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ENVIRONMENTAL DISPLACEMENT IN INTERNATIONAL LAW: BEYOND THE REFUGEE CONVENTION, WITHIN THE HUMAN RIGHTS FRAMEWORK

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ABSTRACT

The category of environmentally displaced persons does not fall within the scope of protection provided by the 1951 Geneva Refugee Convention, as environmental factors are not recognised as grounds for asylum. Moreover, no specific international treaty protects this new category of refugees. Despite this legal gap, scholars have sought to define the concept of environmental refugees to find solutions to the issue of ecological displacement, relying on two fundamental principles: human dignity and the principle of non-discrimination. Some general provisions for protecting refugees in international human rights law are also invoked. In this context, certain United Nations bodies, particularly the United Nations High Commissioner for Refugees (UNHCR) and the Human Rights Committee, have increasingly played a role in addressing environmental displacement.

KEYWORDS

Climate Change, Displacement, Environmental Migrants, Human Rights, International Law, Refugee Status

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Introduction.

Climate change has become unavoidable, along with the environmental degradation that often accompanies it. The disasters caused by these changes destroy entire cities and villages, leaving thousands of people homeless. The consequences of these events are manifold, and it is likely that limited natural resources, such as drinking water, will become increasingly scarce in many parts of the world. Moreover, crops and livestock struggle to survive in "hotspots" of climate change, where the weather becomes extremely hot and dry or cold and humid, which threatens livelihoods and exacerbates food insecurity.

People are attempting to adapt to the changing environment, but many are being **forced to flee** their homes due to the effects of climate change and disasters, or they are migrating in search of survival. These new displacement patterns and competition for depleted natural resources can lead to conflicts between communities or exacerbate existing vulnerabilities.

Displaced persons across borders, in the context of climate change and disasters, may sometimes require international protection. This pushes them to seek refuge in areas unaffected by disasters within their country or neighboring countries. The term "**environmentally displaced persons**" was coined to distinguish this group from other displaced persons and refugees.

However, the concept of "**environmentally displaced persons**" has no defined legal basis within the framework of international refugee law, particularly the 1951 Geneva Convention relating to the Status of Refugees. No international treaty explicitly grants these group rights or recognises their refugee status. From

the perspective of international law, environmentally displaced persons are not considered persecuted under the grounds outlined in the Geneva Convention, such as race, religion, nationality, or political opinion.

This legal gap necessitates seeking alternatives to protect this growing category of environmentally displaced persons. In this context, the role of international human rights law becomes crucial, as it is founded on protecting individuals as human beings, irrespective of the reasons for their displacement.

Therefore, the central issue that this research aims to address is as follows:

To what extent can environmentally displaced persons rely on the principles and provisions of international human rights law to secure their necessary legal protection?

To address this issue, a descriptive method was used to present and analyse the research elements in detail, along with an analytical method to examine the legal texts related to the protection of environmentally displaced persons in international law. Moreover, the comparative method was employed to compare the different legal frameworks at the international level, aiming to identify the scope and criteria of the legal protection granted to these displaced persons.

To address this issue, we have divided the study into two main sections:

- Section one defines the legal and conceptual framework for environmentally displaced persons, highlighting the characteristics distinguishing them from other groups protected under international law.

- Section Two: This section analyses international legal mechanisms, focuses on human rights principles, and explores how they can effectively protect environmentally displaced persons.

Section One: Conceptual Distinguishing between "Environmental Refugees," "Environmentally Displaced Person," and "Environmental Migrants": An Analytical Approach

Various terms are used to describe individuals who are forced to migrate or relocate due to environmental changes, such as "environmental refugees," "environmental migrants," "ecological displaced persons," "climate refugees," and "environmentally displaced persons." This terminological diversity raises questions about the reasons for the differences in terms and their precise definitions.

The use of these different designations reflects multiple dimensions of understanding the phenomenon of environmental displacement. This diversity leads to significant research challenges, as the lack of a unified definition complicates the determination of this group's legal status, thereby hindering the establishment of legal mechanisms for their protection (Subsection One). Moreover, this terminological variation highlights the political and legal complexities that make many states reluctant to officially recognise environmental refugees (Subsection Two).

Subsection One: Defining Environmentally Displaced Persons

Defining and distinguishing environmentally displaced persons from environmental refugees and environmental migrants is necessary. Although distinguishing between these closely related concepts can sometimes be difficult, precision and caution are essential, as they have significant legal implications.

According to the United Nations guiding principles, internally displaced persons (IDPs) are defined as "persons or groups of persons who have been forced or obliged to leave their homes or habitual places of residence, primarily as a result of or to avoid the effects of armed conflict, generalised violence, human rights violations, or natural or human-made disasters, and who have not crossed an internationally recognised state border."¹ In contrast, a refugee, according to Article 1 of the 1951 Refugee Convention, is defined as "a person who is outside their country of nationality or habitual residence due to a well-founded fear of being persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to avail themselves of the protection of that country or to return to it owing to that fear."

The fundamental difference between them lies in the fact that the environmentally displaced person remains within the borders of their own country and, thus, continues to be under the legal protection provided by their state and receiving international humanitarian assistance. The UN High Commissioner for Refugees (UNHCR) has called for humanitarian and material aid to be provided to them under General Assembly resolutions, including Resolution No. 182/46 issued on December 19, 1991², which asked the UNHCR to assist refugees and internally displaced persons. Some have, therefore, rejected the term "environmental refugee" because it implies access to international refugee rights that are primarily reserved for political refugees under international law.

