



# Legal Protection for the Environmental Refugee Under the Rules of International Law

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## Abstract:

The environmental refugee is a relatively new term that has emerged on the global stage in the context of climate change. However, the rules of international law have not yet recognized this phenomenon. This is what drives us, through this article, to explore the limits of legal protection for the environmental refugee—a matter that has become extremely difficult due to the lack of a precise and comprehensive definition of the environmental refugee on the one hand, and the lack of recognition of the right of asylum by the competent international bodies on the other.

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## 1- Introduction

The environmental refugee is a relatively new term that emerged on the global scene in the context of climate change. The right to environmental asylum has become a global reality that drives citizens to leave their homelands due to the increasing number of climate changes and environmental disasters, which has led to a dramatic rise in this phenomenon.

Therefore, the issue of environmental asylum has become one of the most complex global issues, requiring appropriate legal solutions to regulate this phenomenon.

The reasons for choosing this topic are due to the importance of the phenomenon of environmental asylum, especially in light of the growing climate changes, which negatively affect the health, safety, and security of environmental refugees. The study also aims to identify the factors that have led to the absence of a precise and comprehensive definition of the environmental refugee, which is one of the main reasons for the lack of recognition by international bodies and the failure to establish a legal framework to ensure international protection for the environmental refugee.

Accordingly, the study revolves around the following problem:

**What are the limits of the environmental refugee's ability to benefit from the legal protection guaranteed by the rules of international law? And to what extent are these rules sufficient and effective in providing the necessary protection for the environmental refugee?**

To answer this problem, we relied on the **descriptive method** to define the most relevant knowledge and clarify its concepts, in addition to employing tools from the **historical method** to trace and establish the various legal texts. We also used the **analytical method** secondarily by analyzing some international legal texts related to the subject of the study.

The study was divided into two main sections. The first section is devoted to defining the concept of the environmental refugee, while the second section addresses the international legal basis for protecting the environmental refugee.

## **2- First Section: The Concept of the Environmental Refugee**

Studying the concept of the environmental refugee requires defining it (first), identifying its characteristics (second), and its forms (third).

### **2.1 Definition of the Environmental Refugee:**

The term "environmental asylum" first appeared gradually in the 1960s. William Vogt defined it in 1984 as referring to people displaced due to environmental disruption and degradation.

Lester Russell Brown was the first to establish the link between increasing internal and international migration and deteriorating environmental conditions such as earthquakes, desertification, and drought.<sup>1</sup>

In 1988, researcher Jodi Jackson proposed another definition in an article prepared for the Worldwatch Institute. She defined environmental refugees as:

*"Those persons temporarily displaced due to local environmental disturbances, such as avalanches or earthquakes, and those who migrate because environmental degradation impedes their livelihoods and exposes them to unacceptable health risks, and those who are resettled due to desertification or permanent changes in their habitat."*<sup>2</sup>

It is noted that this definition does not differentiate between internal and international migration<sup>3</sup>, which is important for granting international legal protection. It also refers to **forced mass migration**, not **voluntary individual migration**, and links asylum to the **existence of risk**.<sup>4</sup>

Lester Russell Brown also established the relationship between internal and international migration and deteriorating environmental conditions, such as earthquakes, desertification, and drought.<sup>5</sup>

However, the first actual appearance of a definition of the environmental refugee came in the report prepared by Issam El-Hanouni, Director of the Energy Department at the United Nations Environment Programme, in a policy paper titled *"Environmental Refugees"*<sup>6</sup>. He defined them as:

*"Persons who are forced to leave their place of residence temporarily or permanently due to severe environmental disruption, whether natural or man-made, which may endanger their existence or affect the quality of their life."*<sup>7</sup>

Since its publication, this definition has become the most widely used, as it is distinguished by its precision in identifying the environment as the primary cause of asylum, along with wars. It also included industrial disasters as responsible for the growing phenomenon of environmental asylum.<sup>8</sup>

However, some considered that Issam El-Hanouni's definition includes refugees displaced from their habitual homes due to climate changes and man-made natural disasters, and that his

definition also applies to internal migration cases.<sup>9</sup>

The **International Organization for Migration (IOM)** in 2007 defined the environmental refugee as:

*"A person or group of people who are forced to change their habitual residence, either temporarily or permanently, and are forced to seek asylum outside their country due to compelling circumstances caused by gradual or sudden environmental change, which negatively affects their life and living conditions."*<sup>10</sup>

From the above definitions, it is clear that it is difficult to find a precise and comprehensive definition of the environmental refugee, whether by international bodies or specialized researchers in the field of environment and law. This is due to the diversity of terms used to describe the environmental refugee, and the lack of a unified and agreed-upon definition is, in itself, a problem that negatively impacts the refugee, as it is difficult to establish a legal framework that guarantees their rights in the absence of such a definition.

