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Perils of Classification of “Climate Refugees” as Refugees in 1951 UN Convention Relating to the Status of Refugees

V. NAVIN BALAJI ANNAMALAI¹

ABSTRACT

With the start of COP28 Summit in Dubai, UAE, all countries in the world race to fight climate change by trying to find innovative ways to reduce Greenhouse Gas (GHG) emissions. But the effect of missing targets to reduce Global Temperature would be first felt in migration of citizens. The most vulnerable people in Climate Change who are the first affected are the migrants who are displaced due to these Slow-Onset Climate Change events, however in the current scenario they have no legal status of “Refugees” according to the 1951 UN Convention Relating to Status of Refugees. Hence the benefits of being considered a refugee cannot be availed by a displacement victim of Slow-Onset Climate Change events. The author aims to trace the pre-requisite conditions for being considered as a refugee and attempt to fit climate refugees into it. The possibilities of that integration in accordance with the existing Convention is seen. If that is not possible then other remedies for those displaced victims under the existing international law is examined. The solution for providing remedies to those victims of Climate Change is provided keeping in mind the nature of migration and different types in them. Hence a One-size-fits-all solution is set aside in pursuit of unique solutions for this sui generis problem.

Keywords: Climate Change, Climate Refugees, Slow-Onset Climate Change, Migrants.

I. INTRODUCTION

Climate Change has taken the global stage requiring global cooperation transcending borders against a common cause, mankind survival². There are many facets to be dealt with while dealing with climate change and ensuring sustainable development. But the one in focus here is the humanitarian crisis that is going unnoticed by many in the world. Many, while pondering about effects of Climate change overlook the latent human crisis that emerges.

There are over 20 million people who leave their homes every year due to climate change³.

¹ Author is a student at Tamil Nadu National Law University, India.

² Preamble, Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

³ Filippo Grandi, *Climate change and disaster displacement*, UNHCR <https://www.unhcr.org/what-we-do/buildbetter-futures/environment-disasters-and-climate-change/climate-change-and>.

And the world is only getting warmer every year and the risk of more being added to the list is a growing possibility due to the fact that the number of people added to the Internally Displaced Persons list are about 60.9 million in 2022 alone⁴. The Intergovernmental Panel on Climate Change (IPCC) in 1990 predicted that climate change would most severely impact in human migration⁵. The 2016 World Humanitarian Summit identifies disaster and climate induced displacement as a humanitarian challenge⁶.

This is the reason why even UNHCR defines “Climate Refugees” as “persons displaced in the context of disasters and climate change⁷”. UNHCR has also stated that the number of people displaced are now more than the number of people displaced due to conflict⁸. The statistics also show that, at present, the environmental refugees outnumber refugees for political, religious and war conflicts⁹. The 2008 United Nations Human Development Report recognized climate change as the “defining human development issue of our generation¹⁰”

The UNGA Agenda for Humanity calls on States to ensure that countries in disaster-prone regions are prepared to receive and protect those displaced across borders without refugee status¹¹.

The 2016 World Humanitarian Summit identifies disaster and climate-induced displacement as a humanitarian challenge, and a number of its participants called for an ‘international mechanism and legal framework for the protection of people displaced by the adverse effects of climate change.’¹² The New York Declaration, an outcome of the 2016 UN Summit on Refugees and Migrants, both recognises that people may move due to the adverse effects of climate change as well as commits governments to addressing the drivers of large-scale movements, including climate change.¹³

The Paris Agreement itself has requested the Executive Committee of the Warsaw International Mechanism on Loss and Damage to establish a task force on Displacement, to address

⁴ Environmental Migration, Migration data portal (Sept. 18, 2023), https://www.migrationdataportal.org/themes/environmental_migration_and_statistics.

⁵ Daniel Bodansky et al., *International Climate Change Law* 313 (1st ed. 2017).

⁶ UNGA, ‘Outcome of the World Humanitarian Summit’, Report of the Secretary General (23rd August, 2016).

⁷ <https://www.unrefugees.org.uk/learn-more/news/news/whats-a-climate-refugee/>.

⁸ <https://www.unrefugees.org.uk/learn-more/news/news/whats-a-climate-refugee/>.

⁹ Marta Picchi, *Climate Change and the Protection of Human Rights: The Issue of “Climate Refugees*, 13 US-CHINA L. REV. 576 (2016).