¹ United Nations, *Principle 02 of the Guiding Principles on Internal Displacement*, Document No. E/CN.4/1998/53/Add.2. The purpose of the guiding principles, as indicated by its name, is to provide "guidance" in applying international human rights instruments to protect internally displaced persons.

² The document describes the decision in more detail (A/Res/46/182).

Since the 1980s, many researchers have attempted to define the concept of environmentally displaced persons. In 1985, Issam Al-Hanawi, in a report for the United Nations Environment Programme, defined environmentally displaced persons as follows: "individuals who have been forced to leave their traditional homes, either temporarily or permanently, owing to noticeable environmental changes, whether natural or caused by human intervention, which have put their lives at risk or significantly affected the quality and standard of their living." ¹

Despite its comprehensiveness, this definition faces some criticisms. It does not address the concept of "disaster," which is considered a key element when discussing the issue of environmentally displaced persons. Additionally, this definition focuses only on descriptive aspects without offering a legal or rights-based framework for this group, complicating the possibility of including them in international treaties. ²

In the ongoing efforts to understand the dimensions of this phenomenon and develop its concept, Norman Myers's definition added a new dimension focusing on the economic and social causes of environmental migration: "Individuals who are no longer able to earn a sufficient income in their places of residence due to drought, soil erosion, desertification, or other environmental problems; linked to demographic problems and extreme poverty." ³

Through these two definitions, which have been widely adopted in the legal literature, researchers aim to clarify the concept of "**environmentally displaced persons**" and discuss the possibility of determining their legal status and ensuring their protection, similar to the protection system granted to political refugees. They also work on classifying forms of environmental migration on the basis of specific criteria, such as the nature and causes of displacement, to provide a more accurate understanding of the reality faced by these individuals.

Subsection Two: Defining the Environmental Refugee

The term "refugee" is precisely defined within the framework of international asylum law, but international documents have yet to reach a unified definition. On the other hand, the term "environmental refugee" is a relatively new concept that was not commonly used in the past. It first emerged in the 1970s through the work of the environmentalist Lester Brown, founder of the World Watch Institute⁴. Since then, numerous definitions for this term have been proposed. One of the notable definitions is from Issam Al-Hanawi in 1985, in a report for the United Nations Environment Programme, where he described them as follows: "Individuals who have been forced to leave their places of residence, either temporarily or permanently, owing to escalating environmental degradation caused by natural or human factors, which led to a significant disruption in the ecosystem they live in and caused them to lose the sense of security in their lives." ⁵

In the absence of an internationally agreed-upon definition, the International Organisation for Migration (IOM) provided a practical definition for the term "environmental migrants" in 2007 as follows: "An individual or group of individuals who are compelled to leave their usual residences, either temporarily or permanently, within or across the borders of their countries, owing to compelling circumstances caused by gradual or sudden environmental changes that negatively affect their lives and living conditions." ⁶

In another context, "climate refugity" is increasingly used in academic studies to refer to individuals forced to migrate due to climate change. Researcher J.B. Cooper argues that the definition of a political refugee should also include those who migrate due to environmental factors, especially in cases where governments directly or indirectly cause ecological degradation or when they discriminate against these individuals in assisting or exploiting the consequences of natural disasters in a repressive manner. This discussion raises the issue of granting these individuals refugee status, either by amending the definition of the 1951 Refugee Convention or by establishing a new treaty that considers this type of displacement.

However, legal recognition of environmental refugees is lacking because of the lack of international consensus on a clear definition of ecological migration. It is not easy to distinguish between the environmental and other factors that drive individuals to migrate. This raises the following question: is it sufficient to prove the causal link between climate change and migration to grant affected individuals refugee status?

¹ El-Hinnawi, Essam. "Environmental Refugees." *United Nations Environment Programme (UNEP)*, 1985, p. 02.

² Bousraji, Zahra. "The Legal Status of Environmental Refugees in International Law." *Annals of the University of Algiers 1*, no. 33, part 02, 2019, p. 216.

³ Pocheluberry, Baptiste. *Déplacés climatiques: Vers une protection juridique des victimes du changement climatique fondée sur le concept de vulnérabilité*. Master's thesis in International Law, Université du Québec, Montréal, 2016, p. 12

⁴ The Worldwatch Institute is an independent research organisation founded in 1974 by environmental scientist Lester Brown. It studies global ecological, economic, and social issues in Washington, D.C., and focuses on finding sustainable solutions to environmental challenges.

⁵ Frank Iaczk and Christine Aghazarm. *Migration, Environment and Climate Change: Assessing the Evidence*. International Organisation for Migration, 2009, p. 19.

⁶ Ibidem.

Alternatively, according to the 1951 Convention, should there be some form of persecution or serious human rights violations before their status can be recognised as that of refugees?

Typically, victims of natural disasters are not forced to leave their countries, primarily if their governments promptly provide the necessary assistance, reducing the likelihood of their displacement to other countries. However, reality shows notable exceptions, such as Vietnamese migrants who were forced to flee to Cambodia due to flooding. In such cases, humanitarian considerations prevented their return to their homeland. This situation opens the door for rethinking legal frameworks for environmental asylum¹.

