“Environmental Refugees” under International Law:

Towards a legal recognition

by

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Abstract

Every year there is a huge number of people forced to leave their homes and move due to environmentally related factors, either anthropogenic or natural ones. While climate change has already started to affect more and more the environment, there is no clear scientific evidence how and to what extent this change will happen. Consequently, it is far from challenging to establish a direct link between the climate-related event, climate change and human mobility. The goal of this master thesis is to analyze from a social- legal approach the movement of environmentally displaced persons and the possibility of their protection under International Refugee Law, International Human Rights Law and International Climate Change Law. Special attention will be given to the populations of the small island states as an obvious case of environmentally forced movement related to climate change.

At a first level, there will be an analysis of the recognition and possible protection of environmentally displaced persons as refugees under the 1951 Geneva Convention related to the Refugee Status. After the presentation of all the scientific findings and the first conclusion that International Refugee Law doesn't provide a form of protection to these populations, the analysis of international human rights law, practice and jurisprudence is deemed imperative in order for an holistic approach to this scientific question. The second fundamental result of this analysis will conclude that the intersection between environmental degradation and human rights is indisputable and the application of the principle of *non-refoulement* under International Human Rights Law offers an option for protection and could operate as a shield towards the arbitrary violation of fundamental human rights of these people.

At a second level, an in-depth analysis of regional law and specific case studies will be attempted in order to acquire a holistic approach of both the existence and operation of different legal systems, with a focus on regional law applied in the wide African region, as well as analyzing specific examples of migratory movements of the last decades taken place in the African continent.

This study constitutes an attempt to end up with possible scientifically based recommendations and proposals in order to become part of a future scientific contribution to the protection of environmentally displaced persons.

Keywords: environmental or climate refugees, environmental degradation, climate change, human rights, *non-refoulement*

The undersigned hereby declares that this thesis is entirely my own work and it has been submitted to the Department of Balkan, Slavic and Oriental Studies and International and European Studies in partial fulfilment of the requirements for the Degree of Master of Arts in Human Rights and Migration Studies. I declare that I respected the Academic Integrity and Research Ethics and I avoided any action that constitutes plagiarism. I know that plagiarism can be punished with revocation of my master's degree.

Ioanna Toufexi

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Introduction

The relation between environmental changes and human mobility is not new. Environmental factors have always affected the movement of people worldwide, either alone or in combination with other push factors, such as political, social, cultural and economic. What has changed in the past three decades is the scientific evidence that man-made disasters pose a serious threat to the environment, which adversely affect the societies, especially those that are already most vulnerable, and force people to move. Climate change and its relation to migration is a new scientific area which has no exact numbers and evidence and poses significant obstacles to the nomenclature of the people who are urged or forced to migrate due to environmental factors. Especially in cases of slow-onset disasters such as sea level rise, it is very difficult to prove the necessary causal link between the factor that forces a person to migrate and the migratory decision, because it is something imminent that will be deteriorated in the future.

The term "*environmental refugee*" was first created in the mid- 1970s by Lester Brown from the World Watch Institute, but the first formal use of the term was made by El-Hinnawi as a report title for a publication of the United Nations Environment Programme in 1985 (N. Myers, 1993, p.1). Since then the term was further popularized in the international policy and legal agenda and the current debate on the lack of an appropriate legal definition has well been established.

In 1993, the well-known prediction by Norman Myers that by the end of the 21st century there would be 150 million environmental refugees, has created public fear and initiated populist, anti-migratory movements (N. Myers, 2002). By the mid-1990s the term "climate refugee" has emerged, due to the scientific outcomes and acceptance of the phenomenon of increasing global warming due to anthropogenic factors (E. Piguet, 2008, p.3). The former UN General Secretary Ban Ki-moon has referred to climate change as 'the defining challenge of our era (A. S. Soares, 2018, p.5). As it is also highlighted by the Intergovernmental Panel on Climate Change in its first report in 1990, "human migration movements could be the greatest individual impact of climate change, since millions may be displaced by it" (Ibid, p.7).

Characteristic is the fact that between 2008 and 2014 an estimated 184.4 million people were displaced by environmental factors (T. Anastasiou et al, 2018, p.2).

There is no internationally accepted legal definition of those people who are forced to flee either by crossing an international border or internally due to environmental factors (G.C. Bruno et al, 2017, p.11). What constitutes the main reason for this lack of consensus is far from been clear and a combination of lack of exact evidence, political unwillingness and the multi-casual character of this kind of human mobility are some of the primary problems needed to be dealt with. As a result, the terms "environmental refugee" or "environmentally displaced person" are "umbrella" terms that constitute a broad category, including the persons who are forced to migrate due to man-made disasters and who fall outside of the legal perspective. They are commonly used in political debates and in the mass-media and are not legally accepted.

This paper aims to analyze the issue of "environmental refugees" from an international legal perspective, without to circumvent its political, social and cultural inherent nature. Because it is a new scientific area which is directly correlated to other different scientific sectors, such as political, legal, geographical and cultural, there are completely controversial views regarding the issue.

This study will firstly focus on International Refugee Law and how environmentally displaced persons are protected or if they are protected at all. As it will be discussed later, the primary source of International Refugee Law is undoubtedly the Geneva Convention of 1951 regarding the Status of Refugees and its Protocol of 1967. This Convention applies only to those refugees who cross an internationally recognized border and leaves out of the scope those who move internally. In the case of environmentally displaced persons, the substantial percentage of them is considered as internally displaced and this constitutes the first fundamental protection gap, which combined with the lack of a valid and consistent definition of the persons forced to flee due to environmental factors, indicates a holistic normative and institutional vacuum (A. S. Soares, 2018, p. 4, 13). As a result, the main argument in favor of the extension of the Geneva Convention in order to be applied to environmentally displaced persons is not a suitable and adequate solution.

Due to the fact that most environmentally displaced persons migrate internally, there is a lack of exact statistical evidence and ambiguous numbers among the researchers. Some of the most well-known, such as the 2001 World Disasters Report of the Red Cross and Red Crescent Societies estimate that almost 25 million people are currently displaced due to environmental factors (Oli Brown, 2008, p.11). In 2005 the UN University's Institute for Environment and Human Security predicted that by 2010 there will be 50 million EDP's, while Norman Myers of Oxford University said that by 2050 *"there could be as many as 200 million people overtaken by disruptions of monsoon systems and other rainfall regimes, by droughts of unprecedented severity and duration, and by sea-level rise and coastal flooding"* (ibid, p.13). Whatever the exact numbers, the multi-causal character of this kind of human mobility proves that environmental factors are in the most cases combined with other phenomena such as conflicts, politically or economically complex situations and it is not proper to categorize this kind of human mobility as distinguished from the others (B. Mayer, 2018, p.5).

After the analysis of International Refugee Law in relation to environmentally induced movements, this research study will focus on International Human Rights Law and specifically the application of the fundamental principle of *non-refoulement*, as it is provided and interpreted under International Human Rights Law regarding the protection of environmentally displaced persons. Sources of Environmental and Climate Change Law will be further examined, which cast a light on the issue by focusing on the primary and secondary responsibilities of the states of origin and the third states in comparison to the responsibilities of the receiving states which are primarily regulated under International Refugee Law (Ammer and Stadlmayr, 2010, pp.3-5).

In conclusion, due to the interdisciplinary character of this issue, political, geographical and demographical evidence are equally important in order for a holistic understanding of the subject. This paper appertains to the legal examination of the issue of environmentally displaced persons and analyzes thoroughly the issue from a socio-legal perspective, without to interfere to the policy making much involved in the discussion of this issue, although equally important to the possible protection solutions.

Chapter I: Environmentally induced movements under International Refugee Law

i) "Environmentally displaced persons" under the 1951 Convention related to the Status of Refugees

The 1951 Geneva Convention relating to the Status of Refugees provides the strongest protection under International Refugee Law for people who are forced to leave their homes and flee to another country, by crossing an internationally recognized border (M. Cullen, 2020). The wide ratification of the above Convention and its recognition of the most fundamental human rights to the individuals seeking protection, such as the right to public education, social security and employment, indicates its utmost significance under International Law (Refugee Convention, 1951, Chapters III-VI). Despite the wide use of the terms 'environmental refugee', or 'climate change refugee', it will be argued that those persons are rarely protected by the aforementioned Convention (ibid).

Under Article 1 of the Refugee Convention, a refugee is a person who is outside of the country of his nationality or origin and owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion, is unwilling to avail himself of the protection of that country (Refugee Convention, 1951, Art. 1A). The first fundamental element of this definition, the persecution, is lacking in the case of the movement induced by environmental factors or degradation, although the Convention does not provide an exact definition of persecution (M. F. Vallandro do Valle, 2017, p.4). There are two different approaches in order to define persecution under International Law: the human rights approach which is based on serious violations of human rights, and the circumstantial approach which is based on the specific circumstances of each refugee claim and does not amount necessarily to a human right violation (ibid). In this analysis the human rights approach regarding the interpretation of persecution will be taken as the most appropriate one, as it is indicated by the recent jurisprudence of

national courts regarding the refugee claims. The act or omission by the State regarding a specific right is that leads to a violation under Human Rights Law (ibid). Persons who are forced to move due to harsh environmental conditions are generally rely on the protection of their State, even if the State is capable of limited support, and in general there is no act or omission by that State which will indicate a total lack of protection. Any claim for refugee status based only on environmental factors such as disasters, land degradation etc. will prima facie be rejected as it does not constitute persecution per se (M. Cullen, 2020, p.272).

Additionally, the second element of the Refugee definition is the discrimination on the grounds of the exclusively referred five reasons on the Convention, on which the persecution took place. Natural hazards, or man-made disasters are not characterized by nationalities, religious or political opinions and affect whole populations without discrimination, so the second element of the definition is also not applied (M. F. Vallandro do Valle, 2017, p.20).

In the scientific literature it is supported that the only way for an environmentally displaced person to fall under the protection scope of the Refugee Convention is to be defined as a member of a particular social group (ibid). State practice indicates two approaches in order to define a particular social group, with the first being the protected characteristics approach which is based on the existence of an immutable characteristic among the members that is so important and identical for them that they cannot be required to change it (Ward v Canada, cit. supra note 19, p. 739, from M. F.Vallandro do Valle, 2017, p.21). Because environmental harm is not inherent to human dignity, it can't be considered as an immutable characteristic of the social group. On the other hand, the second approach is the social perception approach which defines the members of a particular social group as those who share a characteristic or element which is generally perceived from the society as separate. On the light of this second approach, it could be rightly argued that persons affected by natural or man-made disasters are seen as a distinctive and separate group from the rest of the society, but there is one more important rule in the interpretation of this case applied in both approaches: The common link shared by the members of the particular social group cannot constitute the fear of persecution itself and must exist as such, even when persecution is absent (ibid). It is well worth to mention the comment made by McHugh J from the High Court of Australia "[…] *while persecutory conduct*

cannot define the social group, the actions of the persecutors may serve to identify or even cause the creation of a particular social group in society. Left-handed men are not a particular social group. But, if they were persecuted because they were left-handed, they would no doubt quickly become recognizable in their society as a particular social group. Their persecution for being left-handed would create a public perception that they were a particular social group. But it would be the attribute of being left-handed and not the persecutory acts that would identify them as a particular social group" (ibid). Additionally, a government may not have the capacity to protect its own citizens against the impacts of environmental change, which affect a particular social group and this state's failure could result to the movement of the members of this particular social group to another country, but as it has already mentioned, it is very difficult for these persons to constitute a particular social group under the interpretation of the Refugee Convention (A. Kraler et al, 2011).

