CLIMATE CHANGE REFUGEES: SHOULD APPLICANTS ESCAPING THE SUDDEN, DISASTROUS ONSET OF CLIMATE CHANGE BE ACCORDED THE SAME PROTECTION AS THOSE ESCAPING PERSECUTION?

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ABSTRACT

In the face of imminent mass displacements induced by climate change, the current legal regime for refugee protection fails to preserve the rights of individuals escaping climate disasters. This is due to the normative requirement that applicants seeking refugee status must be escaping 'persecution'.[286] Since those escaping climate change do not satisfy the traditional rubric of persecution, it has been argued that refugee status would not apply to applicants seeking protection from the effects of climate change.[287] There is disagreement among academics on whether 'CCRs' (climate change refugees) should be accounted for in a separate category under Article 1A(2) of the Refugee Convention 1951.[288] This paper will analyse whether disaster-motivated escape is adequately similar to 'persecution' so that victims of climate change induced displacement may be considered refugees under the Convention. Moreover, it will assess whether international regimes, procedurally and substantively, provide redress for CCRs.

1. INTRODUCTION

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286 Refugee Status Appeals Authority (RSAA) Refugee Appeal No. 70708/97 and 70710/97 (17 November 1998)

287 Robert McLeman and François Gemenne, *Routledge Handbook of Environmental Displacement and Migration* (19th March 2018) Chapters 26,30 & 34

288 Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) Article 1A(2)

In their Fourth Assessment, the Intergovernmental Panel on Climate Change predict that, by the year 2050, approximately 25 million to 1 billion people will be displaced due to environmental degradation caused by climate change.[289] This statistic includes internally displaced persons and individuals fleeing gradual hazardous changes in the environment.[290] This article will primarily focus on sudden events that motivate desperate cross-border movement and the consequent uncertain status of escapees. However, in order to engage with a wider variety of research, gradual degradation of the environment, which forces cross-border movement, will also be examined.

In order to find a pragmatic solution to the plight of climate refugees, doctrinal analysis will be undertaken along with an evaluation of the academic debates in this area. It is also pertinent to note that in existing literature, the terms 'environmental migrants' and 'climate change refugees'[291] have been used interchangeably. The definition of climate change refugees used in this article will be El-Hinnawi's (1985) definition of environmental migrants:

> *"Those people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life"*[292]

[289] IPCC, 2007: *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, 104 pp
[290] Internal Displacement Monitoring Centre, *No matter of choice: displacement in a changing climate* (December 2018) 2-3
[291] Hereinafter referred to as CCRs
[292] Essam El-Hinnawi, United Nations Environment Programme 1985 <http://wedocs.unep.org/handle/20.500.11822/2651> accessed 27th November 2020

The article will discuss the applicable international legal frameworks and the extent to which they address the status and protection of CCRs. It will then compare the conditions of traditionally persecuted refugees and CCRs to determine whether CCRs may claim asylum in the absence of traditional persecution. Secondly, a critical comparative study will be done on regional treaties and case law to ascertain good practices which can be extrapolated to propose a practical yet durable model for legal reform. After evaluating the shortcomings of the Refugee Convention, a case for legislating to supplement existing provisions for the protection of refugees will be made. To make the presented solution clear for practitioners, the accommodation of climate refugees will also be seen through a regional lens attuned to localised CCR management concerns.

2. THE ESTABLISHED REGIME

International law regarding the establishment of refugee status is primarily contained in the Refugee Convention 1951[293] (hereinafter referred to as the Convention) which lists requirements that must be met for an applicant to be determined a refugee and the 1967 Protocol Relating to the Status of Refugees[294] (hereinafter referred to as the 1967 Protocol) which removes temporal and geographic restrictions for refugee claims. The requirements for refugee status include alienage from the stage of origin, well-founded fear of persecution, absence of protection from the state of origin, and nexus to the reasons provided in Article 1A(2). The Convention provides a list of characteristics, including race, religion, nationality, and membership of a

[293] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137

[294] Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) Treaty Series, Vol. 606, pp 267

particular social group or political opinion, which may cause a potential refugee to fear persecution. Keeping the requirements for refugee status in mind, the features common to CCRs will now be studied to understand whether they may be covered by the Convention.

