

**‘ENVIRONMENTAL REFUGEES’:
EXPOSING THEIR PROTECTION GAPS IN INTERNATIONAL LAW**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore
University Law School

By
WANJALA DEAN GEORGE
076684

Prepared under the supervision of
Dr. John Osogo Ambani

January 2017

Declaration

I, WANJALA DEAN GEORGE, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:

Date:

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:.....

Dr. John Osogo Ambani

TABLE OF CONTENTS

Declaration	ii
Dedication	vi
Acknowledgements	vii
Abstract	viii
List of Acronyms	ix
CHAPTER ONE	1
Introduction	1
1.1 Background and Statement of the Problem	1
1.2 Hypothesis	5
1.3 Research Questions	5
1.4 Objectives	5
1.5 Limitation	6
1.5.1 Methodology	6
1.5.2 Approach	6
1.6 Chapter Breakdown	6
CHAPTER TWO	8
Development Of Refugee Law	8
2.1 Introduction	8
2.2 Development Of Refugee Law	9
2.3 Elements Of The Refugee Definition	11
2.4 Whether Environmental Refugees Meet The Cut	13
2.5 Refugee Protection On The Regional Level	17
2.5.1 The 1969 OAU Convention	18
2.5.2 The 2001 Bangkok Principles and the 1984 Cartagena Declaration	20
2.6 Conclusion	21

CHAPTER THREE	24
Potential Modes Of Protection.....	24
3.1 Introduction.....	24
3.2 Expansion of the Geneva Convention.....	25
3.3 Non-Refoulement And Complementary Protection.....	27
3.3.1 Complementary Protection	31
3.4 International Human Rights Law	31
3.5 International Environmental Law	36
3.6 Conclusion	37
CHAPTER FOUR.....	39
Working Towards A Holistic Solution	39
4.1 Introduction.....	39
4.2 Critic of Non-Refoulement Approach	40
4.3 Critic of International Human Rights Law Approach.....	40
4.4 Critic of International Environmental Law Approach	42
4.5 New Refugee Convention.....	43
4.6 Prevention	45
4.7 Conclusion	46
CHAPTER FIVE	48
Conclusion And Recommendations.....	48
5.1 Introduction.....	48
5.2 Restating the Initial Problem	48
5.3 Research findings.....	49
5.3.1 Existing international regimes are an ill-equipped mode of protection	49
5.3.2 Alternative protection mechanisms exist outside the scope of current refugee laws	49
5.3.3 An approach based on asylum alone is not sufficient protection	50

5.4 Conclusion	50
5.5 Recommendations.....	50
5.6 Recommendations for Further Research.....	52
BIBLIOGRAPHY	53
Books	53
Case Law.....	55
Conventions	56
European Union Directives.....	57
General Comments.....	57
Internet Sources	58
Journal Articles	59
Reports	63
UNHCR Reports.....	63
Unpublished LLM Thesis	65
Working Papers.....	65

Dedication

*To all 'environmental refugees' around the world enduring adversity and in desperate search for
a safe place to call home.*

Acknowledgements

I am greatly indebted to Dr. John Osogo Ambani, my supervisor, for his constructive criticism, wisdom and sense of direction throughout this dissertation. I also acknowledge my family, for providing a suitable environment for conducting this research and most sincere appreciation to God, for His Grace.

Abstract

This dissertation explores two principal research questions: first, whether international law provides for a mechanism that protects those moving away from harsh environmental conditions and secondly, whether existing international refugee laws can be adopted with necessary modifications to contain ‘environmental refugees’.

The point of departure of this dissertation will be the existing *1951 Geneva Convention relating to the Status of Refugees* enacted six decades ago to protect people fleeing persecution of their civil and political liberties. It will be argued that this Convention is an antiquated form of protection for the recent wave of migration patterns across international borders to escape environmental calamities witnessed from across the Sahel and the Horn of Africa, as well as the Soviet Union, Latin America and low-lying islands such as Tuvalu and Kiribati. As such there is a new breed of refugees who will be named ‘environmental refugees’ for purposes of this study, who cannot find solace in the existing refugee laws.

The dissertation will investigate the existing international and regional laws in detail, as well as alternative protective regimes before recommending a holistic approach in dealing with this emergent crisis.

List of Acronyms

Bangkok Principles

Bangkok Principles on the Status and Treatment of Refugees

Cartagena Declaration

Cartagena Declaration on Refugees

CCPR

Human Rights Committee

CESCR

Committee on Economic, Social and Cultural Rights

ECHR

European Convention of Human Rights

ECtHR

European Court of Human Rights

Geneva Convention

Geneva Convention relating to the Status of Refugees

HRC

Human Rights Council

ICCPR

International Covenant on Civil and Political Rights

ICESCR

International Covenant on Economic, Social and Cultural Rights

ILM

International Legal Materials

ILO	International Labor Organization
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
Kyoto Protocol	<i>Kyoto Protocol to the United Nations Framework Convention on Climate Change</i>
OAU	Organization of African Unity
<i>OAU Convention</i>	<i>Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa</i>
<i>Rio Declaration</i>	<i>Rio Declaration on Environment and Development</i>
<i>Stockholm Declaration</i>	<i>Stockholm Declaration of the United Nations Conference on the Human Environment</i>
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNEP	United Nations Environmental Programme
UNFCCC	<i>United Nations Framework Convention on</i>

Climate Change

UNGA

United Nations General Assembly

UNHCR

United Nations High Commissioner for
Refugees

UPR

Universal Periodic Review

USSC

United States Supreme Court

CHAPTER ONE

Introduction

1.1 Background and Statement of the Problem

‘The regime of refugee law is mainly governed by the 1951 *Convention Relating to the Status of Refugees*¹ (hereinafter 1951 Convention) and its 1967 Protocol as it has been ratified by several states.² The Convention affords protection to individuals already outside their country of origin who must show that they have a well-founded fear of being persecuted because of their race, religion, nationality political opinion or membership of a particular social group.³ While states traditionally enjoy discretion to control the entry, residence and expulsion of aliens,⁴ state parties to this convention have a duty not to return those aliens specifically defined as refugees.

On the other hand, the 1969 *Convention Governing The Specific Aspects Of Refugee Problems In Africa*⁵ (hereinafter 1969 African Convention) introduces a definition with objective criteria for determining refugee status and does away with the elements of deliberateness and discrimination inherent in the 1951 Convention.⁶ In addition to the definition found in the 1951 Convention, the term refugee also applies to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek

¹ *Convention Relating to the Status of Refugees*, 189 UNTS 137, entry into force 22 April 1954 available at: <http://www.refworld.org/docid/3be01b964.html> accessed 29 February 2016.

² As of April 2015, there were 145 State Parties to the 1951 Convention and 146 State parties to its 1967 Protocol. See, UNHCR, United Nations Treaties Collection, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol <http://www.unhcr.org/3b73b0d63.html>.

³ Article 1(a)(2) *Convention Relating to the Status of Refugees* 1954; *INS v. Cardoza-Fonseca*, USSC, 9 March 1987, paragraph 1454 USSC.

⁴ *Beldjoudi v France*, ECtHR, 26 February 1992, paragraph 74.

⁵ Organisation Of African Unity *Convention Governing The Specific Aspects Of Refugee Problems In Africa* 10 September 1969 1001 UNTS 45.

⁶ UNHCR: Mandal R, *Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")*, June 2005 at 13 <http://www.refworld.org/docid/435e198d4.html> on 2 December 2015.

refugee in another place outside his country of origin or nationality.⁷ Indeed, both definitions are employed by UNHCR in its operations in Africa.⁸

‘Environmental Refugees’ is a term coined in 1985 to refer to people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption that jeopardized their existence and/or seriously affected the quality of their life.⁹ There has been a growing awareness, through academic research, of the nexus between climate change and migration.¹⁰ In spite of this however, there is no sufficient legal definition of people who may be induced or forced to leave their homeland due to the effects of climate change which has led to the wide use of the term ‘environmental refugees’ to describe such situations.¹¹ This has in turn led to the impression that these displaced people will be protected under international refugee law.

It would seem therefore, that the 1951 Convention did not contemplate other sorts of refugees and many scholars hold the belief that the term ‘environmental refugee’ is in fact a misnomer and misleading as well as potentially damaging to the protection of traditional refugees under the Refugee Convention.¹² Additionally, although the 1969 Convention refugee definition has been expanded, it does not specifically mention harsh environmental conditions as an explicit factor of

⁷ Article 1(2) *Convention Governing The Specific Aspects Of Refugee Problems In Africa* (1969).

⁸ UNHCR, 'Note on International Protection' A/AC96/830 7 September 1994, 32.

⁹ El-Hinnawi, E, *Environmental Refugees*. Nairobi: United Nations Environment Programme 1985.

¹⁰ Boano C, Zetter R, Morris T, *Environmentally Displaced People: Understanding Linkages Between Environmental Change, Livelihoods And Forced Migration*, Refugee Studies Centre, Oxford, 2007, 6.

¹¹ Marshall LW, 'Toward a new definition of ‘refugee’: is the 1951 convention out of date?' 37 *European Journal of Trauma and Emergency Surgery* (2011) at 61-66;

Norwegian Refugee Council: Kolmannskog V, 'Future Floods of Refugees, A comment on climate change, conflict and forced migration' April 2008 http://www.nrc.no/arch/_img/9268480.pdf on 08 December 2015.

¹² Castles S, 'Environmental change and forced migration: making sense of the debate', 2002, Geneva, UNHCR; UNHCR: Division of International Protection Services, *UNHCR and Climate Change: Involvement, Challenges & Response* <http://www.unhcr.org/4ad5820f9.html> on 04 December 2015.

granting refugee status.¹³ The assumption therefore is that movement precipitated by climate change is therefore inevitably indiscriminate.¹⁴

Authors in support of the view of adapting the definition of ‘refugee’ to include people who have undergone forced migration due to environmental factors argue so because such refugees are similarly forced to relocate due to external and largely unimaginable factors.¹⁵ Some even argue that ‘environmental refugee’ is part of a particular social group, which is explicitly included in the African Convention definition of refugees.¹⁶ Refugee status should therefore be determined on an objective criteria based on the conditions prevailing in the country of origin¹⁷ so as to do away with elements of deliberateness and discrimination inherent in the 1951 Convention definition.¹⁸ Following this view therefore, the host countries should be obliged to protect them.¹⁹ They conclude that the 1951 Refugee Convention is not adequate and progressive enough to adapt to changing environmental conditions and therefore they suggest an extension of the Convention.²⁰

On the other hand, there are those that argue that the term ‘environmental refugee’ has no legal basis in international refugee law and should be avoided in order not to undermine the

¹³ This view is shared by international organizations such as the United Nations High Commissioner for Refugees (hereinafter UNHCR) and the International Organization for Migration (hereinafter IOM), who instead use the term ‘environmentally displaced person’. See also, Keane D, ‘The Environmental Causes and Consequences of Migration: A Search for the Meaning of ‘Environmental Refugees’ 16 *Georgetown International Environmental Law Review* (2004), 214-17.

¹⁴ Āurková P *et al*, ‘Climate refugees in the 21st century,’ 2012 <https://fusiondotnet.files.wordpress.com/2015/02/climate-refugees-1.pdf> on 10 December 2015, 8.

¹⁵ McAdam J, *Climate Change, Forced Migration, and International Law*, Oxford University Press, 2012,9; Williams A, ‘Turning the Tide: Recognizing Climate Change Refugees in International Law’ 30 *Baldy Center for Law and Social Policy* (2008),504; Suhrke A, *Pressure Points: Environmental Degradation, Migration and Conflict*, Washington, DC: American Academy of Arts and Sciences,1993,9; Myers N and Kent J, *Environmental Exodus: an Emergent Crisis in the Global Arena*, Washington, DC 1995.

¹⁶ Jakobson E, ‘Global Policy Making on Climate Refugees: What is the Problem?’ (2010) at 19 <http://www.pol.gu.se/digitalAssets/1309/1309786_vt10-elin-jakobsson.pdf> on 25 November 2015.

¹⁷ Article1(2) *Convention Governing The Specific Aspects Of Refugee Problems In Africa* (1969).

¹⁸ UNHCR: Mandal R, *Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")*, June 2005 at 13 <http://www.refworld.org/docid/435e198d4.html> on 2 December 2015.

¹⁹ Trollaldalen J et al, *Environmental Refugees: A Discussion Paper*, Oslo: World Foundation for Environment and Development and Norwegian Refugee Council, 1992, 23; International Organisation for Migration and Refugee Policy Group, *Migration and the Environment*, 1992, 30.

²⁰ International Organization for Migration , *Migration, Environment and Climate Change: Assessing the Evidence* 2009 at 405 <http://publications.iom.int/bookstore/free/migration_and_environment.pdf> on 20 November 2012.

international legal regime for the protection of refugees.²¹ An expansion of the current refugee definition would open the refugee floodgates given the sheer enormity of the problem²² and might result in the potential devaluation of the current protection for refugees.²³

The above notwithstanding, the issue of ‘environmental refugees’ is becoming prevalent in a world undergoing the constant threat of global warming, storms, earthquakes and floods. It has been witnessed from across the Sahel and the Horn of Africa, as well as the Soviet Union and Latin America.²⁴ Global warming is rendering some islands uninhabitable as they warm up at almost four times the global average rate.²⁵ Additionally, climate change is making matters worse by increasing the intensity and frequency of important drivers of displacement such as droughts, floods and other extreme weather events.²⁶ As a result, such populations in low-lying islands are being forced to resettle in neighbouring countries.²⁷

This scenario poses a number of new and unprecedented problems in international law and raises the question of how the citizens of these islands will be protected since the rights, entitlements and protection options for people displaced by climate change are uncertain in international law, and there is no international agency with a mandate to assist them.²⁸

²¹ Worster W, ‘The Evolving Definition of the Refugee in Contemporary International Law’ 30 *Berkeley Journal of International Law* (2012) 101- 168,102; Nathwani N, *Rethinking Refugee Law*, Martinus Nijhoff Publishers, 2003, 94.

²² Williams A, ‘Turning the Tide: Recognizing Climate Change Refugees in International Law’,504; Kibreab G, ‘Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate.’ *Disasters* (1997) 20-38, 21.

²³ Westing A, ‘Environmental Refugees: A Growing Category Of Displaced Persons’ 19 *Environmental Conversation* (1992), 201-7.

²⁴ Myers N, *Ultimate Security: the Environmental Basis of Political Stability*, New York and London, 1993,189; Jacobson, J *Environmental Refugees: a Yardstick of Habitability*, Washington, DC: World Watch Institute 1988.

²⁵ UNHCR: Report of the Secretary-General, *Climate change and its possible security implications* 11 September 2009 <http://www.unhcr.org/refworld/pdfid/4ad5e6380.pdf> on 05 December 2015.

²⁶ UNHCR: The Nansen Conference Oslo, *Climate Change and Displacement in the 21st Century* June 5-7, 2011 <http://d2530919.hosted213.servetheworld.no/expose/global/download.asp?id=2280&fk=1633&thumb=> on 03 December 2015 .

²⁷ UNHCR: Palais des Nations Geneva, *Climate Change Displacement and International Law* 8 December, 2010 <http://www.unhcr.org/4d05ecf49.pdf> on 05 December 2015 .

²⁸ UNHCR: Black R, *Environmental Refugees: Myth or Reality? New Issues in Refugee Research Working Paper* 34 2001 2; UNHCR, *Submission On The Relationship Between Climate Change And Human Rights*, 19 September 2008 <http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/SydneyUniversity.pdf> on 26 November 2015.

In the light of these developments, herein is the problem that merits attention: should the host country, be mandated to take in these immigrants and grant them the same refugee status as those fleeing persecution? Or are they justified in sending them back to their countries since people forced to move as a result of climate change do not fit the international legal definition of a refugee? It is the aim of this dissertation to explore the several questions surrounding such refugees and come up with recommendations that adequately address the problem.