Furthermore, it is supported that this category (the particular social group) is broader than the others mentioned in the Convention, such as religion, race or political opinion and usually overlaps with them (K. Walter, 2012). UNHCR has stated in its 1979 Handbook on the interpretation of the Geneva Convention that a 'particular social group' comprises of individuals with a "similar background, habits or social status", but no further guidance has been given for the interpretation of the term. Some other scholars expressed the opinion that this term has been used deliberately in the Convention as broad enough, in order to fill the gaps of the other narrower categories of discriminatory grounds of race, religion or political opinion. In the case of *Ward v. Canada (Minister of Employment and Immigration)* it has been stated that there are three possible categories which could fall under the interpretation of the term 'particular social group': the first one includes groups of individuals defined by 'innate or unchangeable characteristics' which would face the fear of persecution on the grounds of gender, linguistic background and/or sexual orientation. The second category is related to "groups whose members voluntarily associate for reasons so fundamental to human dignity, that they should not be forced to forsake the association, as discussed above. The last category encompasses individuals who 'share unalterable common characteristics due to their historical permanence" (ibid). These interpretative information have been used in the jurisprudence of international and national courts, but no one of them is related to environmentally or climate change displaced persons.

Accordingly, a person could be protected under the Refugee Convention when discrimination or persecution occurs on the grounds of an environmental or climate change event combined with another persecutory reason of the Refugee Convention. For example, in cases of gender-based violence which may occur in the aftermath of a natural disaster (L. S. Nishimura, 2018). A New Zealand tribunal has adjudicated that in the aftermath of the Cyclone Nargis in Burma, people aiding in humanitarian relief work were considered by the State as political opponents of the regime and their arrest amounted to persecution, which will qualify them with a successful asylum or refugee claim (M. F. Vallandro do Valle, 2017).

ii) Conflict- Induced 'Environmental Migration' under the Refugee Convention

It is very important to bear in mind that the examined migratory movements have a multi-causal character. Environmental disruption leads usually to the occurrence of conflicts and violence, which could be also induced by resource shortages, food insecurity or land degradation (T. Mehta, 2012, p.34). For instance, the civil war in Syria in 2011 and the conflict in Sudan also in 2011 are both including environmental factors as indispensable triggers of violence in both regions. Characteristic is the use of the term 'ecocide', in order to describe the cases where environmental destruction is used as a war strategy. The legal treatment of the persons forced to flee in these cases are almost equal to that of the political refugees and environmental degradation during war is clearly considered as an act of persecution (ibid). For example, the use of defoliants by the US army in Vietnam War between 1960's and 1970's and the destruction of land and forests have forced people to move to the urban centers. The same strategies were also used in the Kurdish areas in Iraq (ibid).

Moreover, it is officially stated by UNHCR in the Policy Paper on Climate Change that persons who are displaced due to conflicts over natural resources could fall under the protection umbrella of the 1951 Geneva Convention. These kinds of conflicts have been undoubtedly observed mainly in the African continent during the genocide in Rwanda, in the Democratic Republic of Congo, Burundi and others (ibid). In these 'environmental conflicts' it is eminent that the asylum seeker should invoke a greater risk of suffer than the rest of the population in cases of generalized violence for a successful refugee claim, than that required by civil war refugees (ibid). On the

other hand, it should also be noted that these conflicts are in most cases worsened by the policies of the Governments of the involved states and used as a strong political tool to support their regimes, thus the persons displaced during or after these conflicts could be described also as political refugees (T. Mehta, 2012). Last but not least, climate change exacerbates further the current situation, especially in the already vulnerable and post-conflict zones. Slow-onset disasters such as drought, desertification and land degradation have a gradual impact on the societies and constitute an extra push factor for human mobility (V. Kolmannskog).

iii) The implementation of the Refugee Convention to the environmentally displaced persons (EDP's) of the small island states

South East Asia is one of the world's most vulnerable regions to environmental phenomena and changes and experiences numerous natural disasters annually (The Nansen Initiative, 2015). Floods, droughts, tsunamis, earthquakes and typhoons are the most common natural hazards in this region and have been exacerbated the last two decades due to climate change. The small island states of Maldives, Kiribati and Tuvalu etc. are increasingly facing the negative impacts of climate change through sea level rise and changing rainfall variability (ibid). The President of Maldives, Mr. Mohamed Nasheed, has repeatedly stressed that if ocean level rise continues under the current trends, Maldives and the other small island states would disappear totally from the world map before the end of the century (K. Walter, 2010).

The citizens of the Small Island States of the East Pacific Area are a specific category of environmentally displaced persons with unique characteristics under International Law, which distinguish them from the other environmentally forced or induced movements. Due to the specific geography of these islands, the people affected have not the choice to move internally, as the majority of environmentally displaced persons have, and are obliged to move to another state, usually Australia or New Zealand to flee their sinking homes (ibid, p.8). Besides, they are not able to return to their countries, as they are disappearing under the ocean. As a result, there will be unfortunately cases of such a displacing of entire nations with unprecedented ethnographic, demographic and cultural consequences. The Intergovernmental Panel on Climate Change acknowledges that this region is not only highly vulnerable to the impacts of climate change and geographically prone to natural hazards, but in addition

they are highly isolated and lack the economic, building and institutional capacity to adapt to these natural or anthropogenic hazards (ibid).

Regarding their protection under the 1951 Geneva Convention, citizens of the Small Island States would generally flee to another country, so they cross an international border as the Convention requires. Moreover, the required element of the well-founded fear is established without difficulty in their case, as the extreme weather events and resource scarcity pose serious threats to their lives. It is supported that small island state citizens would also overburden the requirement of persecution, because the severe environmental harms pose usually serious physical danger to the affected populations and create such an economic hardship that could equate to persecution. Since there is no internationally accepted definition of persecution, that is interpreted under international human rights norms and national jurisprudence (ibid, p.28).

The problematic area in the case of the citizens of the Small Island States is the lack of a direct causal link between the persecution and the State's act or omission. Based on the current scientific knowledge on climate change, the least accepted cause of climate change is the greenhouse emissions, which are emitted by all the other countries apart from the small island states, which are considered almost environmentally neutral. Consequently, their governments cannot be considered as the agents of persecution (ibid, p.30). These governments are not persecuting their own nationals, but they are trying to protect their own citizens and obviously not deliberately persecuting them, so as they cannot reach the level of incapability provided in the Convention.

Even if persecution in the case of the displaced persons of the small island states will be proved, there are highly controversial opinions about how this persecution has been made on the grounds of one of the exclusively referred five reasons in the Refugee Convention. Two are the reasons of persecutions that could be interpreted in favor of the displaced citizens of the small island states. The first is persecution on the grounds of 'nationality', due to the fact that this category of displaced persons are threatened because they have the nationality of a specific island country facing a specific danger. Although in the cases of *Shah v. England* and *Ward v. Canada* it has been stated that the size of the recognized groups doesn't need to be specific, it is highly unambiguous if displacement of entire nations would fall under the protection scope of the Refugee Convention (ibid, p.32).

Accordingly, there are some scholars who supported that groups of people displaced due to sea level rise share the innate trait of the lack of political power to protect their own environment. In other words, their political disempowerment is what makes them victims of environmental degradation (J.B. Cooper). This is a very risky and general approach, which is unable to reach even a level of political or legal consensus. Consequently, until today, the citizens of the small island states are not considered to be protected under the 1951 Geneva Convention and unfortunately there is not even an assumption that would be protected in the near future.

iv) The proposal of an extension of the 1951 Geneva Convention

So far it has been clear that neither the current framework of the Convention nor its interpretation and implementation by the national policy and jurisprudence leave space for the protection of environmentally displaced persons from the states of destination based on exclusively environmental factors. As a result, it is proposed by the academic legal community that a possible extension of the Convention would be an appropriate solution in filling the legal vacuum of the protection due to environmental reasons.

Perhaps the most complete proposal was presented by the state of Maldives in 2006, which was focused on the creation of a new Protocol to the Refugee Convention which would recognize which environmental factors could cause human mobility, both sudden-onset disasters and slow-onset climate events, as reasons of persecution, regardless of human interference (M. F. Vallandro do Valle, 2017). It should be noted that the drafters of this innovative proposals would not intended to change the level of harm required to amount to persecution, as only environmental events with grave impacts in the affected populations would be considered. Their argument was explicitly referred to some examples of what would constitute persecution under their extended definition, such as real fear of destruction, loss of one's life or severe damages in the property due to severe environmental hazards deriving either by State's decision or by private entities. Furthermore, they are suggested to include also the internally displaced persons. Characteristic is also the 2006 resolution of the Belgium Senate, which enables the government to support within the United Nations the extension of the Refugee Convention in order to be applied also to "environmentally triggering forced movements".

The two main arguments in favor of this opinion is that the 1951 Convention is outdated, since its creation and implementation was purposed on the protection of the refugees after the Second World War by using narrow and exclusive terminology without leaving the margin for future new and broader interpretations (ibid, p.12). Additionally, it is argued that the governments of the affected populations in many cases are not capable either politically or economically to deal with severe environmental impacts or are directly responsible for them and consequently an extension of the aforementioned Convention will constitute a legal binding solution that would oblige them to take measures.

But is this argument the best solution for the protection of environmentally displaced persons? The answer is rather negative. Although the Refugee Convention is one of the most overarching regimes under International Law and the argument of its extension has the advantage of building upon already established legal norms, it isn't the appropriate protection regime for environmentally induced forced migration for a number of reasons (M. Ammer and L. Stadlmayr, 2010).

Firstly, it is a highly politically controversial argument and lacks international consensus, as it involves an expansion of the obligations of the State Parties to more groups of individuals than they had deliberately agreed upon (T. Mehta, 2012). It would also lead to an overburdening of the host states and of the role of UNHCR in the field (M. F. Vallandro do Valle, 2017). Although the Convention provides a total individualistic approach to the refugee definition, this doesn't mean that it could not be applied to cases of larger groups of individuals, such as in a mass influx of asylum seekers, in which UNHCR has repeatedly recognized the notion of *prima facie* refugees (UNHCR, 2015). As environmentally displaced persons would move in a large scale, this prima facie refugee status could constitute an important tool in their recognition (M. F. Vallandro do Valle, 2017). Nevertheless, the granting of this kind of status is not unanimously recognized and implemented by the Convention's State Parties. For instance, the EU Member States are used to apply a temporary protection regime in cases of a mass influx and don't have the political will and resources to guarantee a complete form of protection. Considering the large numbers of the populations affected by environmental degradation, it is unlikely that this approach could lead to a solution, even a temporary one. More importantly, UNHCR has stated that '*in the current political environment, [the inclusion of environmental refugees] could result in the lowering of the protection standards for refugees and even*

undermine the international refugee protection regime altogether" (UNHCR, October 2008).

Additionally, it has been expressed that because of the lack of a scientific certainty on which environmental events are caused by climate change, it is not likely that the States will establish new legal obligations based only on possible scenarios (T. Mehta, 2012). According to Article 1 of the Geneva Convention there must be a causal link between the fear of persecution and the lack of protection of the State of origin, which is very complex to be proven in cases of slow-onset degradation as to amount to such a level of harm to the persons affected (M. F. Vallandro do Valle, 2017).

