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MIGRATION AND HUMAN DISPLACEMENT IN THE CONTEXT OF CLIMATE CHANGE: REFLECTIONS ON THE CATEGORY OF CLIMATE REFUGEES

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I. INTRODUCTION – II. CLIMATE CHANGE AND ITS IMPACTS ON MIGRATION – III. INTERNATIONAL LAW AND CLIMATE MIGRATION: THE INTERNATIONAL CLIMATE CHANGE FRAMEWORK – IV. CLIMATE REFUGEES: TOWARDS A LEGAL FRAMEWORK IN INTERNATIONAL LAW – V. CONCLUSIONS

ABSTRACT. As a consequence of the impering productive system in the world, climate change is considered as one of the most controversial phenomena because of its environmental, economical, demographic and social effects which cause, in the end, the displacement and migration of population, specially in the Global South. Nowadays, natural disasters and climate change are factors causing the greatest number of migrant people around the globe. Events such as droughts in the Sahel region, the rising sea levels in the Asian South and Southeast and the disappearance of insular states as Kiribati or Tuvalu give testimony of this condition. In this context, the term “climate refugee” arises to tackle and give an answer to those people who are forced to abandon their homes due to environmental deterioration caused by climate change. Nevertheless, this concept poses a series of challenges and difficulties regarding its implementation in international law of refugees. Thus, the aim is to provide an approximation of a collective, the climate refugees, by analyzing their origins and consequences.

KEY WORDS: climate change, climate refugees, environmental degradation, international environmental law, forced migration, climate vulnerability, fundamental rights.

MIGRACIÓN Y DESPLAZAMIENTO HUMANO EN EL CONTEXTO DEL CAMBIO CLIMÁTICO: REFLEXIONES SOBRE LA CATEGORÍA DE LOS REFUGIADOS CLIMÁTICOS

RESUMEN. Como consecuencia del sistema productivo que impera en el mundo, el cambio climático se presenta como uno de los fenómenos más controvertidos por sus efectos ambientales, económicos, demográficos y sociales, provocando, en última instancia, el desplazamiento y la

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migración de la población, especialmente en el Sur global. Actualmente, los desastres naturales y el cambio climático constituyen factores que causan el mayor número de personas migrantes a nivel mundial. Acontecimientos como la sequía en la región del Sahel, el aumento del nivel del mar en el Sur y Sudeste Asiático, y la desaparición de estados insulares, como Kiribati o Tuvalu, dan prueba de ello. En este contexto, el término «refugiado climático» surge para abordar y dar respuesta a las personas que se ven forzadas a abandonar sus hogares por la degradación ambiental, ocasionada por el cambio climático. No obstante, este concepto plantea una serie de desafíos y dificultades, en cuanto a su implementación en el derecho internacional de los refugiados. Así, se pretende dar una aproximación de un colectivo, los refugiados climáticos, analizando sus orígenes y consecuencias.

PALABRAS CLAVES: cambio climático, refugiados climáticos, degradación ambiental, derecho internacional ambiental, migración forzada, vulnerabilidad climática, derechos fundamentales.

MIGRATION ET DÉPLACEMENT HUMAIN DANS LE CONTEXTE DU CHANGEMENT CLIMATIQUE: RÉFLEXIONS SUR LA CATÉGORIE DES RÉFUGIÉS CLIMATIQUES

RÉSUMÉ: Conséquence de la mise en péril du système productif mondial, le changement climatique est considéré comme l'un des phénomènes les plus controversés en raison de ses effets environnementaux, économiques, démographiques et sociaux qui entraînent, en fin de compte, le déplacement et la migration des populations, en particulier dans le Sud. De nos jours, les catastrophes naturelles et le changement climatique sont les facteurs qui provoquent le plus grand nombre de migrations dans le monde. Des événements tels que les sécheresses dans la région du Sahel, l'élévation du niveau des mers dans le Sud et le Sud-Est de l'Asie et la disparition d'États insulaires comme Kiribati ou Tuvalu témoignent de cette situation. Dans ce contexte, le terme "réfugié climatique" apparaît pour aborder et donner une réponse à ces personnes qui sont forcées d'abandonner leurs maisons en raison de la détérioration environnementale causée par le changement climatique. Néanmoins, ce concept pose une série de défis et de difficultés quant à sa mise en œuvre dans le droit international des réfugiés. Ainsi, nous avons l'intention de donner une approximation d'un collectif, les réfugiés climatiques, en analysant leurs origines et leurs conséquences.

MOTS-CLÉS: changement climatique, réfugiés climatiques, dégradation de l'environnement, droit international de l'environnement, migration forcée, vulnérabilité climatique, droits fondamentaux.

I. INTRODUCTION

The purpose of this paper is a first study of the figure of the "climate refugee" and its applicability in the current legal framework, in terms of asylum. This term arises as a consequence of the search for the recognition and effective protection of the rights of climate migrants, specifically in the international normative framework of human rights, migration and climate change. We will also focus on the phenomenon of climate change, as it is the determining factor behind so-called climate migration, highlighting the concept of climate vulnerability, and the normative framework on climate change. The work, which deals with such complex and multi-causal phenomena

as migration and climate change, addresses two major global crises: migration and the environment.

As the United Nations High Commissioner for Refugees (UNHCR) has been explaining for years, “more and more people are being forced to move because of extreme shortage, environmental degradation and climate change”². The motivation for this paper arises from whether, for people migrating for environmental and climatic reasons, there are legal mechanisms in international law to which they can avail themselves, namely the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The gravity of the situations faced by climate migrants invites analysis.

This paper focuses, firstly, on the phenomenon of climate change as a key driver on migrations by highlighting the term “climate vulnerability”. Secondly, we underline the importance of the international climate change framework and its link to the protection of climate migrants. Finally, we introduce the term “climate refugee” for a brief analysis on its viability under the 1951 Refugee Convention and its 1967 Protocol.

