

RESEARCH
ARTICLE**The Protection of Environmental Refugees in International Human Rights Law**

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Environmental refugee, human rights, international human rights conventions, global, regional.

Abstract

This study aims to shed light on the adequacy of international human rights law rules in protecting the rights of environmental refugees, especially in light of the absence of a specific legal framework for them and their exclusion from the protection provided by refugee-specific conventions.

Although environmental refugees enjoy all the human rights stipulated in various international human rights conventions, whether global or regional, regardless of their status, their rights still require further protection and enhancement. This can be achieved by establishing a legal framework that organizes and protects their rights, in addition to activating international cooperation mechanisms to assist them.

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Introduction

The types of human movement vary according to different causes. Some people move in search of economic opportunities and new prospects, while others move to escape armed conflict, food insecurity, poverty, persecution, or other human rights violations and abuses. Others migrate due to the negative effects of climate change or natural disasters. The phenomenon of environmental refuge is associated with many factors, most notably climate change and its resulting natural disasters, as well as ecological degradation, which is often caused by human activity. These factors push people to move from one region or country to another in search of basic needs essential for survival.

An environmental refugee is a term describing individuals forced to leave their place of residence, whether temporarily or permanently, due to environmental degradation that directly threatens their lives or seriously affects their quality of life.

The term "environmental refugee" has been used by various non-governmental organizations, in the media, and in some academic literature to raise awareness and focus on the forced nature of such displacement. However, the use of the term "refugee" has later been criticized because it has a specific legal meaning in the context of the 1951

Geneva Convention on the Status of Refugees and international refugee law. The International Organization for Migration (IOM) considered the use of the term "refugee" inappropriate in this context.¹

International reports confirm that environmental refuge is steadily increasing, especially given the ongoing severe climate degradation and its negative impacts on health, food security, water, and livelihoods that rely on natural resources. According to a World Bank report, climate change could force about 216 million people across six regions to migrate within their countries by 2050.²

In light of the rising number of environmental refugees and the conflicting opinions about the absence of a legal framework specifically addressing their rights at the international level—especially as they are not included among the categories protected under refugee-specific conventions such as the 1951 Geneva Refugee Convention—this study seeks to explore the adequacy of international human rights law rules in protecting this category of refugees.

Study Problem: How effective are the rules of international human rights law in protecting environmental refugees?

Study Objective: This study aims to highlight the international conventions for human rights protection, both global and regional, and assess their adequacy in protecting environmental refugees, especially in the absence of a legal framework safeguarding their rights.

Study Plan: The study addresses the research problem in two main sections. The first focuses on the protection of environmental refugees under global human rights conventions, while the second addresses their protection under regional conventions.

Section One: Protection of Environmental Refugees under Global Human Rights Conventions

Global conventions have a broad scope encompassing the entire international human family without being restricted to a particular region or group. Notable examples include various declarations, conventions, and covenants issued by the United Nations for the protection and development of human rights, starting from the 1945 UN Charter, the 1948 Universal Declaration of Human Rights, the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and the 1989 Convention on the Rights of the Child, among others.³

This study will focus on the adequacy of the following in protecting environmental refugees: the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1989 Convention on the Rights of the Child (CRC), and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).

First - Under the ICCPR (1966): The ICCPR is one of the primary instruments that reflect the classical concept of fundamental rights and freedoms. It builds upon the rights declared in the 1948 Universal Declaration of Human Rights and is dedicated to civil and political rights.

The ICCPR includes two Optional Protocols.⁴

¹ **Climate Change, Environmental Degradation, And Migration**, Accompanying the Document, Communication from the Commission to the European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, An EU Strategy on adaptation to climate change, P 14. For more see Document **N°SWD(2013) 138 final**, At 16/04/2013

² **The United Nations Calls for Support for the Increasing Number of Environmental Migrants**, *InfoMigrants website*, accessed on 10/11/2024 at 14:47, at the following link:

<https://www.infomigrants.net/ar/post/35251/%D8%A7%D9%84%D8%A7%D9%85%D9%85-%D8%A7%D9%84%D9%85%D8%AA%D8%AD%D8%AF%D8%A9-%D8%AA%D8%B7%D8%A7%D9%84%D8%A8-%D8%A8%D8%AF%D8%B9%D9%85-%D8%A7%D9%84%D8%B9%D8%AF%D8%AF-%D8%A7%D9%84%D9%85%D8%AA%D8%B5%D8%A7%D8%B9%D8%AF-%D9%85%D9%86-%D8%A7%D9%84%D9%85%D9%87%D8%A7%D8%AC%D8%B1%D9%8A%D9%86-%D8%A7%D9%84%D8%A8%D9%8A%D9%8A%D9%8A%D9%8A%D9%8A%D9%86>

³ **Nour Farhat**, *International Human Rights Law and Related Rights, The Arab Guide for Human Rights and Development, The Arab Organization for Human Rights in cooperation with the Office of the High Commissioner for Human Rights and the United Nations Development Programme*, First Edition, 2005, p. 44.

⁴ Adopted and opened for signature, ratification, and accession by United Nations General Assembly Resolution 2200 A (XXI) of 16 December 1966, which entered into force on 23 March 1976. To view the text of the Covenant, click on the following

The first, effective from March 23, 1976, allows individuals to file complaints regarding human rights violations. The second, effective from July 11, 1991, pertains to the abolition of the death penalty.

Regarding state obligations, the Human Rights Committee,⁵ in its General Comment No. 31 (80), affirms that Article 2 outlines the legal commitments of state parties⁶, including the general obligation to respect and ensure all rights recognized in the Covenant for all individuals within their territory and subject to their jurisdiction.

Under Article 26 of the Vienna Convention on the Law of Treaties, states are obliged to fulfill the commitments in good faith. Article 27 of the same Convention stipulates that states cannot invoke their constitutional or domestic laws to justify failing to fulfill treaty obligations. Therefore, per Article 2(1) of the ICCPR, state parties must respect and ensure the rights recognized in the Covenant to all individuals within their territory or under their jurisdiction, regardless of nationality or statelessness, including asylum seekers and others⁷.

Hence, state parties are obligated to protect the rights of environmental refugees under Article 2 of the Covenant.

