

WHO IS A REFUGEE? A PHILOSOPHICAL ACCOUNT

by

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ABSTRACT

This thesis comprises two sections: the first section considers who is a refugee and who is not a refugee; and the second section illustrates the necessity of amending the present international laws and conventions to include other people who should also be recognised as refugees. The critical issue regarding the definition of a refugee, is whether or not there is adequate evidence concerning the current understanding of the notion of who a refugee is. Therefore, in order to reach these goals, this thesis is divided into five chapters. The first chapter explores the definitions pertaining to what it means to be a refugee. The second chapter takes into account the different types of victims that are excluded from the notion of refugee. The third chapter considers the consequences of having a restricted understanding who qualifies to be a refugee. The fourth chapter provides alternative solutions that would assist in providing a more comprehensive definition. Furthermore, chapter five discusses the necessity to further expand the refugee concept to include other forms of victims that are not already included. Overall, this thesis seeks to support expansion of the term 'refugee' since the reasons for forced migration have changed, and individuals are not only fleeing from individual persecution, for instance, but from other situations that can be considered to fall under forced migration. Consequently, extending the definition of the term 'refugee' should occur, because refusing to consider revising the term amounts to a refusal to show acceptance and empathy to today's other migrants who are also experiencing survival challenges in their home countries.

TABLE OF CONTENTS

INTRODUCTION	6
1. The question of identification: who counts as a refugee?	6
2. The necessity to expand the definition of who a refugee is	6
3. Views regarding the necessity to expand the definition of who a refugee is.....	7
4. Outline of thesis.....	10
CHAPTER ONE: EXPLORING AND UNDERSTANDING THE CONCEPT OF REFUGEEHOOD.....	12
1.1 Introduction	12
1.2 Political understanding of the global factors regarding refugeehood	12
1.3 A common sense definition of a refugee.....	13
1.4 The legal and political definition of a refugee.....	17
1.5 Conclusion.....	22
CHAPTER TWO - VARIOUS TYPES OF PEOPLE IN NEED THAT ARE EXCLUDED FROM THE DEFINITION OF REFUGEEHOOD	24
2.1 Introduction	24
2.2 The implications of the Organisation of African Unity's definition of a refugee.....	25
2.3 The UN's 1951 Refugee Convention's definition of a refugee.....	26
2.4 Internally displaced persons.....	28
2.5 Environmental refugees and the exclusion of people due to various circumstances.....	30
2.6 Economic migrants vs. political refugees.....	33
2.7 The immorality of distinguishing between refugees and economic migrants	34
2.8 War and civil strife and the importance of change	38
2.9 Conclusion.....	39
CHAPTER THREE - IMPLICATIONS OF A LIMITED UNDERSTANDING OF WHO COUNTS AS A REFUGEE.....	41
3.1 Introduction	41

3.2	Part I: the implications and consequences of not expanding the refugee definition	42
3.2.1	Definition of human trafficking.....	42
3.2.2	Definition of smuggling.....	43
3.2.3	The difference between smuggling and human trafficking.....	44
3.2.4	The importance of human security	46
3.3	Part II: Why it would be best not to expand the refugee definition.....	47
3.3.1	Refugee law should not be extended to other types of victims.....	48
3.3.2	Another objection against the non-expansion of the refugee definition.....	50
3.3.3	Seven reasons why the UN's 1951 Refugee Convention's definition of a refugee should not be expanded	51
3.3.4	How expanding the refugee definition could cause more damage than good	53
3.3.5	The notion of self-determination and the problem of absorbing a large influx of refugees.....	53
3.4	Conclusion.....	55
CHAPTER FOUR - A MOVE TOWARDS A COMPREHENSIVE DEFINITION OF REFUGEE AND THE ALTERNATIVE SOLUTIONS FOR THE DEFINITION		58
4.1	Introduction	58
4.2	Part I: Towards a comprehensive definition of the concept of refugeehood	59
4.2.1	The tools that are needed.....	60
4.2.2	The OAU Convention and the Cartagena Declaration's definitions of a refugee	62
4.2.3	The problem of non-refoulement and the struggle to cross other international borders.....	64
4.2.4	Constraints in the UN's 1951 Refugee Convention's definition of refugee.....	66
4.3	Part II: Alternative solutions to expanding the current refugee definition	68
4.3.1	Proposal of a new definition	70
4.4	Conclusion.....	71
CHAPTER FIVE - THE IMPORTANCE OF EXPANDING THE REFUGEE DEFINITION.....		72

5.1	Introduction	72
5.2	The importance of expanding the UN’s 1951 Refugee Convention refugee definition to recognise and include other vulnerable and at-risk migrants	73
5.3	Scholars’ differing views of the UN’s 1951 Refugee Convention’s refugee definition.....	74
5.4	The definition of a refugee should reach beyond the confining criterion of persecution	75
5.5	All victims need a safe-haven.....	77
5.6	The importance of expanding the UN’s 1951 Refugee Convention’s refugee definition.	77
5.7	Conclusion.....	79
	REFERENCES.....	81

PREFACE

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Furthermore, this thesis is devoted to those it ultimately makes reference to, that is, the countless number of people who should also be included in the definition of 'refugee'.

INTRODUCTION

Two philosophical and political questions are fundamental to interrogating the literature on refugees. The first is to ask who counts as a refugee, and the second is to question the necessity of expanding current international laws and conventions to include other types of victims who should be considered as refugees. The core issue in the on-going debate about refugees, which will be analysed in this thesis, deals with the sufficiency of the current understanding of the concept of refugee.

1. The question of identification: who counts as a refugee?

At present, the United Nations' (UN) 1951 Convention Relating to the Status of Refugees provides a clear answer to the first of the above questions. In this convention, the UN states that refugees are persons living outside of their country of citizenship or residence who have a well-founded fear of suffering persecution at the hands of their government due to their race, religion, nationality, membership of a certain social group, or political opinion (United Nations High Commissioner for Refugees, 14: 2001). This account of who is considered to be a refugee is not comprehensive enough because it fails to acknowledge that the events or circumstances that result in people becoming refugees are extremely diverse. For instance, there may be certain political occurrences that could result in a person becoming internally displaced, and this is problematic, as according to the UN's 1951 definition of who a refugee is, an internally displaced person (IDP) would not count as a refugee, because the definition expects a refugee to be outside of his country. This means that IDPs are not included in the current definition of who qualifies as a refugee. In addition, the UN's refugee definition fails to cover the dire circumstances of people who are escaping from natural disasters, generalised violence such as war and civil strife, of economic migrants attempting to escape poverty, or essentially, of stateless people. This is certainly problematic because by excluding these people, the concept of refugee is empty of meaning. The consequence of the exclusion of the above displaced people and migrants is that the definition of refugee remains narrow in its meaning making it difficult for other displaced and persecuted people to be recognised as refugees.

2. The necessity to expand the definition of who a refugee is

The second question in the literature, which deals with the necessity to expand current international laws and conventions to include other types of displaced and persecuted people

who should be considered as refugees has been debated and discussed by various scholars. Whereas some scholars propose that the UN's definition of refugees should be expanded, there are other scholars who do not believe that this expansion is necessary. As a result of this scholarly disagreement on who qualifies to be termed a refugee, it has become imperative to ask what would be an adequate definition of the term 'refugee'.

Answering the above question would entail providing a clear definition that simultaneously balances accommodating those people experiencing dire conditions and not over-burdening various states by forming a definition that is too broad. However, even though it is acknowledged that it is difficult to create such a balance, scholars should still persist in aiming for such balance in defining the term. Nonetheless, before I consider what might be an acceptable definition for the notion of refugee, it is vital to consider the various views on whether or not the refugee definition requires further elaboration.

3. Views regarding the necessity to expand the definition of who a refugee is

One of the scholars who believes that the expansion of the definition of a refugee is necessary is Andrew E. Shacknove, who takes issue with the two questions that characterise the discussion of refugees in the extant literature. He argues that the definition of what constitutes a refugee is problematic, his main argument is related to the narrowness of the definition, as it does not acknowledge other ways in which a refugee might be a victim of persecution or displacement (Shacknove, 1985, p.276). He indicates that refugees are typically considered as being victims of a "predatory state" (Shacknove, 1985, p. 276).

He claims that, apart from direct persecution, the relationship between the citizen and their state can be damaged in other ways (Shacknove, 1985, p. 276), and therefore he proposes that a reformed definition of the concept of refugee is essential, as it will recognise broader ways in which the state-citizen bond can be severed. For Shacknove (1985, p. 276), refugees are people who find themselves in dire circumstances because a state does not care about their citizens' rights, their basic needs, or their safety. Because of these factors, Shacknove claims that there is an urgency to expand the concept of "refugeehood" as a better understanding of the concept should include cases where many people choose to leave their countries due to generalised violence and war, famine, poverty, and natural disasters. He believes that the broadening the notion of who a refugee is, legally and socially, is vital as this will ensure that victims are protected from natural hardships or catastrophes since this undermines their physical security (White, 2011, p. 23).

Other philosophers agree with Shacknove that the definition of the UN's 1951 Convention requires expansion. For example, Matthew Gibney (2004, p. 7) proposes that the definition should be further elaborated to include: "Victims of generalised violence and events seriously disturbing the public order such as famine and natural disasters as well as individual persecution".

Some philosophers have extended their concept of who a refugee is, beyond Shacknove and Gibney's concept, to include people who migrate due to economic reasons. Kieran Oberman (2016) makes a plausible claim that the discrepancy between refugees and economic migrants is implausible from a moral standpoint. He posits that there are victims that need to migrate in order for their basic rights and needs to be satisfied, and there are countries that are able to meet these basic needs. According to Oberman (2016), it is completely morally insignificant whether those people migrating are fleeing their home countries due to economic or persecution reasons.

It is important to note that even though it would make moral sense to re-evaluate the definition of a refugee, there are other perspectives that claim that it would cause more damage if the definition is altered. Laura Ferracioli (2014, p. 4) argues from this perspective as she highlights how eliminating the present UN's 1951 Refugee Convention's definition would present a danger to refugees. In addition to other scholars and practitioners, Ferracioli notes there is consensus that if states attempt to negotiate an expanded definition of a refugee in a present political forum, they might develop weak legal concepts (Ferracioli, 2014, p. 4). The consequence of such negotiations would result in even more people falling outside of the scope of the protection that refugeehood currently guarantees. As Michael Dummet (2001, p. 37) states: "Any suggestion of renegotiating the Convention is dangerous; there are many signatory states that now consider its terms too generous".

Additionally, other scholars such as Michael Barutciski claim that further extending the term 'refugee' to cover other people such as IDPs would be "detrimental" to those currently falling within the purview of refugee law (Barutciski, 1998, p. 3). This is because such an extension might result in them not being adequately protected, as there would be too many people being accounted for in the Refugee Convention.

Hence, even though from a humanitarian perspective it is desirable to reform the definition of the concept of refugee, it is clear that role players cannot disregard the fact that it may be difficult to achieve such reformation. Additionally, failing to expand the definition of what it

means to be a refugee does not mean that all the other people in need of protection and inclusion as a refugee should not be given the required aid, and that states can shy away from helping other people who require protection.