II. CLIMATE CHANGE AND ITS IMPACTS ON MIGRATION

Climate is the consequence of a series of diverse interactions between the elements that make up the climate system (the atmosphere, the land surface and its vegetation, the oceans, the ice sheets, etc..) and in turn, and most importantly, it is a determining factor for the composition of the natural environment and for all life on Earth. Focusing on climate evolution, the global climate periodically undergoes large oscillations between warm, ice-free phases and icy phases with ice sheets. Thus, heavy floods, periods of drought and glacial episodes have been occurring on Earth throughout its history and have had a definite influence on the evolution of life. Despite the importance of natural factors in defining the climates of the past, they play a secondary role in climate change since the end of the 20th century, i.e., according to the IPCC

² Statement by António Guterres, United Nations High Commissioner for Refugees, to the Third Committee of the United Nations General Assembly, 62nd Session (New York, 8 November 2007) See: <http://goo.gl/MvJLZz>.

report, it is anthropogenic greenhouse gas (GHG) emissions that have made the greatest contribution to current global warming³.

According to the IPCC, the warming of the climate system in the last decades of the 20th century and the current century is irrefutable and the likelihood that it is largely due to human activity is high, with increasing GHG concentrations being the main cause. Furthermore, at the global level, GHG concentrations have increased, the atmosphere and ocean have warmed, snow and ice amounts have decreased and sea levels have risen⁴. In the following, the phenomenon of climate change is presented as a determining factor for migratory movement.

1. The role of climate change as a key driver on migration

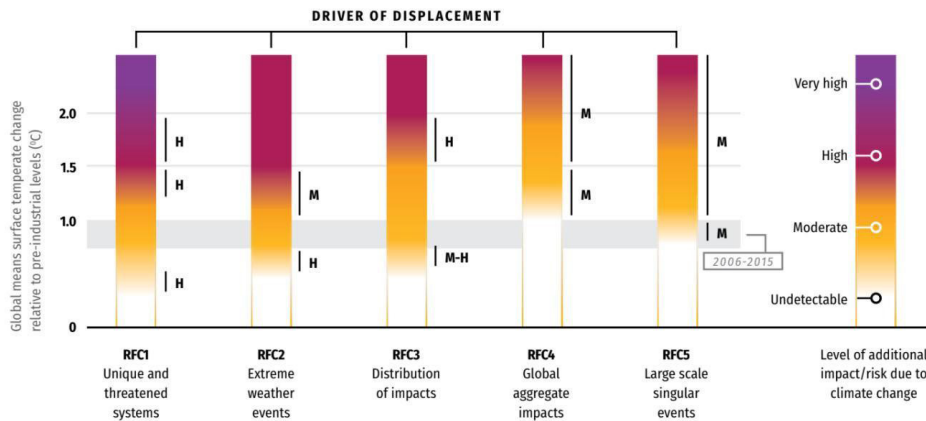
In order to understand the impact of climate change as a cause and origin of the migration phenomenon, it is worth paying attention to the Figure number 1.

The projected scenario and future climate change impacts reflect an alarming picture. The main risk categories (“reasons for concern”⁵) become

³ IPCC: *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*. IPCC, Geneva, Switzerland, 2007, pp. 39-41.

⁴ If we pay attention to the “Summary for Policymakers” of the IPCC’s fifth report in 2013, they state that the evidence that the influence of human activities has been the main cause of the warming under study since the mid-20th century has increased compared to the previous report in 2007. This report acknowledges among other statements that “[...] it is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century”. IPCC: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 2013, pp. 17-19.

⁵ The five integrative reasons for concern (RFCs) provide a framework for summarising key impacts and risks across sectors and regions, and were originally introduced in the IPCC Third Assessment Report. They include: RFC1: Unique and threatened systems: ecological and human systems that have restricted geographic ranges due to climate-related conditions (such as coral reefs, the Arctic and its indigenous peoples, mountain glaciers and biodiversity hotspots); RFC2 Extreme weather events: risks or impacts to human health, livelihoods, assets and ecosystems from extreme weather events such as heat waves, intense rainfall, droughts and associated wildfires and coastal flooding. RFC3 Distribution of impacts: Risks or impacts that disproportionately affect particular groups due to unequal distribution of physical climate change hazards, exposure or vulnerability. RFC4 Aggregate global impacts: global monetary damage, global-scale degradation, and loss of ecosystems and biodiversity. RFC5 Large-scale

Figure 1: Reasons for concern that might lead to displacement risks

Source: IPCC SR 1.5C, 2018

more likely if global annual average temperatures rise more than 1.5°C above pre-industrial levels. However, current emission reduction pledges place the world in a reality towards 3°C or more by the end of this century, moving the world into a high or very high risk sphere, as indicated in the graph. It is notable that some of these risks are causing both displacement and migration of people, such as extreme weather events and sea level rise. Thus, the risk of displacement increases significantly as climate change worsens and temperatures continue to rise.⁶

singular events: relatively large, abrupt and sometimes irreversible changes in systems caused by global warming. Examples include the disappearance of major ice sheets, such as those in Greenland or West Antarctica (with possible long-term sea level rise of several metres). IPCC: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*. World Meteorological Organization, Geneva, Switzerland, 2018, p. 13.

⁶ According to the World Bank, climate change is on a disastrous trajectory causing widespread human and ecological suffering. For example, it is estimated that a 4°C warming would cause more than 80% of the world's population to be affected by climate change impacts occurring simultaneously in multiple sectors, such as agriculture and water. World Bank. 2013. *The*

We can say that migration is a heterogeneous phenomenon, the particularities of which will depend on the specific scenario or case in which we are moving. Thus, in climatic or environmental migration, environmental degradation, resource depletion and natural hazards play an important role as “push factors”, often filtered through contexts of poverty, food deficiencies, conflicts and social inequalities. Among the multitude of factors driving the displacement of people, climate change has emerged over the years as one of the main causes of displacement and is set to be the primary driver of migration in the future.⁷ Climate change triggers severe environmental, ecological and socio-economic impacts that make the lives of people living in affected areas very difficult.⁸ Besides, there is no doubt that this phenomenon is a key factor in stimulating the migratory movements of the last decade.⁹

Climatic migrations are heterogeneous in nature, and their singularities are not easy to identify. However, they share a number of characteristics. We

World Bank Annual Report 2013. Washington, DC, p. 12. Moreover, according to a report by the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation, if a 4°C scenario is reached by 2100, hundreds of millions of people will be affected by coastal flooding, as well as by drought and displacement due to land loss. In addition, hurricane and flood risks are projected to increase, leading to both displacement and migration. Subsidiary Body for Scientific and Technological Advice and Subsidiary Body for Implementation. *Report on the structured expert dialogue on the 2013–2015 review*, 2015, pp. 67-75. See: <https://unfccc.int/resource/docs/2015/sb/eng/inf01.pdf>.

