas como resultado de un deterioro significativo del medio ambiente, teniendo en cuenta los ahorros y los costos” (art. 6, VI), so that environmental disasters generate compensation and other forms of satisfaction for such damages, including comprehensive reparation. Furthermore, the concept of migration established in the law points to migration broadly, as “cualquier movimiento de personas hacia el territorio de otro Estado o dentro del mismo sin importar su tamaño, su composición o causa” and makes clear that “migración incluye el desplazamiento que se da por parte de los refugiados, las personas desplazadas, las personas desarraigadas y los migrantes económicos”. Additionally, in the State of Chiapas, the Law considers “desplazados internos a las personas o grupos de personas asentadas en el Estado de Chiapas que se han visto forzadas u obligadas a abandonar, escapar o huir de su lugar de residencia habitual, en particular como resultado o para evitar los efectos de un conflicto armado, de situaciones de violencia generalizada, de violaciones de los derechos humanos o de catástrofes naturales o provocadas por el ser humano y que no han cruzado los límites territoriales del Estado”.

In the state of Guerrero, Law Number 487 “to prevent and address internal displacement” (2014), in its Article 2, also provides for such institute, as internally displaced persons are “personas o grupos de personas asentadas en el estado de Guerrero que se han visto forzadas u obligadas a abandonar, escapar o huir de su lugar de residencia habitual, en particular como resultado” due to “(...) de violaciones de los derechos humanos o de catástrofes naturales o provocadas por el ser humano, y que no han cruzado los límites territoriales del estado”.

6. *Conclusions*

It is evident, as observed, that there exists a regulatory gap that currently requires coordinated efforts at global, regional, and national levels. This is because the issue of environmental displacement cannot admit merely domestic or exclusively international analyses, as it constitutes a transnational phenomenon – that is, one that occurs both within national state jurisdictions and requires diverse states to address the same phenomenon.

The regulatory deficiency may be as concerning as conflicting regulatory diversity, generating excessive regulatory fragmentation, which may further accentuate the problem since the regulatory deficit may eventually be replaced by conflicting regulation, which would in no way promote the inclusion of populations that undeniably deserve protection. In this case, simplicity and regulatory economy, along with their articulation, constitute the primary objective.

Within the Latin American context, it is observed that national states present diverse approaches to the issue of those affected by environmental crises who are compelled to relocate, ranging from regulation of exclusively internal displacements to also regulating legal issues arising from transborder environmental displacements.

In this way, public policies for confronting problems derived from current environmental displacements need to be formulated and executed in a highly changing, complex, and multifactorial reality. Furthermore, the absence of formal and legal recognition of this phenomenon constitutes a global barrier for the advancement and construction of public policies that protect and safeguard the fundamental rights of these people, which gives rise to dependence on the political-administrative will of countries to formulate public policies that deal with the theme individually and in isolation, representing the absence of international articulation on a problem that has a global dimension.

We hope that, in this moment of turbulent political transformations, we may understand the necessity of acceptance and adaptation of those who are forced to leave their places due to environmental factors, without such issues being subjected to populist designs that are currently gaining strength, which stigmatize population segments in a negative manner.

Abstract

This article analyses the issue of environmental displacement, particularly from a regulatory perspective, with a focus on Latin America. Based on the recognition that there is an environmental crisis and that it causes the forced displacement of people as it progresses, it addresses the conceptual difficulty of dealing with an issue that is both national and international, since it occurs in both scenarios. It presents data on this issue and, specifically on the topic of legal regulation, points to the existence of an international regulatory deficit, limiting such regulation to soft law standards. At the national level, for the countries analysed, he notes the absence of regulatory symmetry, a consequence of the lack of regulatory coordination between the national and international levels, for an issue that is both internal and external, but at the same time cross-border. The result is the difficulty of addressing its effects and protecting those affected. It proposes the need for coordination between regions and states to better protect and address the issue.

Proteção das pessoas deslocadas por motivos ambientais e os problemas derivados da assimetria regulatória na América Latina

Este artigo analisa a proteção dos migrantes ambientais no contexto da assimetria regulatória na América Latina, ou seja, especificamente, a ausência de regulamentação padronizada na legislação nacional dos Estados da região. Com a intensificação dos eventos climáticos extremos e a exploração dos recursos naturais, o deslocamento forçado devido a questões ambientais e climáticas piorou, expondo desigualdades históricas e estruturais. O texto examina as lacunas do direito internacional, incluindo a inadequação da Convenção de 1951 relativa ao Estatuto dos Refugiados para proteger os migrantes ambientais, e a falta de legislação internacional vinculativa e seus efeitos. Discute a distinção entre «pessoas deslocadas por motivos ambientais», «refugiados ambientais» e «migrantes ambientais», argumentando que a ausência de regulamentação coesa e a assimetria na legislação nacional resultam em uma proteção frágil dos direitos humanos dessa população vulnerável. O artigo destaca a necessidade de desenvolver estratégias de adaptação e mitigação que considerem

os aspetos ecológicos, sociais e económicos, e de superar os déficits regulatórios para garantir uma proteção eficaz.