¹⁰ Roxana A. Mastor, Michael H. Dworkin, Mackenzie L. Landa & Emily Duff, *Energy Justice and Climate-Refugees*, 39 ENERGY L.J. 139 (2018).

¹¹ UNGA, ‘*One Humanity: Shared Responsibility*’, Report of the Secretary General for the World Humanitarian Summit (2nd February, 2016).

¹² UNGA, ‘*Outcome of the World Humanitarian Summit*’ Report of the Secretary-General (23 August 2016).

¹³ UNGA, ‘*New York Declaration for Refugees and Migrants*’ (13 September 2016).

displacement due to climate change¹⁴. A clear link between climate impacts and displacement was accepted by UNHCR¹⁵, but then the most disproportionately affected vulnerable groups are Refugees, Internally Displaced People and Stateless People¹⁶.

Even in this classification, the displacement is more likely going to affect the Global South than the Global North in a disproportionate way because the climate change migrants don't have an ability to move over long distances to traverse Global South regions to enter the Global North. Nearly 70% of all refugees, whether fleeing conflict or disaster, mostly prefer to stay closer¹⁷, meaning the migration scale despite being huge would only be done on a smaller distance. Hence the neighbouring countries of the affected country hosts a large number of them.

(A) Who are Refugees

Technically speaking, therefore, the term “climate refugee” is something of a misnomer, as it has no basis in international law and does not accurately reflect the complex ways in which climate and human mobility interact¹⁸. There is only type of Refugees and the criteria for the same is enumerated in the 1951 UN Convention on Refugees. While regional conventions have a slightly different definition, the UN Convention is the most widely accepted definition.

Despite the UNHCR calling the people displaced by climate change as “Climate Refugees”, they officially are not refugees under the 1951 Geneva Convention on Refugees. For the migrants to be called refugees, they must be under the ambit of the definition of the Convention.

A refugee is referred to as someone who "...owing to 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 [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence, is unable or, owing to such fear, is unwilling to return to it¹⁹.

There are other definitions given in many other regional conventions like

The term “refugee” shall also apply to every person, who, owing to external aggression,

¹⁴ *Frequently asked questions on climate change and disaster displacement*, UNHCR <https://www.unhcr.org/news/stories/frequently-asked-questions-climate-change-and-disaster-displacement>.

¹⁵ Submission from the Office of United Nations High Commissioner for Refugees (UNHCR) ‘Forced Displacement in the context of climate change: challenges for states under international law’ (25 May 2009) FCCC/AWGLCA/2009/MISC.5, 15.

¹⁶ Filippo Grandi, *Climate change and disaster displacement*, UNHCR <https://www.unhcr.org/what-we-do/build-better-futures/environment-disasters-and-climate-change/climate-change-and>.

¹⁷ Kristy Siegfried, *Climate change and displacement: the myths and the facts*, UNHCR <https://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts>.

¹⁸ Climate change and displacement | UNHCR

¹⁹ Convention Relating to the Status of Refugees, art. 1, July 28, 1951, 189 U.N.T.S. 137.

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 refuge in another place outside his country of origin or nationality²⁰.

And

A ‘refugee’ may also be “persons who have fled their country because their lives, security or freedom have been threatened by... internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order²¹.

However, the 1951 Geneva Convention for Refugees Definition is the one agreed upon by most of the countries in the world. But the current definition is *non-liquet*²² to the condition of climate refugees. The existing definition of ‘refugees’ necessitates the presence of ‘well-founded fear of persecution’ and the forms of it is also not expansive, but has an exclusive definition restricting the interpretation of fear of persecution.

Under the current framework the climate-change induced externally displaced persons are not included due to them not satisfying the requirements of ‘persecution’. The UN Handbook for the Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol Relating to Status of Refugees, states that though there is not a universally accepted definition for persecution, it is normally associated with the actions by the authorities of a country or emanate from sections of the population that do not respect the standards established by the laws of the country²³. Hence, we can see that persecution requires some form of ‘human agency’ either through state or non-state actors.

But climate-change induced persecution by State and/or Non-State Actors if being a factor for displacement then those people still come under the existing definition of “refugees”. But climate-change as a standalone feature to cause displacement across state borders is not included in the definition.

Persons who are victims of persecution for any of the reasons listed in the 1951 Geneva Convention are termed as political refugees. And only they are provided with the protection of the convention. The term ‘persecution’ despite being very general, it has been defined in the Convention to only include five grounds viz race, religion, nationality, membership of a

²⁰ Asian-African Legal Consultative Organization, 1966: Art. 1(2).

