DRAFT CONVENTION ON THE INTERNATIONAL STATUS OF ENVIRONMENTALLY-DISPLACED PERSONS*

Preamble

The Contracting Parties

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

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

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

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

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

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

Considering that several international declarations underline the existence of this category of displaced persons (Principle 18 of the Rio Declaration on Environment and Development, concerning ecological assistance; Agenda 21, Chapter 12, 12.47 ; and the Directive principles relating to internally-displaced persons),

Considering the numerous international conferences that also refer to such situations, including the Kyoto Conference (1997) and that of The Hague (2000) which set forth the risks of large migrations linked to climate change, and the World Conference on the Prevention of Natural Disasters (Hyogo, January 2005) which insisted on prevention linked in particular to ecological refugees,

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[*] Draft Convention elaborated by the CRIDEAU (Interdisciplinary Center of Research on Environmental, Planning and Urban Law) and the CRDP (Center of Research on persons rights), thematic teams of the OMIJ (Institutional and Judicial Mutations Observatory), from the Faculty of Law and Economic Science, University of Limoges, with the support of the CIDCE (International Center of Comparative Environmental Law).

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

- The General Assembly of the United Nations in resolutions 2956 (1972) and 3455 (1975) on displaced persons, resolution 36/255 of 17 December 1981 on strengthening the capacity of the United Nations system in the face of natural disasters and other catastrophes, resolution 43/131 of 8 December 1988 on humanitarian assistance to victims of natural disasters and emergency situations of the same type, resolutions 45/100 of 14 December relative to humanitarian assistance to victims of natural disasters and emergency situations of the same type, resolution 49/22 of 13 December 1994 concerning the international decade for the prevention of natural disasters,

- The Security Council (5663rd session of 17 April 2007) making the link between the impact of climate change and international security, in particular in respect to persons who risk displacement by 2050;

- The Secretary General of the United Nations in his message of 5 June 2006 exhorted governments and societies through the world to think of those who cannot subsist in arid zones and will become ecological refugees,

Considering that the specialized institutions of the United Nations such as the World Health Organization, UNESCO, the World Bank, and other institutions in the United Nations system, such as the High Commissioner for Refugees, the United Nations Environment Programme, and the United Nations Development Programme, regional organizations such as the Council of Europe, the European Union, and the African Union have drawn attention to the challenges of environmental migrations,

Considering the international agreements that already take into consideration environmental displacements, including International Labour Organization Convention N°. 169 concerning Indigenous and Tribal Peoples in Independent Countries of 27 June 1989 and the Convention to Combat Desertification of 12 September 1994,

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

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

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

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

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

Considering that the status of environmentally-displaced persons should be based on respect for the international legal instruments and protective principles relating to human rights and the environment,

Have agreed to the following :

Chapter 1 — Objective, definitions, scope of application, principles

Article 1 - Objective

The objective of this Convention is to contribute to guaranteeing the rights of environmentally-displaced persons and to organize their reception as well as their eventual return, in application of the principle of solidarity.

Each Contracting Party undertakes to accept environmentally-displaced persons with strict respect for the human rights guaranteed by international conventions to which the State is a party and to confer additionally those rights specifically set forth by the present text.

Article 2 - Definitions

1. The term “State Party” refers, unless otherwise indicated, to a Contracting Party to the present Convention.

2. “Environmentally-displaced persons” are individuals, families and populations confronted with a sudden or gradual environmental disaster that inexorably impacts their living conditions and results in their forced displacement, at the outset or throughout, from their habitual residence and requires their relocation and resettlement.

2.1. The terms “persons” and “families” refers to the individual dimension of displacement necessitated by environmental disaster and the term “populations” refers to the collective dimension of phenomena which can affect rural or urban communities, cities, countries, or continents…

2.2. “Sudden environmental disaster” is a rapidly-occurring catastrophe of natural and/or human origin.

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

2.4. “Habitual residence” means that area which defines the identity of individuals, families and populations.

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

3.1. “Temporary displacement” is any displacement made necessary by an environmental disaster leaving open the possibility of return in a short or medium term.

3.2. “Permanent displacement” is any displacement made necessary by an

environmental disaster eliminating any perspective of return in a long or very long term.

4. “Relocation” means that environmentally-displaced persons obtain, within a State Party, temporary places to live in conditions equivalent to those which prevailed before their displacement.

5. “Resettlement” means the integration of environmentally-displaced persons in healthy conditions that permit them a life of dignity where they can enjoy their rights and exercise their obligations without discrimination.

Article 3 - Scope of Application

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

Article 4 - Principles

1. Principle of common but differentiated responsibilities

In the interests of present and future generations and on the basis of equity, the obligations set forth in the present Convention shall be implemented with respect to the principle of common but differentiated responsibilities.