Additionally, it is important to broaden understanding of what 'persecution' means under the current UN's definition of who a refugee is. People are being forced to escape dire conditions for a variety of reasons, such as economic deprivation, natural disasters, civil strife, and statelessness. Why should those people who are escaping various threatening conditions not be afforded the same protection as those who are already covered by the UN's 1951 Convention? The debate is divided along the lines of those individuals and organisations who push for similar protection of other individuals in need, and other individuals and organisations who claim that any effort to widen the definition of a refugee would be harmful to systems pertaining to refugee protection. This thesis argues that protection that is similar to the protection available for refugees under the UN's 1951 Convention is important for other people requiring protection, as they are no less important than those people who are already covered by the UN' 1951 Convention.

It is necessary to philosophically analyse refugee issues in order for long-term solutions to be developed. However, in as much as it is necessary to implement long-term solutions, current problems beleaguering the coordination of refugee programmes around the world have to do with a deep conceptual crisis. The definitional problems regarding the concept of refugeehood are related in some way to larger moral problems, such as discrimination, responsibility in times of danger, prejudice, fear, and what counts as a reasonable relationship between a country and its citizens. This is why issues of refugeehood are fundamental in political philosophy, because taking into account the concept of refugeehood will highlight the fact that according to certain international laws the concept is too limited, and hence, the concept or definition should be expanded to include those people who are suffering in other ways besides individualised persecution.

In this thesis, the researcher seeks to contribute to resolving the conceptual difficulties associated with the definition of refugee, and she explores the possibility of expanding the definition of the concept of refugeehood in the UN's 1951 Convention so that it integrates as its central criterion other circumstances that also affect people, such as being stateless or IDPs. This broadening of the definition is essential as it will allow us to move beyond the

narrow focus on individualised persecution only and will include more generalised situations, such as civil strife and war.

Based on the analysis of different scholars' positions regarding the idea of refugeehood, the researcher attempted to develop an understanding of refugeehood that is sufficiently comprehensive to include the different types of situations leading to forced migration. This entails an attempt to provide a reformulated definition of what a refugee is under the UN's 1951 Refugee Convention. In doing so, the researcher takes into account different arguments that show support and disapproval of the UN's 1951 Convention's current definition of a refugee. However, ultimately, this thesis aims to consider how the conceptual crisis surrounding the understanding of the concept of refugee can be rectified by broadening the definition the current UN's 1951 Refugee Convention offers. It is essential to achieve conceptual clarity regarding the Convention's fundamental role of protecting refugees. For this reason, modifying the definition of a refugee is necessary because the definition must be considered with more caution and prudence than has previously been the case.

4. Outline of thesis

In the first chapter, the researcher interrogated the definition provided by the UN's 1951 Refugee Convention Relating to the Status of Refugees and investigated the various views on expanding the definition of who a refugee is. However, the researcher will additionally refer to other significant organisations in this domain, such as the Organisation of African Unity (OAU) Convention and the Cartagena Declaration, in order to show how these laws are more favourable, as they provide a broader definition of refugeehood.

In the second chapter, the researcher explores how the definition of a refugee is restricted in international policies such as the UN's 1951 Refugee Convention Relating to the Status of Refugees and the OAU's Convention, making them defective, as they exclude other types of people that should also be recognised as refugees. Furthermore, the researcher will argue how important it is that the marginalisation of other people is not disregarded, as that would be neglecting other types of victims that need to also be protected and aided by these laws. Accordingly, the aim of this chapter is to take into account other people that should be included in the definition of who a refugee is, and to describe the great injustice to these excluded people, if they are not included in the definition.

The third chapter, is separated into two parts: the first part attempts to show the harmful consequences of excluding people from the refugee definition; and the second part describes

the possible reasons for the implications of extending the refugee definition to include other types of people in need in addition to those who experience individual persecution.

In the fourth chapter, the researcher proposes a comprehensive way of refining the existing refugee definition. While stating the former point, she also describes what is required in order to effectively refine the definition, which includes an alternative and new definition of refugeehood, one that acknowledges all people that should, within reason, be classified as refugees.

Finally, in the fifth chapter, the researcher defends the significance of further developing the current UN's 1951 Convention definition of who a refugee is. She will show how it is vital for the definition of refugeehood to be further expanded. The researcher believes that the core of this chapter is to focus on and support expanding the current UN's definition, in order for it to include other people besides those that suffer because of one of the five grounds of persecution from the UN's 1951 Convention's stipulations regarding refugeehood. Therefore, the researcher argues that by modifying and finding ways to improve the refugee definition, more people in need will be supported and protected. This final chapter seeks to indicate that broadening the definition is within UN's mandate, and because of these vital factors, such further development of the definition of refugeehood is both necessary and sound.

CHAPTER ONE: EXPLORING AND UNDERSTANDING THE CONCEPT OF REFUGEEHOOD

1.1 Introduction

The aim of this chapter is to examine and clearly articulate how the different prevailing international laws, governments, and organisations define the notion of a ‘refugee’. The researcher outlines the definition provided by the UN’s 1951 Refugee Convention Relating to the Status of Refugees and shows the different positions regarding expanding the definition of a refugee. Reference will also be made to other major international legal forums such as the OAU and the Cartagena Declaration. The latter laws provide a wider definition and the likelihood of inclusion of those people facing other dangers, such as generalised violence, to be considered as refugees.

However, prior to the above being achieved, it is important to firstly attempt a political understanding of the global factors regarding refugeehood. Thereafter, the researcher considers both the common sense and legal definition of what constitutes a refugee.

1.2 Political understanding of the global factors regarding refugeehood

In the political discourse, it has been claimed that typically, refugees come from very poor states and this is why economic reasons could be viewed as a root cause for people fleeing to other states as refugees. However, even though refugees do usually flee from poverty-stricken countries, not all poor countries push refugees to migrate. Therefore, this point suggests that poverty is not necessarily a cause for migration. As will be illustrated during the course of this thesis, there are other causes that result in the migration of refugees, and they will be discussed at a later stage.

However, if we agree that economic causes are not necessarily the reason for the migration of refugees, then there are only two other possibilities:

- (1) that poverty leads to political and generalised violence that in turn causes refugees to flee from their countries of origin; and
- (2) Internal displacement and poverty coincide with political violence as a reason for the migration of refugees.

However, the researcher believes that the violence does not necessarily have to be politically-based; the violence that occurs can merely be caused by the different types of suffering that potential refugee's experience, which lead them to seek refuge in other states.

Therefore, the above points show that in comparison to countries with low economic development, countries with high economic development experience low refugee migration during conflict. In other words, the level of economic development is likely to determine how many citizens migrate. Nonetheless, the above points fail to recognise that other events such as civil wars also cause the migration and displacement of citizens. What this research is attempting to show is that there are various factors responsible for the creation of refugees, and it is not possible to focus on only one reason when there are many other events or circumstances causing people to seek refuge in other countries.

1.3 A common sense definition of a refugee

According to Shacknove (1985, p. 274) there is a common sense definition or understanding of what a refugee is, he posits that a refugee can be defined as a person who has the desire to escape life-threatening circumstances, stating that "Refugees are, in essence, persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible".

Shacknove's (1985, p. 274) definition of a refugee indicates that refugees are viewed as people whose needs and rights are disregarded by their current government, placing them in a vulnerable position, and the only way in which they can escape from this position is by seeking refuge in another state.

Furthermore, Shacknove (1985, p. 274) proposes that the definition of a refugee can be based on an implicit notion that:

1. "[a] bond of trust, loyalty, protection and assistance between the citizen and the state constitutes the normal basis of society;
2. [i]n the case of a refugee, this bond has been severed;
3. [p]ersecution and alienage are always the physical manifestations of this severed bond; and

4. [t]hese manifestations are the necessary and sufficient conditions for determining refugeehood”.

The four points above together provide a theoretical point for the definition of what constitutes a refugee, and indicate what is important and universal about the notion of refugeehood. In other words, refugeehood can be classified as one of the few exceptional ways of ‘undermining’ the rapport between the state and the citizen. The state and the citizen have a bond because of the citizen’s entitled and natural position of belonging to that particular state. However, when a victim experiences persecution in their state of origin, gaining refugeehood leads to a subtle undermining of the rapport between the state and the citizen, because essentially this state of affairs means that the state has failed to provide their citizen with the needed security in order for them to not be in danger and to feel protected from any kind of harm or persecution. In addition, this is one of the ways in which the relationship between the state and the victim can be destabilised, due to the state’s inability to prevent different kinds of hardships that may affect the citizen which in turn, would lead them seeking refuge in another country.

By way of explanation, Shacknove (1985) claims that the relationship between the citizen and state can be destabilised in other ways other than the occurrence of persecution. Therefore, due to these other factors, an expanded definition of who a refugee is should be created.

Shacknove (1985) rightly points out that the relationship between a citizen and a state can be severed in other ways besides persecution, as various citizens can suffer in different ways that should allow them to qualify as refugees. For instance, an Ethiopian man may have decided to leave his land due to severe famine and drought. He may then decide to seek refuge in Somalia. However, his attempt to claim asylum in Somalia is rejected as his experience does not qualify as a form of persecution that is ‘well-founded’. According to the Somali government, this would mean that the Ethiopian citizen had not been persecuted and that he had no reason to fear persecution in Ethiopia. This example shows other ways in which a relationship between a citizen and state can be severed, i.e. the state had evidently failed to assist the Ethiopian citizen during the famine and drought he experienced in his home country. More importantly, the provided example depicts how important it is for the notion of refugeehood to be expanded to include people like the Ethiopian man, as his circumstances show that there are other ways in which a person can experience persecution. The present

UN's 1951 Refugee Convention is too weak in its definition to take into account the different vulnerabilities that victims seeking refuge in other states experience. If the current notion of what constitutes a refugee is re-evaluated, there will be other victims like the Ethiopian man who are forced to endure other forms of persecution. Therefore, this example shows how there is an urgent need for an effective and robust refugee protection regime, one that would include those who also have a moral right to be included and protected like other refugees covered in the UN's refugee protocol.

Furthermore, this is why Shacknove (1985) claims that the definition of the concept is too narrow, as it does not acknowledge the other ways in which a refugee can be a victim of persecution. He indicates that refugees were customarily understood as developing from a context of persecution that arose in their state of residence, or in other words, a "predatory state" (Shacknove, 1985, p. 276). This means that refugees are people who find themselves in dire circumstances because of a state that does not protect their rights, supply their basic needs, or provide for their safety. Because of these factors, Shacknove (1985) claims that there the concept of "refugeehood" requires urgent expansion to facilitate the circumstances where many people choose to leave their countries due to generalised violence and war, famine, poverty, and natural disasters such as earthquakes. These points illustrate how Shacknove (1985, p. 276) believes that the expansion of the refugee evaluation instrument is vital, as this would ensure that citizens are also protected from natural hardships or catastrophes, since they too undermine physical security.