Subsection Three: Defining the Environmental Migrant

An environmental migrant is an individual who voluntarily chooses to relocate from their usual place of residence, primarily because of future ecological factors. Various incentives drive this type of migration, whether current or temporary, such as environmental pollution, land degradation, or areas exposed to floods, drought, desertification, and natural disasters. This migration can be viewed as a strategy for adapting to environmental changes or as evidence of failure to achieve such adaptation, leading individuals to migrate².

When the terms "migrant" and "refugee" are compared, there is a significant overlap in their meanings and implications. Migrants typically leave their home countries voluntarily in search of a better life. In contrast, refugees are compelled to leave their country owing to a well-founded fear of persecution or harm, and they are unable to return safely. In contrast, migrants do not face such barriers, as they can return to their homeland if they choose while still being able to receive protection from their governments.³

Environmental migration is a form of permanent or temporary departure caused by environmental changes, whether due to acute natural disasters or gradual ecological deterioration. However, "environmental migrants" apply explicitly to individuals fleeing an imminent ecological threat or danger or those who freely leave their country due to environmental degradation⁴.

In this context, the term "refugee" has a particular influence on public opinion due to its connotations of coercion, as it portrays the person as a victim of forces beyond their control, evoking sympathy and support. In contrast, the term "migrant" suggests choice and will and is often associated with pursuing a better standard of living. For this reason, some prefer to use the term "refugee" when discussing individuals displaced due to environmental issues to raise awareness and highlight their suffering.

Subsection Two: Justifications for the Lack of Recognition of Environmental Refugees at the International Level

The international community remains hesitant about granting environmental refugees a legally recognised status. This hesitation stems from several justifications, the most prominent being legal reasons (Subsection One) and economic considerations, where such recognition could lead to additional financial burdens on receiving states (Subsection Two).

Subsection One: Legal Grounds for Hesitation in Granting Environmental Refugee Status

Using "environmental refugees" or "environmental migrants" is not merely a matter of linguistic differences; it involves absolute legal obligations from the international community within an international legislative framework. Moreover, the term "refugee" resonates strongly with the public, as it implicitly evokes a sense of catastrophe, generating widespread empathy and highlighting the need for urgent humanitarian intervention. In contrast, the term "migrant" is understood as a voluntary movement towards a better standard of living, which reduces the urgency of providing protection.

However, some countries are reluctant to adopt the term "environmental refugia" because of the potential legal obligation to protect this group, treating them equally to political refugees, especially if the environmental refugee crosses national borders into another state. This debate extends to ecological refugees displaced within their borders, raising significant discussion within the United Nations. While some parties argue that the concept of refugee status should be limited to those crossing international borders, thereby excluding internal

¹ Ben Jamil Aziza, "The Legal Status of Environmental Migrants," *Al-Nabras Journal of Legal Studies*, vol. 2, no. 2, University of Arabi Tebessi, 2017, p. 152.

² Belhul Zakia, *Climate Refugees from the Perspective of Human Rights, Security, and International Law*, PhD diss., Faculty of Law and Political Science, University of Batna, 2019, p. 51.

³ El Yazid Ali, "The Future of the Refugee Protection System Under International Refugee Law," *Journal of Studies on the Effectiveness of Legal Norms*, no. 1, vol. 2 (2018): 73, University of Abdelhamid Ibn Badis, Bejaia.

⁴ Azhar Dhief, "Environmental Migration... A Sociological Perspective," *Journal of Social Studies and Research*, no. 12 (2015): 135, University of El-Oued.

displacement issues from the mandate of the United Nations High Commissioner for Refugees (UNHCR), the UN representative for displaced persons and refugees insists that all environmental migrants, whether they have crossed international borders or not, belong to a single legal category that requires equal protection.

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Additionally, most refugee cases resulting from environmental disasters are managed through the provision of international humanitarian assistance, although this aid is often insufficient. Furthermore, there are obstacles to the delivery of this assistance, the most significant being the need for the affected country's consent to receive aid. This condition reflects respect for the state's sovereignty and embodies the principle of noninterference in countries' internal affairs without their permission. Therefore, this creates a barrier for international organisations and governments that wish to provide humanitarian support².

Moreover, in the same context, the International Organisation for Migration (IOM) confirmed that individuals forced to migrate for environmental reasons do not fall under the current legal framework for asylum. It also noted that "environmental refugees" could impose legal obligations on the international community. In contrast, the 1951 Geneva Convention on refugees does not protect those forced to leave their homes due to environmental risks³. The recognition of climate migrants as refugees reflects the international community's responsibility for the humanitarian impacts of environmental degradation and climate change rather than just the responsibility of those directly affected. Such recognition would grant them additional rights, such as international protection by the United Nations High Commissioner for Refugees (UNHCR), resettlement, the right to asylum, and shared responsibility for their displacement between the international community and the country of origin. From this perspective, the term "refugee" is a privilege that allows displaced individuals to enter countries that have otherwise closed their borders under the pretext of security.

On the basis of the above, some scholars argue that distinguishing between types of environmental refugees according to the degree of freedom individuals have in staying or leaving their original areas is necessary.⁴ In this context, whether environmental degradation is temporary or permanent should be considered rather than making arbitrary decisions about classifying an individual as an environmental refugee. Additionally, clear legal conditions

¹ Hossni Abdel-Maaz Abdel-Hafiz, "Environmental Security: 'Environmental Refugees: Problems and Solutions,'" *Journal of Environment and Life*, no. 420 (2017): 88, Dar University of Naif Publishing.

