

**DRAFT CONVENTION ON THE INTERNATIONAL STATUS
OF ENVIRONMENTALLY-DISPLACED PERSONS** (third version- May 2013)

Preamble

The Contracting Parties

Considering the alarming condition of the global environment and the increasing rate of its deterioration,

Considering the causes of this degradation, in particular climate change and/or the loss of biological diversity, drought, desertification, deforestation, soil erosion, epidemics, armed conflict, major infrastructure and more generally, natural and technological hazards,

Considering that these negative environmental phenomena produce victims who encounter injury to their health and their dignity, and even impairment of the essence their fundamental right to life,

Considering that the gravity of environmental harm necessitates the displacement of individuals, families and populations,

Considering also that some environmental policies may induce displacement,

Considering that the exponential growth and clear foreseeability of such movements constitute a threat to the stability of human societies, the preservation of cultures, and world peace,

Considering the many appeals from non-governmental organizations to recognize a status for environmentally-displaced persons, and insisting on the urgent necessity of responding to their plight,

Considering that a status for environmentally-displaced persons involves different branches of the law: human rights, environmental rights, disaster law, humanitarian law,

Considering that several international declarations underline the existence of this category of displaced persons (Principle 18 of the Rio Declaration on Environment and Development, concerning ecological assistance, June 1992; Agenda 21, Chapter 12, 12.47 ; development of contingency plans ; Directive principles relating to internally-displaced persons, 1998; Pinheiro principles, 2005; and the Nansen principles, 2011),

Considering the numerous international conferences that also refer to such situations, including:

- the Kyoto Conference (1997) and that of The Hague (2000) which set forth the risks of large migrations linked to climate change,

- the World Conference on the Prevention of Natural Disasters (Hyogo, January 2005) which insisted on prevention linked in particular to ecological refugees,

Considering that certain organs of the United Nations have spoken of this matter:

- The General Assembly of the United Nations in resolutions 2956 (1972) and 3455 (1975) on displaced persons, resolution 36/255 of 17 December 1981 on strengthening the capacity of the United Nations system in the face of natural disasters and other catastrophes, resolution 43/131 of 8 December 1988 on humanitarian assistance to victims of natural disasters and emergency situations of the same type, resolutions 45/100 of 14 December relative to humanitarian assistance to victims of natural disasters and emergency situations of the same type, resolution 49/22 of 13 December 1994 concerning the international decade for the prevention of natural disasters,
- The Security Council (5663rd session of 17 April 2007) making the link between the impact of climate change and international security, in particular in respect to persons who risk displacement by 2050;
- The Secretary General of the United Nations in his message of 5 June 2006 exhorting governments and societies through the world to think of those who cannot subsist in arid zones and will become ecological refugees,

Considering that the specialized institutions of the United Nations such as the World Health Organization, UNESCO, the World Bank, and other institutions in the United Nations system, such as the High Commissioner for Refugees, the United Nations Environment Programme, and the United Nations Development Programme, regional organizations such as the Council of Europe, the European Union, the African Union have drawn attention to the challenges of environmental migrations and the International Organization for Migration (IOM) has increased its activities in favor of environmentally-displaced persons: report from the High-Commissioner of the United Nations on the links between climate change and human rights January 2009; report from the special Reporter on human rights for displaced persons in their own country, Mr. Chaloka Beyani 2010; communication from the European Commission of the 16 April 2013 on strategies of adaptation to climate change,

Considering the international agreements that already take into consideration environmental displacements, notably:

- The International Labour Organization's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries of 27 June 1989;
- The Convention to Combat Desertification of 12 September 1994;
- The Convention concerning handicapped persons of the 13 December 2006;
- The African Union's Convention for the Protection and Assistance of Internally Displaced Persons in Africa of October 22, 2009;

Recognizing the duty of the international community to assist a State that suffers ecological disaster,

Considering that, despite numerous international agreements aimed at protecting the environment, international refugee law lacks an instrument specifically foreseeing the situation of environmentally-displaced persons which can be invoked in their favor,

Reaffirming the principle of common but different responsibilities of States as recognized in article 3 of the Framework Convention on Climate Change,

Considering that in these circumstances it is the duty of the international community of States to organize their solidarity and that of other actors by elaborating an agreement on the international status of environmentally-displaced persons

Considering that this status should encompass individuals, families and populations forced to move either within or away from their State of residence,

Considering that the status of environmentally-displaced persons should be based on respect for the international legal instruments and protective principles, notably the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights of December 16, 1966,

have agreed to the following:

Chapter 1 - Objective, definitions, scope of application

Article 1 – Objective

The objective of this Convention is to establish a legal framework that guarantees the rights of environmentally-displaced persons and to organize their reception as well as their eventual return, in application of the principle of solidarity.