Consequently, expanding the concept of refugeehood will result in vulnerable people who leave their countries because their basic rights are being neglected, being permitted to seek refuge elsewhere (White, 2011, p. 23). This should be the case, as it should be borne in mind that what results in seeking refuge is irrelevant, what is crucial is that their safety and their well-being is threatened. To put it differently, the suggestion is that regardless of whether or not a victim suffers from war or general violence, these circumstances should not be the primary basis on which a decision is made as to whether or not a victim should be considered a refugee. The mere fact that their safety is being jeopardised, should be reason enough for the victims to qualify as refugees. The evident tension between providing protection to the victims who are attempting to escape other kinds of untenable situations as compared to offering protection only to those who are fleeing because of persecution is an aspect that needs to be questioned. Therefore, this point highlights why the expansion of the concept of refugeehood is important because albeit that the five grounds underpinning the refugee

definition are important when considering whether or not a person should qualify as a refugee, it is essential to recognise that, in some circumstances, there are other forms of vulnerability that force people to leave their countries of origin.

As Roger Zetter states:

“The contemporary drivers of displacement are complex and multi-layered, making protection based on a strict definition of persecution increasingly problematic and challenging to implement. Many forced migrants now fall outside the recognized refugee and asylum apparatus. Much displacement today is driven by a combination of intrastate conflict, poor governance and political instability, environmental change, and resource scarcity. These conditions, while falling outside traditionally defined persecution, leave individuals highly vulnerable to danger and uncertain of the future, compelling them to leave their homes in search of greater security. In addition, the blurring of lines between voluntary and forced migration, as seen in mixed migration flows, together with the expansion of irregular migration, further complicates today’s global displacement picture” (Roger Zetter, 2015, cited in Peters & Besley, 2015, p.1369).

The above factors show that there should be a reconsideration of the definition of refugeehood. There is a case for a broader definition that is based upon humanitarian factors, which will help to modify the restrictions within the UN’s 1951 Refugee Convention Relating to the Status of Refugees. What is implied by humanitarian factors, is the understanding that it is important for there to be a definition that acknowledges the need to improve the welfare and untenable circumstances for citizens fleeing their countries of origin. That is, a definition of the concept of refugee should show compassion and concern for the fleeing citizens, as well as guarantee a way to assist them. Furthermore, in attempting to expand the current refugee definition, there should be wider assistance provided to diverse ranges of citizens in need. Furthermore, an inclusive and fair definition of the concept of refugeehood would acknowledge that there are circumstances that are not just based on a well-founded fear of persecution, but also on circumstances related to citizens who have no other choice but to leave their countries of residence or origin (Shacknove, 1985, p. 277). These situations could be based on circumstances such as them being deprived of the chance and the freedom to live with dignity.

1.4 The legal and political definition of a refugee

The term ‘refugee’ can also be defined in a legal and political way. Specifically, the definition of a refugee can also be found in international instruments and statutes such as the UN’s 1951 Refugee Convention Relating to the Status of Refugees, the OAU Convention, and the Cartagena Declaration. Part of the issue is that individuals who ought to be eligible for refugee status according to the general or common-sense definition, are not eligible for refugee status according to the UN’s legal guidelines.

The UN’s 1951 Declaration Relating to the Refugee Convention is one of the foundations for the broader human rights scheme for protecting vulnerable victims. However, it is also a very restricted instrument, as it provides protection for a very specific group of people (Worster, 2012, p. 94). The instrument is a part of the UN’s protocol that defines who is and who is not a refugee. Therefore, it only provides protection and security to people that have already obtained refugee status (Phuong, 2005, p. 66). That is, it protects people that have qualified as refugees within the scope of the UN’s 1951 Convention Relating to the Status of Refugees. Furthermore, its focus is on the rights that people gain when they attain recognition as refugees. However, there is also some clarity in this international instrument in terms of those people that do not qualify as refugees. This clarity appears in Article 1(F) as it excludes people:

“with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations” (The Convention Relating to the Status of Refugees, 1951).

Similarly, persons who voluntarily receive protection from their countries of origin or of residence, or persons that have gained protection in a host country are not recognised as refugees (The Convention Relating to the Status of Refugees, 1951).

The UN’s 1951 Convention Relating to the Status of Refugees provides an account of the principle of non-refoulement. This principle prohibits a country that has asylum seekers from forcefully returning them to a country in which they would face a major threat based on their “race, religion, nationality, membership of a particular social group or political opinion” (The

Convention Relating to the Status of Refugees, 1951). Consequently, the researcher believes that interrogating the relevant international legislation, it is possible to attain a better understanding of what it means for one to be classified as a refugee and what the term 'refugee' entails.

In article 1(a)(2) of the UN's 1951 Convention Relating to the Status of Refugees, a refugee is defined as:

“An individual who is outside of his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group” (The Convention Relating to the Status of Refugees, 1954).

In this definition, it is evident that a person is considered a refugee if that person has left their country of origin because of individualised persecution, which could either be based on the person's race, choice of religion, political beliefs, or because the person is a member of a vulnerable social group. This means that the person seeking refuge should be a victim of the stated types of persecution. The 'persecution' referred to does not include people attempting to escape war or a person suffering from targeted and continuous prejudice. Isabelle R. Gunning puts this point very clearly with the example she provides of an urban activist being able to claim successfully that she is a victim of individual persecution on the grounds of her political opinions (Gunning, 1989, p. 37), whereas a farmer who attempts to escape the threat of war conditions or civil strife would be forced to remain in his country, as his circumstances are not considered to be a form of persecution.

The UN's 1951 Convention Relating to the Status of Refugees primarily focuses on ensuring that the victim needing to qualify as a refugee, can be assessed as such. Most importantly, the existence of a "well-founded fear" that any return to the country of origin would not be feasible, is a point that should be shown by the victim. In other words, the protection provided by this essential legislation is only reserved for those that have left their country of residence or origin on the grounds of individualized persecution. The implication of the foregoing is that the concept of a refugee is identified, in essence, as referring to a person who has crossed an international border because of the well-supported fear of persecution (Shacknove, 1985, p. 274).

Consequently, in order to rectify the gap evident in the definition of a refugee in the 1951 Convention, the creation of the Organisation of African Unity's 1969 Convention (which is now known as the African Union) was an attempt to rectify the definition's restrictions in order to ensure effective handling of the countless refugee issues that occur in Africa. Furthermore, even though the OAU's refugee definition reveals the spirit of the UN's 1951 Convention, it is also specifically directed to Africa (Msoka, 2007, p. 6). The nature of causes having to do with refugees in Africa is not the same as in Europe. This is why the OAU created the Convention Governing the Specific Aspects of Refugee Problems in Africa in 1969 (Msoka, 2007, p. 6). This is because in the early 1960s, Africa had to deal with the aftermath of the armed struggle of African liberation movements, armed conflicts, certain power struggles, and aggression that undermined newly independent African states. As a result of the "insecurity, unrest, violence, socio-political instability, and the internal displacement of civilians and refugees", the drafters of the OAU believed that it was necessary for the Convention to be extended as there were difficulties that many African nationals experienced that were not covered by the UN's 1951 Refugee Convention (Msoka, 2007, p. 6). The OAU felt that many victims were primarily fleeing civil strife and war and these were conditions that needed to be included in the UN's 1951 Convention. The goal of the OAU Convention was directed towards creating the African dynamic of solidarity between states by providing protection to victims who were forced to flee from their countries of origin or usual residence due to instability in their usual home states.

In summary, since the OAU was constituted, the drafters of the OAU held that the UN's 1951 Refugee Convention's definition was unsuitable for considering matters that were primarily within the African context, and this also influenced their decision to extend the refugee definition. For example, Tanzania's invasion of Uganda in 1979 attracted the attention of the OAU heads of state, highlighting the need to protect human rights in Africa (Ssenyonjo, 2012, p. 6). These violations occurred during a period when regional human rights organisations and systems were developing in Europe and America. In this context, the necessity of establishing a regional human rights system in Africa became even more crucial. This latter point is why the OAU convention's concept of refugeehood included humanitarian concerns; its goal was to offer a realistic solution to the struggle of many citizens to be recognised as refugees.

In light of this situation, Eduardo Arboleda (1991, p. 185-188) claims that in the 1990s the international definition of a refugee was already obsolete, due to the number of victims

attempting to escape other forms of dangerous occurrences, such as generalised violence. Arboleda (1991, p. 185-186) also rightfully claimed that the UN's 1951 Refugee Convention Relating to the Status of Refugees' definition of a refugee was insufficient to take into account the issues posed by many displaced persons in Africa. As a result, in order to adjust to the new circumstances, a refugee definition was developed in this region (Crepin, 2016, p. 2).

Paragraph 1 of Article 1 of the 1969 Organisation of African Unity (OAU) provides a wider definition of what constitutes a refugee. They intended its definition to modify the definition proposed in the UN's 1951 Convention (Jackson, 1999, p. 177). Paragraph 2 of the same OAU article contains the following definition of the term 'refugee:'

“The term “refugee” shall also apply to every person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country origin or nationality” (Jackson, 1999, p. 177).

The OAU's definition permitted a number of unique stipulations. The above definition does not promote the individual persecution as a main source for determining refugee status, but instead makes reference to exterior circumstances of violence (Crepin, 2016, p. 5). This is evident, as Article 1 of the OAU's 1969 Convention shows that the term 'refugee' should apply to victims who flee their country of origin owing to external violence, occupation, foreign domination, or circumstances greatly jeopardising the public order. Simultaneously, the OAU's 1969 definition of refugee was the first significant challenge to the notion that persecution is an essential criterion in being granted refugee status.

By the same token, Matthew Price (2006, p. 415) argues that limiting refugehood only to people who have suffered or are likely to suffer persecution, leads to the formation of a “morally arbitrary distinction among people who are similarly situated with respect to their need for protection from violence”. Hence, Price (2006, p. 415) claims that the OAU's definition Convention's continued promotion of the persecution criteria to qualify as a refugee, ignores human rights issues and issues of fairness and peace, and any kind of meaningful progress.

Additionally, Arboleda (1991, p.185-189) also acknowledges that by their adherence to “objective conditions in the country of origin”, the OAU accommodates those circumstances

that affect people living in Africa. In contrast to this view, Alice Edwards (2006, p. 232) argues that the UN's 1951 Convention Relating to the Status of Refugees 1951 notion of refugee did apply to the African context, and recognises the widespread forms of violence that were evident in the OAU's international forum. However, she also claims that the 1951 definition can incorporate an extensive variety of cases having to do with asylum seekers from the African region, and this is evident via a liberal analysis of the OAU's terms in most circumstances.

The Cartagena Declaration on Refugees (UNHCR, 1984), which arose out of a colloquium based on the International Protection of Refugees in Central America, Mexico, and Panama also defines what constitutes a refugee. The Cartagena Declaration is important as it attempts (like the OAU) to modify the definition of a refugee. Because of the changing nature of the arrival of refugees in the Latin American region, the UN Refugee Convention's definition of a refugee needed to be expanded as its current definition was too limited. Those individuals classified as refugees in Latin America were no longer wealthy nor as recognised as they were during the 1970s. The current influx of refugees were recognised as the new Latin American refugees who were "rurally based, ethnically diverse individuals, who congregated in isolated areas bordering their country of origin" (UNHCR, 1984). Therefore, these developments necessitated a revised and more encompassing definition in order to include those people in need of refuge and protection.