One primary criterion that must be satisfied is proof of cross-border movement i.e., alienage from the state of origin. If this requirement is applied to CCRs then it will only be adequately fulfilled when physical cross-border movement can be shown. Any internal displacement will fall short of the alienage requirement irrespective of the cause of the displacement.[295] Generally, this may not be a difficult element to prove for some CCRs, such as the residents of small island nations. Rising sea levels due to global warming are resulting in pacific islands being submerged under water which may eventually force residents to relocate to another land mass.[296] An example of a state which has had the frailty of its geopolitical situation exacerbated by climate change is the island nation of Kiribati. The official stance of the government of Kiribati is that relocation is the only method to ensure the safety of their people.[297] It can nonetheless be argued that movement from the physical boundary of one sovereign jurisdiction to another may not occur if the country of origin is completely underwater by the time potential CCRs begin their journey. There is a stark contrast between traditional border crossings between two countries with identifiable borders and border crossings prompted by instant circumstances. However, if it is internationally agreed that there would be a legal presumption of continuity

[295] Ni- Xing Yin, *A Nation Going Under: Legal Protection for Climate Change Refugees* (Boston College International and Comparative Law Review Volume 38 Issue 2, 2015) 341-342
[296] UN High Commissioner for Refugees (UNHCR), *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches* (February 2012) 4-5
[297] Maryanne Loughry and Jane McAdam, '*Kiribati – Relocation and Adaption*', (Forced Migration Review No.31, 1st October 2008)

of statehood,[298] even if that State no longer exists territorially, then it may be safely established that CCRs would fulfil the requirement of alienage.

For the second element to be fulfilled the applicant must show fear of persecution due to one of the grounds in the Convention. The concept of 'persecution' in international law has evolved over the years. The concept of persecution under the Refugee Convention can only be construed in its truest essence by breaking it down and understanding its constituent elements.[299] Persecution has been broadly understood from Article 33 of the Convention to include discriminatory acts that may seriously threaten the safety, freedom or any other fundamental human rights of the applicants.[300] The concept of persecution developed in parallel with the requirement of protection for victims of involuntary forced migrations as a consequence of the Second World War. Moreover, the focus was on restricting refugee status to applicants who were facing the risk of persecution due to the failure and unavailability of State protection.[301]

In the case of CCRs the persecutor is the environmental disaster that threatens the individual's security and choice to freely stay in their country of origin.[302] A causal link has been discovered between environmental disasters and migration patterns. It has been shown that migration is induced not only by the actual events of disasters but also the inevitable socio-economic

[298] UNHCR Expert Meeting on Climate Change and Displacement (Bellagio Conference 2011)
[299] Josè H. Fischel De Andrade, *'On the Development of the Concept of Persecution in International Law'* (III Anuário Brasileiro De Direito Internacional Volume 2, 2008) 135-136
[300] Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (Reissued Geneva December 2011) 13(35)
[301] Hathaway, J., & Foster, M. *The Law of Refugee Status* (Cambridge University Press 2014), pp 182-287
[302] Jane McAdam, 'Climate Change, Forced Migration and International Law', pp 49-50

hardships that follow.[303] However, the Refugee Convention 1951 lays out the grounds upon which persecution can be feared and environmental disasters are not included.[304] Needless to say, CCRs cannot strictly fall under the grounds of the Convention due to the absence of getting targeted 'for reasons of race, religion, nationality, membership of a particular social group or political opinion'. However, if CCRs were to qualify as a particular social group then they would be able to have a plausible claim, thus satisfying a well-founded fear of persecution.

The benchmark provided by the UNHCR as an acceptable interpretation of a particular social group has been backed by caselaw in the cases of *Islam v. Secretary of State for the Home Department* and R. *v. Immigration Appeal Tribunal and Secretary of State for the Home Department, ex parte Shah*.[305] Further, in *Canada v. Ward* a succinct test was established under which a particular social group can be constituted by individuals united in their characteristics which are different from social mores and that is the reason why they fear persecution. This concept has been formulated as a tripartite test whereby members of a particular social group are held to be those who have innate or unchangeable characteristics, fundamental voluntary association with a group or a former voluntary association with the same.[306] However, an increasingly broad meaning of a particular social group would undermine the limited State

[303] Dr. Camillo Boano, Roger Zetter and Dr. Tim Morris, *Environmentally Displaced People: Understanding the linkages between environmental change, livelihoods and forced migration* (Refugees Studies Centre, 1st November 2008) 15-17

[304] Angela Williams, *Turning the Tide Recognizing Climate Refugees in International Law* (Law and Policy University of Denver Volume 30 Issue 4, September 2008) 502-529

[305] *Islam v. Secretary of State for the Home Department* and R. *v. Immigration Appeal Tribunal and Secretary of State for the Home Department, ex parte Shah, UK House of Lords*, [1999] 2 WLR 1015; [1999] INLR 144