As it has been stated in reports of the involved Organizations (IOM, UNEP), the vast majority of the environmentally displaced persons are moving internally and not internationally. As a result, even if environmental factors could be considered as persecution, these groups of people wouldn't fall under the protection scope of the Convention, due to the fact that it is applied only to cross-border forced migration. As long as these individuals remain in the territory of the State of their nationality, the latter has the total responsibility for their protection based on the fundamental principle of the state sovereignty under International Law. As it will be argued in the next chapters, regional arrangements are more capable to protect these affected populations than primary International Refugee Law.

Chapter II: International Climate Change and Human Rights Law related to "climate change displacement"

Without disregarding the significance of International Refugee Law, we should take into account that international human rights norms as well as Environmental and Climate Change Law and the obligations and rights they create are both to States and individuals are of an equal importance in the case of environmentally displaced persons. Despite the complementary nature of this field of Law to the primary Refugee Law and the 1951 Geneva Convention, it constitutes a necessary legal tool for the protection of 'environmental refugees', as they are not officially recognized and protected by International Refugee Law.

This chapter will focus on the issue of recognition and protection of displaced persons due to climate change impacts, both sudden and slow- onset disasters. A brief analysis of the fundamental legal and policy instruments of International Climate Change Law will be discussed and interpreted through human rights principles and norms deriving from International Human Rights Law. State responsibilities in the context of climate change constitutes a significant legal tool to the protection of the affected populations, although they are not explicitly referring to human mobility due to climate change impacts. Last but not least, a brief analysis of the fundamental human rights of the persons in move with a specific focus on the right to life is of a primary importance due to the recent landmark decision of the Human Rights Council on the case of *Teitiota v. New Zealand*.

i) An introduction into the key concepts

The discourse about climate change has emerged publicly for the first time in the end of 1980's in the United States (Hilal, Hareem, 2020). Due to the politically and scientifically controversial opinions, the Intergovernmental Panel on Climate Change (IPCC) was established, in order for a common policy, legal and scientific approach to be established. The knowledge and information provided by the reports of the IPCC contributed to the adoption of the United Nations Framework Convention on Climate Change (UNFCCC) in 1992, which provides the definition of climate change as "*a change of climate with is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods* (UNFCCC, 1992).

The link between climate change and human mobility is a relatively new finding surrounded by much controversy. Within the climate change regime, forced movement is indicated usually by the term 'climate change induced displacement', while the term migration is used also to indicate a possible solution to climate change events (L. S. Nishimura, 2018). In the first report of the IPCC (1990), it has been stated that 'the gravest effects of climate change may be those on migration, while has been warned that millions might migrate due to coastal flooding, agricultural disruption or coastal erosion (IPCC Assessments 1990). Besides, the link between climate change and migration has been also recognized by many decisions of the

Conference of the Parties (COP), the Paris Agreement and other related Committees (L.S. Nishimura, 2018).

As is has been already argued, this type of human mobility is characterized by multi-causality and vulnerability and is overlapping with social, economic, demographic and political factors, disproportionally affecting those already vulnerable. For instance, in the state of Bangladesh it is estimated that if sea level continues to rise under the current pace, 18 to 20 percent of the state's total cultivating land will leave almost 15 million people without housing. Moving to the African continent, as one of the already most affected regions from climate events, accretive seasonal migrations of pastoralists and agricultural workers in the Sahel region are already taking place, having huge demographical impacts for the affected indigenous populations (ibid, p. 31). Other scientists have argued that populations living in the low-lying island states would become 'stateless' due to the submergence of the territory caused by the rising sea levels (W. Kälin, 2010). The Norwegian Refugee Council's Internal Displacement Monitoring Centre and the United Nations Office for the Coordination of Humanitarian Affairs have estimated that in 2008 alone, 36 million people were displaced by sudden- onset natural disasters, a number added to the 4.6 million people displaced within their own country due to conflicts. From the 36 million people, over 20 million were displaced by climate-related disasters.

There are five possible scenarios of people displaced due to climate change supported in the literature and each of them has its own particularities and requires different policy and legal responses (ibid, p. 85). The first one is the case of the 'sinking' small islands, as it was already analyzed.

The second and the third are related to the distinction between sudden- onset disasters and slow-onset environmental degradation. Flooding or mudslides caused by heavy rainfalls could lead to large-scale displacement, which wouldn't be always permanent. It should be noted that not every sudden natural disaster is linked to climate change. The aforementioned cases are eminently linked to climate change but there are others like a volcano eruption or an earthquake which aren't obviously caused by anthropogenic factors, without to undermining the severity of a displacement triggered in the last case. In comparison, slow- onset environmental degradation would be harder to be proven. It is characterized by a gradual deterioration of the environment until it will reach the point of becoming inhabitable and lead to a forced human mobility. As a result, those people who will be 'pushed' to

flee in combination with other external social or economic conditions, would not be considered as refugees, but as migrants, due to the voluntary character of their movement. There is no accepted definition of 'migrant' in International Law except from that of the 'migrant worker' defined as '*a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national (*International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990). Equally, there is no definition of the 'environmental migrant'. The International Organization of Migration (IOM) defines those people as '*persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad (*IOM, 2007). On the other hand if their areas of residence become uninhabitable, their movement would be defined as forced and in the most cases permanent (W. Källin, 2010).

Regarding the fourth and fifth scenario, the fourth is related to those areas characterized as *high-risk zones* by governmental actors. Those areas are considered too dangerous to be habitable and the affected populations will be asked to flee, either with their consent or they will be obliged to. Usually they are regions affected by high risk of flooding or mudslides. The last case could be described as "*unrest, seriously disturbing public order, violence or even armed conflict.* Resource scarcity is usually the main characteristic of this fifth scenario (ibid).

ii) Forced displacement and International Climate Change Law

Climate change displacement constitutes one of the more complex scientific areas of International Refugee and/or Migration Law. Although it is scientifically accepted that an environmental event directly linked to climate change could lead to a forced movement, there is currently no legally binding instrument in International Climate Change Law, which officially recognizes and protects "climate change displaced populations". By implementing a socio-legal and human rights based approach, climate change instruments both binding and soft-law could be interpreted on the basis of international human rights norms and principles in order to broaden the obligations of the States both the origin and the receiving ones.

The three fundamental legal instruments of International Climate Change Law are the United Nations Framework Convention on Climate Change of 1992, the Kyoto Protocol adopted by the Conference of the Parties in 1997 and the Paris Agreement adopted in 2015 (UNFCCC, 1992). Moreover, the traditional rules of general International Law related to state responsibility are equally of an utmost importance.

One of the most fundamental principles of the UNFCCC regime is established in Article 3 (1) "All State parties should *protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities"*. Article 4 of the UNFCCC provides several obligations for the State Parties to the Convention under the aforementioned principle, such as promotion, cooperation and adaptation to climate change related events, the implementation of regional mitigation programs etc. These obligations could be classified as general and specific, with the general applied by both developing and developed countries and the specific commitments followed by the developed countries, specifically referred in Annexes I and II of the UNFCCC (Hilal, Hareem, 2020). In other words, the responsibility for the protection of the environmental system is commonly shared among all State Parties, but their respective contribution to the handling of the climate change issue should be differentiated according to their capabilities (F. Staiano). Additionally, both the Kyoto Protocol and the Paris Agreement are totally permeated by this principle, although the established obligations are characterized by the non-binding expressions of "should" or "may" and give large discretion to the Parties regarding their implementation (ibid, p.34).

The adoption of the Paris Agreement with the establishment of the principle of the loss and damage rather than just adaptation, reinforces the relationship between the States obligations and climate change induced displacement (The Paris Agreement, 2015, Article 8.1). The first Decision of the Conference of the Parties (COP) regarding the adoption of the Paris Agreement not only recognizes the link between human displacement and climate change but also states that human mobility induced by climate change couldn't be prevented through mitigation or adaptation efforts (ibid, p.26). Moreover, in the Comment n.49 of the aforementioned Decision, the Task Force on Displacement is established, in order to deal with the issue of climate change induced displacement, as one of the obligations of loss and damage due to climate change events. On the other hand, the same decision denies the possibility of

liability or compensation obligations established in the Paris Agreement, as it is explicitly stated in the Comment 51 of the D. 1/COP.1. This is the result of the negotiation between the developing countries on the one hand and the countries of the Umbrella Group (among others Canada, Russia, Australia and United States) on the other hand, which under the pressure of the United States agreed to a non-explicit reference of such an obligation in the text of the Paris Agreement.

The precautionary principle established in Article 3.3 of the UNFCCC is of an equal importance in order to interpret the adaptation obligations of the States Parties. Due to the controversy surrounding its legal status as a norm of customary law, it is not clear if it could be implemented in every related case, but it is undoubtedly part of the interpretation of the adaptation obligations established in the UNFCCC (L. S. Nishimura, 2018). Moreover, its role is very significant in establishing human rights violations related to climate change and not just referring to general risks to human rights (ibid).

On the other hand, it is important to comparatively analyze the concept of state responsibility for internationally wrongful acts under general International Law, as it is closely related to the adaptation responsibilities of the State Parties established by International Climate Change Law (D. Staiano, 2018). The International Law Commission Draft and its provisions on the Responsibility of States for an Internationally Wrongful Act (DARSIWA), states in Article 1 that "*every internationally wrongful act of a State entails the international responsibility of that State*". This means that the general rule for internationally wrongful acts is the individual responsibility of the State. On the other hand, in Article 47 of the DARSIWA it is stated that where "*several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act".* However, Article 47 doesn't include situations where more than one State carries out separate wrongful acts, which contribute to the same damage, such as in case of climate change. Environmental damages triggered by climate change are the result of a combination of all State's greenhouse gases emissions (GHG) and cannot directly be attributed to one particular State. Under these rules established by DARSIWA, a State Party's emission of GHG, which contradicts the relevant obligations established by the Paris Agreement couldn't create its liability against the affected States, because the damages caused by climate change, including climate change induced displacement, aren't attributed exclusively to that State. It is

supported that GHG emissions are considered as separate acts that generate the same damage and thus falling out of the scope of the DARSIWA's definition. The possible solution in this case is the "cumulative responsibility", in order to avoid a total inadmissibility of claims against the accountable States (D. Staiano, 2018).

Last but not least, the prohibition of trans-boundary harm as a recognized principle of International Environmental Law is also incorporated in Climate Change Law. In the Preamble of the UNFCCC it is stated that States have 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"*. Although its legal status as customary International Law is still disputed, it is widely used in international jurisprudence and arbitration, as it is recognized by the International Court of Justice in its Advisory Opinion *on Legality of the Threat or Use of Nuclear Weapons* (ibid, p.43).

In conclusion, climate change induced displacement remains an unsolved issue under both International Treaty and Customary Climate Change Law. Although it is recognized that human displacement is one of the unavoidable impacts of climate change, it doesn't explicitly be referred as a climate change disaster which would create an obligation of a recognition of at least temporary protection of the affected populations by the receiving States. This conclusion in combination with the *non-binding* character of the adaptation obligations arising from the UNFCCC regime, provides little space for a possible future protection of people displaced by climate change related events. In comparison, it is scientifically proposed that an establishment of an International Treaty Law instrument in the form of a Protocol to the UNFCCC or as a self-standing treaty in the context of International Climate Change Law, would formally address the issue of cross-border climate change related displacement and would create compensation obligations for the costs related to the handling of this phenomenon (Biermann and Boas, 2010).

iii) Human rights and climate change

Consequently, it is of an utmost importance to identify when and which a protected right is violated in order to constitute *a real risk of irreparable harm* and enable the protection veil of the principle of *non-refoulement*. Then we should search which human rights are violated in cases of environmental degradation and would

prohibit the return of the affected individuals to places where they would face serious violations of their rights. Due to the inter-related nature of the human rights, the latters will be overlap and their violation should be as serious as to equate to inhuman or degrading treatment. The Office of the High Commissioner for Human Rights (OHCHR) has stated that the human rights that are directly linked to climate change and thus to its possible upcoming displacement include the right to life, right to water and adequate food, the right to health, the right to adequate housing and the right to self-determination. Furthermore, serious risks to the enjoyment of the right to culture and other social values are expressed by the Intergovernmental Panel on Climate Change in the case of the low-lying States. It is obvious that the individual circumstances of every claim are equally important in order for the establishment of the link with one of the protected rights mentioned before. For instance, in the case of direct environmental changes, such as when the increased salinization reduces the available freshwater, there will be more approving to claim a real risk to the enjoyment of the right to life, while on the opposing case of the slow onset environmental disasters, usually caused by the rise of the sea-level, a real risk to the right to health or adequate housing may be more favorable to be alleged. Therefore, in the latter case, without the proper adaptation mechanisms, sea-level rise could pose a real risk to these two rights amounting to inhuman or degrading treatment or punishment, especially if the applicant is a member of a particular or vulnerable group (ibid).