In addition, the Cartagena Declaration used the UN's Refugee Convention to assist in expanding on its own definition. Its definition included:

"...Among refuge persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed the public order" (Kneebone & Sanaei, 2007, p. 9).

Thus, the Cartagena Declaration is important as it achieved what the 1951 Convention Relating to the Status of Refugees failed to achieve, namely, including criteria such as generalised violence and the undermining of basic human rights. The Cartagena Declaration acknowledges that the urgency for one to attain refugee status can reach beyond mere persecution, and this is an important factor.

Even though the Cartagena Declaration is not a legally binding document, it provides relevant guiding principles that guide Latin American states on how to approach refugees'

predicaments (UNHCR, 1984). The fact that it has not been legally implemented should not detract from its meaning and significance in terms of its contribution, especially in terms of how it highlights the necessity to expand the available definition of the concept of refugeehood that exists in international laws such as the 1951 Convention (UNHCR, 1984).

The way in which the UN's 1951 Convention Relating to the Status of Refugees has defined what constitutes a refugee, indicates that more development is required in terms of what constitutes a refugee, and this is evident other international laws such as the OAU Convention and the Cartagena Declaration. Even though it might be true that the UN's 1951 policy still holds weight in the international community, its failure to develop and become more inclusive has proved to be insufficient in reacting to the needs of refugees attempting to escape indiscriminate harm (UNHCR, 1984). This is why both the OAU and the Cartagena Declaration show how the UN's 1951 Convention is lacking, as it only succeeds in partially protecting certain vulnerable refugees. International laws like the OAU and the Cartagena Declaration indicate that all those in need of refuge should be protected. Partial protection of certain vulnerable refugees is problematic, and in this thesis the researcher explores the concept of refugeehood in terms of how it is perceived in the ethics of migration, by referring to the relevant international laws as well as leading scholars on the topic.

Thus, it is important to note that the above laws show how imperative it is to expand the current notion of refugeehood or the definition of who a refugee is. The language used in the Cartagena Declaration and the OAU does not follow traditional international legal language used in the UN's 1951 Refugee Convention definition of who a refugee is. Rather, these laws illustrate the need to break away from conservative ideas underpinning the notion of who a refugee is, and they provide extensive ideas that are applicable to various plights of sufferings and the vulnerabilities present in many countries. Additionally, these laws indicate how the current definition of who a refugee is should be developed to accommodate the adapting refugee crises in the world, as such an expansion of the definition would save many lives.

1.5 Conclusion

The researcher has outlined the various ways in which the term 'refugee' has been defined in the international legal literature and the way in which different scholars interpret the current refugee definition as well as the potential expansion and development thereof. Specifically, the researcher has analysed the definition of the term 'refugee' as it appears in the UN's 1951 Convention, the OAU, and the Cartagena Declaration. This analysis is important

understanding the definition of the term 'refugee, as without clarity, any investigation into the ethics of migration would likely gloss over serious conceptual issues. Furthermore, gaining clarity regarding the notion of refugeehood is important, especially in terms of how fundamental the issue of defining refugeehood is in contemporary political philosophy. Such clarity can only be achieved by considering both a political perspective and a philosophical perspective. By critically taking into account issues that restrict the meaning of what constitutes a refugee, it is possible to show how other vulnerable individuals are forced to experience other kinds of danger due to being excluded from the criteria that would allow them to be considered refugees. Therefore, by exploring the limitations of the current definition of refugeehood, a more expansive definition becomes possible so that more people are protected and saved from dangerous circumstances.

Simultaneously, if we are able to improve refugees' circumstances by insisting upon an expanded definition of refugeehood as opposed to what it is currently in place, and if this is approached from a philosophical or political perspective, fairness and justice will be incorporated into the notion of who a refugee might be (Lamey, 2016). Thus, the researcher suggest that by taking into account the refugees' issues from a political and philosophical perspective, society is better able to critically consider whether or not the way in which refugees are approved or dealt with, is fair and just. According to Lamey (2016), a theory of justice that protects and considers the refugees' hardships should take precedence over one that does not, as it is important to ensure that there is adequate assistance for people facing significant hardships that should be recognised within refugeehood. The issue of refugees raises one of the main questions within political philosophy, and that is, whether or not the concept of refugeehood should be expanded. Taking this question into account should lead to the recognition that expanding the definition will enable the provision of security of desperate to vulnerable victims that no longer enjoy protection from their countries of origin or residence.

Moreover, now that the notion of refugeehood has been explored as a concept, the next aim is to expand on the implications of depending on a restricted meaning of the term 'refugee' by describing how this could exclude many individuals in need of the protection provided under the different kinds of refugee laws.

CHAPTER TWO - VARIOUS TYPES OF PEOPLE IN NEED THAT ARE EXCLUDED FROM THE DEFINITION OF REFUGEEHOOD

2.1 Introduction

As stated in the previous chapter, the researcher's aim was to provide different definitions of the term 'refugee' as found in various types of international law. Additionally, the researcher also outlined how different scholars interpret the definition and its potential expansion. The researcher also detailed the definition of the concept of refugeehood in the UN's 1951 Convention, the OAU, and the Cartagena Declaration. It is essential to explore the term 'refugee' from the perspectives of different scholars and from the perspectives of different international legislation to foster a better understanding of the notion of refugeehood. Having this understanding, makes it easier to show how and why the current definition of the term 'refugee' is lacking. Therefore, the aim of this chapter is to identify the various types of people that are excluded from the UN's 1951 definition of refugeehood, and the reasons why it would be unjust to exclude them from being incorporated into the definition. This will further highlight the importance of expanding the term 'refugee'. Furthermore, the aim of this chapter is to facilitate the ways in which the definition of a refugee is narrow in various international laws such as the UN's 1951 Refugee Convention and the OAU. In these laws, the definitions of the term 'refugee' are flawed because they exclude other kinds of displaced people that should be included in their notions of a refugee. It is vital that this exclusion is not disregarded, as this would disregard other people that also need to be protected and aided by these laws. Consequently, the aim of this chapter is to take into account all the other people that should be included in the definition, and why it would be problematic not to do so.

Additionally, the goal of this dissertation is to explore the possibility of expanding the definition of a refugee as it stands in the UN's 1951 Convention, so that it includes other dire and difficult circumstances that affect other people who aren't considered refugees as they don't fall into the UN's narrow criteria. The narrow definition is problematic as there other ways in which victims can suffer or experience persecution, besides experiencing individualised persecution.

2.2 The implications of the Organisation of African Unity's definition of a refugee

The OAU's definition of a refugee has been commended for reaching beyond the scope of the UN's 1951 definition of a refugee, however, little has been done to examine the kind of criteria it proposes (Rankin, 2005, p. 1). There are scholars that claim that the "criteria on which refugee status may be granted under the [OAU] definition are self-evident in the broad grounds listed" (Rankin, 2005, p. 1). However, even though it can be acknowledged that the definition does have an indicative sense to its meaning, it cannot be ignored that the OAU Convention's definition of what constitutes a refugee has proven to be unclear and vague, which means that this definition should be carefully examined (Rankin, 2005, p. 1). It is important that this vagueness is tackled so that other people experiencing untenable circumstances can also be accommodated under the definition of what constitutes a refugee.

However, there is some sense of specificity in the definition's four recognised criteria: external aggression; occupation; foreign domination; and events seriously disturbing public order. According to Rankin, during the drafting of the UN's 1951 Convention, although many of these specifications "lacked firm definition under international law" at the time the Convention was drafted, the act of choosing specific events to be covered by the definition indicates that there was mindful effort made to restrict the scope of what constitutes qualification as a refugee (Rankin, 2005, p. 8). Very few scholars have discussed the core notion and the restrictions of these qualifications. This is of concern, specifically because the definition uses ambiguous events, such as those that disturb the public order. According to Rankin, there are those that agree with Medard Rwaleimera (1989: 558) that the clause, "is designed to cover a variety of man-made conditions which do not allow people to reside safely in their countries of origin" (Rankin, 2005, p. 8). Nonetheless, while it can be acknowledged that the definition acknowledges a victim's suffering, it is difficult to know for certainty how these conditions should be interpreted, i.e. "is a riot sufficient to disrupt public order or would only a civil war suffice?" (Rankin, 2005, p. 8). According to Rankin (2005, p. 8), it is contradictory and unreasonable to praise the OAU's refugee definition for broadness, and this definition also excludes non-man-made events, such as natural disasters. He posits that if we choose to read this refugee definition as it is, we have no reason as to why a flood or an earthquake do not qualify as disruptions of public order (Rankin, 2005, p. 8).

Therefore, this is why it is imperative to expand the OAU Convention's refugee definition as the people internationally continue to experience devastating circumstances. It is not only

those who experience foreign domination and external aggression, who are in need of protection from the refugee notion, other occurrences such as internal displacement and generalised violence also impact on people and this accompanies other forms of hardship. Nonetheless, the intention here is not to ignore the fact that the definition of what constitutes a refugee cannot include every person dealing with adverse circumstances, but there should be some leeway for expanding the definition of a refugee, so that more imperilled lives are saved and protected.

Additionally, the state's actions also indicate why a wider definition is required. States use the definition in a restrictive way. The current standpoint of the South African government is that the OAU's Convention is only applicable to African asylum seekers, despite the fact that the definition contains the words "every person" (Rankin, 2005, p. 8-9). The result is, "the overwhelming rejection of non-African applicants" (Rankin, 2005, p. 8-9). This point indicates why the refugee definition should be expanded, because the ordinary meaning of the words "every person" clearly suggests a more inclusive interpretation, meaning that the definition's application ought to be universal and consistently applied across all groups of imperilled people, not just Africans. The expansion of the definition would lead to a more open and universal interpretation, which is important so that no unjustified exclusions are made based on a person's country of origin.

Additionally, this is why this chapter seeks to take into account the various other kinds of people seeking refuge that should be included in the definition of refugeehood, and the consequences of not including these people in a more comprehensive definition of what constitutes a refugee. Taking into account other forms of imperilled people further indicates the importance of expanding the definition of what it means to be a refugee, and points to how out-dated its stagnant definition is. A more expanded notion should take into account the present influx of refugees throughout the world.

2.3 The UN's 1951 Refugee Convention's definition of a refugee

It is vital to acknowledge the fact that the UN's 1951 Refugee Convention's definition of a refugee fails to take into account the harm that is caused to those victims who are trying to escape from dangerous circumstances. Occurrences such as war, civil strife, and environmental disasters (climate refugees), or in principle, those who have become stateless, internally displaced individuals, and economic migrants. The researcher will therefore

present some of the circumstances that she believes should be included in the concept of who should be considered a refugee. This will include the following:

- a) A situation where people suffer deprivation; and
- b) Circumstances where people are displaced due to various events.