⁷ According to the 2012 UN Secretary General’s report *Migration and Development*, in relation to environmental migration, it is rarely the only reason people move, but often one of the reasons for migration, along with political, social, economic and demographic factors. United Nations. *International Migration and Development: Report of the Secretary-General*. Sixty-eighth session. Doc. A/68/19, 2012, p. 7. See: <https://www.acnur.org/fileadmin/Documentos/BDL/2014/9734.pdf>.

⁸ Based on Walsham’s analysis, climate change is expected to affect migration in at least four ways: 1) through the intensification of natural disasters (both sudden and slow onset), 2) the detrimental consequences of increased temperature, climate variability and other effects of climate change on livelihoods, public health, food security and water availability, 3) sea level rise, which will make coastal areas uninhabitable, and 4) competition for natural resources, which will lead to increased tensions, including conflict, and 5) the impact of climate change on migration. WALSHAM, M. *Assessing the Evidence: Environment, Climate Change and Migration in Bangladesh*. Dhaka: OIM, 2010, p. 9.

⁹ The International Organizations for Migration, in its *World Migration Report 2020*, admits “that the number of people migrating as a result of environmental factors and climate change has been steadily increasing”. IOM. *World Migration Report 2020*, Geneva, 2020, p. 257.

say that they are involuntary movements, i.e. there is a set of forces that push them more or less directly to leave their homes. In turn, these movements can be temporary, permanent or circular. Another characteristic is that they are multi-causal, i.e. environmental factors interact with political, economic and demographic factors.¹⁰ Lastly, another characteristic of climate migration that deserves special attention is climate vulnerability, which we will analyse in the following section.

2. Climate vulnerability: Concept and brief case studies

Climate vulnerability can be defined as the degree or level to which a particular population, individual, group of people or region is susceptible to the adverse effects of climate change, including climate variability and extremes¹¹. Thus, it is an element that will depend on a sum of combinations among which we can add geological, biophysical, technological conditions, as well as social and political injustices.

As we will see below, notwithstanding the effects of climate change occur everywhere in the world, its impacts will vary from region to region, and its consequences will not be the same for different social groups, depending on various factors (age, income, gender, ethnicity).

If we look at the World Economic Forum's *The Global Risks Report 2020*, we can see that the consequences that converge and give rise to climate migration (natural disasters, biodiversity loss, extreme weather, anthropogenic disasters and failure of climate action) are in the top 10 risks in terms of probability and impact¹². In addition, the study notes that countries will experience losses

¹⁰ Goodwin-Gill and McAdam state that; “people are on the move due to extreme poverty, the collapse of traditional livelihoods in a context of globalisation and rapid urbanisation, the effects of climate change, natural disasters and environmental degradation, which often exacerbate competition for scarce resources. These various factors often overlap or reinforce each other”. GOODWIN-GILL, G and MCADAM, J. *Climate change, disasters and displacement*, Geneva, UNHCR, 2017, p. 5. See also: HOSSEIN, A., & ELSADING, E. *Climate Refugees: The Climate Crisis and Rights Denied*. Berkeley, CA: Othering & Belonging Institute, University of California Berkeley, 2019, pp. 17-19.

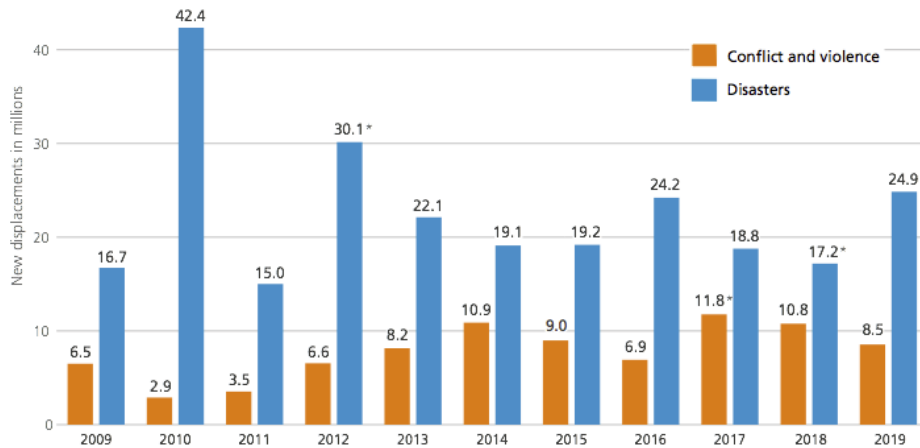
¹¹ IPCC, *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation. Summary for Policymakers*, Switzerland, 2011, p. 67.

¹² WEF, *The Global Risks Report 2020* (15th ed.), Geneva, 2020, pp. 3-5.

unevenly, with the risk of exposure, disaster and economic costs being higher in smaller and poorer economies¹³.

The Internal Displacement Monitoring Centre's (IDMC) annual report, Global Internal Displacement Report 2020, provides the following graph, from which we can conclude:

Figure 2: New displacements due to conflict, violence and disasters globally (2009-2019)



Source: IDMC (2020)

First, the trend in relation to internal displacement is that it occurs more as a result of disasters than conflict and violence, with the number of people displaced by disasters in 2019 being the highest since 2012.

Secondly, by studying this report, we can conclude that disasters occur and mostly affect regions, countries and communities that were already vulnerable, forcing people with little resilience to leave their homes. We will dwell on this aspect in the case studies.

Third and finally, according to the report, disasters accounted for nearly 3/4 of new displacement worldwide in 2019. More than 95% were climate-related (of 24.9 million disaster displacements, 23.9 million were climate-related and 947,000 were geophysical). Geolocated data shows the Global South (East Asia and the Pacific, South Asia, Sub-Saharan Africa and the Americas) as the most affected by climate change-induced disasters.

¹³ *Ibidem*, p. 31.

For the case studies in relation to the regions most exposed to climate vulnerability, we will choose a number of countries in Asia and Africa as the two continents with the highest incidence of internal displacement due to disasters, according to the IDMC report. Thus, in relation to Asia (East and South), we will begin the analysis by mentioning two countries, **Bangladesh** and **Myanmar**, which have been particularly affected by climate-related issues, with the poorest people bearing the brunt of climate vulnerability.