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

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

2. Principle of proximity

The present Convention shall be implemented, as much as possible and respecting the principle of common but differentiated responsibilities, in the framework of the principle of proximity, which requires the least separation of persons from their cultural area.

3. Principle of proportionality

The present Convention shall be implemented according to the principle of proportionality in the framework of an international system of financial aid.

4. Principle of effectiveness

In order to render concrete and effective the rights conferred by the present Convention, the World Agency for Environmentally-Displaced Persons (WAEP) and the States Parties shall, as soon as environmentally-displaced persons are welcomed in temporary residences, develop and implement policies permitting environmentally-displaced persons to leave these temporary residences in order to establish normal conditions of life. Such policies shall be elaborated with the participation of the environmentally-displaced persons, organizations which represent them, and the concerned States.

Chapter 2 — Rights Guaranteed by the Convention

Article 5 - Rights guaranteed to all environmentally-displaced persons

1. Rights to information and participation

Each person, each family and each population has the right of access, as early as possible, to information relating to environmental threats and critical situations implied by these threats.

Each person, each family and each population has the right to participate in the determination of policies to prevent environmental disasters and to take charge, at the outset or throughout, of the consequences.

The States Parties undertake to implement the rights to information and participation in a manner that will enable their exercise to have a real influence on decisions relating to environmental threats.

2. Right to assistance

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

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

3. Right to water and to food aid

Each environmentally-displaced person has the right to water and the right to receive a subsistence food supply.

4. Right to housing

Each environmentally-displaced person has the right to salubrious and secure housing.

5. Right to health care

Each environmentally-displaced person has the right to receive necessary health care.

6. Right to juridical personality

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

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

7. Each person environmentally-displaced to a State that is not his or her own retains the civil and political rights in his or her State of origin.

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8. Right to respect for the family

Each environmentally-displaced person has the right:

a) not to be separated from family members,

b) to the reunification of the family when the members are dispersed by an environmental disaster.

9. Right to education and training

Each environmentally-displaced person has the right to receive education and training with respect to his or her cultural identity.

10. Right to work

Each environmentally-displaced person has the right to gain his living by work.

Article 6 - Rights of Temporarily Displaced Persons

1. Right to safe shelter

Each temporarily displaced person has the right to be sheltered, if necessary, in provisional housing that the States Parties undertake to establish and maintain with full respect for human dignity.

Each temporarily displaced person housed in a temporary shelter has the right to circulate freely and to choose freely to establish a residence elsewhere.

2. Right to reintegration

Each temporarily displaced person sheltered in his or her own State of residence has the right to resettlement. It imply positive obligation for States Parties to ensure the reinstallation of its residents in their normal place of residence.

3. Right to return

Each temporarily displace person sheltered in a receiving State has the right to return to his or her normal residence when that become habitable. It imply positive obligation for State of origin to ensure the return of its nationals to their normal place of residence.

4. Right to prolonged shelter

Each temporarily displaced person has the right to prolong his or her stay when his or her normal place of residence becomes habitable. In such instance, the person loses the status of a temporarily displaced person but, if the person is not a national of the receiving State, may have the rights conferred on a lawful alien.

Article 7 - Rights of Permanently Displaced Persons

1. Right to resettlement

After a temporary shelter, as brief as possible, each permanently displaced person has the right to resettlement.

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2. Right to nationality

Each permanently displaced person has the right to conserve the nationality of his or her State of origin affected by the environmental disaster and to acquire the nationality of the receiving State.

Article 8 - Rights of families and of populations

1. Families displaced by environmental disasters have the right to preserve their unity.

2. Displaced populations benefit, in the receiving State, of rights equivalent to those recognized for minorities by international agreements, notably the right to constitute themselves collectively and maintain their collective identity.

Article 9 - Grant of the status of environmentally-displaced person

The States Parties shall elaborate within two years from the entry into force of the Convention transparent and open legal procedures for the demand and grant or refusal of the status of environmentally-displace person based on the rights set forth in the present chapter.

The elaboration of the procedures shall be accomplished in cooperation with the High Authority, which shall propose guidelines following signature of the Convention.

Article 10 - Principle of non-discrimination

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

Chapter 3 — Institutions

Article 11 - World Agency for Environmentally-Displaced Persons (WAEP)

Due to the foreseeable growth and permanence of environmental displacements, a World Agency for Environmentally-Displaced Persons (WAEP) shall oversee the application of the present Convention. A High Authority, a World Fund for the environmentally-displaced (WFED), a Scientific Council and a Secretariat assist WAEP. These institutions shall exercise their functions in accordance with the requirements of the Aarhus Convention on Rights of Information, Public Participation and Access to Justice.

WAEP is constituted a specialized agency of the United Nations.