Stateless persons

The UN's 1954 Convention Relating to the Status of Stateless Persons ("1954 Statelessness Convention"), defines a stateless person as "a person who is not considered as a national by any State under the operation of its law" (Albarazi and Van Waas, 2011, p. 8). Therefore, based on this definition of a stateless person, should this kind of person be included in the definition of a refugee?

It could be argued that stateless persons should be included and protected within the domain of the definition of who a refugee is, because even though the UN's 1954 Convention takes stateless people into account, it fails to recognise that the notions of statelessness and refugeehood are not mutually exclusive. Stateless people are individuals who do not have passports or other relevant documentation, which in turn means that they do not have citizenship in any country. Therefore, due to the latter factor, they seek protection from a state because they are considered as non-citizens in all states. The researcher believes that is linked to refugees' circumstances, as they typically seek protection from another government due to some form of persecution experienced in their countries of origin. The only difference between refugees who can trace a link to a particular state through their documents (passports) and stateless persons, is that a stateless person has no identifying documentation. Hence, the conclusion is that if both groups share a common experience, namely, escaping persecution, surely they deserve equal protection.

Stateless people ought to be recognised as refugees by the UN's 1951 Convention because their situation of statelessness is in itself a form of persecution that they should be protected against. For instance:

- a) X is Y because A (a person is a refugee because of persecution);
- b) X is treated in Y manner because A (a person is treated as a refugee because of persecution); and

- c) therefore it follows that anyone who experiences A, even if not X, should be treated in Y manner (that is, a stateless person who is not like X who is recognised as a refugee should be treated as X because of the experience they share).

Thus, the proposal is that the crucial defining point for a claim to refugeehood is the experience of persecution and *not* the nature of the vulnerable person who experiences this persecution. Consequently, a person's statelessness should not be used as a valid reason to exclude them from refugee status, because what is valid is the experience of persecution, not person experiencing the persecution.

As a result, the UN's 1951 Refugee Convention should be modified, because failing to provide a stateless person with a passport or needed documentation in the initial landing country is a form of persecution, as that particular state has failed to protect the stateless person. Subsequently, this would mean that the stateless person would have to seek refugeehood in another state in order to gain the acknowledgement and protection that they require. Conversely, the stateless person could migrate to another country but would still be a stateless person, which would still be a form of persecution. This is why it is important for the UN's 1951 Refugee Convention to be modified, because irrespective of whether the stateless person remains in his country of origin where he is persecuted or if he chooses to migrate to another state, if the policy is not altered, in either case the victim is still exposed to unjust persecution. As a result, in both circumstances, the stateless person should be recognised as someone who should fall under the definition of a refugee. It is vital that the policy is expanded to include stateless victims as refugees, as this will enable a wider standard of protection that is far more appropriate and complete in practice (Foster & Lambert, 2016, p. 566).

2.4 Internally displaced persons

Internally displaced persons are victims of war, discrimination, and persecution. This is why it is problematic that the 1951 Convention has omitted them as refugees. There are many who argue that they are refugees as they experienced the same kind of suffering as those who are classified as refugees according to the UN's Convention. However, because these people have not crossed an international border, this vital detail makes it difficult for them to claim that they should be treated and classified as refugees.

According to Beswick and Jackson (2011), refugees are recognised as those people who have crossed an international border and are not being legally protected by their home country (Beswick & Jackson, 2015, p. 62).

Currently, IDPs are defined as:

“persons or groups who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural-made disasters and who have not crossed an internally recognized state border” (Cohen, 2004, p. 465-466).

It is important for states to show the same kind of care to IDPs as they do to their fellow compatriots, legally recognised refugees. From a moral and ethical perspective, it is important for states not to disregard the various dire circumstances millions of IDPs experience, because millions of IDPs have been forced to endure armed conflicts and leave their places of origin, a situation that is typically grounded in the same circumstances as those people who are classified as refugees.

Consequently, the above points illustrate why the international refugee regime, specifically, the 1951 UN Refugee Convention, is criticised by those that support the inclusion of IDPs, namely because the UN Refugee Convention has failed to include these obvious victims of forced migration (Lomo, 2000, p. 272). Those who support the inclusion IDPs as refugees claim that due to changed circumstances, namely, the increasing number of people displaced within their states that are in need of protection, it is paramount that the definition of the term "refugee" in the UN's 1951 Refugee Convention be expanded.

Additionally, one of the major issues regarding the international protection of IDPs is that the UN's 1951 Refugee Convention does not have them in mind (Steadman, 2015, p. 6). The UN's 1951 Refugee Convention still at times assists IDPs, but in principle the practice does not adhere to the UN's 1951 Refugee Convention directive. The main concern that prevents the UN's 1951 Refugee Convention taking on the issue of IDPs is that they are still under the control and jurisdiction of their home country. Thus, if the UN intervened while IDPs were within their countries, this would be considered a violation of a government's sovereignty, as this would be considered assisting nationals while they are still in their original country and therefore out of the ambit of the UN's 1951 Refugee Convention's mandate. This means that because an IDP never crosses international borders, they cannot be registered as asylum

seekers, making it even more difficult for these IDPs to receive the necessary aid from other states.

Thus, the above factors indicate that if the presently approved UN's 1951 Refugee Convention's definition recognises persecution as a criteria for refugeehood, then it should be the case that if a person's needs and security are encroached upon, especially by their current state, victims such as stateless people and IDPs should also be included in the UN's 1951 Refugee Convention's definition. It is imperative that the UN's 1951 Refugee Convention's international policy be expanded, as failing to do so suggests that the kind of danger other groups of vulnerable and threatened people suffer are not as severe as people recognised as refugees, and that their experiences cannot be quantified or even compared.

2.5 Environmental refugees and the exclusion of people due to various circumstances

In 1985, El-Hinnawi's (UNEP) paper defined the term 'environmental refugee' as follows:

“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 jeopardised their existence and/or seriously affected the quality of their life”. By “environmental disruption” in this definition is meant any physical, chemical and/or biological changes in the ecosystem (or resource base) that render it temporarily or permanently unsuitable to support human life” (Ramlogan, 2004, p.117).

However, El-Hinnawi (in Ramlogan, 2004) omitted individuals who are displaced due to political circumstances or because of armed conflict, as well as voluntary migrants who seek to source better employment opportunities due to economic hardships in their home countries. As a result, this results in three categories of environmental refugees as described by Haque (1997, p. 37), namely:

- 1) People who are displaced due to environmental causes that are momentary in nature such as an earthquake or a cyclone. However, these people return to where they originally reside once the area is reformed.
- 2) People are displaced permanently due to permanent environmental changes and these are usually man-made situations such as riverbank erosion and flooding.

- 3) People who migrate on permanent or temporary grounds in order to improve their circumstances.
- 4) People who are displaced due to armed conflict (Haque, 1997, p. 37).

Admittedly, the issue with this categorisation is that it fails to take into account the point that the victims from point 1 could become permanently displaced too (Mehta, 2012, p. 9). This point is highlighted in an International Organisation of Migration's (IOM) report, which states that even though sudden disasters typically cause temporary rather than permanent displacement, it is difficult to make this claim with any certainty, as the boundaries between the temporary and permanent displacement are typically blurred in practice (Mehta, 2012, p. 9). Brief examples of this could be natural disasters such as earthquakes and hurricanes.

However, El Hinnawi's categorisation of refugees should be acknowledged as it establishes the point that environmental issues are among the main reasons why people leave their home countries (Mehta, 2012, p. 21). Additionally, the definition does not claim that a person should flee their country so that they are viewed as an environmental refugee. Thus, it leaves room for claims that crossing international borders is not a prerequisite for assisting and protecting individuals in terms of international laws such as the UN's 1951 Refugee Convention.

It is also important to note that the issues most environmental refugees experience are concerned with the difficulty of attributing their danger to a persecutor. Environmental dangers do not and are not readily understood as a form of persecution towards a person. This is because environmental refugees are not fleeing from persecution imposed or accepted by their state like those who are individually persecuted (Mehta, 2012, p. 21).

Other natural disasters, such as floods and droughts are typically considered as unwarranted reasons to apply for refugee status, as these events are beyond the state's control and they do not have the power to prevent natural disasters from occurring. Thus, as Shacknove (1985, p. 277) states, "for even an ideally just state cannot save us from earthquakes, hurricanes or eventual deaths". This means that this perspective only acknowledges the control that a state has over its citizens' actions. For example, a state is able to prevent another person undermining the basic rights of others, i.e. they can stop one person from causing any kind of bodily harm on to another person. The state's powers are only limited to the actions of human beings, not natural events. Based on these factors, is the UN's 1951 Refugee Convention's definition justifiable?

However, before answering the above question, it should be borne in mind that from a historical perspective, when the UN's 1951 Refugee Convention policy was created, the entity that imposed any kind of persecution was the state (Shacknove, 1985, p. 276). In other words, the state was the main source of persecution and typically the entity that a person sought to escape from and then to be granted refuge from an exterior state. Furthermore, during the UN's 1951 Refugee Convention's creation, it was developed out of Western concerns. Due to occurrences such as the Second World War and the Cold War, these types of contexts showed the state as the entity that persecutes. Additionally, the UN's 1951 Refugee Convention definition of a refugee speaks only to the European historical context in which refugees experienced hardship due to different forms of persecution from "highly organized predatory states" (Shacknove, 1985, p. 276). Therefore, the UN's 1951 Refugee Convention's creators recognised refugees as fleeing tyrannical and totalitarian states, and this in turn indicates why the policy was created – to highlight the importance of persecution when classifying a refugee. As a result, the above points emphasise how the 1951 definition of a refugee came into existence, namely that it was created considering the worldwide occurrences that mainly affected the Western states at the time, and these were events that were based on the persecution or harm of individuals. To put it differently, in as much as in today's socio-political environment the legal instrument provides a narrow definition of a refugee, at the time of its creation, it would have been impossible to guess or know the impact that certain conditions or circumstances would have on many future people seeking to migrate from many parts of the world, and their reasons for doing so.

However, although there have been attempts to provide different explanations in order to define environmental refugees, no specific definition in any international laws exist that can be used to protect them. This is further evident in the UN 1951 Refugee Convention's definition neither includes nor protects environmental refugees. This is because UN 1951 Refugee Convention's definition is very limited in its interpretation of the ways a person can be persecuted, and accordingly, it excludes environmental refugees. All the same, the difference pertaining to two categories of people seeking status as refugees, and the different way in which they are considered, illustrates the urgency to develop and implement other suitable and permanent ways of attending to this problem.

The UN's 1951 Refugee Convention could be applied to environmental refugees. However, it is clear that the creators of the UN's 1951 Refugee Convention did not intend for these people (as well as others) to be included or protected, which is why the international law's

current framework is inadequate. This point also indicates why the UN's 1951 Refugee Convention's definition of refugeehood needs to be expanded. As a result, in the case of climate refugees, the researcher recognises a strong example of another form of victim that shows how the current concept of what it means to be a refugee is restricted.