Chapter III: The principle of *non-refoulement* under International Human Rights Law

Due to the non-recognition of environmental or climate change displacement in international refugee and climate change law, it is important to focus on the dynamic contribution of international human rights law in this field. It is not only a significant legal tool by recognizing specific rights to environmentally displaced persons and by imposing specific obligations for the involved States, but also an intimate part of the interpretation of the already established international treaty and customary international law.

The principle of *non-refoulement* under general International Law provides that "*no person shall be rejected, returned or expelled […], or to a territory, where substantial grounds can be shown for believing that he or she would face a real risk of being subjected to torture or cruel inhuman or degrading treatment"* (S. E. Lauterpacht and D. Bethlehem, 2003). Under Human Rights Law this principle offers a broad protection to every person, who will substantiate a real risk of any type of recognized harm, either prohibited by the primary or customary International or Regional Human Rights Law. *Non-refoulement* constitutes an obligation, directly binding the States (C. Caskey, 2020). On the other hand, the scope of this principle under International Refugee Law is stricter and applies only to those persons who will be qualified as refugees and will prove their persecution on the grounds of the exclusively referring reasons of the 1951 Geneva Convention. Due to the non-recognition of "environmentally or climate change displaced persons" under the 1951 Geneva Convention regarding the refugee status, the operation of the principle of *non-refoulement* in their case is the only possible protection that they will be granted, which resembles in that of the refugees.

Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is explicitly referring to the *non-refoulement* principle as Article 16 of the International Convention for the Protection of All Persons form Enforced Disappearance does. Moreover, it is regarded as an inherent principle to the nature of human rights by the Human Rights Committee and the Committee on the Rights of the Child. It constitutes also an integral part of the interpretation of Human Rights Law at a regional level, such as the European Convention of Human Rights and it is also considered as a principle of customary International Law, both as an absolute prohibition of torture or inhuman or degrading treatment and as a fundamental norm of International Migration Law (ibid, p.4).

Regarding the content and scope of protection that the principle of *non-refoulement* offers, it is primarily a negative obligation to the States not to deport or extradite a person, although it has also been interpreted as having positive obligations. The Human Rights Committee and its interpretation of the Covenant, has adjudicated that a State Party has the obligation of no deporting a person from its territory, where there are substantial grounds for substantiating a "real and significant risk of irreparable harm, such as that contemplated by articles 6 and 7". Besides, the territorial scope of the principle arises from the jurisdictional clause of the ICCPR and

applies within the "territory and jurisdiction of the state party, while extra-territorially could be applied in the case that specific state's jurisdiction can be established. At the regional level the European Court of Human Rights (ECtHR) with its application of the European Convention of Human Rights (ECHR), considers the territorial and personal scope of the principle as it is defined by the general jurisdictional approach of the treaty (ibid, p.5). It is worth mentioning that over a half of all the cases related to *non-refoulement* obligations at a universal level is concerning the State parties to the European Convention. Specifically, the ECtHR applies extra-territoriality based on a more restrictive approach and mandate the exercise of effective control of the state party over the territory or the pesons and thus is yet unambiguous whether the principle of *non-refoulement* applies beyond the maritime context and could also protect the persons who have not yet crossed an international border.

The *non-refoulement* principle is derived from the theory of positive obligations and constitutes part of a State's obligation to protect its own citizens and prevent arbitrary violations of their human rights either by act or omission, in order to ensure the enjoyment of at least the basic human rights (for instance, the right to life or physical integrity). In the case of environmental degradation and its engagement with the principle of *non-refoulement*, a specific link with the enjoyment of a protected right either under customary Human Rights Law or an applicable treaty provision must be established. The procedure follows the same pattern as the two-step test which is used under International Refugee Law for the establishment of the "*well-founded fear of being persecuted*", with the difference that in Human Rights Law a "*real risk of irreparable harm"* is required. The UN Human Rights Committee has formally mentioned this test in the case of *Teitiota v. New Zealand* under the International Covenant on Civil and Political Rights as whether there were "*substantial grounds for believing that there is a real risk of irreparable harm specifically related to the enjoyment of a protected right*". As a consequence, two elements are equally important, at least at the global level, in order for the protection mechanism of the principle to be activated for an individual: a) the establishment of substantial grounds for the existence of a real risk of (b) irreversible harm, in the form of a violation of a particular protected right (ibid).

i) The right to life and *non-refoulement* in cases of environmental degradation (*the case of Mr. Ioane Teitiota v. New Zealand*)

The right to life is widely recognized as the supreme right and its enjoyment is a prerequisite for the enjoyment of all the other fundamental human rights. It is not only guaranteed at international level, but also at regional and national level (Article 6 of the ICCPR, Article 3 of the UDHR, Article 2 of the ECHR, Article 4 of the African Charter on Human and People's Rights) (C. Caskey, 2020). As the Human Rights Committee has noted, the impacts of climate change and the consequent environmental degradation poses serious threats to the enjoyment of the right to life. It has also repeatedly recognized that in order to ensure the enjoyment of the right to life, the states parties have the negative obligation of not "deporting, extraditing or otherwise transferring" persons to another territory where there are substantive or profound reasons for supposing that their rights would be violated under Article 6. On the contrary, at a regional level and specifically the ECtHR recognizes the prohibition of *non-refoulement* primarily on the protectional scope of Article 3 of the ECHR, without to thoroughly discard the possibility of the operation of the principle based on Article 2. In the case of Teitiota v. New Zealand, the HRCttee has expressed for the first time a well-developed and innovative approach on the issue of the prohibition of *non-refoulement* due to environmental degradation.

Regarding the factual circumstances of the case, Mr. Ioane Teitiota and his wife has moved from their country, the island of Tarawa in the Republic of Kiribati, to New Zealand in the year of 2007 (K. Buchanan, 2015). They obtained three children, who were born in the territory of New Zealand, but they were not entitled to New Zealand citizenship in light of the Citizenship Act 1977. They remained in New Zealand illegally and after the expiration of their visas in October 2010, Mr. Teitiota applied for refugee status based on the Immigration Act 2009, which is the New Zealand Law which incorporates the 1951 Convention Relating to the Refugee Status into domestic law. He has subsequently claimed that he is entitled to be recognized as a refugee "on the basis of changes to his environment in Kiribati caused by sea level rise associated with climate change". He supported that the situation in the island of Tarawa has become "increasingly unstable due to sea level rise, caused by global warming". The scarcity of the fresh water due to saltwater contamination was evident

and along with the erosion of the already narrowly inhabitable land on Tarawa, land disputes and a housing crisis created a precarious and violent environment, which has forced Mr. Teitiota and his family to move to New Zealand.

His claim for refugee status was unsuccessful under the New Zealand domestic Courts, after the negative decisions of the Immigration and Protection Tribunal, the High Court, the Court of Appeal and finally the last decision of the Supreme Court in July 20th, 2015. In these decisions, it was taken under consideration that the Republic of Kiribati has already filed the 2007 National Adaptation Programme of Action under the United Nations Framework Convention on Climate Change (UFCCC). As a result, and although the deterioration of the population's health has been repeatedly continued, the adoption of this plan indicated that the Republic of Kiribati has tried to take measures in order to protect its citizens and that was the reason why the Supreme Court has confirmed that Mr. Teitiota does not face a risk of serious harm in order to be protected as a refugee and further that "there is no evidence that the Government of Kiribati is failing to take steps to protect its citizens from the effects of environmental degradation to the extent it can". Besides, worth-mentioning is the fact that the Supreme Court did note that its decision, also based on the former decisions of the lower courts, didn't mean that "environmental degradation resulting from climate change or other natural disasters could never create a pathway into the Refugee Convention or protected person jurisdiction", leaving the discussion on this issue more relevant than ever before (C. Caskey, 2020).

Consequently, after the rejection of his refugee claim by the New Zealand domestic Courts and the exhaustion of all the available domestic remedies, Mr. Teitiota has filed a communication in 15 September of 2015 in front of the Human Rights Committee under Article 41 par. 1 and 2 (Human Rights Committee, CCPR/C/127/D/2728/2016). With this communication (No. 2728/2016), Mr. Teitiota claims that the State Party New Zealand violated his right to life under Article 6 par. 1 of the International Covenant on Civil and Political Rights (ICCPR), due to his removing and his subsequent deportation to Kiribati in September 2015 by the New Zealand authorities. The HRCttee has examined the engagement of the principle of *non-refoulement* through a risk to the right to life in the case of environmental degradation caused by climate change. Due to the utmost importance of this case, it is worth-mentioning to analyze and examine the ruling of the HRCttee in the case of Mr. Teitiota and especially the two dissenting opinions of Vasilka Sancin and Laki

Muhumuza, which are very crucial for the future positive steps regarding the protection of environmentally displaced persons.

The New Zealand domestic Courts were the first to examine and interpret the protection of the right to life under the International Covenant on Civil and Political Rights (ICPR). Specifically, the Immigration and Protection Tribunal after the rejection of the refugee claim, has adjudicated that Mr. Teitiota as a non-refugee, could not be entitled to the protection of the 1951 Convention regarding the Refugee Status, which includes the protection of *non-refoulement* for the individuals recognized as refugees. Consequently, the Court moved forward to the examination of the obligation of non-*refoulement* under human rights law and followed the interpretation of the right to life of the ICCPR under the No. 6 (1982) General Comment on Article 6 of the Covenant of the Human Rights Committee. The Tribunal stated that under Article 6 of the ICCPR an arbitrary deprivation of life could be an interference which is "(a) not prescribed by law, (b) not proportional to the ends sought and (c) not necessary in the particular circumstances of the case". Moreover, the Tribunal affirmed that there is a positive obligation based on the right to life, which could be indicated through programmatic steps from the state to protect its citizens, which in this case was the 2007 Programme of Action of the Republic of Kiribati. As a result, the applicant could not claim any act or omission of the state to fulfil its obligation based on the interpretation of the Covenant. Last but not least, the Tribunal adjudicated that the claimant didn't manage to establish a "sufficient degree of risk to his life or that of his family at the relevant time", based on the Committee's jurisprudence in *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), and there was an absence of the imminent character of the risk of a violation to the Covenant, which is required under the Optional Protocol of the Covenant.