[306] *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689

obligations set out in the Convention, making it difficult for host States to accommodate the surge of incoming refugees.[307]

For CCRs the characteristic common to the group is the sudden environmental disaster that leaves them in need of refugee protection. This would make the manner of the supposed persecution overlap with the feature that is common to the group of CCRs. The case law concerning the relationship between persecution and qualification as a particular social group suggests that the social group must exist free of just a common fear of persecution.[308] In addition, victims of climate change induced disasters are affected impartially. It is not their innate features that are the cause of their suffering but rather the location of their dwelling.[309] Therefore, for them to be considered a 'group' just because they share the same location would result in an uncontrollably large social group. The meaning of a particular social group is increasingly interpreted to accommodate smaller groups of individuals as a control on refugee influx. Hence, it is unlikely that a court would rule in favour of declaring CCRs as a particular social group.

The reason for granting refugee status on the basis of belonging to a particular social group was in the spirit of benefitting disfranchised applicants that do not fall into any of the other categories in the Refugee Convention.[310] Unfortunately, in practice, this spirit is lost in its exclusionary application. It

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307 T. Alexander Aleinikoff, '*Protected Characteristics and Social Perceptions: An Analysis of the Meaning of 'Membership of a Particular Social Group*', (Cambridge University Press, June 2003) 286-288

308 Applicant A. and Another v. Minister for Immigration and Ethnic Affairs and Another, High Court of Australia, (1997) 190 CLR 225; 142 ALR 331

309 Michelle Foster, '*The Ground with the Least Clarity: A Comparative Study of Jurisprudential Developments relating to 'Membership of a Particular Social Group"* (University of Melbourne Australia Division of International Protection, August 2012) 6-8

310 Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)

is understandable that this narrowing down is necessary to prevent host States from being overburdened. However, it leaves CCRs without protection under this regime. In sum, the Convention ground of 'particular social group' cannot include CCRs.

As per the UNHCR's Handbook,[311] the absence of State protection from threats to the peace and the security of individuals can be classified under 'cumulative grounds', which could constitute a 'well-founded fear'. Cumulative grounds are a combination of factors that may not be sufficient as standalone causes, but when put together, they make the applicants' claims of well-founded fear more robust.[312] Under the hypothetical premise that the onset of climate change is assumed to be an agent of persecution, an absence of sufficient security by the State will rationalise the demand for asylum. However, for such an argument to be justified, the nexus requirement must be fulfilled. The nexus criterion is the connection between the persecution and the Convention ground it is propelled by. This relationship of causation is not a freestanding requirement.[313] It must be linked to the Convention grounds. The Convention grounds are limited in terms of the situations they cover and CCRs fall short of achieving any sort of validation under the elements in the Refugee Convention 1951.

The Refugee Convention is not the only international framework that may be used as a tool to actualise the rights of victims of hazardous environmental effects. The United Nations Conference on the Human Environment, where

311 Guidelines On International Protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (7th May 2002) 2-5
312 Ibid
313 Colloquium on Challenges in International Refugee Law. "*International Refugee Law: The Michigan Guidelines on Nexus to a Convention Ground.*" (Mich. J. Int'l L. 23 no. 2, 2002) 213

the Stockholm Declaration was produced,[314] was one of the first global conferences to highlight the importance of a safe and healthy environment where individuals could lead a dignified life.[315] However, it has been argued that in reality, the goal of the Conference and the Declaration was for participating countries to declare control over their natural assets and to enable them to further their development plans unhindered.[316] With regard to accommodating CCRs, the Declaration can be credited for identifying a right to an adequate, liveable environment. Moreover, the Stockholm Declaration was also the precursor to an official acknowledgement that a harmful environment would be considered an interjection to the enjoyment of one's human rights.[317] In a third safe country, away from the environmental disaster, this obstacle to fundamental rights, including but not limited to the right to life, could also be removed. The ground reality is that although the Stockholm Declaration is relevant and could have provided protection for CCRs, it is soft law and therefore not binding.[318]

As proved above, the international regimes fail to procedurally and substantially provide any redress to CCRs. In a recent judgment against New Zealand, the Human Rights Commission (HRC) stated in *obiter* that States are advised against returning people fleeing their State of origin due to the disastrous impacts of climate change if it is apparent that this would be a derogation of their fundamental rights.[319] However, in the concerned case,