1.2 Hypothesis

The following are the hypotheses:

1. International law lacks a clear method of protecting ‘environmental refugees’
2. The regime of refugee law could be adopted with necessary modifications to contain ‘environmental refugees’

1.3 Research Questions

1. Does international law provide for a mechanism of protecting those moving away from harsh environmental conditions?
2. Should the definition of refugees under international law be broadened to include the so-called environmental refugees?

1.4 Objectives

The objective of this study is to mitigate the homelessness that may be caused by the increasingly felt results of climate change, which may lead to a mass exodus of citizens in the search for new and safe homelands. This is because, such migrants will confront the international community with a number of practical, legal and humanitarian questions as how to handle this new challenge. It is therefore prudent to answer the research questions for the sake of the millions of ‘environmental refugees’ projected to exist in the coming years.

1.5 Limitation

1.5.1 Methodology

The study will utilize primary sources to get information on facts such as the number of refugees in a given year as quoted by the UNHCR and reported in newspapers. Secondary sources of literature such as textbooks on environmental and human rights law, journal articles, UNHCR and UNFCCC reports as well as judicial decisions of affected areas will be the most prevalent sources in this study. Tertiary sources such as human rights instruments and refugee conventions will also be referred to.

1.5.2 Approach

In terms of approach, the study will specifically deal with the plight of ‘environmental refugees’ and not convention refugees in general. The study will take a human rights direction in trying to find ways of resolving the problem and filling the existing legal gap.

The limitations will therefore be that the present study focuses on the legal dimension of the problem. Consequently, it will not engage in the debate on root causes or empirical evidence.

1.6 Chapter Breakdown

Chapter One is the introduction of the study, which features a background to the problem as well as identifying the existing legal gaps in the area. Despite the fact that various authors have proposed to extend legal protection under international law to include ‘environmental refugees’ it must be assessed whether such proposals are sound from a legal point of view.²⁹ To this end, Chapter Two of this study will examine existing international regimes. In particular, the chapter will focus on both international and regional international refugee law in order to determine whether it is legally viable to achieve protection of ‘environmental refugees’ through the existing refugee laws.

Regardless of the findings of Chapter Two, Chapter Three will explore whether other forms of protection such as human rights conventions or temporary and complementary protection

²⁹ Coinsbee M and Simms A, *Environmental Refugees: The Case For Recognition*, New Economics Foundation, London, 2003, 36; Cooper J, ‘Environmental Refugees: Meeting The Requirements Of The Refugee Definition’, *New York University Environmental Law Journal* (1998), 494.

regimes such as the *non-refoulement* principle can be used as justifications to protect ‘environmental refugees’. Chapter Four will thereafter build upon the findings of Chapter Three and it will be determined, which of these regimes would provide the most adequate framework for protection. Chapter Five will be the final chapter, and will bear recommendations and conclusions based on the analysis from the previous chapters.

CHAPTER TWO

Development Of Refugee Law

2.1 Introduction

The previous chapter introduced the study and featured a background to the problem by hinting at an existence of a legal gap in refugee law that fails to cater for those fleeing environmental disasters. The chapter had two hypotheses: the first being that International law lacks a clear method of protecting ‘environmental refugees’ and secondly that the regime of refugee law could be adopted with necessary modifications to contain ‘environmental refugees’. The two research questions on the other hand were: whether international law provides for a mechanism of protecting those moving away from harsh environmental conditions and secondly, whether the definition of refugees under international law can be broadened to include the so-called ‘environmental refugees’?

In an attempt to answer the first question and to test the first hypothesis, this chapter will trace refugee law back to its roots in order to determine whether the drafters of international and regional instruments contemplated such ‘environmental refugees’. The point of departure of the chapter will be the two world wars, which necessitated the enactment of the *1951 Geneva Convention relating to the Status of Refugees*¹ (hereinafter *Geneva Convention*).

The 1979 United Nations High Commissioner for Refugees (hereinafter UNHCR) *Handbook on Procedures and Criteria for Determining Refugee Status*² (hereinafter UNHCR Handbook) will be used as a tool of interpretation in order to breakdown the elements of the *Geneva Convention*. Such interpretation shall be a guide as to whether ‘environmental refugees’ are protected under the *Geneva Convention* as amended by the *1967 Protocol Relating to the Status of Refugees*.³

¹ *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

² Office of the U.N. High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/IP/4/Eng. Rev. 2 (1979) (reedited January 1992).

³ *1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/IP/4/Eng. Rev. 2 (1979) (reedited January 1992).

Having illustrated that the *Geneva Convention* did not contemplate such ‘environmental refugees’, the chapter will then turn to regional conventions that have extended the categories of refugees having realized the unfeasibility of the strict approach of the *Geneva Convention* to determine whether such ‘environmental refugees’ can be protected in the regions of Africa- through the 1969 *Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa* (hereinafter *OAU Convention*), Asia- through the 2001 *Bangkok Principles on the Status and Treatment of Refugees* (hereinafter *Bangkok Principles*) and Latin America- through the 1984 *Cartagena Declaration on Refugees* (hereinafter *Cartagena Declaration*).

The chapter will then examine the auxiliary limb of these regional instruments, ‘events disturbing public order’ as a ground occasioning refugee protection, and discuss whether this limb warrants sufficient protection to ‘environmental refugees’. Upon completion of this chapter, the first research question shall be sufficiently answered whereas the first hypothesis shall be adequately tested.

2.2 Development Of Refugee Law

The history of the international refugee system is grounded in the context of the particular politics of the two world wars.⁴ Initially, the League of Nations approached refugee problems in Europe in an ad hoc fashion specific to a national group, possessing defined characteristics, rather than to individuals.⁵ This ad hoc fashion made interpretation simple and there was no great difficulty in ascertaining who was a refugee.⁶ A good illustration is the first global response to refugee movements in 1917, which came after one and a half million people left Russia on the heels of the Soviet Revolution.⁷ When the International Committee of the Red Cross called upon the League of Nations to address the problem, the League created the Office of High

⁴ McCue G, ‘Environmental Refugees: Applying International Environmental Law to Involuntary Migration’ 6 *Georgetown International Environmental Law Review*, (1993-1994), 170.

⁵ McCue G, ‘Environmental Refugees: Applying International Environmental Law to Involuntary Migration’ 171.

⁶ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* U.N. Doc HICR/IP/4/Eng. Rev. 1 (1988).

⁷ Zarjevski Y, *A Future Preserved: International Assistance To Refugees*, Pergamon Press, Oxford 1988.

Commissioner for Russian Refugees, with Fridtjof Nansen as High Commissioner.⁸ Nansen's mandate was limited only to Russian migrants entitled to legal protection by a built-in time limit to address what they perceived as a limited problem.⁹

However, as refugee problems in Europe persisted, it became clear that the proliferation of the problems called for a more general, rather than nationality-based, definition of refugee.¹⁰ Hence came the *Geneva Convention* which was the first international agreement to adopt a universal refugee definition. Delegates to the *Geneva Convention* were prompted to replace ad hoc agreements adopted in relation to specific refugee situations with an instrument containing a general definition of who met the threshold to be considered a refugee.¹¹

The *Geneva Convention* was enacted to address the atrocities suffered by individuals at the hands of oppressive regimes in the wake of World War II.¹² These were individuals who inevitably had to migrate from their home countries as they suffered persecution in the sense that their political and civil liberties were curbed.¹³ In response to the destruction caused by World War II, the UNHCR was created and its mandate was to assist victims of the war who were homeless due to displacement by persecution.¹⁴

⁸ Keely C, Elwell P, *Global Refugee Policy: The Case for a Development Oriented Strategy*, Population Council, 1981, 40.

⁹ McCue G, 'Environmental Refugees: Applying International Environmental Law to Involuntary Migration' 171.

¹⁰ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*.

¹¹ Office of the U.N. High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/IP/4/Eng. Rev. 2 (1979) (reedited January 1992).

¹² Masters S, 'Environmentally Induced Migration: Beyond a Culture of Reaction', 14 *Georgetown Immigration Law Journal*, (2000), 866.

¹³ King T, 'Environmental Displacement: Coordinating Efforts to Find Solutions', 18 *Georgetown International Environmental Law Review*, (2006), 552-553.

¹⁴ Wilkinson R, The Refugee Convention at 50, 2 *Refugees Magazine* Issue, no. 123, 2001 at 2, available at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b5e90ea0&query=refugees%20magazine> on 10 December 2016.

The *Geneva Convention* contained two categories of refugees: (i) any refugee so defined by previous instruments¹⁵ and (ii) individuals with a well founded fear of persecution before 1st January 1951.¹⁶ It is clear that this definition had temporal limitations and even permitted particular signatories to limit it further to persons "in Europe" by a declaration at accession.¹⁷ This resulted in the U.N. delegates meeting again in 1967 to amend the *Geneva Convention* treaty in order to remove the limitations on who could apply for refugee status.¹⁸ Hence came a new protocol to the *Geneva Convention* that was opened for accession on January 1967, which removed the temporal and geographical limitations of the *Geneva Convention* whilst leaving the same substantive provisions to apply.¹⁹ Some commentators have also opined that the 1967 Protocol also expanded the refugee definition to include people forced to move due to political conflict, violence and gross human rights violations.²⁰

2.3 Elements Of The Refugee Definition

The *Geneva Convention* defines a refugee as a 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 and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.²¹

¹⁵ Lentini E, 'The Definition of the Refugee in International Law: Proposals for the Future', 5 *Boston College Third World Law Journal*, (1985), 183.

¹⁶ Furr K, 'Environmental Degradation in the Mesopotamian Marshlands: A Case Study in Legal Deficiencies', 19 *Southeastern Environmental Law Journal*, (2011), 287.

¹⁷ Lentini E, 'The Definition of the Refugee in International Law: Proposals for the Future', 188.

¹⁸ Straw J, 'The Convention: Britain's View', 2 *Refugees Magazine* Issue, no. 123, 2001 at 12-13, available at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b5e90ea0&query=refugees%20magazine> on 10 December 2016.

¹⁹ *Convention Relating to the Status of Refugees*, July 28, 1951, art. 1, para. A(2), 189 U.N.T.S. 137, as amended by *Protocol Relating to the Status of Refugees*, Jan. 3, 1967, art. 1, para. 2, UNHCR Collection of International Instruments Concerning Refugees, at 11 and 40, U.N. Doc. HCR/IP/1/Eng. (1990).

²⁰ Goffman E, 'Environmental Refugees: How Many, How Bad?', CSA, 4. (June 2006), 5, available at <https://uofahsmun.files.wordpress.com/2012/06/environmental-refugees.pdf> on 10 December 2016, at 5.

²¹ *Convention Relating to the Status of Refugees* art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137, 152; *Protocol Relating to the Status of Refugees* art. 1, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

Thus, the definition can be broken down into four distinct elements: (a) the refugee must have crossed international borders; (b) the refugees must be unable or reluctant to return to their country of their nationality; (c) this inability or reluctance must be due to a well-founded fear of persecution; and (d) the persecution must be on account of race, religion, nationality, membership of a particular social group or political opinion.²² Persecution, *sensu stricto*, has been interpreted to mean ‘an act of government against individuals’.²³

The UNHCR Handbook²⁴ offered some guidance on how to further interpret the refugee definition.²⁵ It provides that determination of refugee status consists of three parts: inclusion, cessation and exclusion clauses.²⁶ To begin with, the inclusion clauses form the positive basis upon which refugee status is determined.²⁷ This mainly deals with the requirement of a well founded fear of being persecuted – which consists of both a subjective and objective evaluation of such fear.²⁸ The cessation clauses have a negative effect and indicate the conditions under which a refugee ceases to be deemed so,²⁹ similarly, the exclusion clauses also have a negative effect and indicate the circumstances in which an individual is excluded from the application of the *Geneva Convention* in spite of meeting the criteria of the inclusion clauses.³⁰

Conditions under which a refugee ceases to be deemed so include the following: where an individual voluntarily returns to the country of his nationality that he had fled from; where an individual re-acquires their nationality after having lost it; where an individual acquires a new nationality and enjoys the protection of the country of his new nationality; where an individual

²² Docherty B, Giannini T, ‘Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees’, 33 *Harvard Environmental Law Review* (2009), 362.

²³ Suhrke A, ‘Global Refugee Movements and Strategies of Response’, in Kritz M (ed), *U.S. Immigration: Global and Domestic Issues*, Lexington Mass, DC Heath, 1983, at 157-159.

²⁴ Office of the U.N. High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/IP/4/Eng. Rev. 2 (1979) (reedited January 1992).

²⁵ Hong J, ‘Refugees Of The 21st Century: Environmental Injustice’, 10 *Cornell Journal of Law & Public Policy*, (2000-2001), 330.

²⁶ UNHCR Handbook at para. 30

²⁷ UNHCR Handbook at para 37-53.

²⁸ UNHCR Handbook at para 66-93.

²⁹ UNHCR Handbook at para 113.

³⁰ UNHCR Handbook at para 141-163.

can no longer refuse to avail himself of the protection of the country of his nationality because the factors that led to his fleeing have ceased to exist and he is able to return to the country of his former habitual residence.³¹

Furthermore, persons who meet the criteria of refugee status may nonetheless be excluded from protection in the following instances: where such persons are already receiving United Nations protection or assistance; or not considered to be deserving of international protection because such persons have committed serious non-political crimes outside the country of refuge prior to admission to that country as a refugee, committed war crimes, or act contrary to the United Nations' purposes and principles.³²

Finally, despite noting some difficulties in doing so, the UNHCR Handbook additionally explains that refugees and economic migrants should be distinguished, since economic migrants voluntarily move out of their countries in such of a better life whereas refugees, on the other hand, move out of their countries in order to stay alive.³³

2.4 Whether Environmental Refugees Meet The Cut

Some commentators such as Cooper and Kozoll have argued that the *Geneva Convention* already protects environmental refugees and alternatively, that environmental refugees can meet the definition of refugees in international law.³⁴ Cooper elucidates two limbs of argument in support of her claim: the first being that the existing *Geneva Convention* already encompasses environmental refugees because they face persecution from their national governments; and secondly, that environmental refugees are members of a social group lacking the political power to protect themselves from environmental degradation.³⁵

³¹ UNHCR Handbook at para 113.

³² UNHCR Handbook at para 141,163.

³³ UNHCR Handbook at para 62, 63.

³⁴ Bush B, 'Redefining Environmental Refuges', 27 *Georgetown Immigration Law Journal*, (2013), 554; Kozoll C, 'Poisoning The Well: Persecution, the Environment, and Refugee Status,' 15 *Colorado Journal of International Environmental Law and Policy* (2004), 271, 297-306.

³⁵ Cooper J, 'Environmental Refugees: Meeting the Requirements of the Refugee Definition', 6 *New York University Environmental Law Journal*, (1998), 480.

The thrust of the first argument is that some governments are responsible for causing and/or failing to prevent environmental disasters thereby exposing their citizens to such vulnerabilities that force them to migrate.³⁶ When disaster occur, whether natural or man-made, the reaction time of governments is crucial in subverting further damage.³⁷ Negligent decision making on the part of authorities where environmental disasters, such as tsunamis or earthquakes, are concerned can lead to the creation of environmental refugees who suffer a form of governmental persecution, seeking refuge from their government as well.³⁸

She gives the example of the Chernobyl disaster where the Government of the Soviet Union, after causing the Chernobyl nuclear power plant explosion, delayed safety measures both before and after the explosion.³⁹ This occurred on April 26th 1986 when there was an explosion of a reactor at the Chernobyl nuclear power plant that led to a protracted release of radiation into the environment for a period of about ten days.⁴⁰ Instead of taking action in the first critical hours after the incident, the Soviet authorities remained taciturn, failing to even acknowledge that the accident had occurred.⁴¹ It was only until the Swedish National Defense Research Institute registered a marked rise in radiation levels in the air, that the international community was drawn to the accident.⁴² Eventually and only after strong world-wide news coverage and diplomatic pressure, the Soviet Government issued a brief press release conceding the occurrence of a nuclear accident more than thirty hours after the explosion.⁴³

The radiation effects of the disaster, led to a lot of people migrating from the region following

³⁶ McGregor J, 'Refugees and the Environment', in Black R and Robinson V (eds), *Geography And Refugees: Patterns And Processes Of Change*, Belhaven Press, London, 1993 at 158.