## **2.2 Characteristics of the Environmental Refugee:**

The environmental refugee is characterized by several features that distinguish them from other types of refugees, including:

### **a. The environmental refugee is a migrant:**

The environmental refugee is a form of international migration that occurs due to climate changes. Thus, there is a close relationship between migration and climate disruptions.<sup>11</sup>

### **b. The environmental refugee is forcibly displaced:**

Environmental migration or asylum is called "forced asylum" because refugees are compelled to leave their countries due to climate changes that threaten their existence—such as floods, volcanoes, desertification, and drought—which affect their health and stability.<sup>12</sup>

### **c. The environmental refugee may be internal or international:**

The environmental refugee can be either an internal or international migrant—someone who leaves their place of residence in search of international protection.<sup>13</sup>

### **d. The environmental refugee may be temporary or permanent:**

This depends on whether the refugee can return to their original place of residence once the reasons for migration have disappeared. A **permanent refugee** is someone who cannot return to their homeland due to geographical reasons.<sup>14</sup>

### **e. The environmental refugee is not covered by international treaties:**

These are refugees who are not subject to international legal agreements and texts that regulate environmental refugee status.<sup>15</sup>

## **2.3 Classifications of the Environmental Refugee:**

**Issam El-Hanouni recognized three classifications of the environmental refugee:**

### **a. The Disaster Refugee**

This occurs as a result of severe natural events and technological accidents or the interaction between the two, which cause unplanned displacement, such as hurricanes, climatic floods, earthquakes, volcanic eruptions, or any other climatic or geological event that makes the previously inhabited environment uninhabitable, including industrial and nuclear disasters.<sup>16</sup> The occurrence of a disaster drives citizens to leave their place of residence in order to improve their standard of living and to live in suitable conditions.<sup>17</sup>

#### **b. The Confiscation Refugee:**

This results from acute or separate environmental disturbances that depend on the displacement of targeted populations. Examples include the occupation of areas to implement infrastructure projects, such as hydroelectric power stations and roads, or the establishment of protected areas by destroying natural resources as a strategy such as bombing operations.<sup>18</sup>

#### **c. The Environmental Degradation Refugee:**

This asylum results from the impossibility of remaining in a person's homeland due to pollution or the depletion of environmental resources that make it impossible to live in a suitable and comfortable environment.<sup>19</sup>

The last classification is considered the most accurate and clear for environmental asylum.

### **3. Chapter Two: The International Legal Basis for the Protection of the Environmental Refugee**

Studying the international legal basis for the protection of the environmental refugee requires investigating the justifications for international legal protection of the refugee and studying the international legislative mechanisms for the protection of the environmental refugee.

#### **3.1 Justifications for the International Legal Protection of the Refugee:**

The justifications for international legal protection consist of moral justifications and legal justifications.

##### **3.1.1 Moral Justifications:**

All international charters have unanimously agreed on the preservation of human dignity, which includes providing humanitarian aid to victims of natural disasters and various emergencies, because the failure to provide assistance in such cases is considered a violation of human life and dignity, which in turn constitutes a violation of basic human rights.<sup>20</sup>

Therefore, providing various humanitarian aid to disaster-stricken countries, whether due to natural disasters or emergency situations such as wars and similar cases, is a moral duty based on the idea of justice and human dignity<sup>21</sup>. Thus, international legal protection is based on the human dignity of the environmental refugee, and on the principles of human rights, equality, and non-discrimination with regard to environmental changes<sup>22</sup>. The right of a person to environmental asylum is considered one of the most important human rights that preserves their dignity in order to live in a healthy and safe environment.

##### **3.1.2 Legal Justifications:**

The phenomenon of environmental asylum is constantly increasing for several reasons and

factors, which necessitated providing international legal protection for the environmental refugee in order to achieve the principle of international solidarity or cooperation and the right of the individual to life and to live in a healthy environment. This was stated in Article 03 of the Universal Declaration of Human Rights issued in 1948<sup>23</sup>, which reads:

*"Everyone has the right to life, liberty, and security of person."*

The environmental refugee is the focus of many international instruments such as agreements and declarations. However, these international charters have always advocated the human right to a healthy, sound, and adequate environment<sup>24</sup>, which can be considered a legal justification for protecting the environmental refugee.<sup>25</sup>

### **3.2 Forms of International Legal Protection for the Environmental Refugee:**

#### **3.2.1 Humanitarian Aid:**

Humanitarian aid is a means of protecting refugees by assisting them due to the damage caused by natural and industrial disasters, which prompts them to flee their places of residence to safer areas.<sup>26</sup>

The environmental refugee is among the groups affected by natural disasters, being a vulnerable party, and humanitarian aid is provided through the distribution of relief materials and humanitarian assistance offered to environmental refugees.<sup>27</sup>