Although the ICCPR does not explicitly grant individuals the right to seek asylum due to environmental degradation, they may still seek asylum under Article 6 if their lives are threatened by climate change, rising sea levels, desertification, or lack of fresh water due to pollution. The Human Rights Committee⁸ holds that the right to life includes living with dignity and protection from actions or omissions that may lead to unnatural or premature death.⁹

States' obligations, according to the Committee, extend to reasonably foreseeable threats that endanger life. Environmental degradation, climate change, and unsustainable development pose some of the most serious threats to the current and future generations' ability to enjoy the right to life.¹⁰

Regional human rights courts have acknowledged the undeniable link between environmental protection and the fulfillment of human rights. Environmental degradation has been proven to negatively affect the actual enjoyment of the right to life, and severe environmental harm has led to findings of violations of this right.¹¹

According to the Human Rights Committee, environmental pollution directly impacts individuals' rights to privacy, family life, and home, particularly when its harmful consequences are serious due to its intensity, duration, or the

link:

<http://www.ohchr.org/AR/ProfessionalInterest/Pages/CESCR.aspx>

⁵ **Baya Abdelkader**, *The Two International Covenants on Human Rights Between Commitment and Reservation*, Houma Publishing, Algeria, 2014, p. 46

⁶ To view the text of the First Optional Protocol, click on the following link:

<https://www.ohchr.org/ar/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political>

⁷ To view the text of the Second Optional Protocol, click on the following link:

<https://www.ohchr.org/ar/instruments-mechanisms/instruments/second-optional-protocol-international-covenant-civil-and>

⁸ **Paragraphs 3 & 4**

Human Rights Committee, General Comment No. 31 (80) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, adopted on 29 March 2004 (Session 2187), Document No. CCPR/C/21/Rev.1/Add.13, dated 26 May 2004.

⁹ **Paragraph 10**

The Human Rights Committee was established under Article 28 of the International Covenant on Civil and Political Rights. It consists of 18 members elected for a renewable four-year term. Members serve in their personal capacity and must be nationals of States Parties to the Covenant. They are required to possess high moral character and recognized competence in the field of human rights, with a preference for individuals with legal experience.

For more information about the Committee, see Articles 28 to 34 of the International Covenant on Civil and Political Rights (1966)

¹⁰ **Paragraph 9-4**

Views adopted by the Human Rights Committee under Article 5 (4) of the Optional Protocol concerning Communication No. 2728/2016 (Ioane Teitiota), Document No. CCPR/C/127/D/2728/2016, dated 23 September 2020.

¹¹ **Paragraph 62**

Human Rights Committee, General Comment No. 36 on Article 6 (Right to Life), Document No. CCPR/C/GC/36, dated 3 September 2019.

physical or mental harm it causes. Therefore, environmental degradation may adversely affect individuals' well-being and constitute a violation of privacy and family life as protected by Article 17 of the Covenant.¹²

Thus, it can be said that the International Covenant on Civil and Political Rights imposes three levels of obligations on State Parties, which can be applied to environmental refugees:¹⁸

The first obligation is to respect the rights of individuals on their territory, whether they are nationals or non-nationals. In this case, the State Party to the Covenant is obligated to respect the rights of environmental refugees. Accordingly, governments must refrain from violating human rights, such as arbitrary deprivation of life, which could result from the host state deporting environmental refugees despite knowing that such removal poses a real danger to their lives due to the exacerbating effects of climate change.

The second obligation relates to protecting the enjoyment of rights. It requires State Parties not only to refrain from violating an individual's rights themselves but also to protect the environmental refugee from violations of their rights by third parties, whether individuals, companies, or other non-governmental actors. They may be exposed to hate speech, discrimination, or other campaigns that could endanger their lives or lead to deportation. Therefore, states must create a legislative and political framework and allocate sufficient resources to implement these laws and policies effectively.

As for the third obligation, it requires the State Party to promote and fulfill the rights of environmental refugees. That is, to take the necessary steps to create an environment conducive to the full realization of the relevant rights. This is a "positive" obligation that requires the State Party to take concrete steps, including allocating appropriate resources, to fulfill its commitments under the Covenant. This includes providing legal assistance to environmental refugees, especially when they face deportation proceedings.

According to the Human Rights Committee, the obligation not to return, deport, or otherwise transfer individuals under Article 6 of the Covenant may be broader than the principle of non-refoulement under international refugee law. It may also require the protection of foreigners who do not qualify for refugee status. However, State Parties must allow all asylum seekers who claim a real risk that their right to life would be violated in their country of origin the possibility to benefit from protection against refoulement through refugee status determination procedures or other protective statuses as individuals or groups¹⁴. Therefore, any person who believes their life is at risk due to climate change or environmental pollution may seek asylum in another country or request not to be returned to their country.¹⁵

Second - Under the Convention on the Rights of the Child of 1989:

The Convention on the Rights of the Child was adopted and opened for signature, ratification, and accession by General Assembly Resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990 in accordance with Article 49¹⁶. In truth, the adoption of the Convention on the Rights of the Child was not merely a

¹² **Paragraph 7-4**

Views adopted by the Human Rights Committee under Article 5 (4) of the Optional Protocol concerning Communication No. 2751/2016 (Norma Portillo Cáceres v. Paraguay), Document No. CCPR/C/126/D/2751/2016, dated 20 September 2019.

See also: Paragraph 9-5

Views adopted by the Human Rights Committee under Article 5 (4) of the Optional Protocol concerning Communication No. 2728/2016 (Ioane Teitiota), previously cited reference.

¹³ **Paragraph 7-8**

Views adopted by the Human Rights Committee under Article 5 (4) of the Optional Protocol concerning Communication No. 2751/2016 (Norma Portillo Cáceres v. Paraguay), previously cited reference.

¹⁴ **For further details, see Paragraph 12:**

Human Rights Committee, General Comment No. 31 (80) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, adopted on 29 March 2004 (Session 2187), previously cited reference.

¹⁵ **Paragraph 9-3:**

Views adopted by the Human Rights Committee under Article 5 (4) of the Optional Protocol concerning Communication No. 2728/2016 (Ioane Teitiota), previously cited reference.

¹⁶ One such communication received by the Human Rights Committee was from Mr. Ioane Teitiota against New Zealand, opposing his deportation to Kiribati on the grounds that his right to life, guaranteed under Article 6 of the Covenant, was threatened due to the effects of climate change and rising sea levels. These conditions had forced him to migrate from the island of Tarawa in Kiribati to New Zealand.

legal abstraction or formality or an addition to the series of international human rights documents. Rather, it was a response to the tragic reality endured by children in many parts of the modern world¹⁷. Thus, the 1989 Convention on the Rights of the Child represents international consensus on the need for an international instrument that organizes children's basic rights and has received the highest number of ratifications¹⁸. It aims to advance international standards for children's rights by developing and elaborating many rights previously addressed in earlier instruments.

The Convention was supplemented by three protocols: the first relates to the sale of children, child prostitution, and child pornography¹⁹; the second concerns the involvement of children in armed conflict²⁰; and the third pertains to the procedure for submitting complaints. It was adopted by the General Assembly on 19 December 2011 and entered into force on 14 April 2014.

Although Article 4 of the 1989 Convention on the Rights of the Child adopts the division of human rights into civil and political rights on the one hand, and economic, social, and cultural rights on the other, the Committee on the Rights of the Child²¹ affirmed the interdependence and indivisibility of children's rights. It warned against distinguishing too sharply between economic, social, and cultural rights and civil and political rights, as realizing economic, social, and cultural rights often affects children's ability to fully exercise their civil and political rights and vice versa.²²

The Convention places special emphasis on four general principles to assist in interpreting the Convention as a whole and guiding national implementation programs²³. These principles are reflected particularly in Articles 2, 3, 6, and 12, which concern the right to non-discrimination, the best interests of the child, the right to life, survival, and development, and the right of the child to be heard.