To this end, each Contracting Party undertakes to protect environmentally-displaced persons in conformity with human rights law guaranteed by international law and to ensure the full exercise of those rights specifically set forth by the present text.

Article 2 – Definitions

1. The term “State Party” refers, unless otherwise indicated, to a Contracting Party to the present Convention.
2. “Environmentally-displaced persons” are individuals, families, groups and populations confronted with a sudden or gradual environmental disaster that inexorably impacts their living conditions, resulting in their forced displacement, at the outset or throughout, from their habitual residence.

2.1 “Sudden environmental disaster” is a rapidly occurring degradation of natural and/or human origin.

2.2 “Gradual environmental disaster” is a slow, progressive or planned degradation of natural and/or human origin.

2.3 “Forced displacement” is defined as any temporary or permanent displacement made inevitable by environmental disaster, either within a State or from the State of residence to one or more receiving States, of individuals, families or populations.

Article 3 – Scope of Application

The present Convention has a universal aim. It applies to inter-State as well as to internal environmental displacements.

The present Convention also equally applies to environmental displacements caused by armed conflicts or acts of terrorism.

Chapter 2 –Principles

Article 4- Principle of Solidarity

The rights recognized by the present Convention are exercised according to the principle of solidarity whereby States and public authorities and private actors must do the utmost possible to accept environmentally displaced persons and contribute to the financial efforts required.

Article 5- Principle of common but differentiated responsibilities

In the interests of present and future generations and on the basis of equity, the obligations set forth in the present Convention shall be implemented with respect to the principle of common but differentiated responsibilities and in function of the respective capacities of State Parties, including in terms of reception.

The States Parties, within one year of its opening for signature, undertake to adopt an additional protocol, on the liability of public and private actors with the aim of prevention and reparation.

Such liability derives from breach of positive or negative obligations of a nature to make inevitable, directly or indirectly, environmental displacements.

Article 6 – Principle of effective protection

In order to render concrete and effective the rights conferred by the present Convention, the World Agency for Environmentally-Displaced Persons (WAEP) and the States Parties

have positive obligations to develop and implement policies permitting environmentally-displaced persons to exercise the rights guaranteed by the present Convention.

Article 7 – Principle of non-discrimination

The enjoyment of the rights recognized in the present Convention shall be ensured without distinction based, inter alia, on sex, sexual orientation, race, color, language, religion, political or other opinions, national or social origin, ethnicity, wealth, birth, disability or age.

Article 8 - Principle of non-expulsion

State Parties may not expulse a candidate who has the status of an environmentally displaced person.

Chapter 3- Rights guaranteed to persons threatened with displacement

Article 9 – Rights to information and participation

1. Each person, each family, groups and each population has the right of access, as early as possible, to information relating to environmental threats and critical situations implied by these threats.
2. Each person, each family, groups and each population has the right to participate in the determination of policies and programs to prevent environmental disasters and to take charge, at the outset or throughout, of the consequences.
3. The States Parties undertake to implement the rights to information and participation in elaboration of legal ruling in a manner that will enable their exercise to have a real influence on decisions relating to environmental threats.
4. State Parties shall inform their populations of the existence of the status of environmentally displaced persons and the terms for its recognition.

Article 10- The Right to Displacement

All persons, each family, each group and each population confronted by sudden or gradual environmental degradation that inexorably impacts their living conditions has the right to move within or outside of their home State. State Parties shall not in any way hinder, attempt to hinder or allow any hinderance with this displacement.

Article 11- The Right to Refuse Displacement

When displacement is necessary, and implemented by public authorities, it can only take place with the consent of the persons concerned, except in cases of grave and imminent danger.

Persons duly informed opposing their displacement do so at their own risks and peril.

Chapter 4- Rights guaranteed to displaced persons

Article 12- Rights common to inter-State and internally displaced persons

1. Right to assistance

Each person, each family, each group and each population victim of an environmental disaster has the right to assistance in all locations. This right exists from the moment when the situation becomes critical, during and after the environmental disaster.

The States Parties undertake to place no obstacle in the way of concrete and effective implementation of this right. They undertake also to elaborate and implement a permanent and regularly updated program of assistance to environmentally-displaced persons.

2. Right to water and to subsistence food aid

Each environmentally-displaced person has the right to an adequate supply of drinking water and food.

3. Right to health care

Each environmentally-displaced person has the right to receive necessary health care. In particular, vulnerable persons are entitled to specific support.

4. Right to juridical personality

Each environmentally-displaced person has the right everywhere to recognition of his or her juridical personality.