Moving forward to the examination and the consequent final adjudication of the Committee, in the admissibility part it is noted that the basic question that should be answered was not if Mr. Teitiota was a victim of a violation of a protected right of the Covenant at the time of submission, but rather "whether he has substantiated the claim that upon deportation he faced a real risk of irreparable harm to his right to life ", which brings us to the examination of the engagement of the principle of *non-refoulement* in the protection scope of the right to life (Ibid, pp.8-9). The Committee also considers that "in the context of attaining victim status in cases of deportation or extradition, the requirement of imminence primarily attaches to the decision to

remove the individual, whereas the imminence of any anticipated harm in the receiving state influences the assessment of the real risk faced by the individual". The Committee accepted that the author's presented facts about the situation in Tarawa and admitted that there is not a hypothetical future harm, but rather a serious threat for his life or that of his family. Regarding the merits of the Committee's adjudication, worth-mentioning is the assertion that the obligation not to extradite, deport or otherwise transfer under Article 6 of the Covenant is broader than the scope of the principle of non-*refoulement* under international refugee law, as it could provide protection of individuals not entitled to refugee status. Furthermore, it emphasized on the personal character of the risk and that "*a high threshold for providing substantial grounds to establish a real risk of irreparable harm*" is required. The Committee also noted that the applicant has failed to provide sufficient information which will indicate a "*reasonably foreseeable threat of a health risk*", which would harm his right to life with dignity or cause "*unnatural or premature death*" (ibid, pp.9-12).

From all the above mentioned, it is clear that Teitiota's decision opens a path for the protection of *non-refoulement* in cases of environmental degradation, where there is a real and personal risk to the enjoyment of the applicant's right to life. Procedurally, such a claim before the Committee should focus firstly on the arbitrariness of the evaluation of the assessment by the state authorities and secondly on establishing the causal link between the environmental event caused by climate change and the personal risk to the enjoyment of a protected right (C. Caskey, 2020).

A summarize of the possible instances that could establish the required limit above which environmental events could affect the right to life and create the obligation of *non-refoulement*, could be displayed as follows:

Table 1: Thresholds engaging the principle of non-refoulement owing to a risk to the right to life (. Caskey, 2020C)

Claim	**Threshold**
Lack of access to freshwater, impacting the enjoyment of the right to life	"Sufficient information to indicate that the supply of freshwater is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death."
Food security impacting enjoyment of the right to life	"A real and reasonably foreseeable risk that the author would be exposed to a situation of indigence, deprivation of food, and extreme precarity that could threaten his right to life, including to a life with dignity."
Intense flooding, resulting in breaching of sea walls, impacting enjoyment of the right to life	Sea level rise that renders a territory inhabitable, without the possibility of (either time or State ability based) intervening acts by the State, or the international community, to protected and relocate the population where necessary.

On the contrary, the two dissenting opinions of Vasilka Sancin and Duncan Laki Muhumuza, disagree with the Committee's majority decision that Mr. Ioane Teitiota would not face a real risk of irreparable harm to the enjoyment of his right to life, when returning to the Republic of Kiribati. It is note-worthy that *Sancin* is concerned that the notion of "potable water", used in the assessment of the Kiribati state authorities, does not necessarily amount to "safe drinking water", especially for children (Human Rights Committee, CCPR/C/127/D/2728/2016, Annex I, p.13). With this opinion, *Sancin* considers also other aspects of the case, which would lead to irreparable harm, and which fall outside the scope of Article 6 of the ICCPR. Moreover, under the interpretation and implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child (CtteeRC) has noted

that in the context of the principle of *non-refoulement*, the State parties have the obligation not to reject a child at a border or return him to a country where there are substantive reasons for believing that he or she would face a real risk of irreversible harm, having a more protective character than that of the ICCPR, due to the special needs of the children and their high level of dependence or even vulnerability.

Both members of the Committee refused to join the majority's decision, focusing on the evidence presented by the claimant, that there are stories of children suffering from diarrhea and in some cases even dying from the poor quality of the water, which the Committee doesn't consider as a high danger. Furthermore, Mr. Teitiota and his family, when returned to Kiribati, have had health issues with one of his children ending up with a serious case of blood poisoning. Besides, both reinstated the already expressed opinion of the Committee, that the right to life includes the right of all individuals to live with dignity, "free from acts or omissions that are expected to cause unnatural or premature death" (ibid). The Committee has also expressed the position that climate change and environmental degradation pose serious threats to the enjoyment of the right to life to both present and future generations and States have the obligation to preserve the natural environment and protect it with the best way. *Duncan L. Muhumuza* supported and reinstated the already expressed position of the Committee that serious threats to the enjoyment of the right to life that could lead to its violation, don't necessarily result to loss of life and it would be not logical to wait for a high number of deaths, in order for a violation of the right. Last but not least, they both agreed that the burden of proof should be reversed and the State party must be in the position to demonstrate the capability of the claimant to access safe drinking or even potable water, as it is stems out from the obligation of the State party to protect the enjoyment of the right to life of all its citizens (C. Caskey, 2020). As a consequence, both members of the Committee refused to join the majority and conclude that the removal of the claimant Mr. Ioane Teitiota and his family to the Republic of Kiribati, violates the right to life under Article 6 par.1 of the ICCPR and the principle of *non-refoulement* directly associated with the right to life.

From a macro-level point of view, the case of Mr. Teitiota is undoubtedly regarded as an important contribution in the field of International Human Rights Law and its implementation in cases of climate change events, through the enlargement of the protection scope of the right to life under Article 6 par. 1 of the ICCPR. It is

characterized as a “warning to the destination States” in order to implement their protection decision in accordance with their obligation under International Human Rights Law and Climate Change Law and their obligation for assistance to the vulnerable States, susceptible to a high risk of climate change events, such as the Republic of Kiribati (J. H. Sendut, 2020). By other scholars, this decision is characterized as a “landmark ruling” and as a “significant jurisprudential development” because it is the first time that the Human Rights Committee formally recognizes the inescapable correlation between climate change and Human Rights Law and specifically the enjoyment of the right to life (A. S. Blakemore, 2020). Although the decision’s limitations are still evidently expressed, especially the requirement of the establishment of a high threshold in order for a violation of Article 6 par. 1 of the ICCPR, it serves as a huge accomplishment and a possibly future positive determinant for asylum and refugee claims.

Chapter IV: A comparative analysis of Regional Law and Case Studies

i) Migration patterns in the wider African region

This chapter outlines the purpose of the first-ever Africa Migration Report, which is to advance the African migration agenda in the context of the continent's overall growth and integration. The inaccuracies that characterize the present discourse on African migration can be attributed to three factors: (a) The vast majority of African migrants do not cross seas, but rather cross land boundaries inside Africa; (b) 94% of African migration across oceans follows a predictable pattern; and (c) the vast majority of global migrants are not African. Africa accounts for 14% of the worldwide migrant population, compared to 41% for Asia and 24% for Europe. These facts support the need to recast the story, which is mostly about intra-African migration, as opposed to the tragic events of the past (Maureen Achieng et al, 2020). These facts support the need to recast the tale, which is mostly about intra-African migration, as opposed to the awful sensationalized image of irregular migration from Africa across the Mediterranean.

The plight of climate refugees has attracted worldwide attention. However, international law, particularly African regional law, provides no clear legal protection for them. Their legal safeguards are unclear. Some academics and practitioners claim that the current international refugee concept does not include climate refugees. Climate-induced displacement is mentioned in the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, however it does not restrict migration outside borders. To identify the challenges and prospects in the legal recognition of refugees, this section examines international human rights and refugee law instruments, particularly the 1951 UN Convention Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. It concludes that the inadequacies in the refugee protection framework for climate refugees have been for a long time and are still present now. As a result, researchers argue that the only approach to assure protection for climate refugees in Africa is for the African Union to operationalize the concept of "climate refugees" as a display of its dedication to the values of Pan-African collaboration in addressing common continental problems through its solidarity and humanistic approach (Michael Addaney, 2019).

The Horn of Africa is a tumultuous region marked by internal and cross-border population migrations fueled by climate change, conflict, and starvation. From Ethiopia to Uganda, Eritrea to Somalia, and eastern Sudan to South Sudan, peasant farmers and pastoralists have been on the move for years, fleeing harsh climatic conditions or violence, triggering new conflicts and environmental disasters in the process. Despite the fact that the bulk of climatic displacements in the region occur inside state borders, an increasing number of displaced people are being forced to cross national borders when their crops fail and their livestock perish (Victor Nyamori, 2020).

The main issue this group has is that the 1951 UN Refugee Convention does not address climate refugees, and the African Union's 1969 Refugee Convention is still being debated on how to protect climate refugees. The sensitivity of these persons to environmental stressors remains unclear, under-studied, and with inadequate strategic actions at all levels if they are not recognized. We need to improve the legal recognition of these groupings in international, regional, and national legislation (Michael Addaney et al, 2019).

Massive internal and cross-border migration has revived debate in recent years about the various systems and policies in place to solve what is becoming a major challenge. While refugees, as defined by international law, are entitled to protection under various laws, people fleeing environmental and climatic change are not. The 1951 Refugee Convention and its 1967 Protocol provide a relatively restricted definition of a refugee that excludes anyone displaced by climate change, natural disasters, or environmental changes. Despite rising evidence that environmental changes are becoming a major factor determining the movement of refugees and IDPs in the world, climatic refugees can only claim basic violations of their human rights during these extreme conditions Victor Nyamori, 2020).

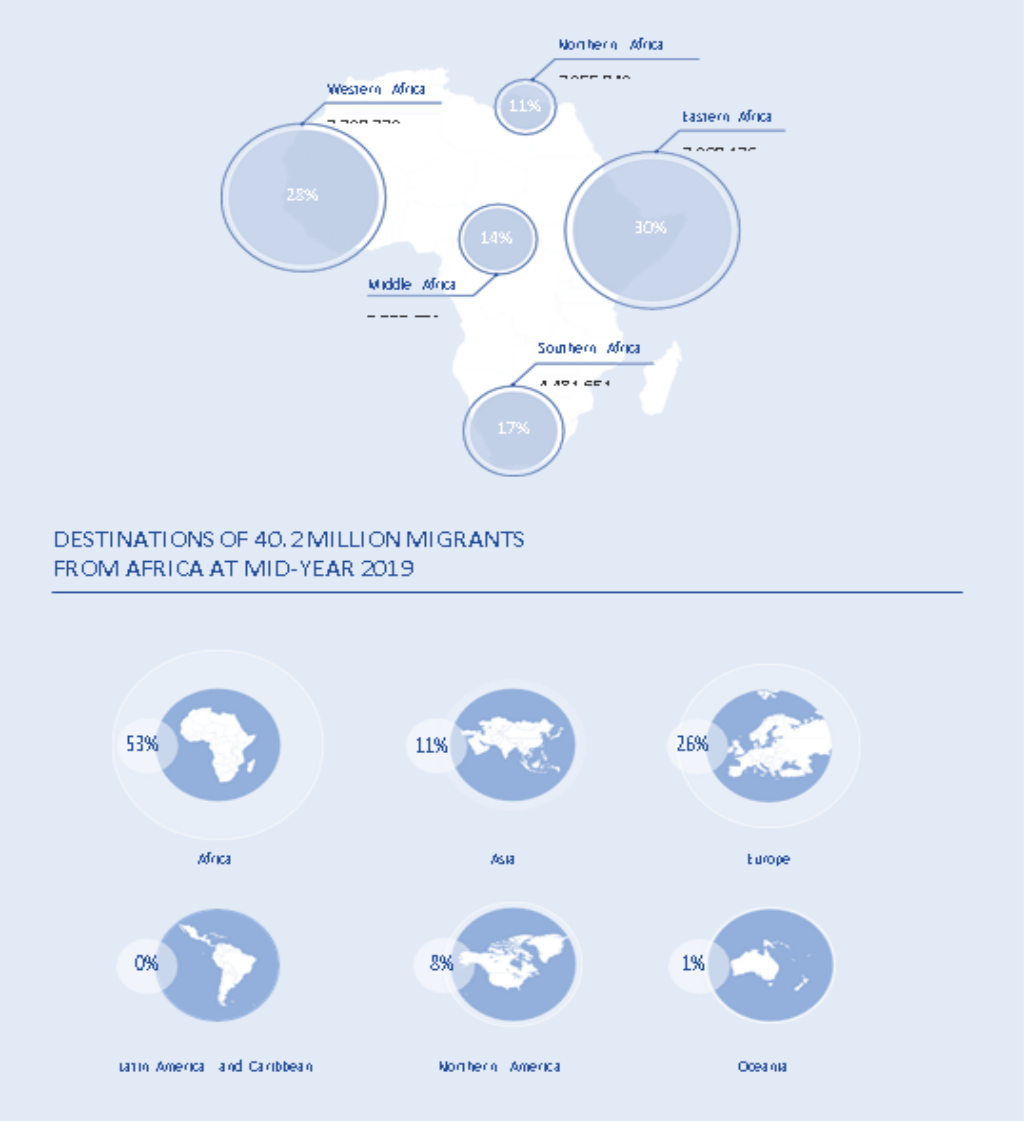
The current reality of African migration is that Eurocentric methods to migration management currently dominate domestic and regional human mobility decisions in Africa. The securing of borders in the Sahel, for example, appears to be primarily motivated by European security concerns, rather than the reality of thousands of years of itinerant trade across the Sahara Desert Recent conversations and debates in Europe, on the other hand, demonstrate a shift in perceptions of the African migratory situation. (Maureen Achieng et al, 2020). Bjarnesen (2020) stated that political debates on African migration were selective and deceptive in terms of the facts they received, contributing to the distorted narrative of African migration to Europe.