2.6 Economic migrants vs. political refugees

According to Michelle Foster (2007, p. 11), it should be questioned as to why there is a definite difference between economic migrants and political refugees, because the difference has been acknowledged by the UN High Commissioner for Refugees (UNHCR) in its 1979 Handbook of Refugees. Foster (2007, p. 11) refers to how the UNHCR's 1979 Handbook attests to the difference:

“A migrant is a person who, for reasons other than those contained in the definition, voluntarily leaves his country in order to take up residence elsewhere. He may be moved by the desire for change or an adventure or by family or other reasons of a personal nature. If he is moved exclusively by economic considerations, he is an economic migrant and not a refugee”.

Nevertheless, Foster (2007, p. 11) highlights how the UNHCR's 1979 Handbook successfully shows why it would be problematic to accept this argument as a criterion that should be considered in deciding who a refugee is. This is because, in as much as a person might be economically deprived in their country and thus choose to migrate elsewhere, there may be religious, racial, and political factors underlying the person's motivation to migrate.

The above examples show that even if a person chooses to move because of economic reasons, there could be other motivating factors. Thus, the researcher posits that the mere fact that a person seeks to move due to economic reasons does not mean he should be excluded from making a refugee claim, if, for example, there is evidence that this person is also being politically persecuted. This should be the case in most situations, since even when a person moves because of economic reasons, there are usually political motivations too. An example of this is a Somali homosexual who moved to Uganda in order to seek better employment opportunities. However, he is struggling to gain employment because of his sexual orientation, which became known by those close to him in Uganda. This example is indicative of the connection between political and economic factors; because of his desire to identify as a homosexual, the Somali was ostracised by the Ugandan society, which in turn, negatively impacted on his prospects of securing employment. Thus, this example points to

the fact that political and economic factors are not necessarily distinct, and they should not be separated. If a person chooses an outside country based on economic grounds, this should not mean that the concerned person cannot make or should not be entitled to claim refugee status.

Additionally, another important argument is that political persecution can also be interpreted as a type of economic loss (Foster, 2007, p. 13). This is highlighted in the UNHCR's 1979 Handbook, which states that if there are dire conditions that undermine the economic circumstances of certain groups of people, the affected parties may claim refugee status when leaving the country.

2.7 The immorality of distinguishing between refugees and economic migrants

It should also be noted that because the 1951 Convention Relating to the Status of Refugees states that a refugee is someone who flees his country in order to evade persecution, an economic migrant would not be entitled to refugee status, as the need to be protected due to economic reasons does not equivocate to refugeehood entitlement, according to the 1951 Convention's definition. Furthermore, there is support for this argument.

One of the arguments supporting the point that an economic migrant should be treated as a refugee is that this victim does not experience the same kind of suffering as a refugee, so allowing the economic migrant to gain refugee status would be unjust and deter those who are in actual need of the refugeehood protection. For instance, there have been cases of economic migrants from Pakistan posing as Syrian nationals in order to improve their chances of being recognised as refugees, which would allow them to flee to European cities (Perring, 2015). This took place when there was a vast influx of economic migrants that lied about their nationality to improve their chances of being able to enter European countries accepting refugees, such as Britain and Germany (Perring, 2015). Abandoned passports and documents were found near the Serbian border. The people who discarded their passports and documents were attempting to escape their poor circumstances and were also fleeing war and persecution, as they believed this was a way to gain asylum.

However, as Kieran Oberman (2016) argues, and the researcher supports his argument, separating refugees from economic migrants should be considered immoral, because there are people in dire need of assistance to meet their basic needs and protect their rights, and there are states in a position to ensure that this help is extended to them. Protecting these individuals' lives and their rights matters, irrespective of whether they are attempting to escape poverty or persecution. However, the researcher doesn't intend to imply that poverty

and persecution are the same. The point that the researcher seeks to make is that regardless of whether or not a person is suffering due to persecution or poverty, both types of suffering deserve attention. The researcher acknowledges that persecution and poverty are different, and this difference should matter when deciding whether or not a person qualifies as a refugee. Nonetheless, this should not detract from the point that both cases should have a fair chance of being considered as a refugee.

It would be incorrect to assume that a refugee is in greater need or deserves more protection than an economic migrant. Economic migrants are people who are trying to escape poverty, and people who are seek to improve their economic circumstances in another state. But then again, not all refugees are similar, as they do not all suffer the same hardships. Even though the 1951 Convention Relating to the Status of Refugees states that all refugees suffer from some form of persecution, the degree of danger and the kind of persecution differs in each case. There are refugees that fear any form of harm, exclusion, or discrimination based on their religious beliefs if they return to their countries. These points seek to show that there are those that will be victimised while there are others that would come to no harm in their countries of origin.

Accordingly, it is imperative that important polices like the 1951 Refugee Convention recognise economic migrants as refugees too, as their needs must be acknowledged, regardless of whether they are refugees or economic migrants. It seems only logical and just that this policy provides the same protection to someone experiencing economic hardship and starvation as someone faces racial, political, religious, or even cultural persecution.

In order to further highlight the importance of not distinguishing between the adverse circumstances of those who are victimised or harmed in their states, Oberman (2016, p.2) provides a relevant example:

“To see the absurdity of the current asylum system, imagine a health system working upon similar lines. Instead of treating the sick and injured, it treats only those who are sick or injured for particular reasons. Victims of assault are seen to; those suffering from disease or malnutrition are ignored. Doctors attend to a superficial knife wound, but walk past a man having a stroke. Now imagine, under this healthcare system, that some patients pretended to be the victims of assault in order to obtain treatment. Would we condemn them as “bogus treatment-seekers” for “abusing the system”? I

do not think so. More likely, we would regard their behaviour as a reasonable reaction to arbitrary discrimination”.

Furthermore, if we allowed ourselves and our governments to abide by the 1951 Convention’s strict and narrow definition of who qualifies as a refugee, then surely in the confines of this definition, those people seeking to escape the war in Syria should not be afforded refugee status (Oberman, 2016, p.2). This should be the case because the Syrian people want to escape war and civil strife, even though some of them do not necessarily suffer direct persecution as individuals due to their religious or political affiliations. However, the researcher is not suggesting that grounds of persecution are not as important as hardships experienced as a result of war. What the researcher is suggesting is that every person facing any kind of harm should be protected and included in the policy irrespective of whether or not they are being individually persecuted or are at risk of war. For that reason, if the 1951 Refugee Convention’s definition’s protection is expanded to include people affected by war, why should this same expansion not include those people that are affected by poverty?

Nonetheless, those who are against expanding the concept of refugeehood as it currently stands in the 1951 Convention could argue that it would be difficult for a state simply to accommodate every victim of poverty or other hardships, and therefore it is not possible to expand the UN’s 1951 Convention’s definition to include these groups. But does this line of reasoning really mean that this level of protection should only be afforded to the refugees that are defined in the policy? The researcher doesn’t believe so. The international legislation should be expanded to ensure the inclusion of those who are victimised or excluded in any way, especially by their own states. It should be only under exceptional circumstances that an outside state refuses to accommodate or recognise a person as a refugee; an exceptional circumstance referring to being a possible threat to a society. Even though the researcher believes it would be difficult to decide whose circumstances are more deserving, she does acknowledge the point that not every person’s circumstance fall under the ambit of the UN’s 1951 Convention’s definition of who a refugee is. But as the researcher has attempted to suggest, it would be a tough call to make, because as long as a person is in danger, irrespective of whether it involves persecution or poverty or any other reason, states have to make a significant effort to provide the needed security for these people seeking refuge.

Furthermore, Oberman (2016, p.3) rightly points out that whether or not a victim can be supported or protected in his country is of no significance, because there is a difference between whether they *can* be assisted and whether they *will* be assisted. In order to highlight this point, he provides a relevant example involving the health care system:

“If there are some patients who could be treated at home, it seems reasonable to treat them at home rather than in hospital. But it is crucial that they actually are treated at home. A health care system that sought to justify the suffering of millions of excluded patients on the grounds that they could have been treated at home (although they weren't) would be offering no justification at all. Likewise, the current asylum system cannot justify excluding economic migrants unless those excluded actually receive assistance in their home country. As long as poverty goes unaddressed, poor people have a claim to migrate” (Oberman, 2016, p.3).

The above example illustrate why it is vital for the 1951 refugee definition to be expanded so that a person is not disadvantaged to the point where they are:

- forced to starve;
- unable to access drinkable water;
- forced to work in environments where they are given poor pay;
- forced to live and work in unsafe conditions; and
- live in poorly maintained or developed accommodation.

These circumstances put people at a risk of being malnourished and contracting harmful diseases, thus, it would be unjust and inhumane to question a vulnerable person's claim to not only migrate but to have a refugee claim under the 1951 Convention Relating to the Status of Refugees. This law has to be expanded to include these affected people too, as their suffering is just as important as those who experience individualised persecution.

Thus, as already stated, an economic migrant's circumstances matter, whether or not their circumstances are based on direct persecution. Having to experience adverse circumstances such as poverty and starvation is problematic, and these types of hardship should allow affected people to claim refuge and also to be recognised by significant policies like the 1951 Convention Relating to the Status of Refugees. In the same way that the international community is sympathetic to the Syrian or the Afghanistan victims trying to escape war in

their countries, the same level of sympathy needs to be extended to Liberian or Congolese people attempting to escape poverty instead condemning them and viewing them as trying to take advantage of the international law on migration and refugeehood. The people's current circumstances require a sympathetic and humanely response and an expansion on certain international legislation so that there is more fair and rational balance in relation to assisting those that should have a claim to migrate.

2.8 War and civil strife and the importance of change

As the researcher has shown, the world is currently facing a grave refugee crisis. Multiple international armed conflicts – the most prominent being the Syrian war which has been raging since 2011, have resulted in a significant increase in the number of displaced persons in the world (Fenemigho & Omorny, 2015, p. 14). At the end of 2014, it was estimated that close to 59.5 million people globally were forcibly displaced, with an estimated 38.2 million of that number being internally displaced, an estimated 19.5 million being refugees, and an estimated 4.8 million asylum seekers (Fenemigho & Omorny, 2015, p. 14). This number of displaced people is unprecedented in modern times, a number not experienced since the Second World War. Armed conflict is currently the largest reason for refugees. The Syrian War is the world's largest source of refugees, and it is therefore, ironic that the 1951 Convention Relating to the Status of Refugees, which is the cornerstone of the international refugee protection regime, does not recognise such persons as refugees unless they can link their cause for flight to persecution recognised by the Convention's narrow definition.

The above points illustrate why it is essential for the international policy to acknowledge other present major causes of forced migration, which are war and civil strife (Gunning, 1989, p. 49). This is vital, as even in the past, states attempted to ensure that the international refugee law took into account the circumstances causing people to migrate. In other words, states attempted to ensure that whatever dominant circumstances were causing forced migration, the relevant international refugee law covered such circumstances during that period. Furthermore, in order to highlight the latter point, Gunning provides an example of how when the League of Nations formed, the main goal of the High Commissioner for Refugees in 1921 was to protect Russian refugees, as they were the most prevalent group of forced migrants at that time. However, because there were other people from different nationalities that were identified as requiring the same kind of protection as the Russian refugees, the League of Nations ensured that nationalities like the Armenians and others also

could be granted refugee status. Similarly, this refugee status protection was provided to Germans that had escaped the dire conditions in Germany in 1936, and they were granted refugee status by a special treaty.