Children are disproportionately affected by environmental changes due to their unique physiological and developmental needs. Changes in temperature, air and water quality, and nutrition are likely to have more severe and lasting effects on children's health, development, and well-being, as well as on their overall quality of life.

The Committee considered that both sudden events—such as severe storms and floods—and slow-onset processes—such as sea level rise, salinization, and land degradation—can drive people to move across borders in search of protection from climate-related harm. The Committee further stated that the effects of climate change in receiving countries may, in the absence of strong national and international efforts, expose individuals to violations of their rights under Articles 6 or 7 of the Covenant. Therefore, receiving states are required to fulfill their obligations of non-refoulement, especially when living conditions in the country of origin may become incompatible with the right to live in dignity—even before the threat becomes a reality.

For more, see:

Views adopted by the Human Rights Committee under Article 5 (4) of the Optional Protocol concerning Communication No. 2728/2016 (Ioane Teitiota), same reference as above.

¹⁷ to view the full text of the Convention, click the following link:

Convention on the Rights of the Child – OHCHR

¹⁸ **Dawia Kirouani**, *The Child's Right to Protection from Exploitation and Violence in All Its Forms*, Master's thesis, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, 2005, p. 82.

¹⁹ As of 08/08/2023, 196 countries have ratified the Convention on the Rights of the Child.

To view the list of countries that have ratified the convention, click the following link:

UN Treaty Collection – Treaties Home

²⁰ Adopted and opened for signature, ratification, and accession by UN General Assembly resolution 263 (Fifty-Fourth Session) dated 25 May 2000, and entered into force on 18 January 2002.

To view the full text of the Optional Protocol, click the following link:

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography – OHCHR

²¹ Adopted and opened for signature, ratification, and accession by UN General Assembly resolution 263 (Fifty-Fourth Session) dated 25 May 2000, and entered into force on 23 February 2002.

To view the full text of the Optional Protocol, click the following link:

Optional Protocol on the Involvement of Children in Armed Conflict – OHCHR

²² The **Committee on the Rights of the Child** is a treaty body established under **Article 43** of the Convention on the Rights of the Child. Initially composed of 10 independent experts, it currently consists of 18 independent experts of high moral standing and recognized competence in the field covered by the Convention. Members are elected by State Parties from among their nationals and serve in their personal capacity. Due regard is given to equitable geographical distribution and the principal legal systems. Members may serve a four-year term and may be re-elected if nominated again.

For more about the Committee, see:

Rules of Procedure of the Committee on the Rights of the Child, Document No. CRC/c/4/Rev.3, dated 16 April 2013.

²³ **Paragraph 30**, Committee on the Rights of the Child, *General Comment No. 19 (2016) on Public Budgeting for the Realization of Children's Rights (Article 4)*, Document No. CRC/C/GC/19, dated 20/07/2016.

Young children are particularly vulnerable to climate change-related stresses. UNICEF has stated that climate change is the greatest threat facing the world's children and future generations.²⁴

The Intergovernmental Panel on Climate Change confirmed in its 2018 report that climate change poses a threat to the enjoyment of human rights protected by the Convention, such as the right to life, adequate food, adequate housing, health, water, and cultural rights.²⁵

There is growing recognition that climate change is a major factor in human displacement. In extreme cases, entire populations in small island states and low-lying coastal areas may need to relocate. It is estimated that the seven years preceding 2015 saw the displacement of around 22.5 million people each year due to climate- or weather-related disasters. These disasters are expected to increase in frequency and severity as a result of climate change.²⁶ Migration has thus become a natural human adaptation strategy in response to climate change and natural disasters—and the only option for entire communities.²⁷

Therefore, State Parties to the Convention must protect the rights of children who migrate or seek refuge due to environmental and climate degradation, especially since Article 2 of the Convention establishes the fundamental principle of applying its provisions to all children without distinction, exception, or discrimination, regardless of gender, race, color, language, religion, political or other opinion, national, ethnic, or social origin, birth status, disability, or any other status.

Moreover, states' obligations under the Convention apply within the territory of the state, including toward children attempting to enter the country. Accordingly, the enjoyment of the rights provided for in the Convention is not limited to children of the State Party but must be available to all children, including asylum-seeking, refugee, and migrant children, regardless of nationality or migration status or statelessness. States must refrain from referring unaccompanied and separated children to refugee status determination procedures if their presence does not raise protection needs under international refugee law. In line with principles regarding states' responsibilities toward unaccompanied or separated children in their territory, children who are not recognized as refugees or do not qualify for complementary protection are still entitled to the protection of all provisions of the Convention as long as they are within the state's jurisdiction.²⁸

Any child refugee policy due to environmental and climate degradation must be based on the four general principles set by the Committee on the Rights of the Child. With respect to administrative actions related to education, care, health, environment, living conditions, protection, asylum, migration, and access to nationality, the state must assess such actions in accordance with the best interests of the child principle and use it as a guide in all implementation measures.²⁹

²⁴ **Human Rights Centre**, *Fact Sheet No. 10 (Rev.4): The Rights of the Child*, Global Human Rights Campaign, United Nations Office, Geneva, p. 4.

To view the full fact sheet, visit the Office of the High Commissioner for Human Rights:

Fact Sheet in Arabic – PDF (Accessed on 07/01/2025 at 14:53).

²⁵ **Paragraphs 4–5**

Report of the United Nations High Commissioner for Human Rights, Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child, Human Rights Council, 35th Session, 6–23 June 2017. Document No.: **A/HRC/35/13**, dated **04/05/2017**.

²⁶ **Paragraph 03**

Joint Statement issued by the *Committee on the Elimination of Discrimination against Women*, the *Committee on Economic, Social and Cultural Rights*, the *Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*, the *Committee on the Rights of the Child*, and the *Committee on the Rights of Persons with Disabilities*. Document No.: **HRI/2019/1**, dated **14/05/2020**.

²⁷ **Paragraph 26**

Report of the United Nations High Commissioner for Human Rights, Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child, Human Rights Council, 35th Session.

Previously cited source: Document No. **A/HRC/35/13**, dated **04/05/2017**.

²⁸ **Paragraph 14**

Joint Statement by the same UN committees listed above.

Previously cited source: Document No. **HRI/2019/1**, dated **14/05/2020**.

²⁹ **Paragraphs 12, 32, and 78**

Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, 39th Session, 17 May – 3 June 2005.

Document No.: **CRC/GC/2005/6**, dated **01/09/2005**.