³⁷ Hewitt, K, *Interpretations of Calamity from the Viewpoint of Human Ecology*, Allen & Unwin, London, 1983; Wijkman A and Timberlake L, *Natural Disasters: Acts of God or Acts of Man*, International Institute for Environment and Development, London and Washington, D.C., 1984.

³⁸ Gordenker L, *Refugees in International Politics*, New York, 1987, 13.

³⁹ Cheney G, *Chernobyl: The Ongoing Story of the World's Deadliest Nuclear Disaster*, New Discovery, 1993.

⁴⁰ Ebel R, *Chernobyl And Its Aftermath: A Chronology Of Events*, Centre for Strategic and International Studies, Washington DC, 1994.

⁴¹ Marples D, *Chernobyl And Nuclear Power In The USSR*, Canadian Institute of Ukrainian Studies Press, 1986, 33.

⁴² Park C, *Chernobyl-The Long Shadow*, Routledge, Kegan & Paul, 1989, 6.

⁴³ Medvedev Z, *The Legacy Of Chernobyl*, Norton, New York, 1990, 76.

the first industrially created environmental disaster and being scattered widely across the Soviet Union.⁴⁴ Cooper resolves that these were thus environmental refugees effectively fleeing a government that first harmed them and then failed to help them as they migrated in search for an environment uncontaminated by radiation.⁴⁵

The second argument, that environmental refugees are members of a social group lacking the political power to protect themselves from environmental degradation, is even less convincing. It is premised on the recognition by the Environmental Justice Movement of those who are politically powerless to protect their environment as a distinct social group.⁴⁶ Cooper uses the Chernobyl disaster to once again illustrate this point. She argues that Soviet citizens lacked the political voice to pursue their individual environmental interests due to the constraints of the Communist regime.⁴⁷ Additionally, since the authorities had the power to force the Chernobyl plant into operation dangerously ahead of schedule as well as the unquestioned authority to place the majority of its nuclear power plants near densely populated areas, the Soviet citizens were rendered even more powerless.⁴⁸ She concludes that it is precisely because of this membership in a social group without political power to protect their environment that the Soviet government subjected them to environmental degradation.

This train of thought has however been criticized by other scholars. The aforementioned argument is rendered problematic by the mere fact that it distorts the concept of a 'social group', which has been explained by the UNHCR Handbook to comprise of persons of similar background, habits or social status such that refugees are persecuted on account of both immutable characteristics (background and social status) and characteristics which one should

⁴⁴ Marples D, *Chernobyl And Nuclear Power In The USSR*, 146.

⁴⁵ Cooper J, 'Environmental Refugees: Meeting the Requirements of the Refugee Definition', 518.

⁴⁶ Ferris D, Hahn-Baker D, 'Environmentalists and Environmental Justice Policy', in Bunyan Bryant (ed) *Environmental Justice: Issues, Policies and Solutions*, Island Press, 1995, 66-67.

⁴⁷ Cooper J, 'Environmental Refugees: Meeting the Requirements of the Refugee Definition', 526.

⁴⁸ Marples D, *Introduction to Grigori Medvedev, No Breathing Room-The Aftermath Of Chernobyl*, New York, 1993, 9.

not be forced to change (habits).⁴⁹ Furthermore, in as much as victims of environmental catastrophes are many at times politically disempowered, that does not make them a ‘social group’ since such disempowerment is only related to the nearly universal characteristic of being a person under an undemocratic government and nothing else.⁵⁰

Persecution, with regard to modern refugee-hood, has been interpreted to mean the infliction of harm on others because of their perceived difference.⁵¹ Cooper’s arguments do not establish that ‘environmental refugees’ were persecuted by their governments, for reasons of their membership in a social group, because there is no specific reason for which they are distinguished and oppressed.⁵² Furthermore, since environmental calamities are either man-made or natural, it is difficult to prove that they qualify as persecution from a national government. Even though some calamities such as drought may be caused by a government’s mismanagement of land policies, it is difficult to prove that such mismanagement was directed towards a particular social group.⁵³ Rather, it would be more appropriate to qualify such persecution as towards the environment.

Additionally, another difficulty is posed by environmental disasters caused by climate change because it is difficult to pinpoint which nation specifically bears state responsibility. This is due to the fact that climate change is an international phenomenon that involves a wide range of actors, most of whom reside in first world countries.⁵⁴ Unfortunately, the people mostly affected by climate change hazards and thereby migrating, are those from third world countries who do not even receive the economic benefits of industrial activities in the first world countries.⁵⁵ As

⁴⁹ Thomas J, ‘Seeing Through a Glass, Darkly: The Social Context of ‘Particular Social Groups’ in *Lwin v INS*,’ *Brigham Young University Law Review*, (1999), 812.

⁵⁰ Fullerton M, ‘A Comparative Look at Refugee Status Based on Persecution Due to Membership in a Particular Social Group’, 26 *Cornell International Law Journal*, (1993), 505, 510.

⁵¹ Steinbock D, ‘Interpreting the Refugee Definition’, 45 *University of California, Los Angeles, Law Review*, (1998), 758.

⁵² Hong J, ‘Refugees Of The 21st Century: Environmental Injustice’, 343.

⁵³ Bush B, ‘Redefining Environmental Refugees’, 27 *Georgetown Immigration Law Journal*, (2013), 566.

⁵⁴ Mayer B, ‘The International Legal Challenge of Climate-Induced Migration: Proposal for an International Legal Framework’, 22 *Colorado Journal of International Environmental Law and Policy*, 2011, 376.

⁵⁵ Zarsky L, ‘Climate-Resilient Industrial Development Paths: Design Principles and Alternative Models’ in Khan S and Christiansen J eds., *Towards New Developmentalism: Market as Means Rather than Master*, Routledge Economics, 2010, 229.

such, they cannot attribute those climate change activities from the national states that they are fleeing from.

From the above therefore, it is clear that the "refugee" definition effectively excludes victims of natural disaster under its terms, despite the fact that they are involuntarily displaced and no more able to seek the protection of their governments than are political or religious refugees. In fact, a leading study of the time, conducted at the request of the UNHCR by Vernant explicitly stated that the *Geneva Convention's* definition excludes victims of natural disasters from acquiring refugee status.⁵⁶

2.5 Refugee Protection On The Regional Level

From the foregoing, the *Geneva Convention* does not cater for environmental refugees. It is thus imperative to evaluate whether the refugees have solace from the regional refugee conventions, which have extended definitions due to the unfeasibility of the strict approach from the *Geneva Convention*.⁵⁷ In this regard, the regions that shall be analyzed are Africa (*OAU Convention*)⁵⁸, Latin America (*Cartagena Declaration*)⁵⁹ and Asia (*Bangkok Principles*).⁶⁰ All these instruments have added an auxiliary limb, 'events disturbing public order' as a ground occasioning refugee protection.⁶¹

Indeed, a majority of African countries have incorporated the extended definition into their

⁵⁶ Vernant J, *The Refugee in the Post-War World*, Yale University Press, 1953, 5-7.

⁵⁷ Arboleda E, Refugee Definition in Africa and Latin America: The Lessons of Pragmatism, 2, *International Journal of Refugee Law*, 1991, 195; Jackson I, *The Refugee Concept in Group Situations*, Kluwer Law International, The Hague, 1999, 404.

⁵⁸ Article I(2), Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, June 20, 1974, 1001 U.N.T.S. 45.

⁵⁹ Para. 3, Cartagena Declaration on Refugees (Cartagena de Indias, 22 November 1984) OAS/Ser.L.V/I.66, doc. 10, rev. 1, pp. 190-93.

⁶⁰ Article I(2) 2001 *Bangkok Principles on the Status and Treatment of Refugees*.

⁶¹ Opoku-Awuku E, Refugee Movements in Africa and the OAU Convention on Refugees, 1, *Journal of African Law*, 1995, 80-81.

national legislation.⁶² In order to understand why governments in these regions agreed to such expansions in their definitions of refugees, it is crucial to look at the circumstances that led to this.

2.5.1 The 1969 OAU Convention

African countries had a shared solidarity that sprung from the liberation struggles they all had to endure. This unique political background, led to massive displacement of people due to the wars of independence which led to ethnic groups cutting across international boundaries and being accepted in their destination countries.⁶³ As such, African states were willing to assume the additional responsibilities that would result from a broadened definition.⁶⁴ As a result, the *OAU Convention* contains the definition in the *Geneva Convention* with an additional limb that includes a broader ground of people fleeing ‘events seriously disturbing the public order’.

This however comes with certain conditions i.e. such refugees only meeting the additional limb and not the traditional *Geneva Convention* requirements will only receive temporary protection yet their counterparts meeting the traditional definitional requirements receive complete protection under the *OAU Convention*.⁶⁵ In this instance however, state parties are forbidden from forcibly returning such refugees to their home states.⁶⁶ This is a two-edged sword however, since such refugees are not allowed to resettle in the new states nor be granted asylum either.⁶⁷

Permanent protection was not needed because colonization came to an end hence people were able to return to their home states. Furthermore, most African countries were at the same

⁶² Jackson I, *The Refugee Concept in Group Situations*, Kluwer Law International, The Hague, 1999, 194-210.

⁶³ Suhrke A, ‘Global Refugee Movements and Strategies of Response’, in Kritz M, (ed.) *U.S. Immigration Policy: Global and Domestic Issues*, Lexington Books, 1983, 157.

⁶⁴ Ibid.

⁶⁵ Miranda C, ‘Toward a Broader Definition of Refugee: 20th Century Development Trends’, 20(2) *California Western International Law Journal*, 1990, 323.

⁶⁶ Ibid.

⁶⁷ McCue G, ‘Environmental Refugees: Applying International Environmental Law to Involuntary Migration’, 6 *Georgetown International Environmental Law Review*, 1993, 174.

economic level therefore there was no enticement to remain in the country of refuge.⁶⁸ It therefore becomes clear that such temporary protection is not viable when it comes to environmental refugees who flee their homes with little optimism of return and a presumption of asylum in their destination state.

That notwithstanding, some commentators have still argued that natural disasters⁶⁹ such as famine and diseases⁷⁰ form part of ‘events seriously disturbing public order’ and as such refugees fleeing such events must be granted protection because their security and health is threatened.⁷¹ On the other hand, others have refuted this stating that ‘events seriously disturbing public order’ relates to those which lead to a breakdown of law and order while natural disasters would only be included if they were to cause a severe breakdown of law and order.⁷²

Due to the temporary protection provisions discussed above, such refugees fleeing on account of ‘events seriously disturbing public order’ have been left increasingly dependent on the UNHCR and live in refugee camps without any prospect of resettlement.⁷³ This is because, African states readily applied the extended definition in the colonization context and after the dust settled, have become more and more reluctant to find lasting solutions that accommodate refugees.⁷⁴ As such, state practice on protection under the extended definition has declined rapidly over time.⁷⁵

⁶⁸ Suhrke A, ‘Global Refugee Movements and Strategies of Response’, in Kritz M, (ed.) *U.S. Immigration Policy: Global and Domestic Issues*, Lexington Books, 1983, at 160.

⁶⁹ Rwenlamira M, ‘Two Decades of the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa’, 4 *International Journal of Refugee Law*, 1989, 558.

⁷⁰ Viljoen F, ‘Africa’s Contribution to the Development of International Human Rights and Humanitarian Law’, 1 *African Human Rights Law Journal*, 2001, 26.

⁷¹ Lopez A, ‘The Protection Of Environmentally Displaced Persons In International Law’, 47 *Environmental Law*, 2007, 389.

⁷² Rankin M, *Extending The Limits Or Narrowing The Scope? Deconstructing The OAU Refugee Definition Thirty Years On*, UNHCR Working Paper No. 113, Geneva, 2005, 18.

⁷³ Crisp J, *Forced Displacement In Africa: Dimensions, Difficulties And Policy Directions*, UNHCR Research Paper No. 126, Geneva, 2006, 12.

⁷⁴ Murray R, ‘Refugees and Internally Displaced Persons and human rights: The African system’, 2 *Refugee Survey Quarterly*, 2005, 57.

⁷⁵ Edwards A, ‘Refugee Status Determination in Africa’, 2 *African Journal of International & Comparative Law*, 2006, 227.

In light of the above, it must be stressed that neither the *OAU Convention* nor state practice gives solace to environmental refugees.

2.5.2 The 2001 Bangkok Principles and the 1984 Cartagena Declaration

From the onset, it is clear that the above instruments offer very little protection in comparison to the foregoing, as they are not legally binding. The member states of the Asian-African Legal Consultative Organization (hereinafter AALCO)⁷⁶ have amended the *Bangkok Principles* from 1966 and adopted the final draft in 2001.⁷⁷ The final text has a lower threshold on the ‘public order’ ground than was initially intended and as such, that provision is a carbon copy of the wording in the *OAU Convention* discussed above.⁷⁸ The above analysis of the *OAU Convention* therefore applies to these principles hence it can be concluded that Asian countries do not have an obligation to protect environmental refugees.

On the other hand, the *Cartagena Declaration* was a regional codification of customary international law that put together the interpretation of the Inter-American Commission on Human Rights of the refugee definition in the region. It was put together in 1984 after the University of Cartagena de Indias sponsored the UNHCR Colloquy of Cartagena attended by representatives of the UNHCR, regional migration experts as well as governmental representatives from the region.⁷⁹

⁷⁶ Asian-African Legal Consultative Organization, Principles Concerning Treatment of Refugees, 31 December 1966, Final Text adopted on 24 June 2001 at the AALCO's 40th Session, New Delhi, available at

<http://www.unhcr.org/refworld/docid/3de5f2d52.html/>. (20th October 2016).

⁷⁷ Oberoi P, ‘Regional Initiatives on Refugee Protection in South Asia’, 1 *International Journal of Refugee Law*, 1999,196.

⁷⁸ Kourula P, *Broadening the Edges: Refugee Definition and International Protection Revisited*, Kluwer, The Hague, 1997,155.

⁷⁹ Trindade C, ‘The Contribution of International Human Rights Law to Environmental Protection, with Special Reference to Global Environmental Change’, in Weiss E, *Environmental Change And International Law: New Challenges And Dimensions*, United Nations University, 1992, 245.

The wide scale violence experienced in the Latin American states coupled with the massive human rights violations necessitated the broad scope of the extended definition.⁸⁰ This was to assist the more than two million refugees generated by years of armed conflict.⁸¹ The terms of the *Cartagena Declaration* were examined in 1989 by the Committee of Legal Experts to the International Conference on Central American Refugees (hereinafter CIREFCA) and they impliedly excluded environmental refugees from protection as they stated that ‘events disturbing public order’ are only those caused by human actions and not by natural disasters.⁸²

From the foregoing, it becomes clear that due to the non-binding nature of these two instruments, refugees meeting the additional definitions receive even less protection than from the *OAU Convention*. In fact, the *Cartagena Declaration* has been referred to as purely aspirational in character yet environmental refugees certainly need more protection than that of an aspirational nature.⁸³

2.6 Conclusion

The current chapter has traced the development of refugee law through existing international regimes, regional instruments as well as trends of state practice in order to answer the first research question: whether international law provides for a mechanism of protecting those moving away from harsh environmental conditions? The analysis found that refugee laws are ill-equipped to offer sufficient protection to victims of natural disasters.

The *Geneva Convention* was found to effectively lock out ‘environmental refugees’ as it was enacted to cater for political refugees and thus did not contemplate that environmental disasters could lead to forced migration across international borders. The chapter further discussed

⁸⁰ Arboleda E, ‘Refugee Definition in Africa and Latin America: The Lessons of Pragmatism’, 2 *International Journal of Refugee Law*, 1991, 205.