Bangladesh is one of the most populated and poorest countries in the world, and also one of the most vulnerable to rising sea levels, as 80% of its area is a low-elevation delta. According to an analysis by the Environmental Justice Foundation, the country is extremely vulnerable to climate change, with estimates for 2050 projecting a scenario in which up to 28% of people living on the coast will be forced to leave their homes as a result of a 50 cm rise in sea level, with the country losing 11% of its land area.¹⁴

In relation to **Myanmar**, according to German Watch's 2020 Global Risk Index, it has been the second most vulnerable country to climate change in recent decades (1999-2018). For its part, the IDMC notes that Myanmar recorded 270,000 disaster displacements in 2019 as a result of floods and landslides following monsoon rains, with Mon State being the worst affected. Myanmar is also unique in that it is a country with a significant number of people displaced by conflict and violence. If we add to all of the above that Myanmar is still recovering from the effects of Cyclone Nargis in 2008, which caused material losses to 2.4 million people, we can affirm that climate vulnerability in this country is a real threat.¹⁵

Thus, in this sense, the most vulnerable population, farmers, were the most affected, highlighting the particular insecurity of the poorest countries to climate change and adding to the complex range of factors that push these sectors of the population to leave their homes behind.¹⁶

¹⁴ Environmental Justice Foundation. *On the frontlines: Climate change in Bangladesh*. London, 2017. Besides, see ISLAM, M. M., SALLU, S., HUBACEK, K., & PAAVOLA, J. "Migrating to tackle Climate Variability and Change? Insights from Coastal fishing Communities in Bangladesh", *Climatic Change*, 124(4), 2014, pp. 733-746.

¹⁵ IDMC. *Global Report on Internal Displacement 2020*, 2020, Geneva, pp. 42, 45-46.

¹⁶ See one of the reports of the UN Office for the Coordination of Humanitarian Affairs (OCHA) on the grave situation in Myanmar: <https://reliefweb.int/report/myanmar/myanmar-humanitarian-needs-overview-2020-december-2019>.

Next, for the case study on the African continent, we will focus on the Sahel countries, which have a high level of climate vulnerability. The data provided by the IDMC report (3.5 million people displaced by disasters and almost 5 million displaced by conflict) show the profound instability and insecurity that prevails in this region. We noted earlier that climate migration occurs as a result of a compendium of factors that intertwine environmental, social, political and economic issues, with climate change ultimately being the determining factor behind the migration or displacement of people.

The Escola de Cultura de Pau, in its 2020 report, identifies the African continent as the region with the highest number of active conflicts in the world. The latter reveal situations with equal denominators and differential agents, in which situations of political instability, ethnic, religious and gender conflicts prevail, in addition to the presence of militarised groups. These scenarios of tension, conflict and violence are often complexly intertwined with environmental and climate issues.¹⁷

For a better understanding, we will refer to the report prepared by the Comisión Española de Ayuda al Refugiado (CEAR), under the title *Refugio por causas medioambientales: África en el olvido*. Case study, published in 2018, where we can observe the multi-causality of migration phenomena related to environmental degradation. This report studies four African countries (**Mali, Nigeria, Cameroon and Ivory Coast**) where a multitude of factors of expulsion from the territory are blurred, including: water scarcity, overexploitation of natural resources, land control, political persecution, armed conflicts, gender inequalities and climate change, concluding that no migration is unicausal¹⁸.

From this report, we can conclude that climate vulnerability in Africa is systemic, as we are referring to countries with few coping mechanisms, whose economies are often highly dependent on the agriculture and livestock sector and where the aftermath of climate change (drought, floods) has a much greater impact than in other regions, due to their inability to combat it, either

¹⁷ Escola de Cultura de Pau. *Alerta 2020! Informe sobre conflictos, derechos humanos y construcción de paz*, 2020, Barcelona: Icaria, pp. 31-52. See also: HARARI, M., & LA FERRARA, E. "Conflict, Climate, and Cells: A Disaggregated Analysis", *The Review of Economic and Statistics* 100(4), 2018, pp. 594-608.

¹⁸ CEAR, *Refugio por causas medioambientales: África en el olvido*, 2018, Madrid: Fundación Universidad Autónoma de Madrid, p. 75.

due to lack of funding for sustainable projects, political instability or armed conflict. This ultimately results in the most vulnerable populations¹⁹ having no choice but to migrate, being driven from their homes.

Finally, but not less important, it is worth mentioning the situation of insular states such as **Kiribati** or **Vanuatu**. Their territories are vulnerable to the effects of climate change, especially to sea-level rise²⁰ and cyclones²¹. These phenomena cause human and infrastructure impacts – the destruction or uninhabitability of homes, loss of lives and livelihoods, damage to the economy, increased water insecurity – leading to the displacement of vulnerable populations.²²

Having analysed the phenomenon of climate change and its impact on migration and the movement of people, we will now look at the international

¹⁹ It is important to mention that women face various vulnerabilities, mostly due to their different roles compared to men, i.e. they are motivated by customs and social differences embedded in the population they are born into. The report, published in 2020, by the organisation CARE, under the title *Evicted by climate change. Confronting the gendered impacts of climate-induced displacement*, provides a very detailed overview of the situation of women in the context of climate vulnerability and migration. CARE. *Evicted by climate change. Confronting the gendered impacts of climate-induced displacement*, 2020, Geneva. Besides, another sector that deserves mention is indigenous peoples. The effects of climate change, as well as environmental degradation, affect them in a special way as a consequence of their high dependency and deep-rooted relationship with the environment. See SURVIVAL. *When Survival speaks out it gives us strength. Survival International Annual Report 2020, 2021*, London, p. 5.

²⁰ “[...] The sea level has risen across Kiribati by 1–4mm per year since 1993, compared to the global average of 2.8–3.6 mm per year. Sea level is expected to continue to rise in Kiribati. By 2030, under a high emission scenario, this rise is projected to be in the range of 7–17 cm. The sea-level rise combined with natural year-to-year changes will increase the impact of storm surges and coastal flooding”. WHO. *Health and climate change: country profile 2017: Kiribati*. 2018, Geneva, p. 3.

²¹ IDMC estimates that Tropical Cyclone Harold, which devastated Sanma and Penama provinces in 2020, displaced a quarter of the population, and represents 46 per cent of the total displacement. Thus, more than 80,000 people have been displaced across Vanuatu as a result of Cyclone Herald. IDMC. *Sudden-Onset Hazards and the Risk of Future Displacement in Vanuatu*, 2021, Geneva, pp. 9, 12.