The reality is that African migration to Europe has remained stable for more than a decade, and the number of arrivals across the Mediterranean has decreased rather than increased since 2015. Within Africa, the requirement for passports and biometrics at Namanga and Lunga Lunga in East Africa obscures the reality of a nomadic Maasai population scattered over Kenya and Tanzania, as well as a Swahili kingdom that formerly stretched the East African coastline between Mogadishu and Biera. This is the reality of Africa's movement, which is driven by local and regional histories and imperatives rather than colonial frontiers. It is necessary to acknowledge these historical movements that were not previously guided by any policy or law (Maureen Achieng et al, 2020).

The number of international migrants in Africa grew from 2000 to 2019. The sharpest relative rise (76%) among all populations was from 15.1 million to 26.6 million, the world's major regions As a result, Africa's proportion of international migrants has

increased. In comparison to the global total, it climbed from 9% in 2000 to 10% in 2019 (UN DESA, 2019). Despite this sharp relative increase, Africa's total number of international migrants is still small in comparison to other world regions and the continent's total population. Asia received 31% of the world's 272 million international migrants in 2019, followed by Europe (30%), Northern America (22%), Africa (10%), Latin America and the Caribbean (4%), and Oceania (3%). International migrants currently make up 2% of Africa's overall population, compared to 3.5 percent for the rest of the globe. International migrants account for a bigger percentage of the overall population in Oceania (21.2%), Northern America (16%), and Europe (11%) than they do in Asia and Latin America and the Caribbean (1.8 percent each). While the majority of migration in Africa takes place within the continent (see Figure 1), estimates of intraregional mobility vary depending on the approach used. In terms of regional migration, 79% of all international migrants living in Africa were born in the continent. When the number of African-born migrants born around the world is compared to the number of African-born migrants living in Africa, intraregional mobility within the continent lowers to 53% (UN DESA, 2019).

Figure 1. Distribution of international migrants residing in Africa and destinations of migrants from Africa



Source: UN DESA, 2019

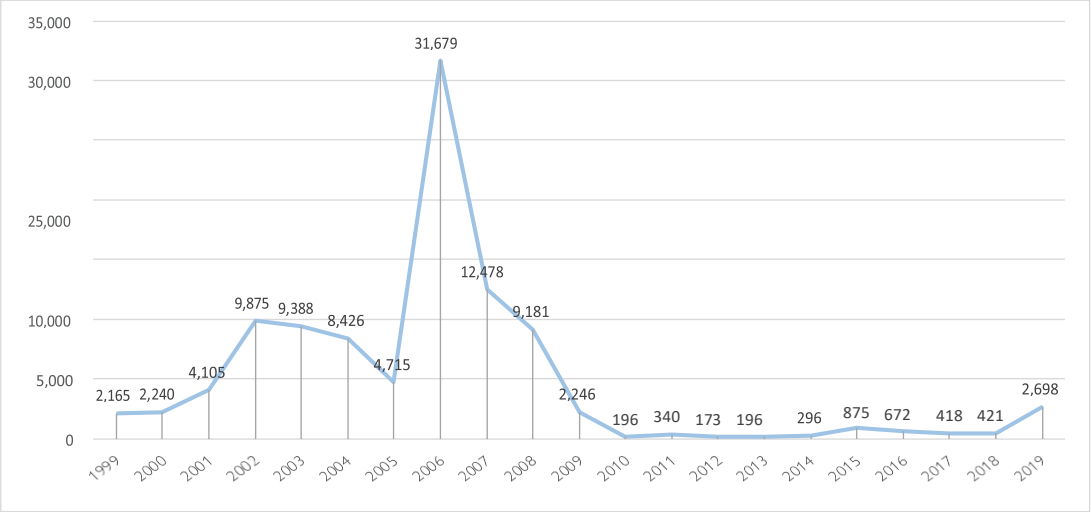
Two key international mechanisms, however, took steps in 2019 to acknowledge the predicament of climate refugees. The Global Compact for Refugees, which governs the sharing of obligations and the protection of refugees, and the Global Compact for Migration, which establishes the principles of safe and orderly migration, are the two. Climate change was recognized as a unique migratory driver in the Global Compact on Migration, which gave the argument new force. The Compact, which has virtually universal African support, establishes a new notion of climate migration and encourages national and regional governments to take the lead in tackling it. While the Compact does not provide new legal rights, it does encourage governments to seek

additional visa categories and other forms of aid for those who are compelled to migrate due to the impacts of floods, droughts, earthquakes and rising sea levels (Michael Addaney, 2019).

This chapter looks at how the lack of available and trustworthy statistics on irregular migration, as well as methodological limitations, affect migration narratives in Africa. Due to the nature of irregular migratory stocks, particularly migration movements, data collection is intrinsically problematic. They frequently occur outside of regulatory guidelines, and they are likely to go unrecorded or be subject to double counting. The lack of a globally agreed-upon definition of "irregular" migration/migrants, often known as "illegal," "clandestine," or "undocumented" movement, exacerbates the problem. The data included in the analysis should be viewed as broad tendencies rather than complete figures. Despite popular narratives about irregular migration from Africa to Europe, an examination of existing data reveals that little is known about irregular migration in the African context, as most African migrants move within the continent and migration from key African countries to the European Union has been mostly regular in recent years (Julia Black, 2020). The chapter concludes that any discussion of irregular migration data should always be contextualized, and that the use of new technologies may provide insights into irregular movements in Africa, as well as assist in overcoming some of the inherent difficulties in traditional sources of irregular migration measurement.

Some examples of popular migration routes based on recent statistics are firstly the sea route from Senegal, Mauritania, and Morocco to the Spanish Canary Islands, as well as the land route from the Niger to North Africa, are the main migration routes from West Africa to other areas (MIDWA, 2015). Previously, the former, or West African route, was the primary irregular route to Spain. As observed in Figure 1, visits to the Spanish Canary Islands increased in the early 2000s, peaking at over 30,000 crossings in 2006, but have since fallen to less than 1,000 crossings per year since 2010 (Julia Black, 2020).

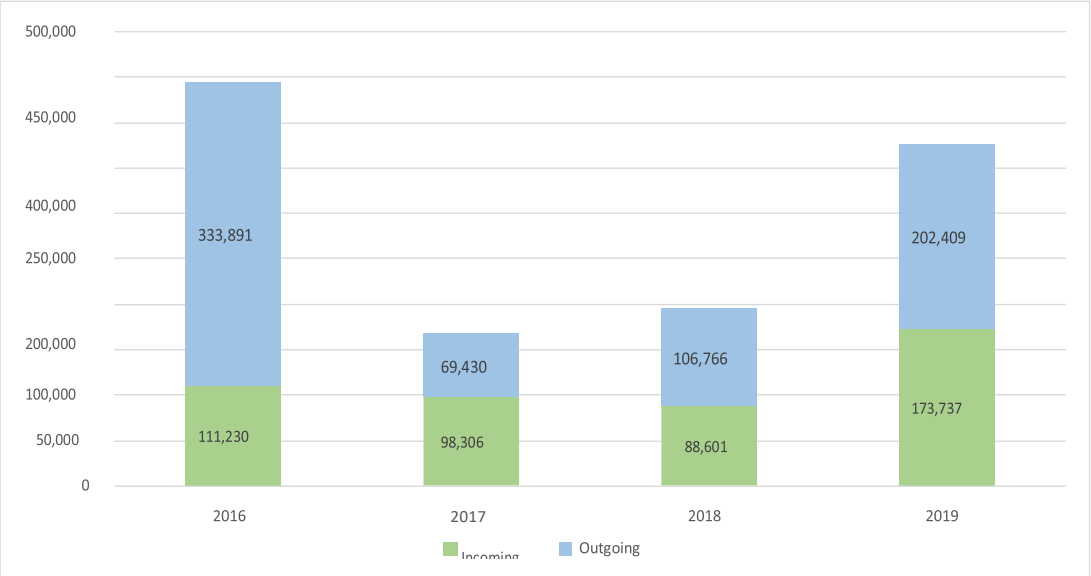
Figure 2. Irregular migrant arrivals recorded in the Spanish Canary Islands



Source: Ministry of the Interior, Government of Spain, n.d.

Accordingly, the majority of West African migrants pass through the Niger on their way to North African countries like Libya and Algeria, and then on to Europe in certain circumstances. Between 2016 and 2019, the IOM's DTM in Niger saw almost 1.2 million people at flow monitoring stations, with nearly 40% of them being "incoming migrants - those arriving from outside of West Africa and traveling into West African nations (IOM, 2019c).