⁸¹ Durieux J, ‘Capturing the Central American Refugee Phenomenon: Refugee Law-Making in Mexico and Belize’, 4 *International Journal of Refugee Law*, 1992, 227.

⁸² Trindade C, ‘The Contribution of International Human Rights Law to Environmental Protection, with Special Reference to Global Environmental Change’, in Weiss E, *Environmental Change And International Law: New Challenges And Dimensions*, United Nations University, 1992, at 299.

⁸³ Miranda C, ‘Toward a Broader Definition of Refugee: 20th Century Development Trends’, 20 *California Western International Law Journal*, 1990, 324.

suggestions by some commentators that the *Geneva Convention* already protects environmental refugees and alternatively, that environmental refugees can meet the definition of refugees in international law.

The thrust of the arguments was that ‘environmental refugees’ face persecution from their national governments; and alternatively, that environmental refugees are members of a social group lacking the political power to protect themselves from environmental degradation. The two arguments were however unconvincing on the basis that they failed to establish that ‘environmental refugees’ were persecuted by their governments, for reasons of their membership in a social group, because there is no specific reason for which they are distinguished and oppressed. Furthermore, since environmental calamities are either man-made or natural, it is difficult to prove that they qualify as persecution from a national government. It would therefore be more appropriate to classify such persecution as towards the environment. Additionally, since climate change is an international phenomenon, it would be difficult to pinpoint which nation specifically bears state responsibility for such persecution.

The chapter thereafter proceeded to analyze whether regional instruments such as the *OAU Convention*, *Cartagena Declaration* and *Bangkok Principles* can offer solace to ‘environmental refugees’ as they have all added an auxiliary limb, ‘events disturbing public order’ as a ground occasioning refugee protection.

The additional limb in the *OAU Convention* is however limited in that such refugees only meeting the additional limb and not the traditional *Geneva Convention* requirements will only receive temporary protection yet their counterparts meeting the traditional definitional requirements receive complete protection. Furthermore, such refugees are not allowed to resettle in the new states nor be granted asylum neither. Thus, even if it could be successfully argued that ‘environmental refugees’ meet the ‘events disturbing public order’ ground, a matter that is still up to debate, the same would still be at a crisis since they only benefit from temporary protection.

The *Cartagena Declaration* and *Bangkok Principles* were found to be even less convincing modes of protection as the same are not legally binding and have been described as purely aspirational in character. The chapter therefore concluded that the existing refugee laws are antiquated modes of protection when it comes to ‘environmental refugees’. Nonetheless, the expansion of the *Geneva Convention* through these regional instruments is an indicator of the attitude change regarding refugees and the identification of new grounds of flight is a step in the right direction.

Having determined that the existing refugee laws are antiquated regimes ill-equipped to offer sufficient protection to victims of natural disasters, the dissertation will therefore proceed in the following chapter to explore alternative solutions to the problem. The available options that will be pursued include the expansion of the current *Geneva Convention*, the principle of non-refoulement, international human rights law as well as international environmental law, all of which may be of aid to ‘environmental refugees’.

CHAPTER THREE

Potential Modes Of Protection

3.1 Introduction

The previous chapter traced the development of refugee law through existing international regimes, regional instruments as well as trends of state practice. By breaking down the refugee definitions in the *1951 Geneva Convention relating to the Status of Refugees* (hereinafter *Geneva Convention*), it illustrated that the same does not protect ‘environmental refugees’ since it was enacted to protect individuals that face persecution of their political and civil liberties. The chapter further endeavoured to establish whether the expansion of the *Geneva Convention* through the regional instruments catered for ‘environmental refugees’ and found that the same only offers temporary protection to such victims. As such, ‘environmental refugees’ are still in want of more stable protection.

It is from this backdrop that the current chapter proceeds from and endeavors to discuss alternative potential solutions that may aid ‘environmental refugees.’ In doing so, the second research question will be answered: whether the definition of refugees under international law can be broadened to include the so-called ‘environmental refugees’? In answering this research question, the first mode of protection that will be examined is that of expansion of the *Geneva Convention*. The chapter will scrutinize both the pros and cons of such an approach in order to determine if it is indeed a viable solution to the plight of ‘environmental refugees’.

The second approach will be the principle of non-refoulement coupled with complementary protection, where it will be argued that ‘environmental refugees’ should not be returned to their countries of origin because of the threat of harm that triggered their flight. A third angle that will be examined is premised in a human rights approach coupled with a strengthened enforcement mechanism. The right to a clean environment shall be used to argue against the return of individuals to a risk of environmental harm, similar to the non-refoulement principle. International environmental law will be the final approach discussed using the ‘polluter pays

principle' where it will be argued that countries which cause pollution leading to climate change refugees, should bear the burden of such pollution, by admitting a greater number of 'environmental refugees'.

3.2 Expansion of the Geneva Convention

One apparent solution to the problem would be the expansion of the *Geneva Convention* by amending it through a protocol that caters for 'environmental refugees' using human rights provisions. Indeed, this is one of the hypotheses of this dissertation: The regime of refugee law could be adopted with necessary modifications to contain 'environmental refugees'. Some commentators have posited that deliberate pollution can amount to environmental persecution and such victims have a well-founded fear of starvation, drowning and statelessness.¹ However, as argued in chapter II, such a position is not tenable since persecution has to be directed towards a particular group and the persecutor has to be recognizable.²

An alternate approach suggested by other scholars is the extension of the convention independent from the element of persecution.³ Instead they propose an additional limb to include victims of both man-made and natural environmental degradation.⁴ Such a definition would for instance read: any person who owing (1) to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, or (2) to degraded man-made or natural environmental conditions threatening his life, health, standard of living, or use of natural resources, is outside the country of his nationality and is unable or,

¹ Coinsbee M and Simms A, *Environmental Refugees: The Case For Recognition*, New Economics Foundation, London, 2003, 30-31.

² See Chapter II above; McAdam J and Saul B, 'An Insecure Climate for Human Security? Climate-Induced Displacement and International Law', *Sydney Centre for International Law Working Paper 4*, 2008, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1292605 (accessed December 20 2016).

³ Boano et al., *Environmentally Displaced People: Understanding Linkages Between Environmental Change, Livelihoods And Forced Migration*, Refugee Studies Centre Policy Briefing, Oxford, 2007, 23, available at <https://www.rsc.ox.ac.uk/files/publications/policy-briefing-series/pb1-environmentally-displaced-people-2008.pdf> (accessed 20 December 2016).

⁴ Mercure P, 'À la Recherche d'un Statut Juridique Pour les Migrants Environnementaux Transfrontaliers : La Problématique de la Notion de Réfugié', *Revue de Droit Université de Sherbrooke*, (2006), 31.

owing to such fear, is unwilling to avail himself of the protection of that country.⁵ This advertently incorporates the human rights principles into the definition of the *Geneva Convention* thereby elevating the status of ‘environmental refugees’ from mere legal oblivion.

In as much as expanding the *Geneva Convention* along human rights lines⁶ may seem feasible, this is an arduous task for many reasons. There is resistance of a human rights expansion to the *Geneva Convention* (despite the fact that it laid its foundations on the *Universal Declaration of Human Rights*) since the international bill of rights predates any awareness of environmental degradation concerns.⁷ Despite the overlap between the goals of environmental protection and human rights, the two are treated as separate realms, hence the preempted resistance to expand the *Geneva Convention* on such a limited premise.⁸

Myers posits yet another difficulty with expanding the *Geneva Convention* definition to include persons whose right to a tolerable environment has been violated.⁹ Such an expansion would require certainty of data connecting forced migration to strictly environmental triggers which is practically impossible as there is no precise way to determine the amount of weight that environmental pressures alone exerts on any one refugee.¹⁰

Undeniably, revising the refugee definition in the *Geneva Convention* to include ‘environmental refugees’ would open a floodgate of refugees far beyond the original contemplation of the international community thereby undermining the goals of refugee asylum.¹¹ Additionally, this

⁵ Cooper J, ‘Environmental Refugees: Meeting The Requirements Of The Refugee Definition’, *New York University Environmental Law Journal*, (1998), 494.

⁶ Chapman A, ‘Symposium Overview to Earth Rights and Responsibilities: Human Rights and Environmental Protection’, 18 *Yale Journal of International Law*, (1993), 215.

⁷ Cuomo K, ‘Human Rights and the Environment: Common Ground’, 18 *Yale Journal of International Law*, (1993), 227.

⁸ Chapman A, ‘Symposium Overview to Earth Rights and Responsibilities: Human Rights and Environmental Protection’, 18, 216.

⁹ Myers N, *Environmental Refugees*, Climate Institute, Washington D.C., 17-18.

¹⁰ Moberg K, ‘Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection’, 94 *Iowa Law Review*, (2009), 1107.

¹¹ Doran A, ‘Where Should Haitians Go - Why Environmental Refugees are up the Creek without a Paddle’, 22 *Villanova Environmental Law Journal*, (2011), 117.

may blur the responsibilities of governments and sidetrack the international community from a permanent solution to the problem.¹² Broadening the definition would also cover internally displaced people, which goes too frankly to the core of sovereignty- such interference is prohibited by the *United Nations Charter*.¹³ Furthermore, the United Nations High Commission for Refugees (hereinafter UNHCR) itself is against broadening the definition, because the inclusion of internally displaced people would lead to strained resources for the ‘proper refugees’.¹⁴ Finally and more prevalent in the world today, is the cultural backlash against total generosity towards refugees. This has been witnessed across Europe, America and even in Kenya with the recent government announcement to close the Daadab camp as refugees are increasingly viewed as security threats in the host countries.¹⁵

Consequently, an attempt to broaden the *Geneva Convention* could prove counter-productive due to political resistance from states as well as the UNHCR which fears that too many duties will sap their already strained resources whereas nations recoil against the prospect of more immigrants and capital spent to accommodate them.¹⁶

3.3 Non-Refoulement And Complementary Protection

Another avenue of protection could be through the principle of non-refoulement coupled with the concept of complementary protection.¹⁷ Even though refugee law may not strictly apply, certain protective principles, and the status envisaged for those displaced, might be relevant.¹⁸ In

¹²Johnson L, ‘Environment, Security & Environmental Refugees’, *Journal of Animal and Environmental Law*, (2009), 245.

¹³ Article 2(7), *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <http://www.refworld.org/docid/3ae6b3930.html> [accessed 9 December 2016].

¹⁴ Price-Cohen C, ‘Considerations Affecting the Implementation of the United Nations Convention on the Rights of the Child in Situations of Forced Migration’, in McCallin M ed., *The Psychological Well-Being Of Refugee Children: Research, Practice And Policy Issues*, Geneva, International Catholic Child Bureau, 1992, 293, 299.

¹⁵ Al Jazeera, ‘Kenya Delays Dadaab Refugee Camp Closure By Six Months’, 16 November 2016, available at <http://www.aljazeera.com/news/2016/11/kenya-delays-dadaab-refugee-camp-closure-months-161116130647820.html> (accessed on 1 December 2016).

¹⁶McCue S, ‘Environmental Refugees: Applying International Environmental Law to Involuntary Migration’, 6 *Georgetown Environmental Law Review*, (1993), 177.

¹⁷ Michelle F, ‘Non-Refoulement on the Basis of Socio-Economic Deprivation: The Scope of Complementary Protection in International Human Rights Law’, 2 *New Zealand Law Review*, (2010).

¹⁸ Kerstin W, ‘Mind The Gap – Exposing The Protection Gaps In International Law For Environmentally Displaced Citizens Of Small Island States’, Unpublished LLM Thesis, University of British Columbia, January 2012, 67.

particular, the principle that no one should be returned to a country where he or she is likely to face persecution, ill-treatment, or torture, the principle of non-refoulement, is key.¹⁹ From a protection perspective, states have direct human rights as well as moral obligations to people already in their territory or jurisdiction- preventing that person's return.²⁰ Indeed, such a principle goes to the core of state sovereignty as it endorses a sovereign entity to relinquish its powers due to moral and humanitarian reasons.²¹

Widely considered to be part of customary international law, the principle of non-refoulement also binds countries, which are not party to any of the abovementioned international and regional instruments.²² There is substantial, if not conclusive authority that the principle is binding on all states, independently of specific assent.²³ Indeed, many commentators have supported this view.²⁴ Furthermore, the UNHCR believes that non-refoulement has gained customary status, and may even be *jus cogens*.²⁵ Additionally, when negotiating the *Convention on the Status of Stateless Persons*²⁶ in 1954, the parties did not find it necessary to include a non-refoulement provision as they saw it as a generally accepted principle.²⁷

¹⁹ Article 33(1) 1951 *Convention on the Status of Refugees*; United Nations *Protocol Relating to the Status of Refugees* (31 January 1967) 606 UNTS 297; Article 3 of the 1984 *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*.

²⁰ Duffy A, 'Expulsion to Face Torture? Non-Refoulement in International Law', 20 (3) *International Journal on Refugee Law* (2008), 373.

²¹ Gill G, Guy S and McAdam J, *The Refugee In International Law*, 3rd ed., Oxford University Press, 2007, 201.

²² Lauterpacht E and Bethlehem D, 'The Scope and Content of the Principle of Non-Refoulement: Opinion' in Feller E, Türk V and Nicholson F (eds.), *Refugee Protection in International Law: UNHCR Global Consultations on International Protection*, Cambridge University Press, 2003 at 140.

²³ Guy S, Gill G, *The Refugee in International Law*, 2 ed., Clarendon Press, Oxford, 1996, 167.

²⁴ Lavenex S, *Safe Third Countries*, Central European University Press, Budapest, 1999, 12; Lauterpacht E and Bethlehem D, 'The Scope and Content of the Principle of Non-Refoulement: Opinion' in Feller E, Türk V and Nicholson F (eds.), *Refugee Protection in International Law: UNHCR Global Consultations on International Protection*, Cambridge University Press, 2003, at 87 – 177.

²⁵ Newmark R, 'Non-Refoulement Run Afoul: The Questionable Legality of Extraterritorial Repatriation Programs' 71 *Washington University Law Quarterly* Fall, (1993), 845.

²⁶ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html> [accessed 8 January 2017].

²⁷ Whitney K 'Does the European Convention on Human Rights Protect Refugees from 'Safe' Countries?' 26 *Georgia Journal of International and Comparative Law*, (2014), 380.

The *Geneva Convention* was the first internationally recognized treaty to codify the principle of non-refoulement albeit with certain limitations. Article 33 (2) of the *Geneva Convention* allows states to expel individuals that would pose a security risk or put the country and its population in danger. That notwithstanding, state practice has shown that this principle applies to a broader class of persons other than those identified in the *Geneva Convention*. In Africa for instance, the principle is not as limited as its equivalent in the UN Convention as there are no situations in which a breach of the rule will be accepted.²⁸

Other treaties have similarly codified the principle. For instance, the 1966 *International Convention on Civil and Political Rights* (hereinafter *ICCPR*²⁹) provides that no individual should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.³⁰ The Human Rights Committee in interpreting this provision stipulated that it caters also for circumstances of expulsion such that state parties have an obligation not to expose individuals to torture, cruel, inhuman and degrading treatment outside of its jurisdiction.³¹

Expulsion, extradition or any other measure to remove an alien may give rise to an issue of torture or cruel, inhumane and degrading treatment, and hence engage the responsibility of the expelling State under international law, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 7 of the *ICCPR* in the receiving country³². In such circumstances, Article 7 implies an obligation not to expel the individual to that country.³³

²⁸ Article 2(3) of Organisation of African Unity Convention governing the specific aspects of refugee problems in Africa (10 September 1969) 1001 UNTS 45.

²⁹ *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S 171.

³⁰ Article 7, *International Convention on Civil and Political Rights* (adopted 16 December 1966, entered into force from 23 March 1976).

³¹ *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, paragraph 9.