²¹ Conclusion III (3) *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, Nov. 22, 1984, 19 I.L.M. 1212 (1985).

²² Malcolm N. Shaw, *International Law* (9th ed. 2021).

²³ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Reissued, (2019).

particular social group or political opinion²⁴. Hence this is a very restrictive definition for refugees.

This is the reason why even economic migrants do not come under the ambit of the Convention because Economic migrants are not refugees as they leave their country voluntarily to seek a better life. Such migration is for economic reasons. He continues to receive protection from his government²⁵.

However, the impact of climate change in causing displacement of people across regions and nations are tangible and too large to ignore in the coming future with worsening climate change effects. And on the face of it, there seems to be no single legal framework for the protection of those displaced across national borders for climate related reasons.

And that is the reason for claims by people to amend the Convention for protection of Climate Refugees.

II. TYPES OF CLIMATE REFUGEES

Despite there being no single legal framework in protecting victims of Climate Change, there are smaller mechanisms to protect facets of Climate Refugees. All refugees are not the same and like that even all Climate Refugees are not the same. A person migrating to another country due to submergence of the entire land by global warming is different from the person who migrated to another country due to a cyclone.

The reason for differentiation lies in the underlying cause of migration. One person migrated due to effect of slow-onset climate change and another person migrated due to sudden onset disaster. The second person must be given shelter for only a temporary period of time and can be sent back once the weather event has receded. But the first person cannot be sent back due to submergence of his country permanently due to rising sea levels. And therefore, they both cannot be clubbed into one definition and they require different protection needs²⁶.

The sudden onset disaster victims mostly move within their country and go back to their own region when the disaster is over, and this has what caused the number of Internally Displaced Persons to increase to 21.8 million a year. Even if the migration is on a cross-border scale, the protection required for those victims of sudden-onset disasters is only temporary protection with basic human rights²⁷. The reason for this the temporary nature of damage caused, which only

²⁴ *Refugee Definition and the Law in Nigeria*, 53 JILI (2011) 32

²⁵ Puneet Pathak, *International Humanitarian and Refugee Law* | 7. Determination of Refugee Status.

²⁶ Lauren Parater, *Why UNHCR is taking action on climate change displacement*, UNHCR Innovation (Jan. 15, 2018), <https://www.unhcr.org/innovation/why-unhcr-is-taking-action-on-climate-change-displacement/>.

²⁷ UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014,

require the host country to host those migrants for a limited duration.

Even in situations of mass influx the UNHCR has required the state to provide for ‘temporary protection’ that extends to admission to safety, respect for basic human rights, protection against refoulement, and safe return when conditions permit²⁸. Safe return implies that the cause that gave rise to the forced displacement is at an end, if the cause persists, protection must continue.

However, the same remedy is not possible for victims of slow-onset climate disasters like global warming, rising sea levels. Desertification, etc. As sea levels rise and more land becomes flooded, internal migration will become a less viable option and affected residents will be forced to flee across borders with no hope of returning to their home country.

This differs from the traditional assumption that refugee status is temporary (i.e., most refugees will return to their original homes). This distinction from traditional refugee status is fundamental, shaping everything from initial decisions about how much insulation to put in housing to operational matters such as vocational training and core concepts about personal and cultural identity²⁹. And only long-term solutions are required for those migrants.

The UNHCR despite not conferring refugee status under the 1951 Geneva Convention for those affected by climate change, it has not turned a blind eye towards their plight. Climate Change is seen as a “threat multiplier” for displacement³⁰.

Hence despite climate change not being seen as a sole reason for conferring refugee status, it is accepted as an underlying cause of socio-political conflicts in the region of climate change which causes a fear of persecution under those 5 grounds for the people. And this satisfies the definition of 1951 Geneva Convention.

There may also have a valid claim for refugee status where the adverse effects of climate change or disasters interact with conflict and violence. These adverse effects may exacerbate violence, or vice versa, and render the State incapable of protecting the victims of such violence, resulting in a well-founded fear of being persecuted for reasons of one or more Convention grounds³¹.

Hence, for example, when Climate Change causes reduction in resources of the State and when that leads to persecution of a minority or a vulnerable group of the state, then they may migrate

www.refworld.org/docid/52fba2404.html, paras. 16.