² Wahaj Hadrir Abbas, "Securing International Protection for Environmental Refugees from the Phenomenon of Global Warming," *Journal of the College of Law for Legal and Political Sciences*, no. 29, vol. 8 (2019): 381, University of Kirkuk, Iraq.

³ Frank Iaczko and Christine Aghazarm, *Migration, Environment and Climate Change: Assessing the Evidence* (International Organisation for Migration, 2009), 18-19.

⁴ William Peterson, in 1958, was the first to introduce the concept of "forced migration" and "voluntary migration" within the framework of the general migration theory. See: Baptiste Pocheluberry, *op. cit.*, 12 p.

must be established to determine the appropriate legal status for these individuals, with a distinction between internal environmental migration and that which crosses national borders.

International organisations, including the United Nations High Commissioner for Refugees (UNHCR), avoid using the term "environmental asylum" and instead adopt the term "environmental migration." They view the phenomenon as a form of forced migration, where individuals are compelled to migrate owing to coercive circumstances that push them to leave their homeland or place of habitual residence.

Ultimately, environmental migration has attracted the attention of many researchers, who have tried to provide accurate definitions. However, none of these definitions have established themselves as a unified reference. The debate on environmental migration remains unresolved due to the lack of international consensus on a shared meaning. Importantly, the number of environmental migrants is closely related to how this type of migration is defined, as expanding the definition increases the number of individuals included within this category ¹.

Subsection Two: Economic Considerations and Their Impact on Denying Environmental Refugee Status

The rapid increase in displaced persons due to environmental changes presents a massive challenge at the international level, as it places significant pressure on the infrastructure and essential services of receiving countries, such as housing, healthcare, education, and labour markets. As the number of people fleeing areas affected by natural disasters increases, governments are forced to redirect their financial and logistical resources to meet the urgent needs of these groups, which may impact the long-term sustainability of their economies.

Moreover, changing trade and production patterns have become inevitable, as the redistribution of the global workforce has led to shifts in industrial and agricultural production sites. Labour tends to move towards areas with more stable climates and safer economic opportunities. However, these shifts can lead to financial imbalances, where some areas face labour shortages while others struggle with surpluses that are not effectively integrated into the job market.

Faced with these challenges, countries urgently need to allocate increasing resources to address the crisis faced by environmental refugees, whether by providing temporary shelter centers, long-term resettlement programs, or enhancing infrastructure to accommodate new population flows.

Statistics underscore the gravity of this phenomenon, as reported by the Internal Displacement Monitoring Centre (IDMC) ². The number of people displaced due to environmental disasters reached approximately 30.7 million in 2020 alone. This figure reflects the magnitude of the crisis and emphasises the urgent need for legal and institutional solutions. However, despite the increasing number of these displaced persons, international law still lacks recognition of them as a distinct category deserving protection, creating a legal gap that contradicts the changing reality. Accelerating environmental phenomena, such as devastating hurricanes, rising sea levels, and desertification, not only affect their original environments but also directly threaten human life and the fundamental right to exist. This makes it essential to reconsider the legal and humanitarian frameworks addressing this issue.

Section Two: Inclusion of Environmentally Displaced Persons Within the Protection of International Human Rights Law

As mentioned, international legal frameworks lack specific provisions protecting environmentally displaced persons. However, this does not mean that they do not benefit from any form of protection, as international human rights law contains fundamental principles that apply to all individuals, forming the basis for the inclusion of environmentally displaced persons under the protection of international human rights law (Subsection A). Certain principles within international law could serve as the foundational basis for protecting environmentally displaced persons (Subsection B).

¹ Mohamed Saadi, *Les réfugiés environnementaux : vers une nécessité de développement du droit international pour la protection des réfugiés*, Al-Masria Publishing and Distribution, 2019, p. 14.

² Internal Displacement Monitoring Centre (IDMC), *Global Report on Internal Displacement 2021*, p. 8, available at: <https://api.internal-displacement.org/sites/default/files/2022>.

Subsection One: The Legal Basis for Protecting Environmentally Displaced Persons in International Human Rights Law

Human rights are granted to every person simply by their humanity, regardless of their status as a citizen, displaced person, refugee, or migrant. Therefore, an environmentally displaced person is considered a human being who, like other migrants, possesses rights under international human rights law. Thus, the foundation for the inclusion of environmentally displaced persons within the protection of international human rights law lies in two essential human rights values: human dignity (Subsection One) and equality and nondiscrimination (Subsection Two).

Subsection One: Human Dignity as an Entrance to Include Environmentally Displaced Persons in the Protection of International Human Rights Law

The Qur'an recognises human dignity from the beginning of creation for all humankind, regardless of race, color, ethnicity, origin, language, or religion. Allah says, "And we have certainly honoured the children of Adam and carried them on land and sea and provided them with good things and preferred them over many of those we created, with a marked preference."¹

(وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْوَنَاءِ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا)

Human dignity is often highlighted at the forefront of discussions on human rights in numerous international declarations and treaties. It is also a fundamental principle in many national constitutions and judicial rulings.