Available at: <http://www.unhcr.org/refworld/docid/453883fb0.html> (accessed 24 November 2016).

³² *Chitat Ng v. Canada*, HRC, Communication No. 469/1991, U.N. Doc. CCPR/C/49/D/469/1991 (1994), paragraph 14.2.

³³ *Soering v The United Kingdom*, 11, ECtHR, 439, 7 July 1989, paragraph 90-91; *Vilvarajah and Others v The United Kingdom*, ECtHR, 26 September 1991, paragraph 103; *H.L.R. v France*, ECtHR 22 April 1997, paragraph

Further, the 1984 *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* broadens the scope of non-refoulement so as to include inhumane or degrading treatment or punishment.³⁴ The *Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa* (hereinafter *OAU Convention*) provides that no person shall be turned away at the border or returned to a country where his life, physical integrity or liberty would be threatened³⁵ whereas the 1984 *Cartagena Declaration on Refugees* (hereinafter *Cartagena Declaration*) emphasizes that the principle of non-refoulement is a cornerstone of the international protection of refugees.³⁶

In addition, the 1969 *American Convention on Human Rights* and the 1981 *African Charter of Human and Peoples' Rights* reiterate the non-refoulement principle.³⁷ Finally, Article 3 of the 1951 *European Convention on Human Rights* (hereinafter ECHR), which prohibits torture, or cruel, inhuman or degrading treatment or punishment, has been interpreted by the European Court of Human Rights to also prohibit extradition or expulsion of a person to a country where he might face such threats.³⁸ Similar to the *OAU Convention*, Article 3 of the ECHR is absolute, preventing removal of the individual no matter how undesirable or dangerous the person is.³⁹ The European Union furthermore adopted a Qualification Directive in 2004 that contains the non-refoulement principle when outlining the protection available to persons not qualifying for refugee status but still in need of protection.⁴⁰

34; *Jabari v Turkey*, ECtHR, 11 July 2000 paragraph 38; *Salah Sheekh v the Netherlands*, ECtHR, 11 January 2007 paragraph 135.

³⁴ Article 3, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987).

³⁵ Article II (3), Organization of African Union, Convention Governing the Specific Aspects of Refugee Problems in Africa, (adopted 10 September 1969).

³⁶ Cartagena Declaration on Refugees, 22 November 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1. Section III(5).

³⁷ Article 22(8), *American Convention on Human Rights*, "Pact of San Jose", Costa Rica, 22 November 1969; Article 12(3), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

³⁸ *Soering v. United Kingdom* paragraph 91; *Chahal v. United Kingdom*, ECtHR, 15 November 1996.

³⁹ Gill G, Guy S and McAdam J, *The Refugee In International Law*, 3rd ed., Oxford University Press, 2007, 211.

⁴⁰ Article 2(e), Council of the European Union, 'Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted', 2004/83/EC, 29 April 2004. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML> (accessed 20 December 2016).

3.3.1 Complementary Protection

The concept of complementary protection can also be another avenue of protection for ‘environmental refugees’. It originates from legal obligations derived from customary law or an international treaty, which prohibit the return of individuals to places of serious harm.⁴¹ Such prohibition is neither on the basis of moral reasons nor practical obstacles of removal, but on account of the international legal obligation of states to individuals by virtue of the extended principle of non-refoulement.⁴²

The concept, a short-hand term for the widened scope of non-refoulement under international law, therefore covers those in need of protection but excluded by the *Geneva Convention* on the basis of the state’s extended non-refoulement obligations under customary and treaty based human rights law.⁴³ Since ‘environmental refugees’ are not protected by the *Geneva Convention*, they can rely on the extended non-refoulement principle for protection and assert their rights not to be returned to their country of harm caused by environmental calamities.

3.4 International Human Rights Law

Another coherent approach in dealing with the ‘environmental refugee’ problem is premised in a human rights approach coupled with a strengthened enforcement mechanism.⁴⁴ Under this system, the right to a clean environment would be used as a basis to prohibit the return of individuals to a risk of environmental harm, similar to the non-refoulement principle discussed above.⁴⁵

This would be appropriate since the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the

⁴¹ McAdam J, *Complementary Protection in International Refugee Law*, Oxford University Press 2007, 1.

⁴² ‘Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)’ UNHCR Department of International Protection, *Legal and Protection Policy Research Series*, (2002) PPLA/2005/02, June xi.

⁴³ Gill G, Guy S and McAdam J, *The Refugee In International Law*, 3rd ed., Oxford University Press, 2007, 285.

⁴⁴ Schwartz L, ‘International Legal Protection for Victims of Environmental Abuse’, 18, *Yale Journal of International Law*, (1993), 355-387.

⁴⁵ Falstrom Z, ‘Stemming The Flow Of Environmental Displacement’, *Colorado Journal of International Environmental Law & Policy*, (2001), 19.

right to life, to health, to food, to water, and to housing.⁴⁶ Principle 1 of the 1972 *Declaration of the United Nations Conference on the Human Environment* (hereinafter Stockholm Declaration) reflects a general recognition of the interdependence and interrelatedness of human rights and the environment.⁴⁷

Indeed, human rights law calls for the protection of ‘environmental refugees’ due to the idea that a person’s absolute inner worth, otherwise known as dignity, must be maintained.⁴⁸ So much so that the *Geneva Convention* affirmed that the *Universal Declaration of Human Rights*⁴⁹, laid its foundation.⁵⁰ In so doing, the *Geneva Convention* clearly understands that refugee status results from the denial of human rights.⁵¹

Human rights have evolved over time due to circumstances that have plagued history⁵² as well as the development of man that have made the need for certain rights more pronounced than others.⁵³ As such they are classified by generations of rights and accept near universal acceptance.⁵⁴ The first generation rights (also referred to as liberty rights) are civil and political rights that were emphasized immediately after World War II by liberal states which viewed them as important to avoid any future atrocities as had been seen in the wars.⁵⁵ They are enumerated in

⁴⁶ ILO Convention No. 169 (1989) concerning *Indigenous and Tribal Peoples in Independent Countries* provides for special protection of the environment of the areas which indigenous peoples occupy or otherwise use.

⁴⁷ A joint seminar on human rights and the environment organized by OHCHR and UNEP in 2002 also documented a growing recognition of the connection between human rights environmental protection and sustainable development (see E/CN.4/2002/WP.7).

⁴⁸ Halpern I, ‘Tracing the Contours of Transnational Corporations’ Human Rights Obligations in the Twenty-First Century’, 14 *Buffalo Human Rights Law Review*, (2007), 129, 138-39.

⁴⁹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 18 November 2016].

⁵⁰ The Preamble to the Refugee Convention begins: "The Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly has affirmed the principle that human beings shall enjoy fundamental rights and freedoms.

⁵¹ Gordenker L, *Refugees in International Politics*, New York, 1987,60.

⁵² Martinez J, *The Slave Trade and the Origins of International Human Rights Law*, Oxford University Press, 2012.

⁵³ Ratliff S, ‘UN Representation Disputes: A Case Study of Cambodia and a New Accreditation Proposal for the Twenty-First Century’, 87 *California Law Review*, (1999), 1207,1213.

⁵⁴ *Ibid.*

⁵⁵ Vasak K, *A Thirty Year Struggle, The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights*, UNESCO Courier, 1977, 29.

the *ICCPR* as negative rights meaning those that do not take an affirmative action on the part of the government to provide.⁵⁶

On the other hand, second generation rights (also referred to as equality rights) are socio-economic rights that were emphasized post world war by socialist states because they were seen to advance what these countries stood for/their ideology – communism.⁵⁷ They are enumerated in the *International Covenant on Economic, Social and Cultural Rights* (hereinafter *ICESCR*)⁵⁸ as positive rights meaning that they involve affirmative social and cultural grants such that citizens can approach their government and demand action to realize those rights.⁵⁹

Third generation rights (also referred to as fraternity rights) arose post colonialism and were favoured by developing countries who perceived them as what they need in order to bridge the development gap brought about in part by colonialism.⁶⁰ As the international community begins to accept the importance of collective rights, third-generation human rights involve action by the state and the individual.⁶¹ Such rights include the right to a healthy environment, which forms the basis of this discussion. Important to note however, is that some of these rights only have persuasive power through the 1992 *Rio Declaration on Environment and Development*⁶² (hereinafter *Rio Declaration*) and 1972 *Stockholm Declaration of the United Nations Conference on the Human Environment*⁶³ (hereinafter *Stockholm Declaration*) as they are not contained verbatim in any international treaty.⁶⁴

⁵⁶ Vasak K, *A Thirty Year Struggle, The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights*, UNESCO Courier, 1977, 29.

⁵⁷ Lawrence L, Stentzel I, 'Prospects for United States Ratification of the Convention on the Rights of the Child', 48 *Washington and Lee Law Review*, (1991) 1285, 1292.

⁵⁸ *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, 999 U.N.T.S 171.

⁵⁹ Wellman C, 'Solidarity, the Individual and Human Rights' 22 *Human Rights Quarterly*, (2000) 639, 641.

⁶⁰ Kooijmans P, 'Human Rights – Universal Panacea? Some Reflections on the So-called Human Rights of the Third Generation', 37 *Netherlands International Law Review*, (1990) 315, 315.

⁶¹ Alston P, 'A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?' 29 *Netherlands International Law Review* (1982) 307, 316.

⁶² *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (vol. I) / 31 ILM 874 (1992).

⁶³ *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994, available at: <http://www.refworld.org/docid/3b00f1c840.html> [accessed 5 January 2017].

⁶⁴ Beitz C, *The Idea of Human Rights*, Oxford University Press, 2009, 161.

A violation of the right to life can be contemplated in relation to environmental issues as the two are interlinked.⁶⁵ Human rights law caters for environmental rights through the *United Nations Framework Convention on Climate Change* (hereinafter *UNFCCC*)⁶⁶, which maintains near universal membership and calls upon signatory parties to prevent and mitigate climate change factors.⁶⁷ Its preamble recognizes that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change. Such areas are given special attention and parties state their commitment to adapt to the impact of climate change.⁶⁸

Furthermore, the Stockholm Declaration grants man the fundamental right to adequate conditions of life in an environment of a quality that permits life of dignity and well being.⁶⁹ The *UNFCCC*, as well as the Rio and Stockholm Declarations, can therefore be used as substantive arguments for legislative reforms of immigration laws to accommodate ‘environmental refugees’.⁷⁰

The negative effects of global warming on the environment have rendered certain human rights un-enjoyable. The plight of ‘environmental refugees’ shall be briefly discussed from this angle. To begin with, the right to life of ‘environmental refugees’ is threatened by environmental calamities, which trigger their crossing of international borders.⁷¹ This despite the fact that the Human Rights Committee has described the right to life as the supreme right, basic to all human

⁶⁵ Stephens T, *The International Courts And Environmental Protection*, Cambridge University Press, 2009, 316.

⁶⁶ *United Nations Framework Convention on Global Climate Change*, 1-5, U.N. Doc. AIAC.237/18.

⁶⁷ Article 3-4, *United Nations Framework Convention on Global Climate Change*, 1-5, U.N. Doc. AIAC.237/18.

⁶⁸ Article 4(1)(e), *United Nations Framework Convention on Global Climate Change*, 1-5, U.N. Doc. AIAC.237/18.

⁶⁹ UN General Assembly, *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994, available at:

<http://www.refworld.org/docid/3b00f1c840.html> [accessed 9 December 2016].

⁷⁰ Cha-Sartori C, ‘Environmental Refugees: The Latest Enterprise Of Corporate Social Responsibility’ 34, *Houston Journal of International Law*, 2011, 129.

⁷¹ Vincent C, ‘Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law’, in Rubio-Marín R, ed., *Human Rights and Immigration, Collected Courses of the Academy of European Law*, Oxford University Press, 2014, at 19-72.

rights, and it is a right from which no derogation is permitted even in time of public emergency.⁷² In the context of climate change, protection of the right to life generally involves the fulfillment of other rights, such as those related to food, water, health and housing which are inevitably threatened when such calamities strike.⁷³

For instance, elements of the right to food include the availability of adequate food including through the possibility of feeding oneself from natural resources.⁷⁴ Although this right is to be realized progressively⁷⁵, the *ICESCR* lays a minimum obligation that individuals should be free from hunger and malnutrition.⁷⁶ ‘Environmental refugees’ fleeing drought for instance do so, because their right to food is curtailed.

Likewise, the right to access water services is inclusive with an adequate standard of living.⁷⁷ Yet, the loss of glaciers and reductions in snow cover are projected to increase and to negatively affect water availability for more than one-sixth of the worlds population supplied by melt water from mountain ranges.⁷⁸ Refugees fleeing such areas, relatedly have their right to water curtailed.

The right to the highest attainable standard of physical and mental health (the right to health) is most comprehensively addressed in article 12 of the *ICESCR* and referred to in other core international human rights treaties.⁷⁹ Climate change constitutes a severe additional stress to health systems worldwide, prompting the Special Rapporteur on the right to health to warn that a

⁷² *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982 paragraph 1; *CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life*, 9 November 1984 paragraph 1.

⁷³ Inter-Agency Standing Committee, ‘Protecting Persons Affected by Natural Disasters – IASC Operational Guidelines on Human Rights and Natural Disasters’, Brooking-Bern Project on Internal Displacement, 2006.

⁷⁴ Article 11(1), *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, 999 U.N.T.S 171.

⁷⁵ *ICESCR, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, paragraph 6.

⁷⁶ Article 11(2) *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, 999 U.N.T.S 171.

⁷⁷ Article 14, 2(h), *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, 13.

⁷⁸ Intergovernmental Panel on Climate Change, ‘Fourth Assessment Report’, Working Group II, 48-49.

⁷⁹ Articles 7b), 10, *ICESCR*, *CEDAW*, articles 12 and 14, para. 2(b); *ICERD*, article 5 (e)(iv).

failure of the international community to confront the health threats posed by global warming will endanger the lives of millions of people.⁸⁰

The above segment leaves no doubt that when ‘environmental refugees’ are removed and deported back to their country of origin, there is a violation of their international human rights’.

3.5 International Environmental Law

Another approach to the problem could be through international environmental law. If environmental migration could be attributed to human action e.g. pollution and climate change, then this may also entail state responsibility under international environmental law.⁸¹ Accordingly, and in line with the ‘polluter pays principle’, those responsible for the causes of displacement should shoulder the consequences.⁸² Principle 16 of the Rio Declaration states that the polluter should bear the expenses of carrying out pollution prevention measures or paying for damages caused by pollution. Consequently, some scholars have suggested that countries that cause pollution leading to climate change refugees, should bear the burden of such pollution, by admitting quotas of ‘environmental refugees’.⁸³

This would not be farfetched since international environmental law was marked as a separate branch of international law during the 1972 United Nations Conference on the Human Environment.⁸⁴ At this conference, the *Stockholm Declaration* was adopted and principle 21 provides that states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own

⁸⁰ Report Of The Office Of The United Nations High Commissioner For Human Rights On The Relationship Between Climate Change And Human Rights, 15 January 2009 , A/HRC/10/61. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement> (accessed 20 December 2016).

⁸¹ Draft M, ‘Prospective Reflections On The Legal Protection Of Ecological Refugees’, 4 *European Journal of International Migration* (2006), 428-445.

⁸² McAdam J and Saul B, ‘An Insecure Climate for Human Security? Climate-Induced Displacement and International Law’, *Sydney Centre for International Law Working Paper 4*, 2008, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1292605 (accessed December 20 2016).

⁸³ Byravan S and Rajan S, ‘Providing New Homes For Climate Change Exiles’, 6 *Climate Policy*, (2006), 247-252.