Figure 3. Incoming and outgoing flows recorded at IOM's DTM flow monitoring points in Niger

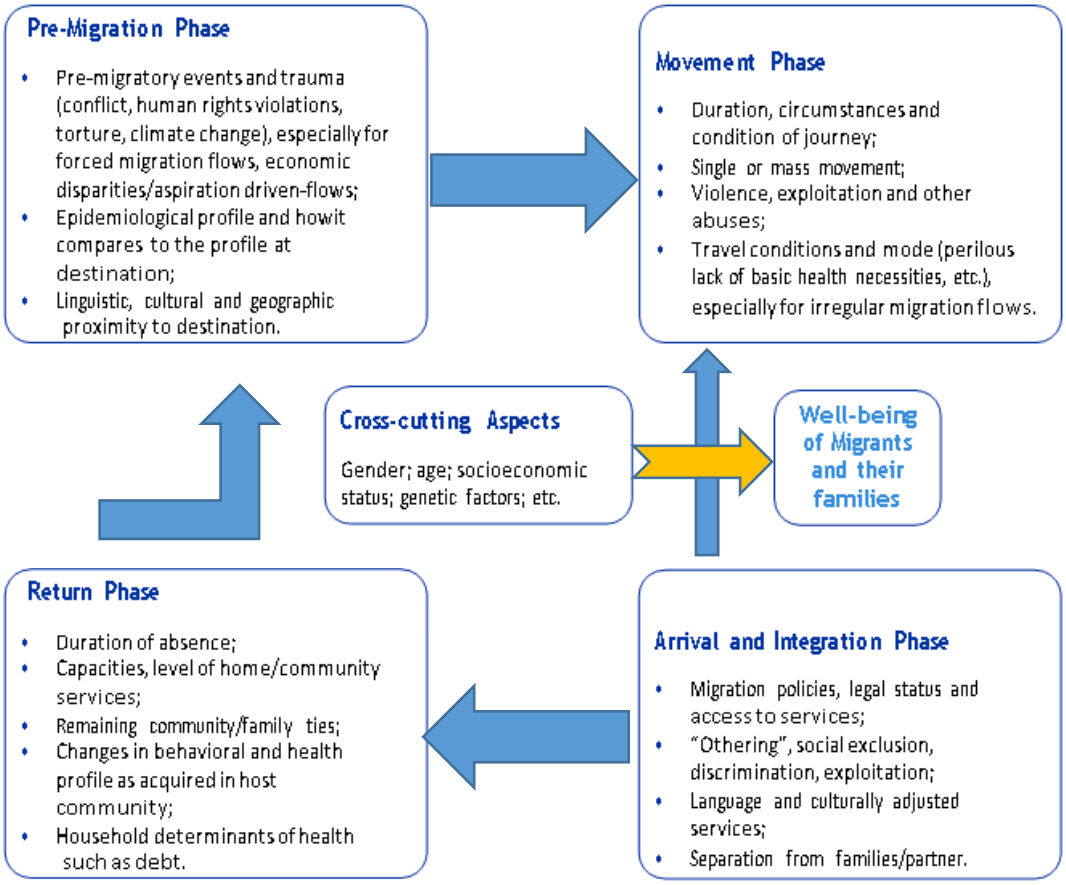


Source: IOM, 2019c

ii) Migratory movements and the right to health in the African region

Throughout the migration cycle, the relationship between migration and health is investigated, including resilience, vulnerability, and socioeconomic determinants of health. Migration health governance, according to the chapter, should encompass the control of communicable diseases, health security, universal health coverage (UHC), and migration-responsive systems, all of which are important for health security, public health, and development. As implementation frameworks, the African Union's Agenda 2063, Africa Health Strategy, and the African Union Migration Policy Framework for Africa, as well as World Health Assembly (WHA) Resolutions 61.17 and 70.15, are suggested (Sunday Smith et al, 2020). Research and data, inclusive policy and legal frameworks, migration-sensitive health systems, and partnerships are all prioritized. In addition, it is argued that international and regional human rights agreements recognize that everyone, regardless of legal status, has the right to the best possible standard of physical and mental health, ensure equality, and support non-discrimination. As a result, these instruments cover and safeguard all migrants, regardless of their status. However, African migrants confront challenges in accessing care in already overburdened health systems, as migration health is viewed through the lens of health security and migrants are viewed as disease vectors (Sunday Smith et al, 2020). Despite this widely held misconception and damaging stereotype, there is no systematic link between migration and infectious diseases in host populations (Abubakar et al., 2018; Aldridge et al., 2018).

Figure 4. The social determinants of migrant's health



Source: IOM, 2019

The right to health constitutes one of the most fundamental acquisitions of the international legal sphere. The right to health is recognized by the WHO Constitution and international human rights conventions for all people, regardless of their legal status. The majority of them guarantee equality and promote non-discrimination and, as a result, include the migrant populations regardless of their social standing. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) states that everyone has the right to the best standard of living, a reasonable level of bodily and mental well-being In terms of regional cooperation, while the African Charter states the every person has the right to enjoy the benefits of the Convention on Human and People's Rights, among which the finest physical and mental health that may be achieved.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) is another important treaty, as it guarantees all migrants the right to emergency medical care as well as regular migrants' access to

social and health services, already existing for nationals specifying that it will not impair more favorable rights derived from other accords. As a result, States are obligated under the ICESCR to respect the right to health of all people, without discrimination, and to refrain from focusing solely on emergency care. Some states, however, have stated that they are unable or unwilling to provide the same level of protection to specific migrant groups as they do to natives (Wickramage et al., 2018).

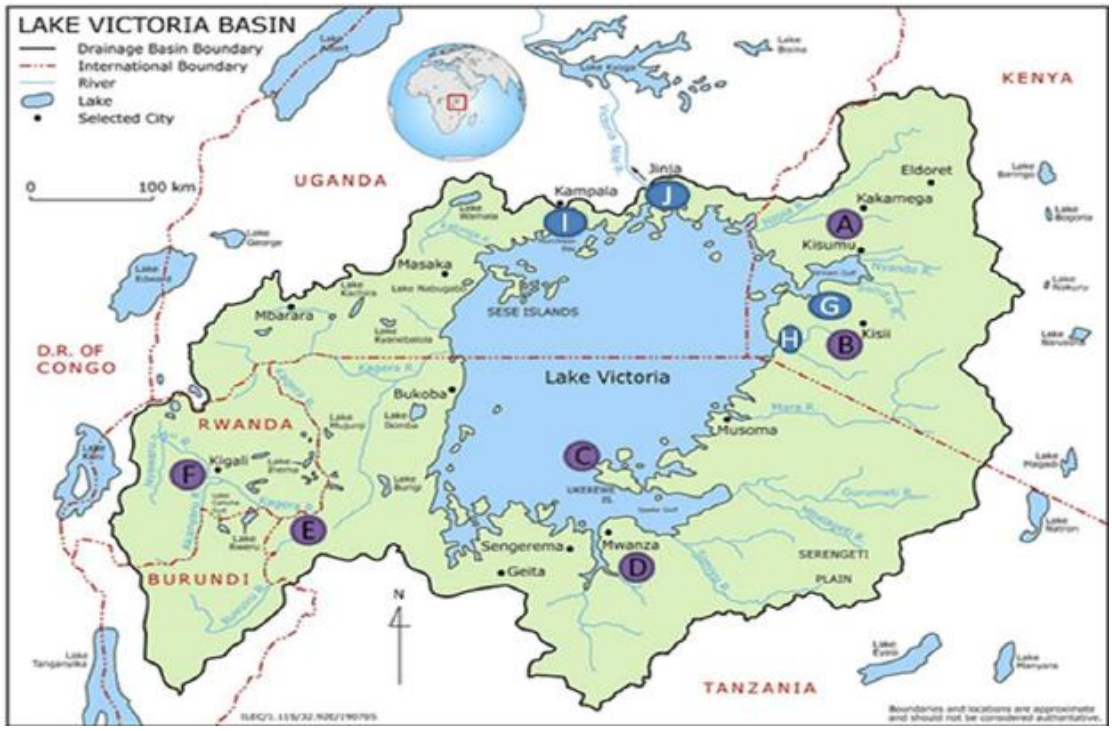
The right to health applies throughout the migration process: laws and procedures at the border should protect migrants' dignity and human rights. States have the authority to regulate entry, but they must do so in accordance with international law and the International Health Regulations (WHO, 2005). The IHR aims to prevent, protect against, control, and respond to worldwide disease transmission while limiting needless constraints on freedom of movement. Only public health emergencies of worldwide concern with pandemic potential, as defined by IHR and determined by WHO, qualify for exclusion. All migrants have the right to health treatment once they arrive in a country. In some circumstances, irregular migrants' health might be used as a legal rationale for their regularization and eventual deportation (IOM, WHO and OHCHR, 2013). The African Union's Agenda 2063 is a framework for achieving growth and sustainable development at the continental level. Healthy and well-nourished individuals are one of the aims, which necessitates universal access to high-quality health care and nutrition emphasizing the importance of tackling health's socioeconomic determinants. The Africa Health Strategy 2016–2030 supports everyone's well-being and acknowledges immigration. As a vulnerable group, displaced people are included. Among the guiding principles are the following: health is a human right for all, that access to health services should be equitable, and that address health's socioeconomic determinants. The African Union's Migration Policy Framework for Africa (MPFA), which views health to be a cross-cutting concern, attempts to help member states and regional economic communities in migration management. In order to contribute to effective health policies, MPFA emphasizes the need for evidence of the links between migration and health, as well as the fact that xenophobia and marginalization aggravate vulnerabilities and conditions that obstruct access to care. It encourages the creation and implementation of inclusive policies, programs, and strategies, as well as the integration of migrants into national systems.

iii) Examples of health related migratory movements

Some migrant workers in Africa, particularly long-distance truck drivers, miners, and fisherfolks, have been found to have higher levels of stress. HIV/AIDS vulnerability (e.g., Kissling et al., 2005; Morris and Ferguson, 2005, IOM, 2010; IOM, 2007). The areas, which are most strongly afflicted by HIV are frequently related to long-term mobility, near major transportation routes, or in the areas around the countries' borders, despite the fact that there is no epidemiological link between the migratory movements and HIV. Inequity, insufficient social protection, violations of human rights, stigmatization and discriminatory policies, as well as behavior changes associated with mobility and their work, such as higher-risk behavior due to long absences from home or dangerous working conditions, make these groups more vulnerable (Mosca et al., 2012; Deane et al., 2010).

On the other hand, mapping has indicated that migratory movements and malaria transmission are potentially linked. Although there is limited or no local transmission of malaria in Nairobi, Kenya, the disease remains a prevalent source of morbidity, owing mostly to migration from greater endemicity places such as Lake Victoria. Movement to and from malaria-endemic areas is influenced by a variety of factors, including infrastructure, deforestation, and political instability. Poverty, which can enhance exposure through poor housing and clothes, insufficient prevention measures, high-risk job conditions, and inadequate access to care are further contributors, particularly in border areas. Understanding socioeconomic and environmental factors, as well as population movement, is therefore critical for malaria management and elimination (Ward et al., 2013; Pindolia et al., 2014).

Figure 4. Illustration of Lake Victoria and countries adhering



Source: ResearchGate

In case of tuberculosis, studies on migrants migrating from high- to low-incidence areas show that risk is higher among migrant households and communities, but not among host populations (Aldridge et al., 2016). Migrants are more likely to be exposed due to poor living conditions in overcrowded, poorly ventilated spaces, occupational risk (e.g., nearly one-third of TB infections among migrant mineworkers in Southern Africa are thought to be linked to mining), as well as increased vulnerability to HIV and malnutrition, both of which are risk factors. Mobility and impediments to care can also cause delays in diagnosis and treatment, and a lack of ongoing care can result in treatment default. Default raises the risk of developing multidrug-resistant tuberculosis (MDR-TB), resulting in increased morbidity and death as well as higher expenditures. MDR-TB control will remain a challenge without rapid diagnosis, treatment, contact tracing, and cross-border continuity of care for migrants and communities (IOM, 2012)

It is of utmost importance not only to recognize the vulnerability of migratory population, especially related to the enjoyment of the right to health, but also to

analyze the correlation of its recognition and provision at international and regional primary and secondary law with migratory movements. Despite this, migration health is frequently overlooked when making judgments about migration governance (Wickramage and Annunziata, 2018). Migration health, on the other hand, must be considered by the global health community and African countries as a crucial component of efficient migration management. Furthermore, to guarantee that the mobility factor is taken into account, migration health must be embedded as an applied lens within health programming goals. This perspective can be applied to a variety of objectives, including the African urban health agenda and commerce and development. As a result, the needs of migrants and communities affected by migration should be included in the delivery, financing, policy, planning, implementation, and evaluation of health services (Siriwardhana et al., 2018)

Investing in migration health will reduce the negative health effects of migration while also ensuring Africa's long-term migration gains. Technical capacities for migration health must be established at the national and regional levels through intersectoral measures in order to achieve this. Interministerial efforts to enhance migration health through evidence-based techniques have yielded favorable development trajectories and mitigated health hazards in other regions (IOM, 2017). The implementation framework for WHA Resolution 61.17 provides as a roadmap to support people-centered, inclusive, and responsive health systems that guarantee migrants have access to quality health services. Improved research and data will help to promote evidence-based policy and practice, migrant health monitoring, and migration health programs.