1. Functions of WAEP

WAEP has as functions:

- to conduct prospective studies on the evolution of environmental displacements;

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

2. Organization of the WAEP

The organization of the administrative council, bureau, scientific council, secretariat, and the High Authority shall be set forth in an additional protocol, elaborated within one year following the opening for signature of the present Convention.

3. The High Authority

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

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

The members of the High Authority serve in their personal capacity.

b) The High Authority has the power to:

- define the criteria and the procedures for acquiring the status of environmentally-displaced person;
- provide an appeal from decisions to grant or refuse the status of environmentally displace person, at the request of individuals, families, populations, or interested non-governmental organizations;
- to decide directly and definitively requests for status from nationals of States not Party to the Convention or in case of failure by a State Party;

- reply to questions concerning the interpretation and application of the Convention at the request of national commissions or any interested physical or moral person;

- assess the compliance of national provisions with the Convention at the request of any interested physical or moral person and make a synthesis of national implementation reports. This synthesis shall indicate deficiencies as well as good practices;

- propose recommendations to the Conference of the Parties;

- propose amendments to the present Convention.

c) The decisions of the High Authority are definitive. The Contracting Parties undertake to comply with the decisions of the High Authority that concern them. The High Authority can request the Conference of the Parties to suspend the right to vote of States Parties which manifest consistent non-compliance with these decisions.

4. World Fund for the Environmentally-Displaced (WFED)

a) Functions

The WFED shall ensure the functioning of the WAEP and provide financial and material assistance for the receipt and return of the environmentally-displaced.

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

An additional protocol to the present Convention is adopted in the year following the opening for signature of the Convention in order to set for the base, the taking and the allocation of the tax.

Article 12 - National Commissions on Environmental Displacements

Each State Party, following entry into force of the Convention, shall create a national Commission to attribute the status of environmentally-displaced person. Each Commission shall consist of 9 independent members, experts in the fields of human rights, environmental law, and peace. The members shall be named by the highest judicial authorities of the country.

Chapter 4 — Measures of Implementation

Article 13 - Cooperation

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

Article 14 - Conference of the Parties

The first meeting of the Conference of the Parties shall take place one year at the latest after the date of the entry into force of the present Convention. The Convention depository will convoke the meeting. Thereafter, the Parties shall meet

regularly at least one time each two years. The proceedings shall be open to the public.

An extraordinary meeting can be called at the request of at least one-quarter of the States Parties.

The Conference of the Parties designates the members of the Executive Council of the WFED and the High Authority.

Article 15 - National implementation reports

1. The Parties shall permanently review the application of the present Convention on the basis of reports communicated by the States Parties, and having this aim in spirit shall:

a) Associate civil society through the process of elaborating reports. The methodology of the report shall be fixed by a tripartite committee made up of the State Party, universities and representatives of the present Convention;

b) Draw lessons from the conclusion and application of bilateral and multilateral agreements or other arrangements relevant to the object of the present Convention, to which one or several among them are Parties.

2. The meeting of the Parties examine and evaluate the policies that the Parties apply, notably the programs aimed at article 5.2 of the present Convention and the legal measures and methodologies that they follow to assure aid, assistance and receipt of the environmentally-displaced in order to improve again the situation in this regard;

Chapter 5 — Final dispositions

Article 16 - Relations with non-Parties

1. The Parties may invite, if appropriate, States that are not a party to the present Convention to cooperate to the implementation of the present Convention.

2. The Parties shall take appropriate measures, in accordance with international law, to ensure that no one undertakes any activities that are contrary to the purpose, the object and the principles of the present Convention.

Article 17 - Dispute Settlement

In case of a dispute between two or more Parties about the interpretation or the application of the Convention, the concerned Parties shall attempt to settle it through negotiation or other peaceful means of their choice.

If the concerned Parties cannot settle the dispute through the ways mentioned in the paragraph above, the dispute is submitted to the High Authority.

Article 18 - Amendments to the Convention and Protocols

Each Party can propose an amendment to the present Convention. Each Party to a Protocol can propose an amendment to this Protocol.

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The text of each proposed amendment is communicated by the Secretariat to the Parties at least six month before the meeting to which the amendment is proposed for adoption. If all efforts to adopt an amendment through consensus are unsuccessful, the amendment may be adopted through a two-thirds majority vote of the Parties present and voting at the meeting.

Article 19 - Protocols

The Protocols foreseen by articles 4 (Responsibility), 11.3.b (WFED), and 11.4 (General management of the WAEP) shall negotiated within one year following the opening for signature of the Convention. They shall be adopted by a two-thirds majority of the Parties present and voting at the meeting.

The meeting of the Parties can adopt any new Protocols by the same majority.

Article 20 - Reservations

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

Article 21 - Signature, ratification, acceptance or approval

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

Article 22 - Entry into force

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

Article 23 - Authentic texts

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

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

Done at on two thousand

Limoges (FRANCE), the 2nd December 2008.

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