Each environmentally-displaced person has the right to replacement of the documentation necessary to fully enjoy the rights derived from having legal personality.

5. Civil and Political Rights

Each person environmentally-displaced retains his or her civil and political rights.

6. Right to housing

Each environmentally-displaced person has the right to salubrious and secure housing, adapted to his or her family situation. Each individual can freely choose his or her place of residence.

6.1 If circumstances require, displaced persons are to be housed in a temporary shelter which State Parties to the present Convention undertake to set up with the strictest

respect for human dignity. This stay shall not last longer than required by the circumstances.

6.2 All environmentally displaced persons housed in a temporary shelter have the right to move freely.

6.3 After a stay in a temporary shelter, environmentally displaced persons have the right to adequate housing. To this end, States Parties shall implement policies that make it possible for environmentally displaced persons to leave a temporary shelter to settle into a normal living condition in a place of residence freely chosen.

7. Right to return

An environmentally displaced person has the right to return when his or her place of origin is again habitable. Notwithstanding whether the displacement was inter-state or internal, the State of origin has a positive obligation to organize the return of all environmentally displaced persons under strict conditions of security, maintaining dignity and without risk to health.

8. Prohibition of forced return

Without exception the State may not oppose a displaced person's refusal to return to his home

9. Right to respect for the family

Each environmentally-displaced person has the right:

- (a) not to be separated from family members,
- (b) to the reunification of the family when the members are dispersed by an environmental disaster.

10. Right to work

Each environmentally-displaced person has the right to earn a living by working in the same conditions as other active workers.

11. Right to education and training

Each environmentally-displaced person has the right to receive education and training respectful of his or her culture of origin.

12. Right to maintain cultural specificity

Environmentally displaced persons have the right, in common with other members of their group, to their own cultural life, religion and language.

13. Right in respect of property and personal possessions

Every displaced person has the right to his property and personal possessions. This right includes State Parties' obligations towards providing assistance in the transport of movable possessions to the temporary accommodation. Along with the right to return, the State Parties should undertake to make secure, in as far as is possible, the property and possessions left behind

14. Right to maintain links with pets

State Parties have an obligation to provide assistance in the transportation of pets to the temporary accommodation.

Article 13- The right of inter-State displaced persons to nationality

All environmentally displaced persons have the right to conserve the nationality of his or her State of origin affected by an environmental disaster. If requested, the host State shall facilitate his or her naturalization.

Chapitre 5 – Recognition of the status of environmental displaced person

Article 14 – Recognition of status

The status of an environmentally-displaced person is granted on demand to any person falling under the definition found in paragraph 2 of Article 2 of the present Convention and in accordance with the guidelines established by the High Authority.

Any person that has been granted the status of an environmentally-displaced person enjoys the rights guaranteed under the chapter 4 of the present Convention.

Article 15 – Criminal Immunity

State Parties shall not impose criminal sanctions on an environmentally-displaced person who, arriving from his or her habitual place of residence, enters or is illegally on the territory of a State Party provided that the person has reported to the police services within one month of entering the State Party's territory.

Article 16 – Procedure

1. In collaboration with the High Authority, State Parties shall adopt within two years of the entry into force of the present Convention a procedure to claim the status of an environmentally-displaced person.

2. A person claiming the status of an environmentally-displaced person is granted a temporary residence permit until a final decision of the National Commission on Environmental Displacements or, in case of an appeal, until the decision of the High Authority. The holder of a temporary residence permit enjoys the rights guaranteed in chapter 4 of the present Convention.

3. The procedure for claiming the status shall ensure that the person making the claim be able to provide as much information as possible to document the claim, and can do so, if needed, with the assistance, provided free of costs, of a translator-interpreter.

4. The decision to accept or to reject a claim for the status of an environmentally-displaced person is rendered by a National Commission on Environmental Displacements. The Commission can render a decision only after having held a adversarial and public hearing during which the person claiming the status of an environmentally-displaced person and a representative of the State Party have had the opportunity to make submissions. At the hearing the person claiming the status of an environmentally-displaced person may be represented by a counsel of his or her own choosing or, if needed, appointed by the Commission. The person has the right to the services of an interpreter if he or she does not understand or does not speak the language of the proceedings.

5. Claims for the status of an environmentally-displaced person based on the same environmental disaster can be heard together. In such cases, the group of claimants may be represented or assisted by one or more counsels of their own choosing or that are appointed by the Commission. Claimants and their counsels shall have access free of cost to the assistance of interpreters-translators at the various stages of the procedure. The existence of a group of claimants does not preclude individual claims or other subsequent group claims for the same environmental disaster.