²⁸ UNHCR, ‘*Protection of Asylum Seekers in Situations of Large-Scale Influx*’, Executive Committee Conclusion No. 22 (XXXII) (21 October 1981) UN Doc 12A (A/36/12/Add.1).

²⁹ Roxana A. Mastor, Michael H. Dworkin, Mackenzie L. Landa & Emily Duff, *Energy Justice and Climate-Refugees*, 39 ENERGY L.J. 139 (2018).

³⁰ Kristy Siegfried, *Climate change and displacement: the myths and the facts*, UNHCR <https://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts>.

³¹ UNHCR legal consideration paper: Climate Change | Global Focus

to another country another country and be conferred the refugee status.

Therefore, when climate change exacerbates the existing predicament of poverty, food insecurity, water pollution, sanitation, etc and when that exacerbation caused serious harm to be inflicted on certain groups within the state and the cause for that being attributed to state's action or state's inaction leading to human rights violation³². Then the resulting migration would be under the ambit of the definition of the 1951 Geneva Convention.

But the migrants driven out of their country due to climate change as a factor without fear of prosecution cannot seek the protection under the 1951 Geneva Convention. But then the migrants driven out of their homes but not out of their countries are considered as Internally Displaced Persons (IDPs).

They "are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters and who have not crossed an internationally recognized State border³³.

Adding on to the Guiding Principles of IDPs, Kampala Convention formulated by African Union for Protection and Assistance of Internally Displaced Persons, it seeks to acknowledge the environmental factors and address the issue of IDPs by providing durable solutions to the problem of refugees and IDPs³⁴.

However, the acknowledgement of the role played by climate change in causing internal displacement is added proof of the long-term displacement capability across state borders in the future. Hence not recognising people who are displaced not within internal state borders but external state borders is unjust for those sections of people.

In the case of *Ieone Teitiota v State of New Zealand*, which was seen as the world's first Climate Refugee case the Honourable Supreme Court of New Zealand dismissed the case due to a lack of question of law raised by the appellant. The court contended that, the definition of refugee as per the 1951 UN Convention stood unchanged and accepted the requirement of a mandatory presence of human agency and fear of persecution in his home country for him to be defined as a refugee.

³² *Refugee Definition and the Law in Nigeria*, 53 JILI (2011) 32.

³³ *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998), reprinted in 38 I.L.M. 301 (1999).

³⁴ Daniel Bodansky et al., *International Climate Change Law* 317 (1st ed. 2017).

Hence, he was disqualified from refugee status. When questioned about failure of court to consider climate change as an indirect human agency, the court stated that the aforementioned question was not open for serious argument. “The tribunal stressed the claimant still needed to establish [that] he/she met the criteria set out in art 1A(2) of the Convention [no matter any other discussion relating to ‘climate refugee’ status]. The claims were dismissed because the indiscriminate nature of these events and processes gave rise to no nexus to a Convention ground.” The Kiribati man was sent back to his homeland along with his family.³⁵

Hence the need for human agency to cause persecution or fear of persecution in the eyes of the migrants, for conferring refugee status is still intact.

III. CAN CLIMATE REFUGEES BE PART OF REFUGEES IN THE 1951 GENEVA CONVENTION

The 1951 Geneva Convention is rooted in the UDHR, UN Charter, ICCPR and ICESCR. The first two documents are the foundation stones of the Post WW2 International World Order and the institutions along with it. The Introductory note of the 1951 convention by the Office of the United Nations High Commissioner for Refugees has mentioned that the 1951 convention is the centrepiece of international refugee protection and that it is grounded in Article 14 of UDHR that it is the right of persons to seek asylum from persecution in other countries. This shows that the bedrock of UDHR was used by the 1951 Convention to stand upon. The *Travaux Préparatoires* for 1951 Convention mentions that the “Convention is based on humanitarian ideals embellished in the concept of human rights”. Further it was added that the 1951 Convention” affirms the principle enunciated in the Charter of the UN”³⁶.

In order to interpret the treaty, there is the Vienna Convention on the Law of Treaties adopted in 1969 convention which codifies the rules on how to interpret treaties with respect to other treaties, customs and hard laws. Article 5 of this convention states that this convention is applicable on any treaty that is a constituent instrument of an international organisation. And the word “treaty” is defined in Article 2.1.(a) “An international agreement concluded between States in written form and governed by international law³⁷” or it also means “the creation of written agreements whereby the states participating bind themselves legally to act in a particular

³⁵ *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZCA 173 (8 May 2014).