The child's right to be heard, mentioned in paragraph 2 of Article 12 of the Convention, applies to all relevant judicial proceedings affecting the child, including unaccompanied children, asylum-seeking children, and refugee children. Standard administrative procedures include decisions regarding children's education, health, environment, living conditions, and protection.³⁰

The Committee on the Rights of the Child considers Article 6 of the Convention a general principle ensuring the child's right to life, obligating State Parties to ensure the child's survival and development to the maximum extent possible and to take all necessary measures to improve maternal and child healthcare and reduce infant and child mortality rates. Article 6 encompasses all aspects of child development; the right to survival and development can only be realized by implementing all other provisions of the Convention, including the right to health, adequate nutrition, social security, a safe and healthy environment, education, and play.³¹

Sudden or slow-onset disasters may lead to massive displacement, potentially separating children from their cultural heritage and hindering access to schools, healthcare facilities, and other essential goods and services. Overcrowding in shelters lacking adequate sanitation and access to clean water may increase the spread of diarrhea and malnutrition—both leading causes of child mortality. Inadequate security in shelters may expose children, especially those traveling alone or separated from their parents, to violence and assault.³²

Third - Under the Convention on the Rights of Persons with Disabilities of 2006:

The Convention is the result of decades of determined efforts by the United Nations to change attitudes and approaches toward persons with disabilities. It elevates the disability rights movement to a new level, shifting the perspective from viewing persons with disabilities as mere “subjects” of charity, medical care, or social protection to recognizing them as “persons” with rights, capable of claiming those rights and making life decisions based on free and informed consent, and as active members of society. The Convention and its Optional Protocol were adopted by General Assembly Resolution 61/106 of 13 December 2006, opened for signature on 30 March 2007, and entered into force on 3 May 2008 after the 20th ratification³³. To date, 184 out of 193 UN Member States³⁴ have ratified the Convention, and 99 have ratified the Optional Protocol.³⁵

Article 3 of the Convention outlines a set of principles that states must guarantee: respect for the inherent dignity and individual autonomy of persons, including the freedom to make their own choices and independence; non-discrimination; equality between men and women; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; accessibility and equal opportunity; and respect for the evolving capacities of children with disabilities and their right to preserve their identities.

³⁰ Paragraph 30

Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1), 62nd Session, 14 January – 1 February 2013.

Document: **CRC/GC/2014**, dated **20 May 2013**.

³¹ Paragraph 32

Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard, 51st Session, Geneva, 25 May – 12 June 2009.

Document No.: **CRC/C/GC/12**, dated **20 July 2009**.

³² Paragraph 10

Committee on the Rights of the Child, General Comment No. 7 (2005) on implementing child rights in early childhood, 40th Session, Geneva, 12–30 September 2005.

Document: **CRC/C/GC/7/Rev.1**, dated **20 September 2006**.

³³ **Paragraph 27** *Report of the United Nations High Commissioner for Human Rights, Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child*, Human Rights Council, 35th Session. **Previously cited source:** Document No. **A/HRC/35/13**, dated **04/05/2017**.

³⁴ **Background of the Convention** *Committee on the Rights of Persons with Disabilities, Office of the United Nations High Commissioner for Human Rights*.

Date accessed: **08/08/2023**, at **11:45 AM**.

Available at: <https://www.ohchr.org/ar/treaty-bodies/crpd/background-convention>

³⁵ **For a list of countries that have ratified the Convention on the Rights of Persons with Disabilities**, see the United Nations website.

Date accessed: **08/08/2023**, at **13:25 PM**.

Link: https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=_en

To achieve this, State Parties commit to guaranteeing and promoting the full enjoyment of all human rights and fundamental freedoms by all persons with disabilities, without discrimination of any kind based on disability, by taking all appropriate measures, including legislative and administrative measures. They also commit to modifying or abolishing existing laws, regulations, customs, and practices that constitute discrimination against persons with disabilities and to ensure that public authorities and institutions act in conformity with the Convention.³⁶

Regarding economic, social, and cultural rights, each State Party undertakes to take measures to the maximum of its available resources, and where needed, within the framework of international cooperation, to achieve the full realization of these rights progressively, without prejudice to those obligations under the Convention that are immediately applicable under international law.³⁷

Given that persons with disabilities are among the most vulnerable groups in emergencies or natural disasters, they often face unequal access to necessities such as water, sanitation, food, and shelter. Therefore, Article 11 of the Convention obligates State Parties, in accordance with their responsibilities under international law, including international humanitarian and human rights law, to take all possible measures to ensure the protection and safety of persons with disabilities in situations of risk, including ... and natural disasters.

States Parties must therefore ensure the principle of non-discrimination in all programs and procedures. This means including persons with disabilities in emergency protocols, ensuring the equitable distribution of aid supplies, and making sure that water, sanitation, and hygiene facilities in shelters and refugee camps are accessible to persons with disabilities. Reconstruction efforts must also ensure that persons with disabilities can live independently in the community.³⁸

States Parties to the Convention must guarantee the recognition of persons with disabilities as equal before the law. According to the Committee on the Rights of Persons with Disabilities, this is a “right that applies everywhere.” There are no circumstances in which international human rights law permits depriving someone of legal recognition or restricting that right—even in emergencies.³⁹

States Parties to the Convention on the Rights of Persons with Disabilities must protect their rights in the event of seeking asylum due to environmental degradation, particularly their rights to life, personal freedom, and security; protection from discrimination; rights to participation, inclusion, and equal opportunity; access to all public facilities and services; access to justice; protection from exploitation, violence, and abuse; protection of mental and physical integrity; access to nationality; the right to mobility; and all other rights and freedoms guaranteed by the Convention.

In addition, states should provide refugees in the context of climate change or disasters, who cannot return to their countries, with complementary protection mechanisms, temporary protection arrangements, or residency arrangements. Complementary protection may be relevant to certain individuals who are forced to move on a long-term or permanent basis, i.e., when there is no prospect of return in the long run. This can include slow-onset processes at an advanced stage leading to gradual displacement (such as desertification) or individuals affected by sea level rise, or certain cases of natural disasters. As for temporary protection, it takes various forms around the world but is generally described as an exceptional measure and a specific temporary protection response to mass influx situations. It aims to provide immediate emergency protection from refoulement. Temporary protection is suitable after severe and sudden disasters (such as floods), when large numbers flee the affected area but the possibility of their return in the short or medium term remains open. Therefore, these individuals have an immediate and temporary need for protection.⁴⁰

³⁶ For a list of countries that have ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities, see the United Nations website.

Date accessed: 08/08/2023, at 13:25 PM.

Link: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en

³⁷ Paragraph 1 of Article 4 of the Convention on the Rights of Persons with Disabilities (2006).

³⁸ Paragraph 2 of Article 4 of the Convention on the Rights of Persons with Disabilities (2006).

³⁹ Paragraph 79, *Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on Living Independently and Being Included in the Community*, Document No. CRPD/C/GC/5, dated 27 October 2017.

⁴⁰ Paragraph 5, *Committee on the Rights of Persons with Disabilities, General Comment No. 1 (2014) on Article 12: Equal Recognition Before the Law*,

In conclusion, it can be said that although environmental refugees are included under the protection of international human rights conventions mentioned above, the actual situation of environmental refugees remains disastrous, especially as they suffer from racism, racial discrimination, and xenophobia in host countries. Environmental refugees also suffer from poor service provision, whether in healthcare or care services, which is due to the fragile economic situation of the host countries.