314 Stockholm Declaration, December 1972
315 Ibid, Principle 1
316 James Gustave Speth & Peter M. Haas*, Global Environmental Governance* (Island Press, 2006) 56-60
317 UN Human Rights Council*, Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: preliminary report* (24th December 2012) 7
318 Stockholm Declaration, December 1972, Principle 24
319 Ioane Teitiota v. New Zealand, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7th January 2020

the appellant's claim was rejected on the grounds that he was not under imminent threat. Even if this claim was allowed, the non-binding nature of HRC decisions would leave the final verdict with the State. Logically this is understandable as in order for an international legally binding framework to come into effect, State signatories have to be satisfied. As each signatory guards their own personal interests it is difficult to achieve absolute unanimity. To further probe this issue, regional legal instruments must be considered to determine whether States have been willing to grant protection to CCRs within their regions.

3. AFRICA

Regional law is geographically specific international law which is the outcome of specialised bodies formed via regional cooperation. An example of this is the Organization of African Unity (OAU) Convention 1969,[320] which is a joint project between 55 sovereign African countries. The OAU Convention aims to address rising intercontinental refugee movement. In the 1969 Convention, a refugee is defined in a contemporary and fit for purpose manner. Any person facing external aggression, occupation, foreign domination, or events seriously disturbing public order in their entire country or just a part of their country is a refugee under this definition.[321] The outcome for CCRs escaping the sudden and disastrous onset of climate change under such a lenient definition is highly favourable. Environmental disasters could constitute events which seriously disturb public order. Hence, the issue of proving persecution under the Refugee Convention can be avoided altogether. The OAU has been academically scrutinised as being

[320] Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention") (10th September 1969)
[321] Ibid Article 1(2)

ineffective in dealing with mass refugee movement because such an all-arching definition gives rise to a multitude of asylum claims.[322] This lends weight to the argument in favour of the Refugee Convention providing strict criteria for refugee status as it filters frivolous claims. However, this is one of the few Conventions that covers the unique situation of those escaping from disasters attributed to climate change and accords them refugee status.

4. CENTRAL AMERICA

Another regional instrument is the Cartagena Declaration 1984[323], which is the product of regional cooperation between the Central American countries to manage refugees. Like the OAU, it provides that any circumstances that may have seriously disrupted public order and adversely affected the rights of the applicants[324] would be sufficient to constitute persecution. In practice it has been noted that each jurisdiction still uses a localised method of implementing the definition. Even though the Convention is transposed into national law, its implementation lacks uniformity.[325] Despite irregularity in application, the Cartagena Declaration is not as discriminatory against CCRs as the Refugee Convention. It does not impose an unreasonably strict qualification requirement for proving persecution. Rather it states multiple situations under which individuals could be oppressed enough to seek refugee status. Particularly it states that 'any other reason' that may impede an individual's safety or freedom could be a reason valid enough to warrant

322 Micah Bond Rankin, *Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years On*, (South African journal on human rights volume 2 Issue 3, 2005) 406-435

323 Cartagena Declaration on Refugees Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (22nd November 1984)

324 Ibid, Conclusion [3]

325 UN High Commissioner for Refugees (UNHCR), *The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America* (June 2013) 21-23

refugee status. This stance towards determining refugee status could be beneficial in dealing with issues like climate change induced migration.[326]

5. EUROPE

The European guidelines on refugee status are contained within the Qualification Directive 2004.[327] It includes the definition provided under the Refugee Convention with adjustments as to the way protection for applicants is to be exercised. This means that yet again there is a complete disregard for the existence of CCRs. A new draft Directive[328] has been submitted which suggests the harmonisation of the implementation of standards of qualification for refugee status but it keeps true to the limited original grounds of eligibility. Member States' inflexibility to welcome CCRs can be attributed to the original definition entrenched in the Refugee Convention.[329] Conversely, the verbatim adoption of the Refugee Convention definition in European refugee law seems to indicate that the Convention definition is Eurocentric.[330] Sudden disasters induced by climate change are a somewhat foreign concept due to the fact that most climate disasters occur outside of continental Europe. Considering that, even if such disasters took place in Europe, the socio-economic capacities of small island nations and continental European nations to cope with the said disasters are incomparable. This could explain the absence of policy initiatives for protecting the victims of climate change induced catastrophes. With the increasing inflow of refugees