⁸⁴ Weiss E et al., *International Environmental Law: Basic Instruments And References*, Transnational Publishers, 1992, 171.

environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.⁸⁵

Considered primarily as an obligation to prevent pollution, principle 21 of the *Stockholm Declaration* is generally accepted as customary international law.⁸⁶ In as much as the principle has not been extended to encompass the consequences of pollution, such as migration, it can still be used as a viable argument in support of ‘environmental refugees’ because not only is there a useful fit between the guiding structure of this principle but also the political and practical obstacles to ameliorating the problem of ‘environmental refugees’.⁸⁷

3.6 Conclusion

This chapter has explored alternative regimes of protection that may be of solace to ‘environmental refugees.’ It began with an apparently straightforward solution (the expansion of the *Geneva Convention*) to accommodate victims of natural disasters in order to test the hypothesis of the author: The regime of refugee law could be adopted with necessary modifications to contain ‘environmental refugees’. Such a proposal consisted of broadening the definition of a refugee in the *Geneva Convention* to encompass an additional limb to include victims of both man made and natural environmental degradation. It was assumed that human rights provisions would justify such an expansion of the Convention.

However it was found that this was not as easy a task as was contemplated due to political resistance from states as well as the UNHCR which fears that too many duties will sap their already strained resources whereas nations recoil against the prospect of more immigrants and

⁸⁵ Conference on the Human Environment, Final Documents, June 16, 1972, 11 I.L.M.1416, also U.N. Doc. A/CONF.48/14/Rev.1.

⁸⁶ Weiss E, *Environmental Disasters in International Law*, Anuario Juridico Interamericano, Washington D.C., 1987,141.

⁸⁷ McCue S, ‘Environmental Refugees: Applying International Environmental Law to Involuntary Migration’, 6 *Georgetown International Environmental Law Review*, (1993), 179.

capital spent to accommodate them. Having illustrated the several difficulties associated with this approach, it proceeded to pursue other avenues of protection that may be available so as to turn away from the conundrum of expanding the *Geneva Convention*.

The second approach was the principle of non-refoulement coupled with complementary protection, where it was argued that ‘environmental refugees’ should not be returned to their countries of origin because of the threat of harm that triggered their flight. A third angle examined was premised in a human rights approach coupled with a strengthened enforcement mechanism. The right to a clean environment was used to argue against the return of individuals to a risk of environmental harm, similar to the non-refoulement principle discussed above. International environmental law was the final approach discussed using the ‘polluter pays principle’ where it was argued that countries which cause pollution leading to climate change refugees, should bear the burden of such pollution, by admitting quotas of ‘environmental refugees’.

This is not to say that the other avenues pursued do not suffer practical difficulties of enforcement. Nonetheless, they were imperative avenues to be pondered upon, in the quest of finding a holistic solution to the problems endured by ‘environmental refugees’. The subsequent chapter will delve into the practical difficulties of enforcing the alternative modes of protection discussed above and use this to find a holistic solution to the problem including pursuing the viability of creation of a new convention to cater specifically to ‘environmental refugees’.

CHAPTER FOUR

Working Towards A Holistic Solution

4.1 Introduction

In an attempt to answer the second research question, whether the definition of refugees under international law can be broadened to include the so-called ‘environmental refugees’, the previous chapter discussed alternative potential solutions that may aid ‘environmental refugees.’ It discussed the pros and cons of broadening the *1951 Geneva Convention relating to the Status of Refugees* (hereinafter *Geneva Convention*) to accommodate environmental refugees, the principle of non-refoulement and complementary protection, and approaches premised in both international human rights law as well as international environmental law.

This chapter will pick up where chapter three left off, and will begin by discussing the drawbacks of the approaches of non-refoulement, international human rights law and international environmental law. The objective is to find a holistic solution to the problem whilst at the same time being mindful of the challenges that may be faced by each approach.

The chapter will then proceed to propose the most holistic solution to the problem, from the author’s point of view, upon reflection from the findings of the previous chapters. The proposals will comprise the creation of a new treaty specifically tailored for ‘environmental refugees’ coupled with mitigation measures of climate change as an approach based in asylum only will not address the root causes of migration.

4.2 Critic of Non-Refoulement Approach

Chapter 3 argued the possibility of the principle of non-refoulement being used as a mode of protection. However, one caveat of this potential solution is that the principle only applies to officially recognized refugees.¹ In fact, the *Geneva Convention*, specifies this in the following terms: no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.²

Additionally, some commentators have questioned its status as a customary international law principle³ and others going so far as to dismiss the customary status of non-refoulement as 'wishful legal thinking'.⁴ That notwithstanding, the customary nature of the principle has received overwhelming support, including from the Human Rights Committee, despite the few dissents of some scholars.

However, the take home point is that if 'environmental refugees' are not designated as refugees in international law, countries are not mandated to protect them; therefore, they are still at risk of being expelled from the receiving nations.⁵ This proposal is therefore only effective insofar as it is complimented by other modes of protection that assure victims of natural disasters refugee status.

4.3 Critic of International Human Rights Law Approach

Another coherent approach suggested was premised in international human rights law where it was argued that the right to a clean environment could be used as a basis to prohibit the return of

¹ Lauterpacht E, Bethlehem D, 'The Scope And Content Of The Principle Of Non-Refoulement', in Feller E, Türk V, and Nicholson F, Cambridge University Press, 2003 87-177.

² Article 33, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

³ Hathaway J, *The Rights Of Refugees Under International Law*, Cambridge University Press, 2005, 363.

⁴ Hailbronner K, 'Non-Refoulement and Humanitarian Refugees: Customary International Law or Wishful Legal Thinking' 26 *Virginia Journal of International Law*, (1985) 857.

⁵ Martin D, 'Reforming Asylum Adjudication: On Navigating the Coast of Bohemia', 138 *University of Pennsylvania Law Review* (1990),1247,1253-57.

individuals to a risk of environmental harm. However, this proposal suffers its own drawbacks. To begin with, the international bill of rights was enacted at an era where environmental concerns were not contemplated as a serious threat to human life.⁶ As such, it contained no explicit reference to the ‘right to be free from environmental harm’.⁷

Additionally, a similar difficulty as that of expanding the *1951 Geneva Convention relating to the Status of Refugees* (hereinafter *Geneva Convention*) exists. Such a human rights approach would also require certainty of data connecting forced migration to strictly environmental triggers which is practically impossible as there is no precise way to determine the amount of weight that environmental pressures alone exerts on any one refugee.⁸ Moreover, it would also demand an analysis of each individual case of an ‘environmental refugee’ in order to determine that environmental harm was the only trigger for migration.⁹ Indeed, this is not feasible as refugee problems warrant group-based solutions due to the large-scale influxes that result.¹⁰

Finally, the intrinsic link between human rights and individuals is their nationality.¹¹ This is the basis upon which they are justiciable as citizens are enabled to hold their governments to account in case of human rights violations. Foreseeably, this would be a big hiccup, for individuals fleeing low-lying islands such as Tuvalu and Kiribati, which are in danger of becoming fully

⁶ Chapman A, ‘Symposium Overview to Earth Rights and Responsibilities: Human Rights and Environmental Protection’, 18 *Yale Journal of International Law*, (1993), 223.

⁷ Cuomo K, ‘Human Rights and the Environment: Common Ground’, 18 *Yale Journal of International Law*, (1993), 227.

⁸ Moberg K, ‘Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection’, 94 *Iowa Law Review*, (2009), 1107.

⁹ Myers N, *Environmental Refugees*, Climate Institute, Washington D.C., 17-18.

¹⁰ Zartner-Falstrom D, ‘Stemming The Flow Of Environmental Displacement’, *Colorado Journal of International Environmental Law* (2001), 5-8.

¹¹ Oliver S, ‘A New Challenge to International Law: The Disappearance of the Entire Territory of a State’ 16(2) *International Journal on Minority and Group Rights*, (2009), 216.

submerged.¹² This is because, they would be considered stateless persons therefore would not be able to hold any government to account for their human rights violations.¹³

4.4 Critic of International Environmental Law Approach

The final alternative mode of protection that was discussed in the previous chapter, is that of using international environmental law principles such as ‘polluter pays’ where

it was argued that countries that cause pollution should shoulder the consequences by admitting ‘environmental refugees’. Likewise, this approach also has its own downsides. To begin with, it is highly unlikely that a country would admit its responsibility in causing pollution. Secondly, it is doubtful that the countries causing pollution, will be bordering the countries where disasters hit; yet ‘environmental refugees’ would most likely flee to neighboring countries in a hurry to secure their livelihood. It would therefore be more productive for countries to implement sustainable development policies and directing their funds to states in vulnerable positions of attack such as low-lying islands.¹⁴

Moreover, the international environmental law documents that were relied on in furtherance of that proposal were mere soft law documents that are not legally binding.¹⁵ These were the 1992 *Rio Declaration on Environment and Development*¹⁶ and the 1972 *Stockholm Declaration of the United Nations Conference on the Human Environment* which some have described to be merely aspirational in character.¹⁷ Also important to note is that, neither of the two instruments have given explicit rights to a safe environment. Instead, they provide for an environment that allows

¹² Frelick B, and Lynch M, ‘Statelessness: A Forgotten Human Rights Crisis’ 24 *Forced Migration Review*, (2005), 65.

¹³ Ibid.

¹⁴ Pfeiffer S, ‘Environmental Refugees: How To Ensure Adequate Legal Protection?’, Unpublished LLM Thesis, University of Bristol, September 2008, 37.

¹⁵ Reilly W, ‘Reflections on Rio’, 8 *Journal of Natural Resources and Environmental Law*, (1992-93), 353, 353.

¹⁶ *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (vol. I) / 31 ILM 874 (1992).

¹⁷ Wirth D, ‘Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa’, 29 *Georgia Law Review*, (1995), 599-653.

for a life of dignity and well-being, such that a good environment is a means to an end and not an end in itself.¹⁸

4.5 New Refugee Convention

As has been illustrated in the above chapters, the *1951 Geneva Convention relating to the Status of Refugees* (hereinafter *Geneva Convention*), is the main instrument responsible for international refugee movements, yet it has failed to evolve with the new demands. Where the law fails to serve the purpose it was enacted for, its utility ceases. It has further been argued that efforts to broaden the *Geneva Convention* with necessary modifications to cater for ‘environmental refugees’ would not be an easy task due to political resistance from both states as well as the UNHCR.¹⁹

‘Environmental refugees’ are still as deserving of protection as political refugees meeting the criteria of the *Geneva Convention* because they suffer the same severe plight. The rise in environmental calamities will correspond to a rise in international migration away from the heavy-hit countries.²⁰ Yet, receiving nations would not be in breach of any international obligation for kicking this new crop of refugees out, however catastrophic it may seem. It is from this backdrop, that this chapter proposes the creation of a new *Convention relating to the Status of Environmental Refugees* (hereinafter *Environmental Refugee Convention*) rather than attempting the arduous task of broadening the current *Geneva Convention*.

This is a preferred solution because ‘environmental refugees’ would not have to fight for the limited slots already set aside for political refugees by countries.²¹ Instead the new *Environmental Refugee Convention* would be tailor-made to cater explicitly for ‘environmental refugees’ and the international community would share the burden of protecting them by adding

¹⁸ Principle 1, *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994, available at: <http://www.refworld.org/docid/3b00f1c840.html> [accessed 5 January 2017].

¹⁹ McCue S, ‘Environmental Refugees: Applying International Environmental Law to Involuntary Migration’, 6, *Georgetown Environmental Law Review*, (1993), 177.

²⁰ Myers N, ‘Environmental Refugees An Emergent Security Issue’ *13th Economic Forum*, Prague, May 2005, 23-27.

²¹ Doran A, ‘Where Should Haitians Go - Why Environmental Refugees are up the Creek without a Paddle’, 22 *Villanova Environmental Law Journal*, (2011), 134.

special slots in their refugee program specific just for them.²² Traditional refugee laws would therefore co-exist with the new ‘environmental refugee’ laws.

An international *Environmental Refugee Convention* is preferred to regional agreements between some countries, because the problem of environmental disasters is a universal one that affects both the developed nations (such as Hurricane Katrina in the United States of America) and least developed nations alike (such as Tuvalu and Kiribati). It is thus a global phenomenon thereby it warrants an international response.

The general framework of the envisioned *Environmental Refugee Convention* shall be further discussed below. To begin with, it shall be strictly a convention for ‘environmental refugees’ and only individuals coming from countries that have experienced immediate environmental disasters (such as hurricanes, earthquakes, submergence of low-lying islands) shall be considered for asylum. This strict criterion exists so as to narrow the refugee floodgates already existing and prevent other migrants from taking advantage of the system. The object and purpose of the proposed *Environmental Refugee Convention* will be to provide protection to ‘environmental refugees’ fleeing to protect their life and is not to be used as a backdoor for migrants looking for a better life.

To this end, the treaty should be infused with the principles of international human rights law, non-refoulement, complementary protection and international environmental law as discussed in Chapter Three in order to offer an all-round protection to victims of natural disasters. To achieve these ends, the contracting parties will have to agree on an official definition of who constitutes an ‘environmental refugee’ through more defined terms. Furthermore, to address the concerns of the UNHCR that they have strained resources for the current traditional refugees²³, the *Environmental Refugee Convention* should have a funding proposal such that all contracting

²² Moberg K, ‘Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection’, 94 *Iowa Law Review*, (2009),1135.

²³ Price-Cohen C, ‘Considerations Affecting the Implementation of the United Nations Convention on the Rights of the Child in Situations of Forced Migration’, in McCallin M ed., *The Psychological Well-Being Of Refugee Children: Research, Practice And Policy Issues*, Geneva, International Catholic Child Bureau, 1992, 293, 299.

parties contribute to the cause, and ‘environmental refugees’ do not sap the resources of the political refugees.

Since international instruments are only as effective as the domestic laws complementing them, the *Environmental Refugee Convention* should insist on countries passing legislation to facilitate the asylum of ‘environmental refugees’. Moreover, in order to avoid the over-burdening of the refugee system, countries should only be made to host the amount of ‘environmental refugees’ that they can sustain. Since it is a shared problem, ‘environmental refugees’ will have at least alternative options of countries to flee to as the *Environmental Refugee Convention* would guarantee at the very least that they would be accommodated somewhere. In as much as states would retain their sovereign right to curb refugee flow, at least there will be legal obligations for all contracting states to accept a quota of some victims of natural disasters. This is arguably a much better position as ‘environmental refugees’ would finally have the force of the law behind them.

4.6 Prevention

The convention approach as an end in itself is adequate but not sufficient. It must also go hand in hand with solutions that seek to address root causes of environmental degradation so as to curb migration at the onset.²⁴ Prevention of hazards that cause environmental migration should be the order of the day. National governments should utilize natural resources in a manner that is equitable, efficient, productive and sustainable so as to prevent future environmental degradation, which triggers calamities such as drought.²⁵

²⁴ Goffman E, ‘Environmental Refugees: How Many, How Bad?’, CSA, 4. (June 2006), 5, available at <https://uofahsmun.files.wordpress.com/2012/06/environmental-refugees.pdf> on 10 December 2016,15.

²⁵ Doran A, ‘Where Should Haitians Go - Why Environmental Refugees are up the Creek without a Paddle’, 22 *Villanova Environmental Law Journal*, (2011),132.

The enactment of policies that reduce greenhouse emissions cannot be overstated as this goes a long way in curtailing the effects of global warming.²⁶ The melting of arctic ice leading to sea level rise will cause island nations to disappear and displace their inhabitants.²⁷ To this end, existing mechanisms such as the United Nations Framework Convention on Climate Change²⁸ and the Kyoto Protocol²⁹ should be further reinforced. It is only through such international cooperation, that man-made triggers to environmental migration will be reduced.³⁰

4.7 Conclusion

This chapter began with a critic of the different modes of protection proposed in the previous chapters. These modes of protection analysed in this chapter were the principle of non-refoulement and approaches in both international human rights law and international environmental law.