Chapter Two: Protection of Environmental Refugees under Regional Human Rights Conventions

Regional human rights charters are those that address a specific regional scope or a particular geographical group often united by a distinct cultural link. There are several reasons that justify regional groups' recourse to international legal regulation of human rights issues, including the desire of regional groups to reaffirm the rights set forth in international conventions and to include new rights in regional charters that are not found in global conventions in response to regional cultural specificities. This also includes the desire to establish more effective monitoring mechanisms at the regional level.⁴¹

Among the most important regional human rights charters are the European, American, and African human rights charters. We will attempt to examine whether environmental refugees enjoy protection under these regional charters.

First – At the European Level

European human rights texts are considered among the first and most important comprehensive legal frameworks for human rights, as they succeeded earlier than others in advancing and realizing human rights. These texts are presented in a detailed manner encompassing all human rights contents, particularly the *European Convention on Human Rights and Fundamental Freedoms* of 1950 and its additional protocols, in addition to other specific European texts on human rights.⁴²

However, our study will be limited to the *European Convention on Human Rights and Fundamental Freedoms* of 1950 and the *Charter of Fundamental Rights of the European Union* of 2000.

1 – Under the European Convention on Human Rights and Fundamental Freedoms of 1950

The European Convention on Human Rights is described as the constitution of the European continent and the foundation for a European public order in the field of human rights and fundamental freedoms⁴³. It was adopted by the Council of Europe in 1950 and entered into force on September 3, 1953⁴⁴. As of August 10, 2023, the number of state parties reached 46⁴⁵ countries. The rights protected by the Convention were expanded through Additional Protocols 01, 04, 06, 07, 12, 13, and 16.⁴⁶

The High Contracting Parties to the Convention committed to securing for everyone under their jurisdiction the rights and freedoms set forth in Section I of the Convention⁴⁷, such as the right to life, the right to liberty and security, the right to a fair trial, the right to respect for private and family life, freedom of expression, thought, conscience and religion, prohibition of discrimination, the right to marry and found a family, the right to an effective remedy, and other rights. All these express the category of civil and political rights.

11th Session, 31 March–11 April 2014,
Document No. CRPD/C/GC/1, dated 19 May 2014.

⁴¹ **Climate Change, Environmental Degradation, and Migration**, *Op. cit.*, pp. 18–19

⁴² **Mohamed Nour Farhat**, *Previously cited reference*, p. 45.

⁴³ **Naïma Amimer**, *Al-Wafi in Human Rights*, Dar Al-Kitab Al-Hadith, Cairo, First Edition, 2009, pp. 159–160.

⁴⁴ **Mohamed Youssef Alwan** and **Mohamed Khalil Al-Mousa**, *International Human Rights Law: Sources and Monitoring Mechanisms*, Part One, Dar Al-Thaqafa Publishing and Distribution, Amman, First Edition, Second Issue, 2008, p. 161.

⁴⁵ To view the text of the **European Convention on Human Rights**, click the following link:

https://www.echr.coe.int/documents/d/echr/convention_ara

⁴⁶ To view the **number of ratifications** of the European Convention on Human Rights, click the following link:

<https://www.coe.int/fr/web/conventions/full-list?module=signatures-by-treaty&treatynum=005>

⁴⁷ To view the **texts of the additional protocols**, click the following link:

https://www.echr.coe.int/documents/d/echr/Convention_ENG

Although the European Convention on Human Rights does not explicitly include the right to a healthy environment, the European Court of Human Rights has acknowledged that severe environmental degradation can affect individual well-being and, as a result, lead to violations of individual rights such as the right to life and the right to respect for private and family life.⁴⁸

The rights set forth in the Convention can thus serve as a basis for various cases concerning environmental issues. The European Court of Human Rights concluded that Article 08⁴⁹ of the Convention may apply to environmental cases, whether pollution originates directly from the state or the state's responsibility arises from a failure to adequately regulate the environment ("private sector activity"). Pollution caused by factory operations can deteriorate the quality of life of local residents and thus particularly affect individuals' well-being and deprive them of the enjoyment of their homes in a way that harms their private and family life.⁵⁰ In the case of *Fadeyeva v. Russia*, the European Court of Human Rights concluded that despite the wide margin of appreciation left to the respondent state, it failed to strike a fair balance between the interests of the community and the applicant's effective enjoyment of her right to respect for her home and private life. The applicant claimed that the operation of a steel plant near her home caused environmental effects threatening her health and safety, as guaranteed under Article 08 of the Convention. The Court found that, for complaints related to the environment to fall under Article 08, they must have a direct impact on the enjoyment of this right and reach a certain level of severity.⁵¹

The European Court of Human Rights has also confirmed, in many of its rulings, the applicability of Article 02 of the Convention and the state's responsibility in cases of natural disasters that had significant repercussions on human lives. Article 02 of the Convention not only requires the state to refrain from intentional deprivation of life but also to take all necessary measures to protect the lives of persons under its jurisdiction. It states that while this obligation must be interpreted as applying in the context of any activity, public or private, that may affect the right to life, it also applies when the right to life is threatened by a natural disaster.⁵²

Based on the foregoing, environmental refugees can rely on Articles 02 and 08 of the European Convention on Human Rights in seeking asylum or to prevent their deportation to their country of origin when their right to life is threatened by a natural disaster or in cases of serious environmental degradation that have grave consequences for human life. They may also benefit from complementary or temporary protection measures. Some EU member states have incorporated provisions into their legislation regarding refugee-type protection for those who may not be able to return home due to a natural disaster. For instance, under Swedish law, a person "unable to return to their home country due to an environmental disaster" may also be eligible for asylum. However, this provision has never been applied. Denmark, on the other hand, has taken an interesting approach in applying humanitarian protection provisions by issuing residence permits on humanitarian grounds for families with minor children from certain areas in Afghanistan where drought is particularly severe, as well as for impoverished Afghans without land from regions suffering from drought and food insecurity, who would be particularly vulnerable upon return.⁵³

2 – Under the Charter of Fundamental Rights of the European Union

⁴⁸ Article 01 of the **European Convention on Human Rights and Fundamental Freedoms** of 1950.

⁴⁹ **Par. 50, *Inter-American Court of Human Rights, Advisory Opinion OC-23/17, of November 15, 2017***, requested by the Republic of Colombia.

⁵⁰ Established under **Article 19** of the *European Convention on Human Rights* (1950).

For more on the **Court and its jurisdiction**, see **Section IV** of the Convention (Articles 38 to 56 of the *European Convention on Human Rights*, 1950).

⁵¹ **European Court of Human Rights, *Case of Tătar v. Romania***, (Application No. 67021/01), Judgment, Strasbourg, January 27, 2009.

To consult the ruling, click on the following link:

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-90909%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-90909%22]})

⁵² **European Court of Human Rights, *Case of Fadeyeva v. Russia***, (Application No. 55723/00), Judgment, Strasbourg, June 9, 2005, **Paragraphs 69, 70, and 134**.