²² In Vanuatu, the high dependency of the local population on fisheries and agriculture (80% of the population engages in subsistence agriculture) shape their vulnerability to climate change. Government of Vanuatu. *Third National Communication to the United Nations Framework Convention on Climate Change*. Vanuatu: Ministry of Climate Change, Government of Vanuatu. 2020, pp. 121-123.

normative instruments on climate change, as well as their connection with migration.

III. INTERNATIONAL LAW AND CLIMATE MIGRATION: THE INTERNATIONAL CLIMATE CHANGE FRAMEWORK

The importance of international law in relation to climate migration lies in the universal nature of both climate change and the migrations linked to it. Thus, climate change is presented as a global phenomenon that negatively affects the entire planet and, in the case of migration, as we saw in the previous section, it occurs in all regions of the world, mostly in the Global South.

Here, we will focus specifically on the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Conferences of the Parties (COP).

The key elements of the Convention, adopted in 1992, are that it is modelled on its predecessor, the Montreal Protocol on ozone layer protection, and, according to CAMPINS ERITJA, the signatory States limited themselves, in this initial phase, to the creation of the general obligations of the Parties, as well as the legal and institutional framework that would allow future actions to be carried out.²³ Thus, the adoption of concrete substantive commitments concerning specific pollution control and abatement measures, as well as the development of more detailed implementation mechanisms, have followed subsequently, under Article 4.2 of the Convention.

Alongside the Convention, there is the Kyoto Protocol, approved in 1997 during the Conference of the Parties in the city of the same name (COP 3). The main objective of this international agreement is to contain emissions of gases that accelerate global warming. The signatory states undertook to reduce emissions of the main GHGs by 5.2% of 1990 levels during the 2008-2012 commitment period. Its main feature is the existence of mandatory targets (in relation to anthropogenic GHGs) for the countries that make up the OECD, in that period, plus others, totalling 37 countries and the European Union.²⁴

²³ CAMPINS ERITJA, M. De Kioto a París: “¿Evolución o Involución de las Negociaciones Internacionales sobre el Cambio Climático?”, *Instituto Español de Estudios Estratégicos*, 15, 2015, pp. 4-6.

²⁴ NAVA ESCUDERO, C. “El Acuerdo de París: Predominio del soft law en el régimen climático”, *Boletín Mexicano de Derecho Comparado*, 147, 2016, pp. 121-125.

The Convention, together with the Kyoto Protocol, established the main legal framework for establishing principles (Convention) and legal rules (Kyoto) on climate change at the international level. This multilateral framework comprises some of the principles of international environmental law of particular relevance to the subject of our work - climate migrants. We refer to the principles of precaution, prevention, intra- and intergenerational equity and sustainable development (article 3, “principles”). Another very important principle contained in the Convention is that of common but differentiated responsibilities.

As we have seen, there is no mention of individuals migrating for climatic reasons. This is due to the limited structure of the Convention itself, as migration was not included in its ultimate objectives, and its bodies and membership were not designed to address this issue. However, this trend was to change after 2010, as the Conferences of the Parties began to give greater importance to the issue of climate migration. Thus, we can highlight the COP 16, which was held in 2010, where the “Cancun Agreements” were adopted.²⁵ and the COP 19, held in Warsaw in 2013, which established the “Warsaw Mechanism” to address loss and damage caused by climate change in developing and vulnerable countries.

At the Paris Summit (COP 21) in 2015, the first universally binding agreement on climate change was adopted. The Paris Agreement is a historic agreement in that it unites the international community as a whole in the ambitious goal of combating climate change, adjusting to its effects and providing aid to developing countries to achieve it²⁶. Its central objective is to maintain the temperature increase below 2°C above pre-industrial levels, limiting the increase to 1.5°C in order to minimise the impact of climate

²⁵ According to Vlassopoulos, the link between migration and climate change first appeared in an official UN document with the adoption of the Adaptation Framework of the Cancun Agreements. In Article 14.f, Parties are encouraged to take the necessary steps to: “take action to enhance understanding, coordination and cooperation on displacement, migration and planned relocation as a result of climate change, where appropriate, at the national, regional and international levels”. VLASSOPOULOS, C. “Defining Environmental Migration in the Climate Change era: Problem. Consequence or Solution?”, In T. Faist & J. Scheade (Eds.), *Disentangling Migration and Climate Change*, Springer, 2013, (1st ed., pp. 145-164).

²⁶ For further information, see: https://unfccc.int/sites/default/files/spanish_paris_agreement.pdf.

change, and basing its legal framework on the figure of national proposals (respect for the capacity of States to make decisions)²⁷.

Moreover, it is worth mentioning the UN climate change conference (COP 23), which took place in November 2017 in Bonn, Germany, and was chaired by the Government of Fiji, where the protection of “climate refugees” was one of the most discussed topics at the summit, and even the creation of a regional “climate refugee” status was raised²⁸, and the Climate Summit, held in Madrid (COP 25), from 2 to 13 December 2019, which reaffirms the intention to join efforts to reach agreements in the search for international protection mechanisms for people who migrate due to climate change²⁹, as well as assistance for the countries that suffer the most from it (“Santiago Network”, “Green Fund”,...).

Finally, we conclude by mentioning COP 26, which took place in Glasgow, from 31 October to 13 November 2021. Despite the claims and requests from international organizations and civil society organizations to agree on measures to protect people who migrate because of climate change³⁰, the agreements reached on mitigation, adaptation, and “loss and damage”, in the so-called

²⁷ According to Jesús Verdú, the Agreement recognises the importance of avoiding, minimising and addressing damages and losses due to the adverse effects of climate change and recognises the need to cooperate and improve understanding, action and support in different fields, such as early warning systems, emergency preparedness and risk insurance. VERDÚ BAEZA, J. “A propósito de la cumbre climática de Marrakech: Cuando la solución empieza a ser parte del problema”, *Revista electrónica de estudios internacionales* (REEI), 33, 2017, p. 11.

²⁸ For further information, see: <https://www.unhcr.org/59fc4e065.pdf>.

²⁹ 61 “(...) In fact, the Global Compact on Refugees, affirmed by the UN General Assembly on 17 December 2018, recognizes that “while not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with drivers of refugee movements (para. 8)”. See: <https://www.unhcr.org/5e01e3857.pdf>.