According to Immanuel Kant's philosophy, each person should be treated as an end in themselves, not merely as a means to an end. Thus, an individual possesses unconditional value. Kant defines dignity as the intrinsic value that gives the human person the right to enjoy a treatment that makes them an end in themselves rather than merely a means for others².

Thus, acknowledging that individuals possess dignity entails recognising that each person is unique and cannot be measured by price. Even if we differ in determining the content of human dignity, it fundamentally pertains to the essence of the human being. This principle is the source of other rights for the individual, such as the right to life. It is a fundamental principle (Principe Matriciel) derived from different principles. This includes the principle of the supremacy of the human being, the principle of respecting the human being from the beginning of life, the principle of the inviolability and integrity of the body, the principle of noninterference with the body and the absence of its materialistic treatment, and the principle of the protection of the human race.³

Overall, the prevailing opinion is that international human rights law is the most suitable solution for protecting the rights of environmentally displaced persons. Governmental bodies concerned with climate change have found that human rights are the only ethical approach that helps protect human rights when addressing climate change. This is in line with the principle of human dignity, as these rights are enshrined in international law. This is referred to as the climate justice approach, which is founded on human rights.

Subsection Two: Equality and Nondiscrimination as a Legal Basis for Protecting Environmentally Displaced Persons in International Human Rights Law

Human rights can protect environmentally displaced persons during international environmental migration. International human rights law, which applies to all individuals without discrimination, also includes foreigners, making it applicable to environmental migrants crossing international borders, as it applies to a country's citizens.⁴

In this context, the right to equal and nondiscrimination intersects with various other rights, as it is closely linked to human dignity. Both principles are grounded in the idea that all individuals are equal in dignity and entitled to human rights. Eliminating discrimination is a fundamental step toward creating a more humane society, as this is manifested in the absolute respect for the sanctity of human dignity for each individual. Furthermore, respecting human dignity forms the ethical and philosophical foundation for all human rights, including the right to equal, as actual human dignity cannot be envisioned without realising equality⁵.

To reinforce this principle, international instruments, including the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the

¹ (Qur'an, Surah Al-Isra, 17:70).

² Fawaz Saleh, "The Principle of Respect for Human Dignity in the Field of Bioethics (A Comparative Legal Study)," *Journal of Economic and Legal Sciences*, vol. 27, no. 1, Faculty of Law, University of Damascus, 2011, pp. 252-253.

³ Ibid., p. 254.

⁴ Pocheberry Baptiste, *op. cit.*, p. 64.

⁵ Mohammad Yusuf Alwan, "The Prohibited Discrimination in International Law," *Arab Policies Journal*, no. 07 (Jordan, 2014): 97.

International Covenant on Economic, Social, and Cultural Rights, emphasise the equal and inalienable rights of all members of the human family. These instruments affirm that human rights are guaranteed to every individual without discrimination, simply by being human.

International human rights law prohibits all forms of discrimination, whether from the state (public government discrimination) or individuals (private individual discrimination). In this context, Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) explicitly forbids discrimination. In contrast, Article 26 of the same Covenant emphasises the necessity for laws to prohibit discrimination and to ensure adequate and equal protection for all individuals against any form of discrimination, regardless of its cause. This means that the scope of legal protection from discrimination is not limited to the rights outlined in the Covenant alone but extends to all areas of life. As a result, the principle of equality becomes a firmly established legal norm, guaranteeing justice and nondiscrimination in all aspects of life.

A state wishing to become a party to the International Covenant on Civil and Political Rights cannot make reservations regarding the right to nondiscrimination stipulated in Article 2. Such reservations "are considered inconsistent with the covenant when viewed in light of its purposes and objectives."¹ Similarly, the 1951 Refugee Convention, in Article 42, allows reservations to its provisions but prohibits reservations on certain articles, including Article 3 regarding the principle of nondiscrimination and Article 4 concerning freedom of religion.

In the *Barcelona Traction* case, the International Court of Justice reaffirmed that fundamental human rights, including protection from slavery and discrimination, apply to all countries. Owing to their global significance, all states are legally responsible for protecting these rights.² Similarly, the Inter-American Court of Human Rights upheld this principle in its Advisory Opinion No. 18 (2003) on the "rights of undocumented migrants and their legal status", emphasising that states must neither allow nor tolerate discrimination against migrants. The Court further stressed the importance of ensuring the right to a fair trial for any individual, regardless of their status as a migrant³.

Similarly, in its General Comment No. 15, the Human Rights Committee confirmed that the rights outlined in the International Covenant on Civil and Political Rights apply to all individuals, regardless of the principle of reciprocity, irrespective of their nationality or lack of nationality. International law, by the principles and provisions laid out in the fundamental global instruments, imposes obligations on states to protect the rights of all individuals within their territories, regardless of the reason, as stipulated in Article 2(1) of the International Covenant, including all migrants.⁴

In this context, climate-displaced persons represent a vulnerable group threatened by the risks of climate change, which has forced many of them to migrate to safer areas. Human rights law recognises the protection of vulnerable groups within society (such as women, children, indigenous people, and persons with disabilities) on the basis of the principle of nondiscrimination. This can be applied to climate-displaced persons, particularly those who want to protect their right to life, a fundamental human right, and their freedom from threats. Climate change especially threatens the right to life and livelihoods.⁵

In light of the above, international human rights law is fundamental in protecting environmentally displaced persons. It establishes basic standards for the treatment states, which must provide refugees in their territories. It also provides a framework for assessing rights threatened by climate change and defines the national entities responsible for protecting them⁶.