To view the ruling, click the link:

[https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22001-69315%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-69315%22]})

⁵³ **European Court of Human Rights, *Case of Budayeva and Others v. Russia***, (Applications Nos. 15339/02, 21166/02, 20058/02, 11673/02, and 15343/02), Judgment, Strasbourg, March 20, 2008, **Paragraphs 128–130**.

To view the ruling, click the link:

[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-85436%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-85436%22]})

This quasi-constitutional legal text serves as the official declaration of the European Parliament, Council, and Commission, affirming the shared binding rights and responsibilities among member state⁵⁴s. The Charter emphasizes the political, economic, and social rights of EU citizens and individuals subject to EU law. It was drafted within the framework of the European Convention and adopted by the European Parliament, European Council, and European Commission on December 7, 2000. The Charter did not have significant legal effect until it became binding through the Lisbon Treaty on December 1, 2009.⁵⁵

As a human being above all, the environmental refugee is entitled to the rights and freedoms enshrined in the Charter. Human dignity, according to Article 1 of the Charter, is inviolable and must be respected and protected. Accordingly, the refugee has the right to life, the right to physical and mental integrity, the right to respect for private and family life, home, and communications, the right to non-discrimination, and equality before the law. They also have the right to preventive healthcare and to benefit from medical treatment under the conditions established by national laws and practices⁵⁶. Under Article 34 of the Charter, they are entitled to social security and social assistance benefits.

To ensure a decent existence for those lacking sufficient resources, according to the rules established by EU law and national legislation and practices, the Union recognizes and respects the right to social and housing assistance to ensure a dignified existence⁵⁷. To protect the environment, Article 37 of the Charter mandates that a high level of environmental protection and the improvement of environmental quality be integrated into the Union's policies in accordance with the principle of sustainable development.

Second - At the American Level

The Organization of American States (OAS) has adopted numerous instruments that generally protect human rights, such as the *American Convention on Human Rights* of 1969 and the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (the "San Salvador Protocol") of 1988, among other human rights conventions. However, this study will be limited to these two instruments:

1 - The American Convention on Human Rights (1969)

The American Convention on Human Rights of 1969⁵⁸, commonly known as the *Pact of San José*, entered into force in 1978. The Convention strengthened the Inter-American Commission on Human Rights, which had existed since 1960 as an "autonomous entity of the Organization of American States," and made this commission a treaty-based body. The Inter-American Court of Human Rights was also established to have jurisdiction over matters related to the fulfillment of obligations undertaken by the State Parties (Article 33).⁵⁹

According to Article 1 of this Convention, State Parties undertake to respect the rights and freedoms recognized in the Convention and to ensure the free and full exercise of those rights and freedoms to all persons subject to their jurisdiction, without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth, or any other social condition.⁶⁰

⁵⁴ **Climate Change, Environmental Degradation, and Migration**, *Op. Cit.*, p. 18.

⁵⁵ **European Union**, *Charter of Fundamental Rights of the European Union*, WIPO Intellectual Property Portal, browsing date: 09/01/2025 at 09:23.

Available at:

<https://www.wipo.int/wipolex/ar/legislation/details/6005>

⁵⁶ *Charter of Fundamental Rights of the European Union*, Wikipedia, browsing date: 09/01/2025 at 10:00.

Available at:

<https://ar.wikipedia.org/wiki/>

⁵⁷ **Articles 02, 03, 07, 20, 21, and 35** of the *Charter of Fundamental Rights of the European Union*, 2000.

⁵⁸ **Paragraph 03 of Article 34** of the *Charter of Fundamental Rights of the European Union*, 2000.

⁵⁹ Also known as the **San José Pact**, it was adopted by many countries in the Western Hemisphere in San José, Costa Rica, on **November 22, 1969**. It entered into force on **July 18, 1978**, after the deposit of the eleventh instrument of ratification (Grenada's instrument).

To view the full text of the convention, click the following link:

<http://hrlibrary.umn.edu/arab/am2.html>

⁶⁰ **Office of the United Nations High Commissioner for Human Rights**, in collaboration with the **International Bar Association**, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series No. 9, United Nations, New York and Geneva, 2003, p. 74.

Although the Convention does not explicitly mention the right to environmental asylum, Article 1 obliges State Parties to guarantee the free and full exercise of rights and freedoms to all persons under their jurisdiction, including environmental refugees, without any discrimination, especially based on race, gender, birth, or any other social status⁶¹. This was affirmed by the Inter-American⁶² Court of Human Rights in its advisory opinion OC-23/17, where the Court emphasized obligations extending beyond territorial borders and stressed that human rights obligations apply to all people, including those residing outside a state's borders. The Court held that a state's obligations include taking measures to prevent serious environmental harm within its territory or beyond. It defined "serious" harm as any that could lead to a violation of the right to life and personal integrity.⁶³

Therefore, under the Convention, environmental refugees have the right to have their lives respected, the right to personal liberty, and the right to security. Accordingly, they must not be deprived of their physical liberty, nor should they be imprisoned or arrested due to their status as environmental refugees. If detained, they must be informed of the charges against them, brought before judicial authorities, and tried within a reasonable time before a competent, independent, and impartial court established previously by law to determine any criminal charges or to decide their civil, financial, labor, or any other legal rights or obligations.⁶⁴

Since the enjoyment and exercise of many human rights are deeply tied to environmental protection, an environmental refugee may claim protection from deportation to their country if their right to life or personal freedom is at risk due to environmental degradation and climate change in their home country.

2 - Under the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol) 1988

In 1988, the General Assembly of the Organization of American States adopted the Additional Protocol to the American Convention on Human Rights in the area of economic, social, and cultural rights, also known as the San Salvador Protocol⁶⁵. This protocol expands upon Article 26 of the Convention, in which State Parties broadly commit to "undertake to adopt measures, both internally and through international cooperation... for the gradual realization... of the rights implicit in the economic, social, educational, scientific, and cultural standards."⁶⁶

The preamble to the protocol states that basic human rights do not derive from being a citizen of a particular state but are based on the individual's human qualities. For this reason, such rights deserve international protection through a convention that affirms or enhances the protection granted by the domestic laws of American states. The aim of achieving a society where people are free from fear and want cannot be realized unless everyone can enjoy their economic, social, and cultural rights alongside their civil and political rights.⁶⁷

Under Article 3 of the Protocol, State Parties commit to guaranteeing the exercise of the rights mentioned in the Protocol without discrimination of any kind, based on sex, color, ethnic origin, religion, political opinions, or other views, national or social origin, economic status, birth, or any other social condition.

⁶¹ Paragraph 01 of Article 1 of the *American Convention on Human Rights*, 1969.

⁶² Article 04 of the *American Convention on Human Rights*, 1969.

⁶³ The Court is composed of **seven judges** from the member states of the **Organization of American States**, elected from among individuals of high moral standing and recognized competence in the field of human rights, and who meet the qualifications required for the highest judicial offices in their respective countries. No two judges may be nationals of the same state. Judges are elected for a **six-year term** and may be **re-elected only once**.

For more information on the Court, see the **Statute of the Inter-American Court of Human Rights**, 1980.