³⁰ The United Nations Network on Migration asked States “to strengthen their commitments and address the reality that people increasingly migrate to adapt to the adverse effects of climate change”. Statement by the United Nations Network on Migration on the occasion of the 26th United Nations Framework Convention on Climate Change Conference of the Parties (COP 26), 29 October 2021. See also: Advisory Group on Climate Change and Human Mobility, with contributions from other civil society organisations. *Calling for Climate Action on Human Mobility*: https://www.nrc.no/globalassets/pdf/brochures/key-messages-cop26/cop26-advisory-group-human-mobility-messaging_2021.pdf.

Glasgow Climate Pact, are insufficient due to their lack of concreteness³¹. However, the Pact agrees to enhance funding and support for developing countries that are particularly vulnerable to the effects of climate change³².

After a brief analysis of current international climate change law, we will now make an initial observation on the complexity of the term “climate refugee” and its viability in current international law.

IV. CLIMATE REFUGEES: TOWARDS A LEGAL FRAMEWORK IN INTERNATIONAL LAW

So far, we have tried to express and configure the reality that exists around the phenomenon of climate migration and those who suffer from it, showing that we are faced with a significant number of people whose fundamental rights are at risk of being violated. This last point will be devoted to the problems surrounding the definition and definition of the term “climate refugee”, and finally, we will take a first look at the viability of this term if it were to prosper under current legislation.

1. The complexity of climate refugee terminology and content

To clarify, for the purposes of this paper, the definitions we will consider apply to both the concept of climate refugee and environmental refugee, since, in our view, there is no practical difference between environment and climate. As we have seen, natural disasters are one of the main facts that are assessed to determine whether a migration is climatic or not. However, according to the analysis provided by the Norwegian Refugee Council, natural disasters are currently presented as phenomena over which human beings have a great relevance, being able to take measures in terms of prevention and to organise

³¹ Andrew Harper, Special Advisor on Climate Action to the UNHCR expresses his concern because “COP 26 has not outlined concrete actions to realize the commitments in these areas, which will be essential to protect vulnerable communities around the world and avoid devastating consequences for millions of refugees, displaced and stateless people”. See: <https://www.unhcr.org/news/briefing/2021/11/618e36334/unhcr-world-must-turn-cop26-words-action-forcibly-displaced-stateless-people.html>.

³² “66. Welcomes the further operationalization of the Santiago network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including the agreement on its functions and process for further developing its institutional arrangements”. See Glasgow Climate Pact: https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf.

themselves in the face of them³³. Therefore, although the term environmental refugee is mentioned, we consider the term climate refugee to be more appropriate, as today's disasters are caused by anthropogenic activities.

Thus, the term environmental refugee first emerged in the early 1970s, when it was invoked by the naturalist Lester Brown, founder of the World Watch Institute. However, it is generally accepted that it was ESSAM EL-HINNAWI, who gave the first formal definition of the term and brought it into the public debate. Thus, in his 1985 United Nations Environment Programme (UNEP) report, he defined them as; “[...] those people who have been forced to leave their traditional habitat, temporarily or permanently because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life”³⁴.

The great debate that originated around the figure of the environmental refugee³⁵, had as its main consequence the emergence of two schools of thought. According to SUHRKE, there are two schools of thought regarding environmental refugees; the “maximalists”, including authors such as El-Hinnawi or Myers, who tend to conceive of the link between changes in the physical environment and human migration as causal and direct, and, on the other hand, the “minimalists”, such as Steve Lonergan and Richard Black, who emphasise the complexity of the interaction between environmental and social systems, questioning the hypothetical direct causal link between environmental change and migration³⁶.

³³ Jan Egeland states that the millions of lives devastated by disasters are more often a consequence of poor man-made structures and policies than the forces of Mother Nature. A flood is not in itself a disaster; catastrophic consequences occur when people are unprepared and unprotected when they strike. NRC. *Time to Act. Millions of People Displaced by Disasters and Climate Change. Perspective: A Humanitarian and International Affairs magazine*, (3), 2015, p. 32.

³⁴ EL-HINNAWI, E. *Environmental Refugees*, United Nations Environment Programme, Nairobi, 1985, p. 4.

³⁵ Due to Norman Myers' work (covering 1989 to 2005) on the massive numbers of environmental refugees he estimated there would be in the future (200 million by 2050). MYERS, N. “Environmental refugees in a globally warmed world”, *BioScience* 43(11), 1992, pp. 752-761. MYERS, N. “Environmental refugees an emergent security issue”, *13th Economic Forum*, 23-27 May. Prague, 2005.

³⁶ SUHRKE, A. “Environmental degradation and population flows”. *Journal of International Affairs* 47(2), 1994, pp. 473-496.

According to MORRISSEY, three criticisms of the “maximalist” position can be identified from the environmental refugee literature. The first is that it problematically labels all migrants as “refugees”, when there are important differences. The second is that it wrongly assumes that the natural environment is easily distinguishable from the social, political and economic context in which they coexist; and the third is that the empirical evidence on migration in response to environmental stress shows that it is dominated by short-distance, temporary and cyclical movements³⁷.

From the above, we can conclude that from the “minimalist” theory, there seems to be a general consensus that environmental characteristics can play a determining role in shaping mobility decisions. We could say that, between the “maximalist” and the “minimalist” school, the debate revolves around the concept of environmental refugee and the figure that revolves around it, as it is accepted by both schools of thought that there is a link between environmental change and human migration. Therefore, the discussion on environmental refugees is presented as a debate on how a relationship is presented and not on the nature of the relationship itself.

The legitimacy of the term environmental refugee is contested and its validity questioned. Thus, Morrissey (2012), notes that authors on both sides of the debate agree that environmental change may play a role in mobility decisions, are willing to accept that other factors matter in these decisions, that mobility (as a strategy to address environmental change) may generate varying degrees of coercion and involve migrations of a variety of temporal and geographical extents. What they disagree on, however, is the extent to which such characteristics validate the usefulness of the concept of environmental refugee. He suggests the terms “proponents” and “critics” to highlight the different degree to which authors (despite their agreement on conceptual issues) disagree on its relevance due to the discursive links it invokes³⁸.

That said, we are presented with two fronts; on the one hand, the debate about the true number of climate migrants and, on the other hand, the notion of the term refugee for people who migrate due to environmental degradation. In relation to the number of climate migrants, we must set aside the discussion

³⁷ MORRISSEY, J. “Rethinking the “Debate on Environmental Refugees”: from “Maximilists and Minimalists” to “Proponents and Critics”, *Journal of Political Ecology*, 19, 2012, p. 39.