Thus, environmentally displaced persons who cross international borders and are present in a foreign territory enjoy all fundamental rights, regardless of their legal or illegal status. This means that the issue of environmental migration has become a humanitarian matter, giving rise to demands for assistance for ecological refugees.

Section Two: The Existence of International Rules Providing an Initial Legal Framework for Protecting Environmentally Displaced Persons

¹ Human Rights Committee, General Comment No. 31, 80th session, 2004, para. 05, *Compilation of General Comments and Recommendations*, p. 247.

² International Court of Justice (ICJ). *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment. ICJ Reports 1970, p. 3, paras. 33–34.

³ Inter-American Court of Human Rights (IACtHR). *Advisory Opinion OC-18/September 03 September 17, 2003, on the Legal Status and Rights of Undocumented Migrants*. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf.

⁴ United Nations Economic and Social Council. *Social Issues and Human Rights: Human Rights*. Thematic Session for the Year 2010, Report No. E/2010/89, pp. 4–6.

⁵ Belhul, Zakia. *Previously cited reference*, p. 130.

⁶ Ibid., p. 127.

In the absence of an international instrument that provides comprehensive and direct protection for all environmental migrants, it seems necessary to view this gap initially, considering some factors that may contribute to enhancing legal protection for environmental migrants. These factors include certain human rights recognised internationally that could offer partial protection for environmentally displaced persons (Subsection One), in addition to the growing role played by some UN bodies in addressing the issue of environmental displacement (Subsection Two).

Subsection One: Expanding the application of some human rights rules to include environmentally displaced persons

International human rights conventions contain provisions to protect refugees, including environmentally displaced persons. Two human rights documents include direct provisions to protect those affected by disasters, whereas a third document, the Kampala Convention, addresses this issue.

Protection of Environmentally Displaced Persons through Provisions Related to Refugee Protection in International Human Rights Law

The effort to find solutions for addressing environmental migration within current international legal texts involves applying certain regulations to environmental migration issues, such as those in international human rights law. Global and regional treaties have shown significant interest in including explicit provisions in their charters and agreements, urging states to protect the human rights of refugees and asylum seekers.

On the basis of the above, the rights outlined in the two International Covenants of 1966 are highly important in the context of environmental displacement cases, as they provide a legal framework that can be referenced when seeking ways to protect environmentally displaced persons.

In this regard, Article 12, paragraph 4 of the International Covenant on Civil and Political Rights stipulates that "No one shall be arbitrarily deprived of the right to enter his own country," reinforcing the principle that individuals cannot be expelled or prevented from returning to their homelands. Additionally, paragraph 1 of the same article affirms individuals' freedom to choose their residence. However, this right is often subject to various restrictions, hindering environmentally displaced persons from settling in new areas.

On the other hand, economic and social rights are important to those affected by environmental crises. In this context, Article 11, paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights of 1966 affirms the right of every individual to adequate food, shelter, and clothing. However, increasing environmental degradation may make access to these necessities extremely difficult and, in some cases, even impossible, placing environmental refugees in a position of extreme vulnerability.

Moreover, some principles related to human rights provide indirect protection for individuals suffering from the severe impacts of environmental changes. This approach is reinforced by Article 1, paragraph 2 of the International Covenant on Economic, Social, and Cultural Rights, which asserts the right of peoples to freely dispose of their natural resources, emphasising that they should not be deprived of their means of subsistence. Therefore, this principle supports the need for legal recognition of protection for those affected by environmental crises.

On this basis, the issue is not limited to the loss of natural resources. Nevertheless, it extends to one of the most fundamental human rights: the right to life, as stipulated in Article 6, paragraph 1 of the International Covenant on Civil and Political Rights of 1966. In some cases, environmental degradation may threaten individuals' lives and can even lead to death, as is the case when entire lands disappear due to rising sea levels, potentially resulting in the complete disappearance of whole island nations¹.

Furthermore, international human rights law protects environmental refugees through established principles. On the one hand, states must protect every individual within their territory, as stated in Article 2 of the International Covenant on Civil and Political Rights and Article 1 of the European Convention on Human Rights. On the other hand, the expulsion of these individuals is prohibited on the basis of the principle of nonrefoulement, according to Article 7 of the International Covenant on Civil and Political Rights, Article 3 of the United Nations Convention Against Torture, Article 3 of the European Convention on Human Rights, and Article 2 of the European Regulation of 2004. This indicates that these provisions can be relied upon to prevent the return of environmentally displaced persons to countries lacking security or the basic conditions for a dignified life by European law.

In this context, the European Court of Human Rights interpreted Article 3 of the European Convention on Human Rights as prohibiting the return of any individual to a place where they might face torture or

¹ Saadi, op. cit., p. 159.

inhuman treatment. Therefore, the prohibition of "expulsion" or "refoulement" is an absolute obligation under this convention, thereby reinforcing the legal protection for environmental refugees within the international human rights framework¹.

However, this principle remains limited in its effectiveness for protecting the rights of environmental refugees, as torture is not universally defined, and it is difficult to identify the perpetrator of the violation, even when it occurs. The mere occurrence of a breach is not sufficient to ensure protection.