To access the full statute, see the University of Minnesota's website, browsing date: 08/01/2025, at 21:00, via the following link: <https://www1.umn.edu/humanrts/arab/am10.html>

⁶⁴ **Inter-American Court of Human Rights affirms the right to a healthy environment**, Global Network for Economic, Social and Cultural Rights.

For more, click the following link:

<https://www.escri-net.org/ar/caselaw/2019/428604>

⁶⁵ See in this regard **Articles 04, 07, 08, and 22** of the **American Convention on Human Rights**, 1969.

⁶⁶ It was **adopted in 1988** and **entered into force on November 16, 1999**.

To access the text of the Protocol, click the following link:

<http://hrlibrary.umn.edu/arab/am3.html>

⁶⁷ **Office of the United Nations High Commissioner for Human Rights**, in collaboration with the **International Bar Association**, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, previously cited reference, p. 74.

There is no doubt that environmental refugees have the right to health and to enjoy the highest attainable standard of physical, mental, and social well-being. Therefore, State Parties to the Protocol must take a series of measures to guarantee this right, such as ensuring basic healthcare for all individuals and families, expanding access to health services to all persons under the state's jurisdiction, and meeting the health needs of vulnerable groups, especially those at higher risk due to poverty.⁶⁸

Since the enjoyment and exercise of many human rights are deeply linked to environmental protection, Article 11 of the Protocol guarantees everyone the right to live in a healthy environment and to access essential public services. To this end, State Parties are required to promote the protection, preservation, and improvement of the environment. The Inter-American Court of Human Rights has held that violating the right to a healthy environment can affect other human rights, especially the right to life and personal integrity, in addition to other rights including health, water, housing, and procedural rights such as the right to access information, freedom of expression, freedom of association, and participation.

The Court has acknowledged the undeniable relationship between environmental protection and the realization of other human rights. Environmental degradation and the adverse effects of climate change negatively impact the actual enjoyment of human rights. Similarly, the preamble to the San Salvador Protocol highlights the close relationship between economic, social, and cultural rights—including the right to a healthy environment—and civil and political rights, emphasizing that the different categories of rights form an indivisible whole, grounded in the recognition of human dignity. The Inter-American Commission on Human Rights has also emphasized that many fundamental rights require, as a necessary precondition for their exercise, a minimum level of environmental quality and are significantly affected by the degradation of natural resources. Along the same lines, the General Assembly of the Organization of American States has recognized the close link between environmental protection and human rights and highlighted that climate change has adverse effects on the enjoyment of human rights.⁶⁹

Every person, including environmental refugees, has the right under the Protocol to adequate nutrition that ensures the highest level of physical, emotional, and mental development, as well as the right to education.

Third – At the African Level

Within the framework of the Organization of African Unity (OAU), before the establishment of the African Union, several instruments addressing human rights were adopted, such as the *African Charter on Human and Peoples' Rights* (1981),⁷⁰ the *African Charter on the Rights and Welfare of the Child* (1990), and other African human rights charters. However, this study will be limited to these two charters:

1 – The African Charter on Human and Peoples' Rights (1981)

The adoption of the African Charter on Human and Peoples' Rights in 1981 marked the beginning of a new era in the field of human rights in Africa. Although the African Charter is largely inspired by the Universal Declaration of Human Rights (1948) and the two International Covenants on Human Rights (1966), it is characterized by a high degree of specificity, particularly due to the African concept of the term “right” and the emphasis it places on individual responsibilities. The Charter includes a long list of rights covering a wide range of civil and political rights, as well as economic, social, and cultural rights.⁷¹

The member states of the Organization of African Unity that are parties to the Charter recognize the rights, duties, and freedoms contained therein and undertake to take legislative and other measures to give effect to them so that every individual may enjoy the rights and freedoms recognized and guaranteed in the Charter without

⁶⁸ Paragraphs 02 and 04 of the Preamble of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the San Salvador Protocol, 1988.

⁶⁹ Article 10 of the Preamble to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, known as the "San Salvador Protocol", 1988.

⁷⁰ Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 of November 15, 2017*, previously cited reference, paragraphs 47–49.

⁷¹ Articles 12 and 13 of the Preamble to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, San Salvador Protocol, 1988.

discrimination, particularly based on race, ethnic group, color, sex, language, religion, political or other opinion, national or social origin, wealth, birth, or other status.⁷²

The African continent, like other continents, has in recent years been affected by climate change, especially desertification, drought, scarcity of potable water, and other climate-related phenomena, which have led individuals to flee their countries in search of safe environments that can protect their lives. Africa is expected to experience some of the most devastating effects of climate change. According to a study conducted by the World Bank, by 2050, approximately 200 million people are expected to be displaced, including 86 million Africans who may be forced to move within their countries. According to a report by the Intergovernmental Panel on Climate Change (IPCC), the total population of Africa is 1.4 billion, meaning that by 2030, half of the continent's population could face displacement and forced migration due to climate change.⁷³

Although Article 12 of the African Charter on Human and Peoples' Rights provides that every persecuted person has the right to seek and obtain asylum in a foreign country in accordance with the laws of each country and international conventions⁷⁴, this article does not apply to environmental refugees, despite the serious effects of climate change on individuals' lives, especially the most vulnerable groups (women and children). Does this mean that environmental refugees are excluded from the protection guaranteed under the Charter to all human beings?

Based on Article 2 of the African Charter on Human and Peoples' Rights, every person has the right to enjoy the rights and freedoms recognized and guaranteed in the Charter without any discrimination based on national origin or any other status. Therefore, any person who seeks refuge in a country due to environmental degradation has the right to enjoy the rights guaranteed under this Charter, particularly the right to life as stated in Article 4, which affirms that every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right. They also have the right to health, to a clean environment, to education, and other rights recognized in the Charter.

State parties to the Charter are obliged to protect environmental refugees as human beings with rights. Therefore, according to the African Commission on Human and Peoples' Rights, they are required to fulfill at least four levels of duties regarding the protection of human rights⁷⁵: "respect, protect, promote, and fulfill."⁷⁶

Accordingly, states are required to **respect** the rights and freedoms of environmental refugees, **protect** them from being violated by others by enacting necessary legislation and laws and providing effective remedies, and **fulfill** the rights and freedoms they have committed to under the African Charter on Human and Peoples' Rights and various international human rights treaties in order to implement them effectively. Thus, states must provide environmental refugees with basic necessities such as food, healthcare, and education.

2 – Under the African Charter on the Rights and Welfare of the Child (1990):

The reason for adopting the African Charter on the Rights and Welfare of the Child⁷⁷ lies in the fact that many issues specific to the African child remained unresolved and outside public debate due to diverging perspectives,

⁷² It was adopted by the Assembly of African Heads of State and Government at its 18th Ordinary Session in Nairobi (Kenya), June 1981, and entered into force on October 21, 1986.

To access the text of the Charter, click the following link:

<http://hrlibrary.umn.edu/arab/a005.html>

⁷³ of the United Nations High Commissioner for Human Rights, in cooperation with the International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, previously cited reference, p. 66.