The principle of non-refoulement was found to have the setback of only applying to people who are officially recognized as refugees. It would therefore be only effective in so far as ‘environmental refugees’ are legally recognized as such. On the other hand, an approach premised in international human rights law also has its own drawbacks. To begin with, the international bill of rights contains no explicit right ‘against environmental harm’. Further, such an approach would warrant individual examinations of each case, which is problematic because migration often occurs in large influxes. Furthermore, such rights would not be justiciable as ‘environmental refugees’ cannot sue their governments for natural environmental disasters. Finally, the approaches founded on international environmental law principles suffered the difficulty that they relied on soft law declarations that are not legally binding.

²⁶ Dowty A and Loescher G, ‘Refugee Flows as Grounds for International Action’, *International Security Journal*, (1996), 54.

²⁷ UNHCR: Report of the Secretary-General, *Climate change and its possible security implications* 11 September 2009 <http://www.unhcr.org/refworld/pdfid/4ad5e6380.pdf> on 05 December 2015.

²⁸ *United Nations Framework Convention on Climate Change*: resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189.

²⁹ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, UN Doc FCCC/CP/1997/7/Add.1, Dec. 10, 1997; 37 ILM 22 (1998).

³⁰ Johnson L, ‘Environment, Security & Environmental Refugees’, *Journal of Animal and Environmental Law*, (2009), 245.

The chapter then proposed the approach of creation of a new treaty called *Convention relating to the Status of Environmental Refugees* specifically tailor-made to cater for the needs of ‘environmental refugees’. The treaty would define them in strict terms and the international community would share the burden of protecting them by adding special slots in their refugee program specific just for them. The treaty would then incorporate the principles of non-refoulement, international human rights law and international environmental law thereby utilizing all the principles discussed in chapter three to benefit this new crop of refugees.

However, it was not lost on the author that such an approach would not address the root causes of migration. It was then suggested that complementary to the proposed *Environmental Refugee Convention*, policies that prevent future environmental degradation should be capitalized on using already existing mechanisms in the United Nations Framework Convention on Climate Change and the Kyoto Protocol. Such an approach was viewed to be the most holistic approach that would best cater to the needs of ‘environmental refugees’ around the world.

The subsequent chapter will be the final one, and will contain a summary of all the findings of this study as well as a summary of the recommendations founded on the analysis of all the chapters.

CHAPTER FIVE

Conclusion And Recommendations

5.1 Introduction

It is clear that the *1951 Geneva Convention relating to the Status of Refugees* (hereinafter *Geneva Convention*) was enacted to protect people fleeing persecution of their civil and political liberties. What is also clear is that there exists a recent wave of migration patterns across international borders to escape environmental calamities witnessed from across the Sahel and the Horn of Africa, as well as the Soviet Union, Latin America and low-lying islands such as Tuvalu and Kiribati.

Yet, there also exist arguments against the protection of this new breed of ‘environmental refugees’ who are viewed as an additional unnecessary burden that will open up the refugee floodgates. The first group of opponents of the concept came from migration theorists who took issue with the assumed relationships between a changing physical environment and the decisions people took regarding their mobility. They emphasize the complexity of the interaction between social and environmental systems and hence question the assumption of a direct causal link between environmental change and migration. Their main criticism of the term ‘environmental refugee’ is that it overlooked the potentially important role played by other factors in the process by affording primacy to changes in the physical environment in decisions about human migration.

5.2 Restating the Initial Problem

Consequently, the international refugee system is faced with a predicament: The *Geneva Convention* never contemplated that environmental factors could trigger migration. This is the problem that impelled this study, which had the objective of finding an adequate means of

protecting ‘environmental refugees’ who endure suffering due to the unlucky fact that they reside in areas prone to environmental disasters.

5.3 Research findings

Challenged by the above problem, the study set out to investigate two research questions in order to expose the protection gaps for ‘environmental refugees’: firstly, whether international law provides for a mechanism of protecting those moving away from harsh environmental conditions and secondly, whether the definition of refugees under international law can be broadened to include the so-called environmental refugees.

The enquiry proceeded from the hypothesis that international law does not adequately cater for ‘environmental refugees’. In an attempt to confirm the hypothesis and answer the research questions, the dissertation was broken down into the following more specific questions. These are: a) Do existing refugee laws adequately cater for ‘environmental refugees’? b) Are there alternative protective regimes outside the scope of current refugee laws? c) How best should the protection gaps in international law be filled to cater for ‘environmental refugees’? The answers to these questions are summarized below.

5.3.1 Existing international regimes are an ill-equipped mode of protection

The study found that existing international refugee laws as well as their expanded regional counterparts in Africa, Asia and Latin America are all ill-equipped to offer sufficient protection to victims of natural disasters.

5.3.2 Alternative protection mechanisms exist outside the scope of current refugee laws

The alternative protection mechanisms that were found to be of aid to ‘environmental refugees’ include the principle of non-refoulement coupled with complementary protection, international human rights law coupled with a strengthened enforcement mechanism and principles of international environmental law such as ‘polluter pays principle’. In answer to the second research question, the suggestion that the *Geneva Convention* can be broadened with necessary

modifications to cater for ‘environmental refugees’, was found to be unrealistic. This is because it would face political resistance from states as well as the UNHCR, which fears that too many duties will sap their already strained resources.

5.3.3 An approach based on asylum alone is not sufficient protection

Finally, it was found that an effective response to the problem of ‘environmental refugees’ was to be found in the creation of a new treaty specifically tailored to meet their needs. Moreover, the best solution was found to be ‘prevention’ rather than ‘cure’ such that in addition to recognizing their plight through a treaty, strong adaptation and mitigation measures must be undertaken to prevent future environmental disasters so as to curb the cause of migration.

5.4 Conclusion

To conclude this study is to confirm the hypothesis that international law does not adequately cater for ‘environmental refugees’. In as much as ‘environmental refugees’ do not meet the requirements of the *Geneva Convention*, they are still deserving of the help and protection that traditional refugees receive as they suffer the same plight. Formalism aside, the spirit of the *Geneva Convention* demands that ‘environmental refugees’ be eligible for official refugee status recognized globally.

5.5 Recommendations

An analysis of the international refugee laws has revealed that they are an antiquated mode of protection since they do not contemplate the possibility of ‘environmental refugees’. As a result, ‘environmental refugees’ continue to face the threat of statelessness as some islands such as Tuvalu and Kiribati are slowly disappearing due to a rise in sea level. Thus, they are constant victims of human rights violations as they suffer a threat to their right to life, health and adequate food among others. The ‘environmental refugees’ therefore continue to rely on the goodwill of states, which is not always constant since no treaty directly protects them.

Hence, in solving these problems, the following measures are necessary:

- a) The root causes that lead to environmental degradation must be addressed so as to curb migration at the onset. Adaptation and mitigation of hazards that cause environmental migration should be the order of the day. National governments should utilize natural resources in a manner that is equitable, efficient, productive and sustainable so as to prevent future environmental degradation, which triggers calamities such as drought. The enactment of policies that reduce greenhouse emissions cannot be overstated as this goes a long way in curtailing the effects of global warming. The melting of arctic ice leading to sea level rise will cause island nations to disappear and displace their inhabitants. To this end, existing mechanisms such as the United Nations Framework Convention on Climate Change and the Kyoto Protocol should be further reinforced.
- b) In furthering the first recommendation, international and regional deliberations, involving all stakeholders (such as countries that suffer the negative effects of climate change, countries causing most pollution, Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Environmental Programme (UNEP), Intergovernmental Panel on Climate Change (IPCC) and International Organization for Migration (IOM)) must be held. To this end, processes like the African Peer Review Mechanism under the African Union (AU) and the Universal Periodic Review (UPR) mechanism under the UN can be sufficiently utilized. Civil society organizations should also be on the forefront of championing the rights of ‘environmental refugees’. It is only through such international cooperation, that man-made triggers to environmental migration will be reduced.
- c) Additionally, there is need for a treaty at the international level that directly protects ‘environmental refugees’. The ‘environmental refugee’ problem demands that the law reacts. Since climate change is an international phenomenon, such a treaty would be better placed to address the massive displacement of people across international borders rather than regional or sub-regional treaties. To this end, the treaty should be infused with the principles of international human rights law, non-refoulement and complementary protection and international environmental law. Such a treaty should clearly define the

criteria of meeting the ‘environmental refugee’ definition so as to prevent floodgates of people seeking admission into host countries, thereby defeating the purpose. To this end, the treaty ought to have guidelines on what quotas of ‘environmental refugees’ countries should accept so as to not overburden host nations. International environmental law principles such as ‘polluter pays’ can be used as a framework to oblige countries which cause pollution leading to climate change refugees, bearing the burden of such pollution, by admitting a greater number ‘environmental refugees’.

- d) Finally, there is need to change the perceptions of the traditional refugee definition through education on the extensive changes that have occurred since the 1951 *Geneva Convention* was adopted. Economic growth coupled with rapid industrialization in many developing countries has come at the cost of citizens’ environmental safety. Scholars who are constantly writing on traditional refugees should also dedicate their work to reflect the evolution of the global changes post the 1951 era as it is within their mandate to initiate the discussions on ‘environmental refugees’ be it in universities or their scholarly works.

5.6 Recommendations for Further Research

Since this study was limited in its focus, it was ill-suited to respond to other questions that emerged in the course of research. For instance, future researchers could explore the relationship between environmental triggers and migration in order to make the statistical data in this field, a major concern among commentators, more certain. Additionally, researchers could also explore a different breed of ‘new refugees’ also coming up, migrating across international borders looking for a better livelihood; the so-called ‘economic refugees’ in order to determine if they are deserving of protection as the ‘environmental refugees’.

BIBLIOGRAPHY

Books

1. Beitz C, *The Idea of Human Rights*, Oxford University Press, 2009.
2. Black R and Robinson V (eds), *Geography And Refugees: Patterns And Processes Of Change*, Belhaven Press, London, 1993.
3. Boano C, Zetter R, Morris T, *Environmentally Displaced People: Understanding Linkages Between Environmental Change, Livelihoods And Forced Migration*, Refugee Studies Centre, Oxford, 2007.
4. Bunyan Bryant (ed) *Environmental Justice: Issues, Policies and Solutions*, Island Press, 1995.
5. Cheney G, *Chernobyl: The Ongoing Story of the World's Deadliest Nuclear Disaster*, New Discovery, 1993.
6. Coinsbee M and Simms A, *Environmental Refugees: The Case For Recognition*, New Economics Foundation, London, 2003.
7. Ebel R, *Chernobyl And Its Aftermath: A Chronology Of Events*, Centre for Strategic and International Studies, Washington DC, 1994.
8. El-Hinnawi, E, *Environmental Refugees*. Nairobi: United Nations Environment Programme 1985.
9. Feller E, Türk V and Nicholson F, *Refugee Protection in International Law: UNHCR Global Consultations on International Protection*, Cambridge University Press, 2003.
10. Gill G, Guy S and McAdam J, *The Refugee In International Law*, 3rd ed., Oxford University Press, 2007.
11. Gordenker L, *Refugees in International Politics*, New York, 1987.
12. Guy S, Gill G, *The Refugee in International Law*, 2 ed., Clarendon Press, Oxford, 1996.
13. Hathaway J, *The Rights Of Refugees Under International Law*, Cambridge University Press, 2005.
14. Hewitt, K, *Interpretations of Calamity from the Viewpoint of Human Ecology*, Allen & Unwin, London, 1983.
15. Jackson I, *The Refugee Concept in Group Situations*, Kluwer Law International, The Hague, 1999.

16. Jacobson, J *Environmental Refugees: a Yardstick of Habitability*, Washington, DC: World Watch Institute 1988.
17. Keely C, Elwell P, *Global Refugee Policy: The Case for a Development Oriented Strategy*, Population Council, 1981.
18. Khan S and Christiansen J eds., *Towards New Developmentalism: Market as Means Rather than Master*, Routledge Economics, 2010.
19. Kourula P, *Broadening the Edges: Refugee Definition and International Protection Revisited* , Kluwer, The Hague, 1997.
20. Kritz M (ed), *U.S. Immigration: Global and Domestic Issues*, Lexington Mass, DC Heath, 1983.
21. Lavenex S, *Safe Third Countries*, Central European University Press, Budapest, 1999.
22. Marples D, *Chernobyl And Nuclear Power In The USSR*, Canadian Institute of Ukrainian Studies Press, 1986.
23. Marples D, *Introduction to Grigori Medvedev, No Breathing Room-The Aftermath Of Chernobyl*, New York, 1993.
24. Martinez J, *The Slave Trade and the Origins of International Human Rights Law*, Oxford University Press, 2012.
25. McAdam J, *Climate Change, Forced Migration, and International Law*, Oxford University Press, 2012.
26. McAdam J, *Complementary Protection in International Refugee Law*, Oxford University Press 2007.
27. McCallin M, *The Psychological Well-Being Of Refugee Children: Research, Practice And Policy Issues*, Geneva, International Catholic Child Bureau, 1992.
28. Medvedev Z, *The Legacy Of Chernobyl* , Norton, New York,1990.
29. Myers N and Kent J, *Environmental Exodus: an Emergent Crisis in the Global Arena*, Washington, DC 1995.
30. Myers N, *Environmental Refugees*, Climate Institute, Washington D.C.,2001.
31. Myers N, *Ultimate Security: the Environmental Basis of Political Stability*, New York and London, 1993.
32. Nathwani N, *Rethinking Refugee Law*, Martinus Nijhoff Publishers, 2003.
33. Park C, *Chernobyl-The Long Shadow*, Routledge, Kegan & Paul, 1989.

34. Rubio-Marin R, *Human Rights and Immigration, Collected Courses of the Academy of European Law*, Oxford University Press, 2014.
35. Stephens T, *The International Courts And Environmental Protection*, Cambridge University Press, 2009.
36. Suhrke A, *Pressure Points: Environmental Degradation, Migration and Conflict*, Washington, DC: American Academy of Arts and Sciences, 1993.
37. Vasak K, *A Thirty Year Struggle, The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights*, UNESCO Courier, 1977.
38. Vernant J, *The Refugee in the Post-War World*, Yale University Press, 1953.
39. Weiss E et al., *International Environmental Law: Basic Instruments And References*, Transnational Publishers, 1992.
40. Weiss E, *Environmental Change And International Law: New Challenges And Dimensions*, United Nations University, 1992.
41. Weiss E, *Environmental Disasters in International Law*, Anuario Juridico Interamericano, Washington D.C., 1987.
42. Wijkman A and Timberlake L, *Natural Disasters: Acts of God or Acts of Man*, International Institute for Environment and Development, London and Washington, D.C., 1984.
43. Zarjevski Y, *A Future Preserved: International Assistance To Refugees*, Pergamon Press, Oxford, 1988.

Case Law

1. *Beldjoudi v France*, ECtHR, 26 February 1992.
2. *Chahal v. United Kingdom*, ECtHR, 15 November 1996.
3. *Chitat Ng v. Canada*, HRC, Communication No. 469/1991, U.N. Doc. CCPR/C/49/D/469/1991 (1994).
4. *H.L.R. v France*, ECtHR 22 April 1997.
5. *INS v. Cardoza-Fonseca*, USSC, 9 March 1987.
6. *Jabari v Turkey*, ECtHR, 11 July 2000.
7. *Salah Sheekh v the Netherlands*, ECtHR, 11 January 2007.

8. *Soering v The United Kingdom*, 11, ECtHR, 439, 7 July 1989.
9. *Vilvarajah and Others v The United Kingdom*, ECtHR , 26 September 1991.

Conventions

1. *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).
2. *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969.
3. *Bangkok Principles on the Status and Treatment of Refugees*, 31 December 1966, Final Text adopted on 24 June 2001.
4. *Cartagena Declaration on Refugees* (Cartagena de Indias, 22 November 1984) OAS/Ser.L.V/I.66, doc. 10, rev. 1, pp. 190-93.
5. *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI
6. *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*, 10 December 1984, UNTS, vol. 1465, p. 85
7. *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, UNTS, vol. 1249, 13.
8. *Convention Relating to the Status of Refugees*, 189 UNTS 137, entry into force 22 April 1954.
9. *Convention Relating to the Status of Stateless Persons*, 28 September 1954, UNTS, vol. 360, 117.
10. ILO Convention No. 169 (1989) concerning *Indigenous and Tribal Peoples*, 27 June 1989.
11. *International Covenant on Civil and Political Rights*, December 16, 1966, 999 UNTS 171.
12. *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, 999 U.N.T.S 171.
13. *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, UN Doc FCCC/CP/1997/7/Add.1, Dec. 10, 1997; 37 ILM 22 (1998).