The duration of protection is similar to that of a refugee as long as the need for international protection persists. Temporary protection is revoked if the conditions in the country of origin improve to a degree that guarantees a safe return. This protection aims to focus on repatriation as the optimal solution.

In any case, the protection provided by international human rights law to environmental refugees is general and indirect. When issues such as entry acceptance, legal status during residence, and conditions for return are discussed, this category—environmentally displaced persons—does not have the right to enter the host state in the first place. Similarly, those who leave their country voluntarily are considered migrants and enjoy general protection for their fundamental rights, with the possibility of return, as per the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, this convention does not regulate their acceptance in a foreign country, grant them permanent residence, or cover climate-displaced persons.²

Protection of Environmentally Displaced Persons through Environmental Disaster Response Mechanisms

Two conventions in the document contain explicit provisions concerning the protection of the target group, especially in the context of natural disasters. These conventions form an essential legal framework aimed at ensuring the rights of individuals affected by environmental disasters by providing the necessary protection, both in terms of recognising their legal status and by obligating states to provide humanitarian assistance and ensuring that they are not returned to their countries if the conditions there pose a threat to their lives and safety.

The International Convention on the Rights of Persons with Disabilities (2006) Article 11 states that state parties should take all necessary measures to ensure the protection and safety of persons with disabilities who are in situations of risk, including natural disasters.

The African Charter on the Rights and Welfare of the Child (1990) stipulates that state parties ensure that children who become refugees or internally displaced due to natural disasters "receive appropriate humanitarian protection to enjoy the rights outlined in this Charter and other international human rights."

In addition to these conventions, the African Union Convention for the Protection and Assistance of Internally Displaced Persons, adopted by the African Union in October 2009 and known as the Kampala Convention, provides a comprehensive legal framework for protecting and assisting internally displaced persons. This convention also obliges African states to seek effective ways to prevent forced internal displacement and strengthen efforts to mitigate the effects of conflicts and natural disasters on populations.

In this context, the convention clearly defines the obligations of state parties, as Article 5, paragraph 4 stipulates the need for "necessary measures to provide protection and assistance to those who become victims of internal displacement due to natural or man-made disasters, including climate change." Therefore, this convention reflects a clear regional commitment to addressing the challenges of internal displacement, especially in light of the worsening effects of climate change.

In emphasising the importance of this step, the United Nations High Commissioner for Refugees (UNHCR), Antonio Guterres, described the convention as "historic," stating in an official statement that this convention "places Africa at the forefront in providing a legal framework for the protection and assistance of internally displaced persons." This statement reflects international recognition of the importance of this initiative in strengthening legal protection for displaced persons.

However, it is essential to note that the earlier treaties and conventions protect individuals on the basis of specific attributes, not specifically as environmental refugees. In other words, these agreements offer general

¹ The European Court of Human Rights interpreted Article 3 of the European Convention on Human Rights as prohibiting member states from returning any individual to a country where they may face the risk of torture, inhuman, or degrading treatment or punishment. This interpretation is evident in several rulings issued by the Court, most notably in the case of *Soering v. The United Kingdom* in 1989. See: European Court of Human Rights, *Case of Soering v. The United Kingdom*, Judgment of July 07 1989, available at <https://hudoc.echr.coe.int/eng?i=001-57619>.

² Belhul, Zakia, *op. cit.*, p. 287.

protection that includes displaced persons for various reasons without directly recognising environmental refugee status as an independent category requiring specialised legal protection.

Section 2: Ongoing Enhancement of the Role of United Nations Bodies in Protecting Environmentally Displaced Persons

Here, we focus on the role of the United Nations High Commissioner for Refugees (UNHCR) (1) and the Human Rights Committee, which has taken a stance on the international protection of environmentally displaced persons when considering a complaint submitted to it (2).

(1) Role of the United Nations High Commissioner for Refugees (UNHCR) in Protecting Refugees

The core role of the UNHCR is to provide international protection to refugees in accordance with the 1951 Geneva Convention and assist affected groups, such as internally displaced persons due to armed conflicts, internal disturbances, ongoing human rights violations, or natural disasters.

On this basis, since individuals forced to be displaced within their countries due to natural disasters are classified as internally displaced persons and since the UNHCR has extended its mandate to include them, environmental migrants are entitled to benefit from the protection of the UNHCR. Therefore, this protection should extend, as a priority, to individuals who are forced to flee across national borders due to environmental conditions¹.

Thus, the UNHCR has played a leading role within the global protection framework, working to provide protection and assistance to individuals displaced within their countries, especially those who cannot return to their homes safely. Furthermore, through its active participation in global policy-making processes, the UNHCR has strengthened its efforts to increase awareness of climate change as a driver of displacement, highlighting the urgent need to provide necessary protection for refugees and other displaced persons in the context of disasters².

In this context, for the first time in June 2011, a group of organisations concerned with refugee and migrant rights, such as the International Organisation for Migration and the UNHCR, along with organisations focused on the environment, humanitarian work, and disaster prevention, met during the International Conference on Climate Change and Migration in the 21st Century, held in Oslo. After this conference, a set of operational tools was developed, which were collectively known as the "Nansen Principles," representing a new approach the international community can take to address environmental displacement issues.