⁷⁴ Articles 01 and 02 of the African Charter on Human and Peoples' Rights, 1981.

⁷⁵ *Environmental Asylum... Another Threat Facing the African Continent*, Shaf Center for Future Studies and Crisis and Conflict Analysis (Middle East and Africa), accessed on 09/01/2025 at 21:23, via the following link:

<https://shafcenter.org/اللجوء-البيني-تحد-آخر-جهد-القارة-الس/>

⁷⁶ Paragraph 03 of Article 12 of the African Charter on Human and Peoples' Rights, 1981.

⁷⁷ The African Commission on Human and Peoples' Rights was established within the framework of the Organization of African Unity to promote and protect human and peoples' rights in Africa. The Commission is composed of eleven members selected from among African personalities of the highest reputation, known for their high moral standing, integrity, impartiality, and competence in the field of human and peoples' rights. Special attention is given to the inclusion of individuals with expertise in law. Members serve in their personal capacity, and no more than one member may be from the same state. Members are elected for a term of six years, renewable. In the first election, the terms of office of four members expire after two years, and those of another three members after four years.

particularly as these issues are closely linked to the conditions of African children and did not receive the attention they deserved. This led African states to highlight them at a regional level⁷⁸. However, the condition of many African children remains critical due to social, economic, cultural, and traditional factors, natural disasters, armed conflicts, exploitation, hunger, and the lack of physical and mental maturity of the child, all of which call for protection and care.⁷⁹

The African Charter on the Rights and Welfare of the Child was a pioneer in establishing the right of children to seek asylum due to environmental degradation. Article 23 of the Charter states that its provisions apply, with all necessary modifications, to children who are displaced within a country as a result of natural disasters, internal conflict, civil unrest, the collapse of economic or social institutions, or for any other reason — including climate change⁸⁰ — that could cause children to seek asylum.

Therefore, State Parties to this Charter are required to take all appropriate measures to ensure that a child seeking refugee status, or who is considered a refugee under applicable international or national law, whether accompanied or unaccompanied by parents, a legal guardian, or a relative, receives protection and humanitarian assistance necessary to enjoy the rights recognized in this Charter or in any other human rights instrument ratified by the concerned states. States must also assist international organizations mandated with the protection and assistance of refugees in their efforts to protect and assist children and locate the parents or relatives of unaccompanied refugee children in order to reunite them with their families. If no parent, legal guardian, or close relative is found, the child must be granted the same protection as any other child temporarily or permanently deprived of his or her family environment for any reason.⁸¹

A child who is a refugee due to climate or environmental degradation has the right to enjoy all the rights and freedoms recognized and guaranteed by this Charter without discrimination on the basis of race, ethnic group, color, sex, language, religion, political affiliation, national or social origin, birth, or any other status — including the status of their parents or legal guardians.⁸²

Therefore, according to Article 4 of the Charter, the best interests of the child must be the primary consideration in all actions concerning them by any person, authority, judicial or administrative body. If the child is capable of forming his or her own views, they must be given an opportunity to be heard, either directly or through an impartial representative, and their views must be taken into account in accordance with applicable laws.

A refugee child due to climate and environmental degradation has the **right to life**, which is non-derogable and protected by law. State Parties to this Charter must ensure the survival, protection, and development of the child to the maximum extent possible⁸³. They also commit to ensuring that their legislation recognizes the **right of the child to acquire the nationality** of the state where he or she was born if at the time of birth the child cannot acquire the nationality of any other state under its laws — a provision that undoubtedly applies to children who are refugees due to climate degradation.⁸⁴ In conclusion, it can be said that although the environmental refugee is included under the protection of regional human rights agreements, they still suffer in reality, particularly in the African and American continents. This is largely due to the economic weakness of these countries. Moreover, these continents are among the most affected by climate change, despite being the least contributors to carbon emissions. According to United Nations statistics, Africa, for example, contributes no more than 4% of global emissions, while the four countries—China, the United States, the European Union, and India—account for over 55% of total carbon emissions. According to the 2019 Emissions Gap Report issued by the United Nations Environment Programme, environmental degradation tends to harm countries with the least capacity to respond, thereby increasing levels of

For more information on the Commission, see **Articles 30, 31, 32, 36, and 45** of the **African Charter on Human and Peoples' Rights**, 1981.

⁷⁸ **African Commission on Human & Peoples' Rights**, 155/96 – *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, **Paragraphs 44, 45, 46, 47**, Document No.: ACHPR/COMM/A044/1, dated 27/05/2002

⁷⁹ **Adopted in Addis Ababa in July 1990** and entered into force on **29 November 1999**, to view the **African Charter on the Rights and Welfare of the Child**, click the following link:
<http://hrlibrary.unm.edu/arab/afr-child-charter.html>

⁸⁰ **Naïma Amimer**, *Previously cited reference*, p. 191.

⁸¹ **Paragraph 4 of the Preamble** to the **African Charter on the Rights and Welfare of the Child**, 1990.

⁸² **Paragraph 4 of Article 23** of the **African Charter on the Rights and Welfare of the Child**, 1990.

⁸³ **Paragraphs 1, 2, and 3 of Article 23** of the **African Charter on the Rights and Welfare of the Child**, 1990.

⁸⁴ **Article 3** of the **African Charter on the Rights and Welfare of the Child**, 1990.

displacement and asylum⁸⁵. Consequently, this wave of asylum has a significant impact on neighboring or transit countries, most of which are developing nations, placing a burden on them beyond their capacity and undermining their social and economic cohesion.

Conclusion:

From all the above, it is clear that **environmental refugees**, despite not having a dedicated legal framework to protect them, **do enjoy all human rights recognized in various international human rights treaties**, on an equal footing with citizens of the host or neighboring countries. However, their rights still require **greater protection and reinforcement**.

Findings:

- There is a clear relationship between environmental protection and the realization of human rights. Environmental degradation and the harmful effects of climate change can negatively impact the actual enjoyment of the right to life, health, food, education, and other rights. This has been confirmed by various regional human rights courts and treaty bodies, particularly the Human Rights Committee and the Committee on the Rights of the Child.
- Despite the absence of a legal framework governing environmental asylum and despite the fact that refugee protection law does not include environmental refugees, **this category is entitled to enjoy universal human rights and fundamental freedoms**, as outlined in various international human rights instruments — both global and regional.
- Although human rights treaties do provide **protection for environmental refugees**, they **still suffer from racial discrimination and hatred in host countries**, particularly in light of the deteriorating economic conditions in these countries.

Recommendations:

- **Establish a specific legal framework** for environmental refugees that regulates and protects their rights. This can be achieved either by adopting a **special convention** for environmental refugees or by **amending the 1951 Geneva Refugee Convention** to include environmental refugees as a protected category or annexing a **specific protocol** for them.
- Work towards **eliminating all forms and manifestations of hatred, racial discrimination, and racism** against environmental refugees, and activate **international cooperation mechanisms** to assist vulnerable countries and communities, in collaboration with the **United Nations** and all relevant stakeholders.

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