³⁶ Paul Weis, *The Refugee Convention, 1951: The Travaux Préparatoires analysed with a Commentary*, UNHCR (1995). <https://www.unhcr.org/media/refugee-convention-1951-travaux-preparatoires-analysed-commentary-drpaul-weis>.

³⁷ *Vienna Convention on the Law of Treaties*, art 2.1.(a), May 23, 1969, 1155 U.N.T.S. 331.

way or to set up particular relations between themselves.³⁸”

The 1951 UN Convention matches that description and hence will be subject to the ‘treaty’ interpretation of this convention. All treaties signed by the contracting parties must adhere to the principle of *Pacta Sunt Servanda* under Article 26 of this Convention. It calls for the contracting parties to be bound by the treaties and performed in good faith³⁹. This good faith is related to the customary international law or *jus cogens* under Article 53 of this convention which states the supremacy of a peremptory norm of general international law, from which no derogation is permitted and modification only through another peremptory norm is possible⁴⁰.

According to Article 31(1) “A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose⁴¹”. This would mean instead of a literal interpretation, a combination of literal and purposive method of interpretation must be used. And this is a binding treaty which has been utilised by the ICJ to adjudicate upon treaty disputes. “The ICJ has pronounced that the Vienna Rules are in principle applicable to the interpretation of all treaties⁴²”. And in the case of *Costa Rica v Nicaragua*, the ICJ opined that a treaty provision must be interpreted in accordance with the author’s intentions (as derived from the text of the treaty) and other relevant factors⁴³.

Hence it can be argued that while interpreting a treaty, a literal interpretation alone would not suffice and other factors like those mentioned above must also be utilised. But the problem is that the 1951 Geneva Convention is a very restrictive one and does not allow leeway for countries to interpret the terms. And the need for fear of persecution is a pre-requisite and cannot be reinterpreted as otherwise.

The presence of human agency may be questioned, but the grounds for questioning that is on thin ice due to no solid backing from any sphere suggesting the presence of slow-onset climate disasters.

It may also be argued that not allowing expanded interpretation of the term ‘Refugees’ in the 1951 UN Convention would cause tremendous after-effects for the climate-change induced externally displaced persons across state borders. It would be contrary to the spirit of international humanitarian law to exclude a large number of displaced people, who are exponentially increasing in number every single year due to climate-change.

³⁸ Malcolm N. Shaw, *International Law* (9th ed. 2021).

³⁹ *Vienna Convention on the Law of Treaties*, art. 26, May 23, 1969, 1155 U.N.T.S. 331.

⁴⁰ *Vienna Convention on the Law of Treaties*, art. 53, May 23, 1969, 1155 U.N.T.S. 331

⁴¹ *Vienna Convention on the Law of Treaties*, art 31(1), May 23, 1969, 1155 U.N.T.S. 331.

⁴² Richard Gardiner, *Treaty Interpretation* (2nd ed. 2017).

⁴³ Richard Gardiner, *Treaty Interpretation* (2nd ed. 2017).

The positive impact of incorporation of these displaced persons as ‘refugees’ would confer them basic rights in 1951 UN Convention along with the application of principle of non-Refoulement. This would provide those people internationally guaranteed protection and rights. The adverse condition on continuing to not include those displaced persons as ‘refugees’ would be against the spirit of the UN Charter, UDHR, ICCPR and ICESCR. These are the fundamental governing documents for all treaties, declarations and actions taken by the UN and its agencies. When these are violated then the spirit of the established humanitarian law and principles would have failed to adapt to a new world and would fall into redundancy.

But this is also a shaky ground because as mentioned above, only the slow-onset climate disaster cross-border migrants are not taken care of in the international law. The other sections of climate refugees like the sudden onset climate disaster victims or the climate change induced violence victims are all accorded protection in the international law.

IV. PERILS OF CONFERRING REFUGEE STATUS FOR SLOW-ONSET CLIMATE CHANGE CAUSED DISPLACEMENT

If for an *Arguendo*, Slow-Onset Climate-change is also a factor for determining refugee, then the problem arises on how to differentiate between genuine climate-change impact migrants and economic migrants. Economic migrants are people who move out of their countries for purely economic reasons and not due to any threat to their lives and freedom, and are governed by their own or alien laws⁴⁴.