#### **3.2.2 International Legislative Mechanisms for the Protection of the Environmental Refugee:**

##### **3.2.2.1 Limoges Convention Project on the International Status of the Displaced:**

In 2007, a working group composed of professors of law and economics at the University of Limoges in France prepared a draft convention specifically for environmental refugees<sup>28</sup>. The preamble of this draft referred to the risks of environmental degradation resulting from climate change, drought, desertification, epidemics, and armed conflicts. The preamble also referred to a number of international legal instruments such as the 1992 Rio Declaration and the Guiding Principles on Internal Displacement, which relate to the resettlement of refugees and displaced persons.<sup>29</sup>

The drafters of the convention project used the term *environmentally displaced person* instead of *environmental refugee*, because the former term is broader and more inclusive than the latter, which only includes those displaced outside their country.<sup>30</sup>

The Limoges Convention project is considered comprehensive, as it includes all types of displacement resulting from environmental and climatic degradation, as well as internal and external displacement, whether temporary or permanent, including both individual and mass cases.

Accordingly, the Limoges Convention Project aims to define legal rights and principles to protect the environmental refugee. The draft includes a set of principles and rights contained in other international legal texts, but adapted to the phenomenon of environmental displacement. Unfortunately, the Limoges Convention project remained just a draft and did not receive attention from international bodies for adoption, recognition, and implementation.

##### **3.2.2.2 Nansen Initiative:**

The Nansen Initiative was launched in October 2012 with the aim of protecting the rights of people displaced across borders due to environmental and climatic degradation. It is a state-owned consultative process, independent of the United Nations, intended to build progressive consensus among interested states on the best ways to deal with displacement in the context of environmental disasters.<sup>31</sup>

This initiative included mechanisms to provide protection for environmental refugees, such as the creation of a global agency for environmental refugees to implement the provisions of the initiative and to carry out its functions in accordance with the Aarhus Convention<sup>32</sup>. The initiative also established national committees to monitor the situation of environmental refugees<sup>33</sup>. Unfortunately, the Nansen Initiative remains an initiative to this day and has not received international recognition.

### **3.2.2.3 1951 Geneva Convention:**

The 1951 Geneva Convention on Refugees adopted several criteria to define the refugee, defining him as:

*"Any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality..."*

According to this definition, the Geneva Convention links the concept of asylum to subjective reasons, mainly persecution on the basis of race, religion, nationality, or political affiliation, whether within or outside one's country.<sup>34</sup>

Therefore, this definition is far removed from the case of the environmental refugee, who is displaced due to climatic degradation and natural or industrial disasters. Accordingly, this convention does not refer to environmental refugees, even implicitly, because the definition it provides is tied to *persecution*, which implies unfair and harsh treatment<sup>35</sup> and does not correspond with environmental degradation or natural disasters. It is also difficult to apply the *group affiliation criterion* due to its vague formulation, making its interpretation difficult for states.<sup>36</sup>

Moreover, the definition in the 1951 Geneva Convention is based on the *individual criterion*, which makes establishing a legal system to protect environmental refugees extremely difficult.<sup>37</sup> Practically speaking, the provisions of this Convention have not been applied because it cannot be applied to environmental refugees, as it does not recognize protection for them since the reason for their displacement is environmental and climatic degradation.

### **3.2.2.4 New York Declaration for Refugees and Migrants:**

The New York Declaration was adopted on 19 September 2016 by all member states of the United Nations during the regular session of the General Assembly. This declaration included many commitments to address the massive increase in the number of environmental refugees due to widespread environmental degradation and to adopt proposals for dealing with this phenomenon.<sup>38</sup>

The declaration also stressed the importance of promoting efforts to facilitate safe migration and to ensure assistance to migrants from countries not affected by wars, changes, or natural disasters.<sup>39</sup>

#### 4. Conclusion:

**After completing the study on the topic of international protection for environmental refugees under the rules of international law, we concluded that there are no international legal texts that regulate the right of environmental refugees, despite the increasing number of such refugees due to widespread environmental degradation—a global reality that can no longer be ignored.**

Therefore, it has become necessary to establish both an international and domestic legal framework that organizes the rights of these refugees and affirms their legal protection. This is crucial to ensuring the protection of their rights and preventing states from evading their responsibilities, which could destabilize international peace and security. Accordingly, we reached the following conclusions:

- The absence of a precise and comprehensive definition for the environmental refugee.
- The lack of international recognition of the right to environmental asylum, despite the existence of many agreements aimed at regulating this phenomenon.
- The phenomenon of environmental asylum stems from a set of factors and causes related to climate change, natural disasters, and environmental degradation—most of which are human-induced.

**Based on all of the above, we propose the following:**

- The necessity of establishing a precise and comprehensive definition for the environmental refugee.
- The updating of the 1951 Geneva Convention to align with the reality of climate degradation, natural and industrial disasters, many of which are caused by human activity.
- International recognition of the right to environmental asylum, along with the establishment of both national and international protection for environmental refugees.

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