14. Organisation Of African Unity *Convention Governing The Specific Aspects Of Refugee Problems In Africa* 10 September 1969 1001 UNTS 45.
15. *Protocol Relating to the Status of Refugees*, 1967, U.N. Doc. HCR/IP/4/Eng. Rev. 2 (1979) (reedited January 1992).
16. *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (vol. I) / 31 ILM 874 (1992).
17. *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994
18. *United Nations Framework Convention on Climate Change*: resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189.
19. *United Nations Framework Convention on Global Climate Change*, 1-5, U.N. Doc. AIAC.237/18.
20. *Universal Declaration of Human Rights*, 10 December 1948 217A.

European Union Directives

1. Council of the European Union, ‘Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted’, 2004/83/EC, 29 April 2004. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML> (accessed 20 December 2016).

General Comments

1. *CCPR General Comment No. 20*: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992.
2. *CCPR General Comment No. 6*: Article 6 (Right to Life), 30 April 1982.
3. *CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life*, 9 November 1984.
4. *CESCR General Comment No. 14*: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4.

5. CESCR, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999.

Internet Sources

1. Al Jazeera, 'Kenya Delays Dadaab Refugee Camp Closure By Six Months', 16 November 2016, available at <http://www.aljazeera.com/news/2016/11/kenya-delays-dadaab-refugee-camp-closure-months-161116130647820.html> (accessed on 1 December 2016).
2. Ďurková P *et al*, 'Climate refugees in the 21st century,' 2012 <https://fusiondotnet.files.wordpress.com/2015/02/climate-refugees-1.pdf> on 10 December 2015.
3. Goffman E, 'Environmental Refugees: How Many, How Bad?', CSA, 4. (June 2006), 5, available at <https://uofahsmun.files.wordpress.com/2012/06/environmental-refugees.pdf> on 10 December 2016.
4. International Organization for Migration, *Migration, Environment and Climate Change: Assessing the Evidence* 2009 at 405 <http://publications.iom.int/bookstore/free/migration_and_environment.pdf> on 20 November 2012.
5. Jakobson E, 'Global Policy Making on Climate Refugees: What is the Problem?' (2010) at 19 <http://www.pol.gu.se/digitalAssets/1309/1309786_vt10-elin-jakobsson.pdf> on 25 November 2015.
6. Norwegian Refugee Council: Kolmannskog V, 'Future Floods of Refugees, A comment on climate change, conflict and forced migration' April 2008 http://www.nrc.no/arch/_img/9268480.pdf on 08 December 2015.
7. Straw J, *The Convention: Britain's View*, 2 Refugees Magazine Issue, no. 123, 2001 at 12-13, available at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b5e90ea0&query=refugees%20magazine> on 10 December 2016.
8. Wilkinson R, *The Refugee Convention* at 50, 2 Refugees Magazine Issue, no. 123, 2001 at 2, available at <http://www.unhcr.org/cgi->

bin/texis/vtx/search?page=search&docid=3b5e90ea0&query=refugees%20magazine on
10 December 2016.

Journal Articles

1. Alston P, 'A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?' 29 *Netherlands International Law Review* (1982).
2. Arboleda E, 'Refugee Definition in Africa and Latin America: The Lessons of Pragmatism', 2, *International Journal of Refugee Law*, (1991).
3. Bush B, 'Redefining Environmental Refuges', 27 *Georgetown Immigration Law Journal*, (2013).
4. Byravan S and Rajan S, 'Providing New Homes For Climate Change Exiles, 6 *Climate Policy*, (2006).
5. Cha-Sartori C, 'Environmental Refugees: The Latest Enterprise Of Corporate Social Responsibility' 34 *Houston Journal of International Law*, 2011.
6. Chapman A, 'Symposium Overview to Earth Rights and Responsibilities: Human Rights and Environmental Protection', 18 *Yale Journal of International Law*, (1993).
7. Cooper J, 'Environmental Refugees: Meeting the Requirements of the Refugee Definition', 6 *New York University Environmental Law Journal*, (1998).
8. Cuomo K, 'Human Rights and the Environment: Common Ground', 18 *Yale Journal of International Law*, (1993).
9. Docherty B, Giannini T, 'Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees', 33 *Harvard Environmental Law Review*, (2009).
10. Doran A, 'Where Should Haitians Go - Why Environmental Refugees are up the Creek without a Paddle', 22 *Villanova Environmental Law Journal*, (2011).
11. Dowty A and Loescher G, 'Refugee Flows as Grounds for International Action', *International Security Journal*, (1996).
12. Draft M, 'Prospective Reflections On The Legal Protection Of Ecological Refugees', 4 *European Journal of International Migration* (2006), 428-445.
13. Duffy A, 'Expulsion to Face Torture? Non-Refoulment in International Law', 20 (3) *International Journal on Refugee Law* (2008).

14. Durieux J, 'Capturing the Central American Refugee Phenomenon: Refugee Law-Making in Mexico and Belize', 4 *International Journal of Refugee Law*, (1992).
15. Edwards A, 'Refugee Status Determination in Africa', 2 *African Journal of International & Comparative Law*, (2006).
16. Falstrom Z, 'Stemming The Flow Of Environmental Displacement', *Colorado Journal of International Environmental Law & Policy*, (2001).
17. Frelick B, and Lynch M, 'Statelessness: A Forgotten Human Rights Crisis' 24 *Forced Migration Review*, (2005).
18. Fullerton M, 'A Comparative Look at Refugee Status Based on Persecution Due to Membership in a Particular Social Group', 26 *Cornell International Law Journal*, (1993).
19. Furr K, 'Environmental Degradation in the Mesopotamian Marshlands: A Case Study in Legal Deficiencies', 19 *Southeastern Environmental Law Journal*, (2011).
20. Hailbronner K, 'Non-Refoulement and Humanitarian Refugees: Customary International Law or Wishful Legal Thinking' 26 *Virginia Journal of International Law*, (1985).
21. Halpern I, 'Tracing the Contours of Transnational Corporations' Human Rights Obligations in the Twenty-First Century', 14 *Buffalo Human Rights Law Review*, (2007).
22. Hong J, 'Refugees Of The 21st Century: Environmental Injustice', 10 *Cornell Journal of Law & Public Policy*, (2000-2001).
23. Johnson L, 'Environment, Security & Environmental Refugees', *Journal of Animal and Environmental Law*, (2009).
24. Keane D, 'The Environmental Causes and Consequences of Migration: A Search for the Meaning of 'Environmental Refugees'' 16 *Georgetown International Environmental Law Review* (2004).
25. Kibreab G, 'Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate.' *Disasters* (1997) 20-38.
26. King T, 'Environmental Displacement: Coordinating Efforts to Find Solutions', 18 *Georgetown International Environmental Law Review*, (2006).
27. Kooijmans P, 'Human Rights – Universal Panacea? Some Reflections on the So-called Human Rights of the Third Generation', 37 *Netherlands International Law Review*, (1990).

28. Kozoll C, 'Poisoning The Well: Persecution, the Environment, and Refugee Status,' 15 *Colorado Journal of International Environmental Law and Policy* (2004).
29. Lawrence L, Stentzel I, 'Prospects for United States Ratification of the Convention on the Rights of the Child', 48 *Washington and Lee Law Review*, (1991).
30. Lentini E, 'The Definition of the Refugee in International Law: Proposals for the Future', 5 *Boston College Third World Law Journal*, (1985).
31. Lopez A, 'The Protection Of Environmentally Displaced Persons In International Law', 47 *Environmental Law*, (2007).
32. Marshall LW, 'Toward a new definition of 'refugee': is the 1951 convention out of date?' 37 *European Journal of Trauma and Emergency Surgery* (2011).
33. Martin D, 'Reforming Asylum Adjudication: On Navigating the Coast of Bohemia', 138 *University of Pennsylvania Law Review* (1990).
34. Masters S, 'Environmentally Induced Migration: Beyond a Culture of Reaction', 14 *Georgetown Immigration Law Journal*, (2000).
35. Mayer B, 'The International Legal Challenge of Climate-Induced Migration: Proposal for an International Legal Framework', 22 *Colorado Journal of International Environmental Law and Policy*, (2011).
36. McAdam J and Saul B, 'An Insecure Climate for Human Security? Climate-Induced Displacement and International Law', *Sydney Centre for International Law Working Paper 4*, 2008.
37. McCue G, 'Environmental Refugees: Applying International Environmental Law to Involuntary Migration' 6 *Georgetown International Environmental Law Review*, (1993-1994).
38. Mercure P, 'À la Recherche d'un Statut Juridique Pour les Migrants Environnementaux Transfrontaliers : La Problématique de la Notion de Réfugié', *Revue de Droit Université de Sherbrooke*, (2006).
39. Michelle F, 'Non-Refoulement on the Basis of Socio-Economic Deprivation: The Scope of Complementary Protection in International Human Rights Law', 2 *New Zealand Law Review*, (2010).
40. Miranda C, 'Toward a Broader Definition of Refugee: 20th Century Development Trends', 20(2) *California Western International Law Journal*, (1990).

41. Moberg K, 'Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection', 94 *Iowa Law Review*, (2009).
42. Murray R, 'Refugees and Internally Displaced Persons and human rights: The African system', 2 *Refugee Survey Quarterly*, (2005).
43. Myers N and Kent J, *Environmental Exodus: An Emergent Crisis In The Global Arena*, Washington Dc: The Climate Institute 1995.
44. Newmark R, 'Non-Refoulement Run Afoul: The Questionable Legality of Extraterritorial Repatriation Programs' 71 *Washington University Law Quarterly Fall*, (1993).
45. Oberoi P, 'Regional Initiatives on Refugee Protection in South Asia', 1 *International Journal of Refugee Law*, (1999).
46. Oliver S, 'A New Challenge to International Law: The Disappearance of the Entire Territory of a State' 16(2) *International Journal on Minority and Group Rights*, (2009).
47. Opoku-Awuku E, 'Refugee Movements in Africa and the OAU Convention on Refugees', 1 *Journal of African Law*, (1995).
48. Ratliff S, 'UN Representation Disputes: A Case Study of Cambodia and a New Accreditation Proposal for the Twenty-First Century', 87 *California Law Review*, (1999).
49. Reilly W, 'Reflections on Rio', 8 *Journal of Natural Resources and Environmental Law*, (1992-93).
50. Rwenlamira M, 'Two Decades of the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa', 4 *International Journal of Refugee Law*, (1989).
51. Schwartz L, 'International Legal Protection for Victims of Environmental Abuse', 18 *Yale Journal of International Law*, (1993), 355-387.
52. Steinbock D, 'Interpreting the Refugee Definition', 45 *University of California, Los Angeles, Law Review*, (1998).
53. Thomas J, 'Seeing Through a Glass, Darkly: The Social Context of 'Particular Social Groups' in *Lwin v INS*,' *Brigham Young University Law Review*, (1999).
54. Viljoen F, 'Africa's Contribution to the Development of International Human Rights and Humanitarian Law', 1 *African Human Rights Law Journal*, (2001).
55. Wellman C, 'Solidarity, the Individual and Human Rights' 22 *Human Rights Quarterly*, (2000).

56. Westing A, 'Environmental Refugees: A Growing Category Of Displaced Persons' 19 *Environmental Conversation* (1992).
57. Whitney K 'Does the European Convention on Human Rights Protect Refugees from 'Safe' Countries?' 26 *Georgia Journal of International and Comparative Law*, (2014).
58. Williams A, 'Turning the Tide: Recognizing Climate Change Refugees in International Law' 30 *Baldy Center for Law and Social Policy* (2008).
59. Wirth D, 'Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa, 29 *Georgia Law Review*, (1995).
60. Worster W, 'The Evolving Definition of the Refugee in Contemporary International Law' 30 *Berkeley Journal of International Law* (2012).

Reports

1. *Cartagena Declaration on Refugees*, 22 November 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1. Section III(5).
2. Inter-Agency Standing Committee, 'Protecting Persons Affected by Natural Disasters – IASC Operational Guidelines on Human Rights and Natural Disasters', Brooking-Bern Project on Internal Displacement, 2006.
3. Intergovernmental Panel on Climate Change, 'Fourth Assessment Report', Working Group II.

UNHCR Reports

1. Castles S, 'Environmental Change And Forced Migration: Making Sense Of The Debate', 2002, Geneva, UNHCR, <http://www.unhcr.org/research/RESEARCH/3de344fd9.pdf> on 5 December 2015.
2. Crisp J, *Forced Displacement In Africa: Dimensions, Difficulties And Policy Directions*, UNHCR Research Paper No. 126, Geneva, 2006.
3. Office of the U.N. High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/IP/4/Eng. Rev. 2 (1979) (reedited January 1992).

4. Rankin M, *Extending The Limits Or Narrowing The Scope? Deconstructing The OAU Refugee Definition Thirty Years On*, UNHCR Working Paper No. 113, Geneva, 2005.
5. UNHCR, 'Note on International Protection' A/AC96/830 7 September 1994.
6. UNHCR, Division of International Protection Services, *UNHCR and Climate Change: Involvement, Challenges & Response* <http://www.unhcr.org/4ad5820f9.html> on 04 December 2015.
7. UNHCR: Black R, *Environmental Refugees: Myth or Reality? New Issues in Refugee Research Working Paper 34 2001 2*; UNHCR, *Submission On The Relationship Between Climate Change And Human Rights*, 19 September 2008 <http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/SydneyUniversity.pdf> on 26 November 2015.
8. UNHCR: Mandal R, *Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")*, June 2005 <http://www.refworld.org/docid/435e198d4.html> on 2 December 2015.
9. UNHCR: Palais des Nations Geneva, *Climate Change Displacement and International Law* 8 December, 2010 <http://www.unhcr.org/4d05ecf49.pdf> on 05 December 2015.
10. UNHCR: Report of the Secretary-General, *Climate change and its possible security implications* 11 September 2009 <http://www.unhcr.org/refworld/pdfid/4ad5e6380.pdf> on 05 December 2015.
11. UNHCR: The Nansen Conference Oslo, *Climate Change and Displacement in the 21st Century* June 5-7, 2011. <http://d2530919.hosted213.servetheworld.no/expose/global/download.asp?id=2280&fk=1633&thumb=> on 03 December 2015.
12. UNHCR: Report Of The Office Of The United Nations High Commissioner For Human Rights On The Relationship Between Climate Change And Human Rights, 15 January 2009 , A/HRC/10/61.

Unpublished LLM Thesis

1. Pfeiffer S, 'Environmental Refugees: How To Ensure Adequate Legal Protection?' Unpublished LLM Thesis, University of Bristol, September 2008.
2. Kerstin W, 'Mind The Gap – Exposing The Protection Gaps In International Law For Environmentally Displaced Citizens Of Small Island States', Unpublished LLM Thesis, University of British Columbia, January 2012.

Working Papers

1. Bilsborrow R, *Rural Poverty, Migration, And The Environment In Developing Countries: Three Case Studies*. Background paper prepared for the World Development Report, Working Papers 1017. Washington, DC: The World Bank 1992.
2. International Organisation for Migration and Refugee Policy Group, *Migration and the Environment*, 1992.
3. Suhrke A, 'Pressure Points: Environmental Degradation, Migration And Conflict' Workshop On Environmental Change, Population Displacement, And Acute Conflict, Ottawa, June 1991.
4. Trollaldalen J et al, *Environmental Refugees: A Discussion Paper*, Oslo: World Foundation for Environment and Development and Norwegian Refugee Council, 1992.