And during slow-onset climate change, the impact happens over a long period of time hence any person who voluntarily moves out of their country for a better job can cite slow-onset climate change as a cause for lower economic opportunities, and still be considered a refugee due to the cause of moving being climate change.

This results in a wolf-in-sheep-attire situation and many people who would not be considered for giving help, would reap the benefits.

There is even differentiation inside slow-onset climate change disasters itself. The UN High Commissioner for Refugees (UNHCR) has identified four main climate change-related displacement/ migration scenarios, including;

- Weather-induced displacement, prompted by events such as hurricanes and flooding;
- Violence related to climate change-related factors;

⁴⁴ *Refugee Definition and the Law in Nigeria*, 53 JILI (2011) 32.

- Increased disaster threats in high-risk zones and resultant replacement of people;
- Gradual environmental deterioration and slow onset disasters which could lead to coastal erosion, sinking of coastal zones and possible total submersion of low-lying island states.⁴⁵

This proves that a one-size fits all solution would not work to provide relief to the migrants of climate change and that attempting to classify all the displaced people due to climate change as ‘climate refugees’ would eliminate the purpose of them being considered as refugees.

Three scenarios might occur amongst displaced/ migrated people;

- Migrant-like situations: Here people decide to move in response to deteriorating environment conditions. Movement is marked by less vulnerability and enough control over the movement.
- Environmentally driven displacement: Deteriorating environmental standards forces the voluntary movement of people. In relation to migrants the people in this category have more vulnerability and less control over the course of movement.
- Refugee-like situations: This situation constitutes the real challenge to the international law as the people in this category are characterised by a high amount of vulnerability and almost no amount of control on the entire process of movement including crossing borders

The problem starts when all three are considered as products of slow-onset climate change, because the first two cannot be considered as refugees in the current setup and the third can only be considered when there is evidence of violence or persecution⁴⁶. But when all three are conferred refugee status then a person who migrated for economic opportunities would take the route of refugee to get more rights than a migrant would get in the host nation. This would be exploitative of the resources of the host nation and unfair on the people who migrated due to persecution.

Characterization of Climate refugees is further difficult due to differing duration of migration, factors of migration (specific environmental *raison d’etre* for migration) and differentiating man-made and natural causes of displacement (like degradation of natural resources, industrial

⁴⁵ Stellina Jolly & Nafees Ahmad, *Climate Refugees under International Climate Law and International Refugee Law: Towards Addressing the Protection Gaps and Exploring the Legal Alternatives for Criminal Justice*, 14 ISIL Y.B. INT’L HUMAN. & REFUGEE L. 216 (2014-2015).

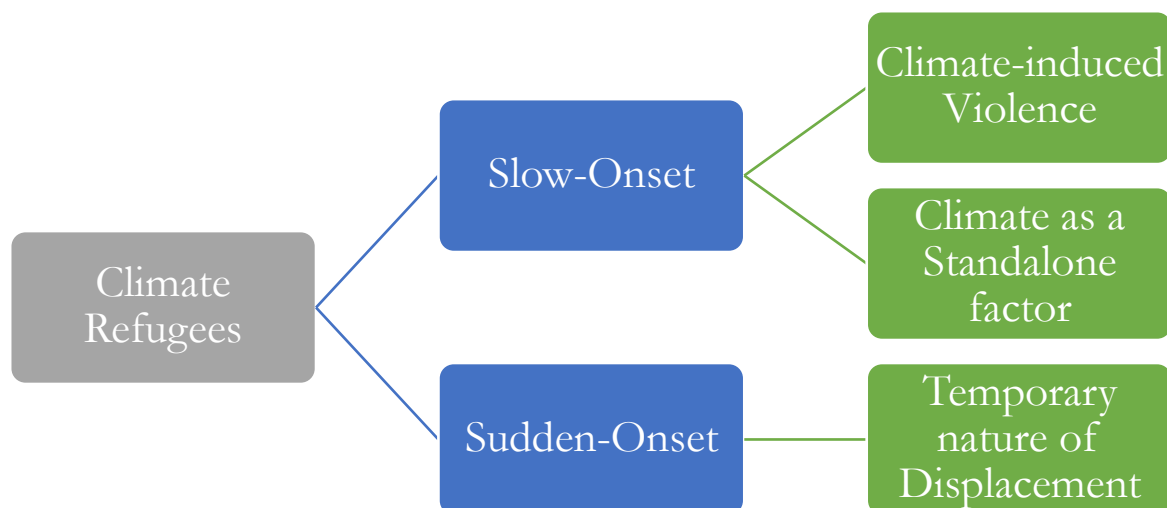
⁴⁶ Stellina Jolly & Nafees Ahmad, *Climate Refugees under International Climate Law and International Refugee Law: Towards Addressing the Protection Gaps and Exploring the Legal Alternatives for Criminal Justice*, 14 ISIL Y.B. INT’L HUMAN. & REFUGEE L. 216 (2014-2015).

accidents, war and conflict, etc.)⁴⁷ This supplements the previous assertion that one-size fits all solution would not be appropriate for a problem that is so diverse in its effect and universal in its impact.