³⁸ *Ibidem*, p. 43.

between “maximalists” and “minimalists” (or “proponents” and “critics”) and their various studies on the number of migrants and make use of those data studies that are reliable and can guide us in determining the number of people migrating now and potentially in the future, such as those that come from statistics related to the impact of natural disasters on migratory movements, such as the one provided annually by the IDMC, which we studied above.

Regarding the use of the term refugee to describe people migrating due to climate change, it is more challenging because “critics” argue that their objection to the term environmental refugee lies in how the environmental policy it encompasses has the potential to undermine the protections currently afforded to refugees (as set out in the 1951 Convention), as well as to reinforce growing anti-immigration sentiment. However, the main problem, in our view, is the absence of a normative concept that defines and describes the group of people migrating as a result of climate change, as well as the multitude of terms that exist to denote these people, leading to their lack of protection³⁹.

In our view, an appropriate term to encompass all such persons would be climatic refugee. However, in order to be accepted, it would have to meet the requirements of the 1951 Convention. Thus, in the following section, we will see whether this possibility is real or not.

2. The reality of the concept of climate refugee under the 1951 Refugee Convention and its 1967 Protocol

From the definition of refugee in Article 1A (2) of the 1951 Refugee Convention⁴⁰, we can identify four indispensable conditions on which the

³⁹ The IOM uses the term “environmental migrants” and defines them as; persons or groups of persons who, for reasons of sudden or progressive changes in the environment which adversely affect their life or living conditions, are obliged to leave their usual places of residence or decide to do so either temporarily or permanently, and who move to another place in their own country or abroad. IOM. *Migration and The Environment. Ninety-fourth session*, 1 November, 2007, pp. 1-2. See: https://governingbodies.iom.int/system/files/jahia/webdav/shared/shared/mainsite/about_iom/en/council/94/MC_INF_288.pdf. The UNHCR uses the concept “environmentally induced persons” meaning those people displaced within their own country or who have been displaced across international borders due to environmental degradation, deterioration or destruction. UNHCR. *The State of the World's Refugees 1993: the Challenge of Protection*. Geneva, 1993, pp. 22-23.

⁴⁰ “As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to

granting of refugee status is conditional: Firstly, there must be a well-founded fear of persecution. Secondly, it must be for reasons of race, religion, nationality, membership of a particular social group or political opinion. Thirdly, the person must be outside their country of nationality. Fourthly, the person must be unwilling or unable to avail himself or herself of the protection of his or her country.

In order for the concept of climate refugee to be accepted, it would have to meet the conditions mentioned above. We will now look at each of the requirements of the 1951 Convention, and see whether the climate condition is covered by current refugee law.

The “well-founded fear of persecution” is identified in the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and its 1967 Protocol relating to the Status of Refugees*, published in 1992, as the key and essential part of the refugee definition. In the handbook, it is mentioned that the refugee definition “[...] excludes persons who are victims of famine or natural disasters, unless they also have a well-founded fear of being persecuted for one of the reasons stated above”⁴¹. This condition is a difficult challenge to adapt to in the context of climate change migration because it is very difficult to define the three key elements of “well-founded fear of persecution”. We refer to the persecutor, to the determination of the fact which is the cause of the persecution and to the precise deduction that the fear is well-founded.

On the persecutor, as another key element of “well-founded fears of persecution”, according to Jolly and Ahmad (2015)⁴², “the only way

such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. It must be noted that under Article 1(2) of the Protocol relating to the Status of Refugees, which was adopted in 1967, the words “as a result of events occurring before 1 January 1951” and “a result of such events” were omitted from the definition of refugee.

⁴¹ It also states: “[...] however, be altogether irrelevant to the process of determining refugee status, since all the circumstances need to be taken into account for a proper understanding of the applicant’s case”. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Geneva, 1992, p. 9.

⁴² STELLINA, J., & AHMAD, N. “Climate Refugees under International Climate Law and International Refugee Law: Towards Addressing the Protection Gaps and Exploring the Legal Alternatives for Criminal Justice”, *ISIL Year Book of International Humanitarian and Refugee Law*, 14-15, 2015, p. 240.

current definition could encompass climate displacement is by equating state mismanagement or negligence in environmental matters as amounting to persecution”. Thus, reports on natural disasters have proven the important role of governments in both causing disasters and further impoverishing already vulnerable populations. However, as some authors point out on the nature of persecution, the wide range of kinds of environmental disturbances do not always fit the coercive cause requirement⁴³.

In relation to the second condition – for reasons of race, religion, nationality, membership of a particular social group or political opinion – the UNHCR report, *Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees*, published in 2001, states that “the key to qualifying a person as a refugee is the fear of persecution on a Convention ground”. Thus, looking at the grounds provided for in the 1951 Convention, the only ground that could be used to include climate migrants would be “membership of a particular social group”. We must bear in mind that it is the populations of the impoverished nations of the Global South who are most affected by climate change, and they can be considered as a “particular social group”⁴⁴.

However, it would be very difficult to prove that climate change is discriminatory. That is, the consequences of climate change are not, a priori, linked to particular characteristics of a person, such as nationality or race. As some authors point out, it is a very difficult task to argue that people harmed by climate change constitute a particular social group, since the law requires that the group must be united by a specific, invariable characteristic, rejecting the risk of persecution as the sole reason for the group’s exclusion⁴⁵.

⁴³ ESPÓSITO, C., & TORRES, A. “Cambio climático y derechos humanos: el desafío de los “nuevos refugiados”, *Revista de Derecho Ambiental de la Universidad de Palermo*, 1, 2012, p. 18.

⁴⁴ Kraler, Katsiaficas & Wagner state that; “(...) the impacts of climate change are unevenly distributed and are most heavily felt in poorer countries. This bigger impact is partly because of greater exposure to climate-related hazards (such as flooding or droughts), but to a large extent also because of greater vulnerability (e.g. importance of agriculture for livelihoods and economies) and more limited resilience (...)”. KRALER A., KATSIAFICAS, C., & WAGNER, M. *Climate Change and Migration. Legal and policy challenges and responses to environmentally induced migration*. Brussels: Policy Department for Citizens Rights and Constitutional Affairs, European Parliament. 2020, p. 62.

⁴⁵ McADAM, J. “Climate Change Displacement and International Law”, *In Side Event to the High Commissioner’s Dialogue on Protection Challenges*, 8 December, 2010, p. 2.