6. In all cases, the decision to accept or reject a claim for the status of an environmentally-displaced person is made on an individual basis for each claimant. Reasons for a decision must be given.

Article 17 – National Commissions on Environmental Displacements

Each State Party, following the entry into force of the Convention, shall create a national commission on environmental-displacements to hear status claims. Each commission shall consist of 9 independent members, experts in the field of human rights, the environment and peace. The members shall be appointed by the highest judicial authorities of the country.

Article 18 – Appeal to the High Authority

1. The decisions of the national commissions can be appealed to the High Authority within one month following notification to the concerned parties.
2. A claimant's appeal from a judgment for the status of an environmentally-displaced person has a suspensive effect on that judgment and the temporary residence permit previously granted to the claimant is extended.
3. The High Authority shall hear any Contracting Party, any State not Party to the present Convention, and any concerned NGO and, on invitation by the President of the High Authority, any individual can submit written submissions and participate to the hearings.
4. The procedural guarantees provided for in paragraphs 3 to 6 of Article 16 of the present Convention are applicable to the appeal process.

Article 19 – Termination of status

1. The protection granted by the status shall cease when the conditions for its recognition no longer exist.
2. Any environmentally-displaced person can extend his or her stay after the termination of status. In this situation the State shall facilitate the stay of the person interested on its territory.

Chapitre 6 — Institutions

Article 20 – Conference of Parties

1. The first meeting of the Conference of the Parties shall, on notification by the registry, take place at the latest one year after the date of the entry into force of the present Convention. Thereafter, the Parties shall hold an ordinary meeting at least once every two years. An extraordinary meeting can be held at the request of at least one-quarter of the the State Parties.
2. The debates shall be open to the public. NGOs may be granted observer status.
3. The Conference of the Parties designates the members of the Executive Council of the World Agency for Environmentally-Displaced Persons (WAEP), of the World Fund for the Environmentally-Displaced (WFED) and elects the members of the High Authority.
4. The Conference of Parties shall adopt Protocols by a two-thirds majority of the Parties present and voting at a meeting.

5. The Conference of Parties shall examine and assess the policies adopted by the Parties, in particular the policies and programs provided for in Article 8, paragraph 2, and in Article 11, sub paragraph 1(2) of the present Convention, and the legal and methodological steps they follow to ensure aid, assistance, and the welcoming of environmentally-displaced persons in order to further improve their situation.

6. The bodies of the Convention shall fulfill their functions in compliance with the Aarhus Convention on Access to Information, Public Participation on Decision-making, and Access to Justice in Environmental Matters.

Article 21 - World Agency for Environmentally-Displaced Persons (WAEP)

1. Due to the foreseeable growth and permanence of environmental displacements, a World Agency for Environmentally-Displaced Persons (WAEP) shall oversee the application of the present Convention.

2. WAEP is constituted a specialized agency of the United Nations.

3. WAEP includes a board of directors, a scientific council, and a Secretariat.

4. WAEP has as functions:

- to conduct prospective studies on the evolution of environmental displacements;
- to evaluate policies susceptible of creating environmental displacements;
- to mobilize the means that can reduce vulnerabilities which are at the origin of environmental displacements;
- to contribute to the general organization of assistance aimed at preventing and limiting displacements and promoting the return as early as possible of environmentally-displaced persons;
- to evaluate programs to prevent environmental displacements and to aid the displaced;
- to support actively the organization of receipt and return, when it is possible, of the environmentally-displaced.

Article 22 – High Authority

1. The High Authority is composed of 21 persons recognized in the fields of human rights, environmental protection and peace. The selection shall be based on equitable geographic distribution.

The members are elected by a majority vote of those present and voting, by secret ballot of the Conference of the Parties. Each State Party can present two candidates. NGOs can present a total of 5 candidates.

The members of the High Authority serve in their personal capacity. They elect from among themselves a Chair. Members of the High Authority are elected for a term of 6 years.

2. The High Authority has the power to:

- define the criteria and the procedures for acquiring the status of environmentally-displaced person;
- hear the appeal from decisions to grant or refuse the status of environmentally displaced person;
- to decide as the body of first and last resort requests for status from nationals of States not Party to the Convention or in case of failure by a State Party;
- decide questions concerning the interpretation and application of the Convention at the request of national commissions or any interested natural or moral person;
- assess the compliance of national provisions with the Convention at the request of any interested natural or moral person and prepare a synthesis of national implementation reports. This synthesis shall indicate deficiencies as well as good practices;
- propose recommendations to the Conference of the Parties;
- propose amendments to the present Convention.

c) The decisions of the High Authority are final and binding on State Parties. The High Authority can request the Conference of the Parties to suspend the right to vote of States Parties which manifest consistent non-compliance with these decisions.