Across sectors, policy and legal frameworks that mainstream migration and health and are compliant with international law are vital. Both research and policy can help create an atmosphere that is conducive to migrant health by addressing xenophobia, exclusion, and damaging misconceptions and stereotypes. These initiatives, as well as health security, can be aided by partnerships, conversations, and cooperation across sectors and countries (WHO and IOM, 2010, 2017).

In conclusion, while there has been progress in the development of policies and frameworks towards recognizing and mitigating the protection and legal gaps faced by climate refugees, more still need to be done at the regional, continental and state level.

There is a need to specifically integrate disaster and climate displaced persons into the international refugee law framework by allowing increased innovative and expansive interpretation of current international laws. It is imperative that no climate refugee suffers from these legal protection gaps we can point out and correct now. The existing bilateral and regional protective programmes and provisions that have been used to protect climate refugees need to be strengthened to not only have a foundation in law but also to influence the development plans and policies of regional governments.

Conclusions and recommendations

It is essential to realize that the conclusion of this analysis would focus on identifying the existing gaps in International Refugee Law and International Human Rights Law, both treaty law and international jurisprudence, related to environmentally displaced persons. Unfortunately, none of the currently existing legal frameworks provides a total formal protection of those people forced to flee due to environmental or climate change events (K. Walter, 2010). The persistent use of the notion "environmental refugee", despite the good intentions, has no legal basis, is even misleading and puts extra obstacles to the pursuit of the appropriate solution.

Due to the complicated relationship between environmental or climate change factors and human mobility, the current legal and policy responses should be totally reformed in order to provide an at least adequate response to environmentally induced migration (A. Kraler et al, 2011). A substantial difficulty is undoubtedly the multi-causal character of this type of mobility, which means that it is very difficult to identify or establish a direct and determinative link between the environmental or climate event and human movement, as other factors such as social, economic or political would also exist. Moreover, there is still scientifically unclear whether and to what extent climate change events would affect human mobility. However, it is obvious that the regions and the populations affected more by environmental or climate change events, are those already vulnerable and have very low or even any adaptation capacities. Noteworthy is the distinction between rapid- onset disasters, which are usually characterized by extreme weather events, and slow-onset environmental or climate events, which could be identified from drought, seal-level

rise, land degradation or desertification. In the last case, the establishment of the causal link among the climate event and human mobility is obviously more complex. It is supported that perhaps the most severe effect of climate change, which is already observed, is the sea- level rise. As a consequence, the populations of the small island states are already facing a partial loss of land, which if not properly reversed, would lead to their disappearance (ibid, p.72).

On the other hand, environmental or climate related events have huge impacts to the enjoyment of fundamental human rights, protected under International Law. International Human Rights Law as a type of complementary protection provides both positive and negative obligations, for both origin and receiving or destination States. The principle of *non-refoulement* in the field of human rights, as it has been interpreted by International and Regional Human Right Courts or human rights bodies, could provide an initial type of protection to environmentally displaced persons, as they are not formally recognized under International Refugee Law and the 1951 Geneva Convention related to the Status of Refugees and its New York Protocol of 1967 (C. Caskey, 2020). On the other hand, it should not be disregarded that environmentally induced displacement doesn't force people to always cross an internationally recognized border and flee to the territory of another State, but there are estimates that the largest amount of people, nearly 12, 2 million in the African continent alone, are internally displaced.

The 1951 Geneva Convention related to the Status of Refugees as the most fundamental source in the field of International Refugee Law, in Article 1 doesn't include in its definition of refugee, those individuals who are forced to leave due to environmental or climate change induced factors. This definition is exclusively described in Article 1, and no other category of individuals could be eligible to be protected as refugees. In legal and policy debates it is usually expressed that a possible expansion of the refugee definition would be a response to the protection of environmentally displaced persons. Based on the arguments of the opposing opinion, I personally don't feel that an expansion of the Refugee definition would be the proper solution. It is supported that including this type of mobility in the definition would lead to reducing the protection granted to the other types of refugees and would overburden the resources of the destination States. This would adversely affect those already eligible for refugee protection and any response should be based on the

"principle of the equitable division of responsibility" (T. Mehta, 2012). Additionally, even if an extension or amendment of the refugee definition could be realized, it would be a dead letter and will still exclude the vast majority of those affected environmental hazards, who are estimated to be displaced internally. On the contrary, any proposal should be focused on the particular characteristics of this type of movement, such as its collective nature and the costs that a future protection system will bring to the destination States.

Similarly unrealistic is the expressed opinion of the establishment of a total new framework in a form of a Convention, applicable only to environmental or climate change displacement, creating specific positive and negative obligations to both origin and destination States (G.C. Bruno et al, 2017). The political unwillingness and the totally contradictory interests of the developed and developing States would impede such a solution.

Besides the already mentioned options, there is also the opinion of an additional protocol, which will explicitly refer to climate changed forced displacement, to the United Nations Framework Convention on Climate Change (UNFCCC). The debate for this protocol has been firstly initiated with the inclusion of a paragraph on climate induced migration and planned relocation in the Cancun Adaptation Framework, which has the objective to enhance action on adaptation, including international cooperation and coherent consideration of matters relating to adaptation under the UNFCCC.

Instead of dealing only with clearly theoretical arguments of the use of the appropriate terminology or even the expansion of definitions or the establishment of new Conventions or adding extra protocols to the already existing ones, it would be wiser and more effective to concentrate upon to practical and realistic responses both preventing and repressive. Ways on how to oblige States to mitigate climate change and offer protection with the form of (re)integration or planned resettlement or even temporary responses, which will reduce the high vulnerability of the environmentally affected populations are more than welcome. International cooperation and political will of both developed, developing and underdeveloped States must be more than evident. If the international community would not properly act today, the consequences will be unreversed and destructive (T. Mehta, 2012).

The principle of *non-refoulement* under International Human Rights Law could provide a higher level of protection to those individuals who are forced to move due to environmental degradation reasons. Its content, as it has been interpreted by the International and Regional Human Rights Courts and the competent human rights bodies, is broader than that provided in the 1951 Geneva Convention related to the Refugee Status and has the capacity to provide a level of protection to environmentally displaced persons, as they are not entitled to the protection offered by the Refugee Convention. Hopefully, and after the Teitiota's case and the extremely interesting and innovative dissenting opinions of the Committee Members Duncan Laki Muhumuza and Vasilka Sancin, the nexus between climate change or environmental degradation and the enjoyment of human rights would be formally established and more and more domestic decision-making bodies would receive more seriously their human rights commitments and obligations. The absolute application of Article 3 of the ECHR or Article 7 of the ICCPR should become self-evident and weight should be given to the special circumstances of each case, especially in assessing particular vulnerabilities or children rights.

This paper demonstrates that flaws in the refugee protection regime for climate refugees have existed in the past and continue to exist today. It also claims that the best method to secure climate refugee protection in Africa is for the African Union to operationalize its solidarity and humanistic approach as a sign of its belief in the values of Pan-African cooperation for addressing common continental concerns. Because the obligations specified in the International and Regional Refugee protection system mostly rest on host governments, the African Union and the African states that would be hosting climate refugees should carry this as a moral and ethical burden (Michael Addaney et al, 2019). Using the same method, hosting governments should ensure that the regional refugee protection system's and Human Rights Law's standards of treatment are effectively implemented in the host states through the implementation of relevant legislation and policy measures. Apart from acknowledging and protecting climate refugees in Africa, the world community, particularly rich countries that have contributed significantly to the climate disaster, have a responsibility, in terms of providing financial support to regional efforts according to their contributions to climate change, in order to encourage the state

parties to African Human Rights Treaties to fully commit to the implementation of a value-driven approach.

It's been more than 30 years since environmental migration became a topic of discussion. Scholars and institutions have continued to refer to the protection of this still hazy group of migrants as an urgent and humanitarian issue that must be addressed with prompt, well-planned solutions after two decades. Several UN agreements expressly mention environmental migration, however none of them are legally obligatory. Binding agreements that guarantee protective status to environmental migrants, such as the Kampala Convention, are, on the other hand, underutilized, and the Paris Agreement makes no reference to persons affected by climate change (Chiara Scissa, 2021). This paper intends to summarize the benefits and drawbacks of the most advanced initiatives, as well as recent international declarations, aimed at securing environmental migrants' protection. It will then continue to argue that certain human rights, which are necessary for a decent life, are contingent on a healthy and protected environment. Finally, it is stated that, in view of their international responsibilities to preserve human rights and basic freedoms, states must overcome their procrastination mentality.

Some academics and practitioners claim that the current international refugee concept does not include climate refugees. Climate-induced displacement is mentioned in the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, however it does not restrict migration outside borders. To identify the challenges and prospects in the legal recognition and protection of climate refugees in Africa, this study examines International Human Rights and Refugee Law instruments, particularly the 1951 UN Convention Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee problems in Africa. It concludes that the inadequacies in the refugee protection framework for climate refugees have been for a long time and are still present now (Michael Addaney, 2019). As a result, this paper contends that the best way to assure climate refugee protection in Africa is for the African Union to operationalize its solidarity and humanistic approach as a sign of its dedication to the values of Pan-African cooperation for addressing common continental concerns.

Despite popular narratives on irregular migration from Africa to Europe, relatively little is known about irregular migration in the African context. Based on the data presented above and the many gaps in what is currently available, the following recommendations should be considered as part of any discussion regarding African migration. Quality data on irregular migration is urgently needed. Better data is needed not just on irregular migration flows, but also the profiles and experiences of those people involved in irregular journeys. This requires both an increase in the quantity and quality of collected data and a harmonization of data that are already collected by national authorities. The improvement of these data should be prioritized to provide evidence for informing adequate assistance and protection policies. Despite the reality that there has traditionally been more regular migration within Africa and from Africa to Europe, irregular migration statistics are sometimes sensationalized without context. It is necessary to do a more thorough and contextual study in order to enable an educated debate on migration-related issues, but this demands enhancing national and regional actors' ability to collect and coordinate data. In any discussion of irregular migration, it's important to consider the larger context of African migration. Migration aids in the development of sensible and well-informed answers.

All things considered, the complementary protection provided by the principle of *non-refoulement* under International Human Rights Law is perhaps an appropriate mean to establish at least a fundamental level of protection to the people who are forced to flee due to environmental or climate change related reasons. The range of rights recognized under Human Rights Law is broader than that of the Refugee Convention of 1951, such as the right to family unity or the right to an effective remedy, completely relevant in the case of environmental displacement. We as members of a responsible international community have the moral duty to overcome any theoretical or normative ambiguity or political unwillingness and use our invaluable knowledge in order for an absolute implementation of the existing human rights norms. As the “worst is yet to come”, it is more urgent than ever to overrun the current inadequacies and build a protection agenda based on the principle of sustainability and the desperate call of future generations to enjoy a life with dignity.

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