Thirdly, there is the reason that the person is in a third country, and there is no exception to this rule⁴⁶. This is a major problem, as most climate migrants move within their own countries, without crossing any borders. However, as international organisations and authors point out, there will be situations where people are forced to cross international borders because, in the aftermath of disasters, these are their only escape routes⁴⁷.

However, the belief that most climate migrants do not cross borders into other countries is not entirely true. According to UNHCR's report, *Global Trends. Forced Displacement in 2019*, there were more than 21 million internationally displaced people⁴⁸. Of this figure, three-quarters or more refugees were hosted by countries neighbouring their countries of origin, with 73% of cross-border IDPs fleeing to neighbouring countries and 27% to non-neighbouring countries in 2019⁴⁹.

Fourthly, there is the condition that the person is unwilling or unable to avail himself or herself of the protection of his or her country. In line with UNHCR (1992), "ineligibility for such protection implies the existence of circumstances beyond the control of the person concerned" and furthermore, "(...) the term 'unwilling' refers to refugees who refuse to accept the protection of the authorities of the country of their nationality". It is the case here that the majority of climate migrants do not leave because they do not want to avail themselves of the protection of their countries.

Thus, most people who flee their countries as a result of climate change have no desire to leave their homes because they do not face persecution from their countries⁵⁰. For instance, climate migrants from island states argue that

⁴⁶ UNHCR, *Handbook on Procedures and Criteria... cit.*, 1992, p. 20.

⁴⁷ See UNHCR, *Climate change, natural disasters and human displacement: a UNHCR perspective*, Geneva, 2008, p. 4. See also PAJARES, M. "Las dos fases de las migraciones climáticas", *Migraciones climáticas*, 2019.

⁴⁸ The UNHCR's report argues "climate change and natural disasters can exacerbate threats that force people to flee within their country or across international borders. The interplay between climate, conflict, hunger, poverty and persecution creates increasingly complex emergencies. For example, food insecurity may become a major driver of conflicts and displacement [...] weather extremes and economic turbulence contributed to several disturbing trends". UNHCR, *Global trends. Forced displacement in 2019*, Geneva, 2020, p. 12.

⁴⁹ *Ibidem*, pp. 8, 22-23.

⁵⁰ In this regard, Robinson (1953), quoted by Kälín & Schrepfer, comments that "[...] someone is not a refugee in the case of "events" which are being fought by the authorities, because

it is the actions of other states that ultimately force their relocation, not the actions of their own governments.

Consequently, it can be argued that the refugee concept in the 1951 Convention was not designed to protect individuals migrating as a result of climate change, although the Convention would allow protection for this group, as long as they could create a connection with the reasons for persecution we have seen, in addition to the other requirements.

V. CONCLUSIONS

This paper has highlighted the reality and particularity of people migrating as a result of environmental degradation caused by climate change. These people who flee their homes as a result of natural disasters, predominantly caused by anthropogenic factors, lack a legal category, and the term “climate refugee” is used to identify this group and highlight the serious situation of violation of fundamental rights that they suffer.

Environmental degradation leads to a lack of resources and poverty among the population, which has no other option but to migrate to another territory to ensure its subsistence. Climate change thus emerges as a determining factor, directly linked to population movements. Climate change is directly or indirectly due to human activity, which modifies the composition of the earth’s atmosphere and adds to the natural mutability of the climate, studied over similar time cycles.

The populations of the global South are the most exposed to the adverse consequences of climate change, which exacerbate their poverty and precariousness. Climate vulnerability, i.e. the degree to which people are able to cope with the effects of climate change, is of great relevance here, with the elderly, women, children, indigenous communities and impoverished people being the groups most exposed and vulnerable to climate change. Other factors such as biophysical, geological and technological conditions, social inequalities and institutional functioning also play a role in climate vulnerability.

in such cases there would be no reason why a person who possesses the nationality would not be willing to avail himself of the protection of his country”. KÄLIN W., & SCHREPPFER, N. “Protecting People Crossing Borders in the Context of Climate Change. Normative Gaps and Possible Approaches”, *Legal and protection policy research series*, n° 24, 2012, p. 32.

Climate migration is a heterogeneous phenomenon, but there are certain characteristics that identify it: it is an involuntary, multi-causal movement that takes place in regions where environmental degradation and resource scarcity reach very high levels. It is important to note that climate migrations are multi-causal, as environmental causes are combined with social, political and demographic factors, sometimes even with scenarios of violence and conflict. However, if these population movements are called climatic for a reason, it is because the determining factor behind them is the effects of climate change.

International climate change law; the 1992 UN Framework Convention on Climate Change and the 1997 Kyoto Protocol, do not include among their objectives the regulation and protection of people migrating due to climate change. However, since the 2010 Conference of the Parties in Cancún (COP 16), there has been a change in trend, as it is the first time that a UN document has linked climate change with migration, alerting us to the problem of climate migrants. Thus, since then, climate migrations have occupied an important place in these spaces, being enshrined in the 2015 Paris Agreement as a phenomenon that must be regulated. However, the figure of the climate migrant is not currently included in any of the United Nations climate change instruments..

The concept of the environmental refugee emerged 36 years ago through a UNEP report by Professor Essam El-Hinnawi, with the aim of bringing the situation of people migrating due to environmental degradation into the public debate. However, to this day, a number of important elements remain unresolved in the area of climate migration. There is no internationally recognised definition, problematic numbers to identify this group and, at the legal level, there is still disparity of opinion and confusion about their protection.

The term we refer to in our paper, “climate refugee”, has been analysed in order to see if it has a place in international refugee law. In relation to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, we state that the current refugee definition does not include environmental and climate issues as grounds for refugee status. However, there is the possibility that a person may qualify for asylum status on the grounds for which it provides, the original cause being environmental or climatic. This is the case in the African

region, where the control and supply of fertile land and drinking water has triggered conflict, in countries such as Sudan, Ethiopia, Mali, etc...

The emergence of the term “climate refugee” reflects a transformation in the drivers of human mobility in the 21st century. Notwithstanding the lack of an international definition for people who leave their homes due to environmental degradation, we should not overlook the importance of defining a normative framework for this group. This paper, which deals with two global crises — the environmental and the migratory — demonstrates the complexity of the reality of climate refugees and their inclusion in international refugee law and the international climate change framework.

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