326 Reed-Hurtado M, 'The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America' pp 141-180
327Council Directive 2004/83/EC (29th April 2004) Article 2(c)
328Procedure 2016/0223/COD (13th June 2016)
329 Violeta Moreno-Lax & Elspeth Guild, *Current Challenges for International Refugee Law, with a Focus on EU Policies and EU Cooperation with the UNHCR* (Directorate-General for External Policies of the Union, December 2013) 14-16
330 Matthew Scott, *Refuge from climate change-related harm: Evaluating the scope of international protection within the Common European Asylum System* (Martinus Nijhoff Publishers 2015)

to Europe, Member States of the European Union are apprehensive about lenient immigration policies and the pressure they exert on internal security because of open borders.[331] There is a need for a comprehensive policy to deal with CCRs, which combines the effort of the institutions of the European Union to create a multi-dimensional model that can balance the interests of Member States and prospective applicants.[332] This model should detail the responsibilities of the host States along with the qualification guidelines for those applying for asylum.

6. NEW ZEALAND AND THE SINKING ISLAND NATIONS

New Zealand is a pioneer State in highlighting the plight of climate change refugees. Since 2013 the New Zealand Immigration and Protection Tribunal along with the Supreme Court have adjudicated on two landmark cases, AF (Kiribati)[333] and AC (Tuvalu)[334] regarding the asylum claims of applicants who hailed from two different Pacific Islands suffering adversely from rising sea levels. The determination in *AF (Kiribati)* is most detailed in its treatment of the claims for refugee status by CCRs, while the determination in *AC (Tuvalu)* provides more insight into the approach to determining claims for complementary protection.[335] Although the appeals for asylum from climate change triggered disasters were rejected in these cases (in AC (Tuvalu) the applicants were permitted to stay because the interests of a child were at

331 *Human Rights and Climate Change: EU Policy Options* (Directorate General for External Policies, August 2011) 65-69
332 Ibid, 77-79
333 A*F (Kiribati)* [2013] NZIPT 800413, New Zealand: Immigration and Protection Tribunal, 25th June 2013
334*AC (Tuvalu)*, [2014] NZIPT 800517-520, New Zealand: Immigration and Protection Tribunal, 4th June 2014
335 Matthew Scott, *Finding Agency in Adversity: Applying the Refugee Convention in the Context of Disasters and Climate Change* (Refugee Survey Quarterly Volume 35, Issue 4, 1st December 2016) 26–57

stake), the courts did give a detailed insight into how CCRs deserve protection. The brief common finding in both cases was that the applicants were seeking protection for disasters set in the future with no definitive proof about the magnitude of the effects that could be directly faced by them.[336] Moreover, it was also stated that since the governments of both islands were engaged in precautionary measures, there was no evidence of absence of State protection.[337] In the absence of State protection, refuge could be forthcoming. The breakthrough in the above cases was that the courts admitted that forceful displacement by environmental disasters is a humanitarian issue and cannot be dismissed just because it does not sit within the Refugee Convention.[338] In light of the future of climate change induced migration, the government of New Zealand is now going to be the first country to provide visas to individuals from the Pacific Islands region escaping the devastating effects of climate change.[339] Although this is a welcome step in the direction of accommodating CCRs, visas are bound to expire and are not a permanent solution.[340]

Regional law is not enough on its own to deal with the issue of CCRs. The application of regional law is limited because it is created and relevant for regional legal systems. However, regional good practices can be used to develop a global approach to deal with CCRs. Therefore, the following

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336 Ibid, 30 - 42

337 Jane McAdam, *The emerging New Zealand jurisprudence on climate change, disasters and displacement*, (Migration Studies Volume 3, Issue 1, 1 March 2015) 131–42

338 Farquhar H, *'Migration with Dignity: Towards a New Zealand Response to Climate Change Displacement in the Pacific*' (Victoria U Wellington L Rev 29, 2015)

339 *Pacific Climate Change Related Displacement and Migration: A New Zealand Action Plan* (Office of the Minister of Foreign Affairs, 2nd May 2018)

340 New Zealand's Climate Refugee Visa, a Framework for Positive Change: Creating a regional framework of protections for climate migrants from the Pacific <https://www.otago.ac.nz/law/research/journals/otago734244.pdf>

section will elaborate on the coping mechanisms that can be created to facilitate victims of climate change disasters.