In a similar vein, the different refugee forums created by the UN after World War II emulated the changes that took place after the war. Primarily, the UN's focus was to provide assistance to people that were affected by the war as well as those people forced into exile due to circumstances affecting them. Conversely, after some time, the UN redefined and modified the term 'refugee', and acknowledged that persecution was, at the time, the main cause of forced migration after World War II ended. Therefore, what the researcher suggests is that international refugee law has always adapted and developed to the circumstances causing forced migration prevalent during a particular time period.

2.9 Conclusion

The researcher has attempted to show that the international definition of a refugee is limited, and this limitation implies that the current refugee definition does not mirror the changing structure of our world and the unique existing issues at the forefront of current global issues. The points that have been provided indicate that all vulnerable people experiencing the stated circumstances should be included in the ambit of refugeehood. The researcher has attempted to take consider the different restricted meanings of 'refugee' and how they are connected to the different implications that have been discussed in this chapter.

The notion of what constitutes a refugee is far more encompassing than what the international community currently assigns to the term. The current notion of refugeehood excludes the struggles of many people forced to leave their home countries in search of security and safety. The threats facing victims of displacement and statelessness and economic migration are real and concerning. The marginalisation of victims of generalised violence and their exclusion from the definition disregards the very real and current threats facing a great number of human beings worldwide. By ignoring the importance of expanding the 1951 Convention Relating to the Status of Refugees' definition implies ignoring the importance of human existence; ignoring that all lives matter, especially when they are lives of people suffering in their home countries. As a result, it is essential that international laws like the 1951 Convention Relating to the Status of Refugees acknowledges that victims of war, stateless people, IDPs, and other kinds of victims are involuntary migrants. This means that their circumstances have forced them to find refuge in another country, and because of this,

they deserve both security and protection. Further, an international country should provide that security and protection so long as it has the means or resources to provide them.

Overall, the researcher has attempted to demonstrate that present understandings of the notion of who a refugee is, are limited. That is, current definitions do not account for experiences that intuitively appear to be good cases warranting refugee status. Here, the researcher is considering those cases or people experiencing poverty or starvation in their country of origin, or a person who desperately wants to flee their country of origin because of certain human rights abuses (one's sexual orientation) but are unable to cross an international border. For this reason, the aim of Chapter Three is to describe the implications of this failure to cover other kinds of people within the present understanding of the concept of who a refugee is. In other words, what problems will the international community have to face if it continues to operate using the restricted understanding of the concept of refugeehood?

CHAPTER THREE - IMPLICATIONS OF A LIMITED UNDERSTANDING OF WHO COUNTS AS A REFUGEE

3.1 Introduction

There are many people suffering due to different circumstances, and who may therefore seek asylum as well as refuge in another country. The reasons for this migration are various, as already stated in the previous chapter. However, those requirements from the UN's 1951 Refugee Convention stating that in order to qualify as a refugee a person has to be outside of their state and experience persecution on the grounds of their race, religion, sex, and ethnicity, and/or due to them being a member of a particular group, has hindered those who are also genuinely suffering from other circumstances from gaining refugee status. This has dire implications for these excluded victims, as such exclusion could result in them finding other ways of escaping the hardships that they may be experiencing, to the extent of resorting to illegal ways of fleeing from their suffering, such as the migrants who cross oceans in overcrowded, unseaworthy vessels.

Furthermore, it should be borne in mind that it is unlikely to find a person who wants to flee to another state illegally. Most people only do this when they feel there are no other alternatives but to resort to illegal ways of fleeing. Therefore, the researcher suggests that if the UN's 1951 Refugee Convention definition of who a refugee is, is not broadened, this law will continue to place people at risk and force them to find other ways of escaping various hardships. When people are desperate to improve their situations and protect their lives and if they feel like they have no other alternatives, this increases the necessity of resorting to illegal ways of fleeing.

It is important that the definition of a refugee is expanded to include other kinds of victims, as the implications of not failing to expand the definition are dire, such as people becoming victims of dangerous crimes such as people trafficking and smuggling. In order for society to minimise the chances of desperate victims putting themselves in these vulnerable and hazardous situations, the definition has to be extended to acknowledge, with sensitivity and empathy, the other ways in which people suffer. If society fails to acknowledge these people, it would be tantamount to placing them directly into situations of poverty, trafficking, and smuggling, where unscrupulous and criminal perpetrators benefit from their helplessness. This is why it is imperative the UN's 1951 Refugee Convention be expanded to include other victims of circumstance, because if this is not done, the implication is that many more people

will find themselves in vulnerable positions and perpetrators will prey on them and exploit their vulnerabilities.

Consequently, one of the aims of this chapter is to highlight how the repercussions of failing to broaden the definition of a refugee will place those currently excluded from the definition at the disposal of traffickers and smugglers. Inasmuch as it is understood that not every person can be included in the definition, ignoring that there are other crises affecting the world is dangerous.

This chapter comprises two parts. Part one deals with the consequences that may result if the current refugee concept is not expanded, and part two considers the reasons why there may be more implications if the refugee definition is expanded. If this definition is expanded, it could cause its actual meaning and purpose to lose significance, to the extent that those people already covered by the refugee notion are not protected adequately. It is impossible and unrealistic to cover every person experiencing hardship in the world, which is why there is the opposing view that it would be best to leave the current refugee concept unchanged.

3.2 Part I: the implications and consequences of not expanding the refugee definition

3.2.1 Definition of human trafficking

The issue of human trafficking is still fairly new in respect of international human rights discussions.

The International Organisation of Migration (IOM) (1999, p. 9) states that trafficking is when:

“A migrant is illicitly engaged (kidnapped or sold) and or moved either within or across international borders; traffickers during any part of this process, obtain enormous or other profit by means of deception, coercion and/or other forms of exploitation under conditions that violate the fundamental human rights of migrants”.

This definition shows that traffickers target the defenceless and the unprotected, and they deceive and manipulate them in order to gain control over them. Traffickers' motivation is to financially benefit from the vulnerabilities of those being trafficked. Because of their helpless status, poverty, marginalisation, and their powerlessness, many victims are at risk of being trafficked (Wilson, 2012, p. 103). Because we live in a world full of increased migration flows, traffickers target the most vulnerable. Therefore, the implications of not ensuring that

other forms of victims are incorporated into the definition of a refugee, will place individuals in situations of extreme vulnerability.

Additionally, the implications of excluding trafficked people from the definition of who a refugee is, are that these people will remain in the same dire conditions that they are forced to live in, whether they are caused by natural disasters or war. For example, war generates trafficking victim zones of conflict, which are regarded lacking basic human security where lawlessness rules (Wilson, 2012, p. 108). These trafficked victims have no protection from the violence of combatants and non-combatants alike, and they do not have any legal protection or remedies due to the lack of law enforcement and the impaired legal systems. Livelihoods are disturbed, desperate poverty is endemic, and social systems break down. In many circumstances, the economies of war and crime cross over and highlight each other. This may be a result of war lords running criminal activities in order to fund their illegal activities; criminals take advantage of the absolute helplessness of civilian populations in order for them to be able to spread and develop their exploitative actions. Many of the current wars are being fought by irregular armies in which forms of enslavement are prevalent. Accordingly, these forms of trafficking are recognised and nurtured in zones of conflict.

Consequently, these issues indicate that the implications of not expanding the UN's 1951 Convention definition of refugeehood is that people would be placed at risk of being exploited by perpetrators, because people at risk are desperate to flee to other countries where they believe that they will be safer and better protected.

3.2.2 Definition of smuggling

Smuggling is defined as:

“This is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries, laws either clandestinely or through deception, such as the use of fraudulent documents. The relationship between the migrant and the smuggler is consensual” (Organisation for Economic Co-operation and Development, 2015).

Human smuggling may be further characterised in terms of the type of person seeking to illegally cross an international border (Organisation for Economic Co-operation and Development, 2015). The term ‘migrant smuggling’ refers to any form of assisted illegal immigration to escape war, political persecution, or natural disaster, or to obtain better

economic opportunities-circumstances that makes migration extremely difficult or impossible. Refugee smuggling includes a class of migrants who are eligible for protection under international law, but due to pressing conditions, they may have to resort to extra-legal measures to obtain this kind of protection. For example, national policies that require refugees to physically arrive within a country's borders to be granted legal protection complicates the asylum-seeking process, and fuels the black market for human smuggling.

3.2.3 The difference between smuggling and human trafficking

The difference between 'trafficking and smuggling' is best described by the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Crime in Vienna during 1999:

“Trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons either by the threat or use of abduction, force, fraud, deception or coercion or by giving or receiving of unlawful payments or benefits to achieve the consent of a person having the control over another person” (Morrison & Crosland, 2000, p. 11).

When a person is not given refugee status and knows that they are going to be deported, there is significant temptation to disappear in the hope of being able to remain illegally in the concerned country. However, if the refugee definition is expanded, the likelihood of displaced people attempting to flee illegally would be more unlikely. Hence, it is vital that governments assess people's asylum claims fairly. If the system cannot be trusted and relied upon, desperate claimants will engage traffickers to provide solutions.

The further consequences of failing to expand the refugee definition, is that refugees and migrants are risking their lives in desperate attempts to reach Europe, and they are being pushed into “modern slavery” by brutal traffickers who are imprisoning, torturing, and sexually violating those they exploit.

There are currently two main smuggling routes from Africa to Europe, crossing the Mediterranean between Libya and Italy, and between Morocco and Spain (Organisation for Economic Co-operation and Development, 2015). There is a busy smuggling route crossing the central Mediterranean from Libya (and in 2011 Tunisia) towards Italy. Smugglers hire boats pilot them, but abandon the boats before the arrival of rescuers. There is a shocking record of abuse by criminal gangs who prey on those seeking to gain refuge and travelling

across Africa, most commonly in Libya, which has become the main launching point for smugglers' boats in the turmoil following its civil war.

These migrants frequently experience barriers to accessing assistance, which makes them vulnerable and easy prey for traffickers and exploiters in the countries where they seek asylum or in the transit countries (Spyropoulou, 2017, p. 1). Refugees fleeing persecution or other dangers in their country are particularly exposed to traffickers (Spyropoulou, 2017, p. 2-3). Likewise, migrants and refugees who have been smuggled are particularly in danger of being exploited because of lack of opportunities in the destination country and the costs associated with the smuggling, often resulting in significant debt that migrants or refugees are able to pay off. Some migrants fleeing from conflict and persecution are susceptible to being trafficked (Spyropoulou, 2017, p. 3). Traffickers leverage refugees' desperation and deceive and coerce them into exploitation, and thus there is an overlap between victims of trafficking, refugees, and smuggled migrants. Trafficking victims may be migrants who have been smuggled, and may also be refugees.