Article 23 – World Fund for the Environmentally-Displaced (WFED)

1. The WFED's mission is to provide financial and material assistance for the receipt and return of the environmentally-displaced. This assistance can be given to international and regional organizations, local and regional governments and non-governmental organizations.

2. The WFED is notably supported by:

- voluntary contributions from States and private actors;
- mandatory contributions funded by a tax based principally on the causes of sudden or gradual environmental disasters susceptible of creating environmental displacement,

3. The WFED will facilitate the conclusion of bi-lateral agreements. It will facilitate regional and international financial and material aid for the welcome and the return of the environmentally displaced.

Article 24 – Institutional Protocols

The organizational arrangements of the WAEP and the High Authority will be set forth in an additional protocol to the present Convention that shall be elaborated within one year following the opening for signature of the Convention.

The organizational arrangements of the WFED, the setting of the tax base,

its collection and allocation will be set forth in an additional protocol to the present Convention that shall be elaborated within one year following the opening for signature of the Convention.

Chapitre 7 — Measures of Implementation

Article 25 - Cooperation

The implementation of the present Convention rest in the first place on institutions that it creates with the active participation of international and regional organizations as well as the secretariats and committees of international agreements for the protection of the environment and the protection of human rights.

Article 26 - Bi-lateral or regional agreements

The State Parties are invited to conclude bi-lateral or multi-lateral agreements on a regional scale in order to fulfil their obligations towards the present Convention.

Article 27 – National Implementation Reports

1. The State Parties shall permanently review the application of the present Convention on the basis of national reports communicated to the Secretariat, and, having this aim in mind, shall:

- Associate civil society through the process of elaborating reports;
- Exchange information on lessons drawn from the conclusion and application of bilateral and multilateral agreements or other arrangements relevant to the object of the present Convention, to which one or more of them are Parties.

2. The methodology of the report shall be fixed by a tripartite committee made up of the State Party, experts, and representatives of the present Convention.

Chapitre 8 — Final Dispositions

Article 28 – Relationship with other instruments

The provisions of the present Convention cannot be interpreted as affecting the rights and guarantees that are more favorable to environmentally-displaced persons included in other binding national and international instruments that are or will enter into force, notably those concerning minorities and aboriginal peoples.

The provisions of the present Convention do not affect the right to seek asylum or to benefit from other forms of national or international protection.

Article 29 – Relations with non-Parties

1. The State Parties may invite, if appropriate, States that are not a party to the present Convention to cooperate to the implementation of the present Convention.
2. The State Parties shall take appropriate measures, in accordance with international law, to ensure that no one undertakes any activities that are contrary to the purpose, the object and the principles of the present Convention.

Article 30 – Dispute Settlement

1. In case of a dispute between two or more State Parties about the interpretation or the application of the Convention, the concerned Parties shall attempt to settle it through negotiation or other peaceful means of their choice.
2. If the concerned Parties cannot settle the dispute through the ways mentioned in the paragraph above, the dispute is submitted to the International Court of Justice.

Article 31 - Amendments to the Convention and Protocols

1. Each Party can propose an amendment to the present Convention.
2. Each Party to a Protocol can propose an amendment to this Protocol.
3. The text of each proposed amendment is communicated by the Secretariat to the State Parties at least six month before the meeting to which the amendment is proposed for adoption.
4. If all efforts to adopt an amendment through consensus are unsuccessful, the amendment may be adopted through a two-thirds majority vote of the Parties present and voting at the meeting.

Article 32 - Protocols

1. The Conference of the Parties may adopt any new Protocol.
2. The text of a proposed Protocol is communicated by the Secretariat to the State Parties at least six month before the meeting to which the Protocol is proposed for adoption.

Article 33 – Reservations

No reservations may be made to the present Convention and the Protocols.

Article 34 - Signature, ratification, acceptance or approval

The present Convention and the Protocols are open for signature by every State and every Regional Economic Integration Organization. The Convention and the Protocols shall be submitted for ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the United Nations who shall act as depository.

Article 35 – Entry into force

The present Convention will entry into force the thirtieth (30) day following the date of deposit of the tenth (10) instrument of ratification, acceptance or approval.

Article 36 – Authentic Texts

The present Convention whose authentic languages are Arabic, Chinese, English, French, Russian and Spanish, shall be deposited with the depository.

In witness of which, the undersigned, duly authorized, have signed the present Convention.

Done at on two thousand

Third version of the Draft Convention, Limoges, May 13 2013.

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