7. CONCLUSION

To deal with the predicted tide of CCRs, academics have proposed three major forms of law reform. These are as follows; the creation of a new Convention,[341] a soft law regime consisting of guidance framework, or through already available legal protection. The inception of a new legal framework seems to be a viable option to the extent of eliminating the problem of identifying CCRs and their rights.[342] An effective Convention will need to provide a rigorous analysis mechanism, which grants refugee status on the empirical basis of claims[343] to avoid a mass uncontrolled inflow of applicants. Another point for consideration is the reaction of the people of the South Pacific regions to a Convention that would classify them as climate change refugees. Natives of oceanic islands have found it offensive to be labelled as refugees because that portrays them as a vulnerable group rather than a resilient nation.[344] Furthermore, a Convention lacks the flexibility of an otherwise incremental strategy. In the age of increased border control and strict migration policies, it is likely that a Convention may face political opposition. So it is unlikely that a Convention would be a realistic solution. In contrast, a soft law-guiding framework could be a good transitional step before a detailed policy is agreed upon. This will enable States to

[341] David Hodgkinson and Lucy Young, '*In The Face Of Looming Catastrophe': A Convention For Climate Change Displaced Persons* (January 2012) 7- 14
[342] Bonnie Docherty and Tyler Giannini, "*Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*" (Harvard Environmental Law Review 33, no. 2 (2009) 357-58
[343] Jane McAdam, *Swimming Against the Tide: Why a Climate Change Displacement Treaty is Not the Answer* (International Journal of Refugee Law, Volume 23, Issue 1, 1 March 2011) 2–27,
[344] Rebecca Hingley, *Climate Refugees: An Oceanic Perspective* (12th January 2017)

independently develop their own practice in due time.[345] However, the issue of implementation of obligations will subsist.[346] A soft law guiding mechanism would only work temporarily and cannot be expected to be a long-term solution.

The use of already available legislation is practical to a certain extent. It has been posited that a case can be made for CCRs to be granted asylum under the right to life.[347] Environmental disasters may cause a variety of threats to safety such as fatal health problems, physical dangers along with economic deprivation which can all be said to obstruct the right to life. But this is a temporary solution and is not sufficient for the multifaceted problems of climate change motivated migration. No existing provision provides a detailed framework for the processing and the relief of CCRs. It has also been argued in light of already existing case law that the encapsulation of the right to life in regional law instruments should be sufficient for CCRs.[348] However, this has not proved to be the case thus far as there is a dearth of case law for victims of climate change. Therefore, it is not practical to rely on current laws for the absolute protection of CCRs.

With the above deliberation on the different kinds of solutions, it can be observed that no one solution can be the ultimate answer. Therefore, instead of considering each approach separately, the answer lies in an overlapping

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345 Jane McAdam, *Climate Change and International Law: Complementary Protection Standards, UNHCR Legal and Protection Policy Series* (May 2011) 60

346 Lauren Nishimura, *'Climate Change Migrants': Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*' (International Journal of Refugee Law 27.1, 2015) 107–34

347 Universal Declaration of Human Rights 1948, Article 3

348 Matthew Scott, Natural Disasters, Climate Change and *Non-Refoulement*: What Scope for Resisting Expulsion under Articles 3 and 8 of the European Convention on Human Rights? (International Journal of Refugee Law, Volume 26, Issue 3, 1 October 2014) 404–32

model. Therefore, a step-by-step solution is required. Firstly, an elaborate guiding framework must be created that will help current CCRs seek protection. Simultaneously, local and international courts must be given specialised instructions by expert groups to ascertain refugee status for victims of climate change and to construe the already available laws while fulfilling the policy objective of the aforementioned guidelines within their advisory jurisdiction. Lastly, advocacy for a comprehensive Convention must begin, as this will create consensual binding obligations for host States. In addition to a general Convention, area and disaster specific treaties need to be developed as well because not all sudden onsets of climate change will be the same. In light of the various predicted consequences of climate change such as fires, flash flooding and droughts, the treaties should focus on individual issues while providing substantial relief to a wide range of displaced victims. This comprehensive mechanism fuses all solutions together, which resultantly covers the flaws of the individual approaches.

It is observable upon analysis of the legal regime for refugee protection that there is no singular internationally binding provision that can act as potential defence for individuals escaping the sudden, disastrous onset of climate change. Laws for refugee protection have been created to ensure that no individual with the rightful need for asylum goes unprotected. Victims of climate change induced disasters have no recourse to protection even though their suffering is comparable to individuals who qualify for refugee status by the mainstream interpretation of 'persecution' in the Refugee Convention. This unfair treatment can leave CCRs stranded with no rights. Therefore, not only should CCRs be recognised as a vulnerable group but they should also be given sufficient protection under a new legal regime. This is the only way

to successfully practice refugee protection in the wake of the emerging challenges of the 21st century.