Hence making a very vague definition leading to nearly all migrants being considered as refugees would reduce the level of importance given to refugees and would undermine the focus on vulnerable groups because when everyone is conferred refugee status, the vulnerable groups tend to be overlooked upon by the agencies like UNHCR which would unfairly affect those groups.

V. SOLUTIONS FOR THE CLIMATE REFUGEE CONUNDRUMS

With Public International law evolving every day, today's solutions may even be redundant tomorrow, but still may be steppingstones to achieve a globally consensual solution.



The above flowchart is the diagrammatic representation of the broad types of refugees, that is cross-border migration. The Sudden-Onset do not have a problem due to the temporary nature of displacement and immediate repatriation of the migrants. In Slow-Onset Climate disasters, if the climate change causes violence which causes a tangible sense of fear of persecution under the 5 grounds of 1951 Geneva Convention for Refugees, then they are conferred refugee status. Even if the temporary displaced or any displaced person is sent back to their home where there is violence and the migrant is having a real risk of being subjected to serious harm, that person

⁴⁷ Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*, 30 LAW & POL'y 502 (2008).

may be protected from return in accordance with prohibitions on refoulement, including the right to be protected from irreparable harm by Articles 6 (right to life) and 7 (prohibition of torture and cruel, inhuman or degrading treatment or punishment) of the International Covenant on Civil and Political Rights⁴⁸. Hence non-Refoulement would apply in accordance with ICCPR even if not applicable to those people outside the ambit of the 1951 Geneva Convention for Refugees.

But in Slow-Onset Climate disasters, there is no scope of repatriation at all due to either submergence or desertification of the land, hence they must be kept in the host country but the existing convention does not confer refugee status to them. And currently the threat level has not made any country uninhabitable by climate change. Hence the people do not have a recourse in the international realm, due to problem being in the internal side.

And any early conferment of refugee status & protection without proper differentiation between voluntary economic migration and voluntary migration initiated due to slow-onset climate change alone, would result in encompassing many developing country citizens migrating to the developed countries illegally as climate refugees.

This would stretch the resources of the host country and reduce the level of aid a host country is able to provide for the migrants due to climate-change. Hence the beneficiaries must be filtered to ensure the benefits only reach the people who truly need them.

VI. CONCLUSION

Roscoe Pound has said “Law must be stable but not stagnant⁴⁹”. This means that a law must never be stagnant and non-adjustable to the requirements of the people bound by it. This is precisely the reason why even the constitution and statutes are given the power to amend and repeal some provisions to ensure the people are not bound by laws unreflective of the current reality. The same is expected to be adhered in the international sense to ensure the conventions are able to adapt to newer and more complex situations in benefit of the vulnerable sections.

And the decision to amend the conditions given in 1951 Geneva Convention for Refugees must only be done by having multilateral discussions and ensure the interests of the Small- Island Countries, Least-Developed Countries are specially taken care of. The reason is that they are the countries who are either vulnerable to climate-change directly or affected by its aftereffects more brutally due to lack of material resources to combat the problem.

⁴⁸ UNHCR legal consideration paper: Climate Change | Global Focus

⁴⁹ James. C Hathaway & Michelle Foster, *Law of Refugee Status* (2nd ed. 2014).

Hence this new climate change issue must definitely be discussed continuously because the future is very close to us and the slow-onset climate change effects that we are talking about has started taking place albeit at a smaller scale. A solution for climate refugees must immediately be thought, however a rushed solution would serve no one good.

Hence the discussions must start now but the solutions must be thought over repeatedly in search of innovations, prior to implementation and continue the search even after implementation. The UNHCR along with other countries' national agencies must coordinate together to ensure the benefits are first given and ensure those benefits being given is being given to the right people. This would be the best use of the limited resources for the maximum good of the world and mankind.