In 2018, when the Task Force on Displacement action plan was implemented, the UNHCR was tasked with conducting a survey on existing international and regional guidelines and instruments concerning the prevention, reduction, and addressing of climate change-related displacement and facilitating durable solutions. The UNHCR contributed to the development of integrated recommendations for approaches to avoid, mitigate, and address displacement related to the harmful effects of climate change, which were presented at the UN Climate Change Conference in 2018 and adopted by the parties³.

Despite expanding the UNHCR's mandate, this has not necessarily led to the adoption of specific legal texts for migrants due to environmental factors. However, the UNHCR provides humanitarian assistance during disasters on the basis of actual circumstances rather than a specific legal framework for those affected.

(2) Role of the Human Rights Committee in Strengthening International Protection for Environmental Displacement

In addition to the role of the UNHCR in protecting environmental migrants, the judicial approach toward environmental mobility cases has evolved. For example, in 2013, a New Zealand court rejected a case filed by Mr. Ioane Teitiota, who sought refugee status for himself and his family for environmental reasons, arguing that they were not facing an imminent threat⁴. However, the Human Rights Committee affirmed the right not

¹ Hamdawi Mohamed, "Le réfugié environnemental: de l'existence matérielle à l'espoir d'une protection juridique internationale," *Revue des études juridiques*, no. 02, Université Moulay Tahar, Saïda, 2020, p. 131.

² United Nations High Commissioner for Refugees (UNHCR), "Displacement Resulting from Climate Change and Disasters," available at: <https://www.unhcr.org/ar/4be7cc27725.html>.

³ Hamza Abdul-Ridha Habib Naam, *The Legal Status of Environmental Refugees in Public International Law*, Master's Thesis, Faculty of Law, Middle East University, 2012, p. 35.

⁴ Mr. Ioane Teitiota resides in Kiribati, a small island nation in the Pacific Ocean, which is expected to become uninhabitable within the next twenty years due to rising sea levels. However, his asylum request was denied due to the absence of any legal provision in international law regulating the status of environmental refugees fleeing rising sea levels and climate change-related ecological hazards in their home countries. See: Iman Fakhri, "Has the Acceptance of Environmental Refugees Begun?" *Al-Bia Wal-Tanmia* [Environment & Development Journal], Arab Forum for Environment and Development, Issue 206, Beirut, 2015.

to return individuals fleeing the effects of climate change and natural disasters to their home countries if their return would threaten their basic human rights.

This decision is considered a historic step with far-reaching implications for the international protection of refugees in the context of climate change and disasters. This highlights the need for countries to take adequate measures to mitigate the damage caused by climate change or reduce its severity. This damage could lead to displacement in the future, creating legal obligations for states.

The Committee concluded that in cases where the risks are imminent, it may be illegal, under the International Covenant on Civil and Political Rights, to return individuals to their home countries if climate change endangers their lives (Article 6) or if they face a real threat, such as being subjected to cruel, inhuman, or degrading treatment (Article 7 of the Covenant). The Covenant encompasses a wide range of civil and political rights that also apply to asylum seekers and refugees, including the right to life and protection from torture or any form of cruel or degrading treatment¹.

Conclusions

As the number of individuals forced to flee their homes and lands, either within their countries or across borders, because environmental degradation continues to rise, these individuals remain officially unrecognised. This is primarily due to the difficulty in achieving consensus on a clear definition of ecological migration or climate-induced migration, as well as that of environmental refugees, given the complexity of distinguishing between environmental factors and other factors affecting migration.

Moreover, they are not covered by the 1951 Refugee Convention, which limited the reasons for asylum to ethnic, religious, national, social, and political factors, without including environmental causes. In light of the absence of a specific international treaty recognising and protecting this group, exploring the legal foundations that justify including environmentally displaced persons within the protection framework of international human rights law has become necessary.

Upon analysing the key international texts related to human rights, it becomes evident that protecting environmentally displaced persons under international human rights law is based on the principles of human dignity and equality and nondiscrimination among all humans. Additionally, some international human rights conventions contain relevant provisions for protecting environmental refugees, allowing the application of global human rights instruments to them, not as refugees per se but as part of the protected groups under general international law.

Moreover, two human rights documents contain direct provisions for protecting affected groups in the case of disasters, and the Kampala Convention serves as a third important document in this context. However, the mechanisms used to protect refugees remain nonspecialised for this particular group, as they were created to protect disaster victims, not specifically, environmental refugees. Nevertheless, they contribute to shaping the issue of ecological asylum at the international level.

In short, the protection provided by international human rights law for environmentally displaced persons remains general and indirect despite provisions that could serve as an initial basis for their protection within the international legal framework. However, this protection is insufficient and lacks the necessary effectiveness to ensure the comprehensive rights of environmental refugees. On this basis, we propose the following solutions:

- The international community must recognise environmental refugees as a category that requires international legal protection.
- There is a need to establish a clear and unified definition of environmental displacement.
- The creation of international, regional agreements to protect environmental refugees is similar to the implementation of the African Kampala Convention to protect internally displaced persons.
- An international body under the United Nations tasked with overseeing and protecting the rights of environmental refugees should be established.

¹ United Nations High Commissioner for Refugees (UNHCR), "The United Nations Human Rights Committee Issues a Historic Decision on Climate Change," January 20, 2020, available at: <https://www.unhcr.org/ar/news/briefing/2020/1/5e2ad86f4.html>.

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