It could be argued that, a person could be a smuggled migrant at one point and a trafficked victim at another point. To put it differently, a migrant victim may count on the services of a smuggler for the purpose of illegal entry into a state, but upon arrival be forced into some kind of exploitative enterprise to which they have not consented and are thus coerced into. There is a sense of helplessness in migrants and refugees making them vulnerable to the trafficking process. When they flee from the country their home countries, migrants often experience difficulties due to language, custom, and culture barriers. A newly arrived migrant victim also lacks a social support system, and it is easy for them to be manipulated into a cycle of exploitation from which it is very difficult to remove themselves.

However, when bearing in mind the definition of a refugee from the UN's 1951 Refugee Convention, being a victim of human trafficking does not typically suffice as a valid claim for refugee status. Nonetheless, if international refugee protection is not provided for 'other kinds' of victims, they are at risk and in danger of being exploited and sold into some form of slavery by perpetrators.

Because they are fleeing from situations of conflict, victims who are specifically not recognised as refugees are exposed to prolonged conditions of insecurity, isolation, and persecution, and hunger, leaving them significantly defenceless to situations of exploitation, abuse, and trafficking. The large numbers of displaced people increases competition for

already limited resources, and thus increases desperation, making displaced populations more willing to take risks and more prone to exploitative situations as they grasp at any means of survival.

For various reasons, asylum is becoming increasingly more difficult to attain. The great disparity between those with a genuine need for resettlement and those who actually receive resettlement, creates tremendous opportunities for traffickers. Without safer alternatives, the people that are not recognised in the UN's 1951 Refugee Convention have fewer options and may resort to the services traffickers provide and the concomitant jeopardies.

3.2.4 The importance of human security

It is essential to note that if people in need are excluded from being considered refugees, a major issue of human security is being ignored (Newman, 2003, p. 15). Human security is defined as,

“Human security is concerned with the protection of people from critical and life threatening dangers, regardless of whether the threats are rooted in the anthropogenic activities or natural events, whether they lie within the outside states and whether they are direct or structural. It is “human-centred” in that its principal focus is on people both as individuals and as communal groups. It is “security oriented” in that the focus is on freedom from fear, danger and threat” (Newman, 2003, p. 15).

In other words, if modern security is to be relevant to the changing conditions and needs it must focus on the individual or people collectively. This does not minimise the importance of traditional ideas of security, but it does imply that it may be more effective to reintroduce providing security for people from wherever the threat emanates.

People who have been trafficked across an international border in transit or at points of destination may require international protection as refugees on the grounds of their experience (The Inter-Agency Coordination Group against Trafficking in Persons, 2017). Therefore, ensuring people's protection against refoulement and access to procedures that can determine their refugee status is perilous.

Refugees and asylum seekers are particularly vulnerable to abuse and exploitation at different stages of their flight, and this includes at the destination point. They may be forced to use smugglers as their only means to flee persecution, conflict, and violence. This is usually done without travel or identity documents to cross dangerous environments and to avoid border

controls that prohibit access to asylum seekers, which in turn, exposes them to risk. Once at their destination, asylum seekers may encounter discrimination, restrictions on freedom of movement, inadequate or non-existent livelihood, no access to educational opportunities and experience, and limited access to humanitarian assistance or other support systems. This can push asylum seekers to depend on smugglers in order to travel in search of better protection and opportunities, or into the hands of traffickers who may prey on refugees and asylum seekers who are in camps, reception centres, or settlements.

The desperate circumstances of poverty that usually prompt men and women to attempt crossing a border illegally for employment purposes or just for protection or security reasons raise the question regarding consent. For example a woman who experiences abject poverty in her country of origin faces a daily choice between, for instance, feeding her children or illegally transiting to another country to work. Thus, the word “consent” has a hollow ring (Pomeroy, 2010, p. 473).

3.3 Part II: Why it would be best not to expand the refugee definition

In part I of this chapter, there was an attempt to show the dangerous consequences of excluding victims from the refugee definition. These consequences described how people excluded from being considered for refugeehood could feel forced into vulnerable positions and agree to be smuggled or even trafficked. This could be because they feel desperate to escape the dire conditions that they may be experiencing in their home countries. By purposefully excluding them from the refugee definition, these people are being placed at the forefront of danger. Every person wants to feel and be safe and protected in the countries in which they reside. If this protection or safety is jeopardised, it is natural to seek out this security and protection elsewhere. However, this desire could be underpinned by a feeling of desperation, which causes victims to resort to harmful acts in order to escape the hardships they may be experiencing.

Overall, this thesis attempts to show how, within the refugee framework, the need to revise the current refugee regime has been debated for a long time (Dawson & Farber, 2012, p. 119). Many scholars have argued robustly over whether or not there is a need to reconstruct the entire refugee law system. For example, Andrew Shacknove and James Hathaway’s proposal to implement a refugee system that accounts for other kinds of victims was met with criticism.

I have attempted to show that a related and on-going debate has focused more specifically on whether or not the legal regime governing refugees should be expanded to encompass protection of other types of forcibly displaced persons that do not fit within the ambit of the UN's 1951 Refugee Convention, such as IDPs, economic migrants, or individuals who have fled their countries of origin due to reasons other than the grounds of persecution that are identified in the Convention. However, a number of scholars defend the need to maintain a distinct and separate legal regime for the protection of refugees meeting the UN's 1951 Refugee Convention definition.

Therefore, the aim of this section is to illustrate the possible reasons why there would be negative implications if the refugee definition was to be further expanded to include other kinds of victims. This aim will be achieved by defending the fact that expanding this definition could cause more damage than good for those people that are already covered by the UN's 1951 Refugee Convention, and it could also be more detrimental and costly to potential host states. This section will present the different scholars that support the maintenance and continuation of the current refugee definition.

3.3.1 Refugee law should not be extended to other types of victims

Writing in the 1990s, Michael Barutciski argued that expanding the refugee policy to other victims such as IDPs would be “detrimental” to those currently falling within the ambit of refugee law (Dawson & Farber, 2012, p. 120). Barutciski highlighted that the protection provided by the UN's 1951 Refugee Convention, specifically the principle of non-refoulement for individuals who have been persecuted and the provision of social and economic services to those who are afforded asylum, had no logical application to individuals displaced within their countries. He further argued that IDPs' rights were already sufficiently addressed within the documentation of international humanitarian law, including humanitarian intervention.

Barutciski (1998, p. 11) claims that while it may make sense to settle on a broad approach to humanitarian issues, the uniqueness and significance of certain issues that are inherent in the term ‘refugee’ in international legal instruments, should not be disregarded. Refugee protection has to do with issues that are quite different from issues having to do with displacement, statelessness, war, and economic issues, or, to put it differently, general human rights law. There is a common trend for scholars to want to provide protection yet Barutciski claims that the irony is that expansion of the current definition of who a refugee is may, in

most cases, be harmful. When Barutciski (1998, p. 11) claims that this extension may be harmful he is implying that it could possibly be even more detrimental to those who are already covered by the refugee notion. This is because expanding the definition could result in people being inadequately protected, as there would then be too many victims being accounted for in the UN's 1951 Refugee Convention. For that reason, this is why this section implies that the expansion of the refugee definition to include other forms of victims besides those already mentioned in the definition, is actually damaging to the traditional asylum option that is crucial to refugeehood. This point is plausible as altering the current refugee definition may be considered to affect the strength of the protection already provided.

Scholars such as Barutciski (1998, p. 11) believe that distinct definitions are formed for legal reasons. For instance, it was decided that a certain group of individuals who fear persecution based on civil or political grounds and who flee from their countries, should be considered as refugees and bestowed a certain set of rights that separates them from other foreigners. He states that it would not make sense to confer rights provided for refugees on other kinds of victims. Those who maintain that there should be progress towards ensuring that (for example) the refugee and IDP were considered more similarly, are ignoring an important part. The types of rights given to refugees would not coincide well with other forms of victims, specifically, those who are not still in their countries of origin.

Therefore, this begs the question as to whether or not it is obligatory to introduce more victims to the definition. Enforcing new human rights' instruments may weaken the impact and credibility of those that currently exist. Accordingly, the notion of broadening the refugee definition to include other kinds of victims is implausible because the term, 'refugee' accounts for particular circumstance that are categorised by being an immigrant in a new country (Barutciski, 1998, p. 15).

Years later, when taking into account the, "scholarly shift away from refugee studies in favour of forced migration studies" James Hathaway agrees with Barutciski that the certain kind of victims protected by the UN's 1951 Refugee Convention must continue to be differentiated from other types of victims (Dawson & Farber, 2012, p. 120). Consequently, in order to further stress this point, Hathaway provided two explanations for his position. The first position had to do with the grounds for discrimination stated in the UN's 1951 Refugee Convention.

Hathaway claims that refugee status is an acknowledgement of the urgency as well as importance to react to the needs of persons in flight from danger provoked by discrimination – the prevention of which, according to Hathaway, is the most vital human rights’ commitment of the international legal framework. Strictly speaking, refugees are people who are at extreme risk because of various reasons based on factors such as who they are or what they believe. For that reason, refugees are what he calls ‘doubly deserving’, because 1) not only is the jeopardy based on issues that are either unalterable (such as race, sex or even nationality), or, 2) so essential that they should not have to be undermined in order for victims to be safe (such as religion, belonging to a specific social group, or having an alternative political opinion). What Hathaway is suggesting is that those refugees that are covered by the UN’s 1951 Refugee Convention’s definition are the ones that experience danger due to some form discrimination. This discrimination is based on things such as their race, religion, nationality, membership of a particular social group, or political opinion. These are the factors that the refugee concept from the UN’s 1951 Refugee Convention is explicitly committed to rectifying. Consequently, because these factors are what were assigned to the refugee notion, it would not make sense to expand these features to include others. Nonetheless, the researcher finds this point to be deeply flawed, as how can it be acceptable for victims to only be covered by the refugee definition if they experience discrimination based on the five grounds? Is it be fair to purely base a definition on these grounds only? It does not seem to be. This way of defining a refugee cannot surely cover everything of what it means to be a refugee, as this would mean that the definition is under-inclusive. Nevertheless, it should be noted that the researcher is not attempting to disregard the importance and the impact that the present refugee definition has had in many people lives. What the researcher is attempting to show is that it is vital that the definition is developed and made sufficiently flexible to recognise the other ways in which a person could be viewed as a refugee. Occurrences such as war do not necessarily fall into the notion of ‘discrimination’. However, this does not mean that a person wanting to flee his or her country of origin due to war does not provide a valid enough reason to be recognised as a refugee. There are other painful ways of suffering, and Hathaway and Barutciski fail to acknowledge this fact.

3.3.2 Another objection against the non-expansion of the refugee definition

Another question that needs to be asked is, should the fear that the present refugee definition may lose its meaning be an adequate enough reason not to find ways of creating a definition that continues to protect those that suffer from individualised persecution, and that also takes

other forms of hardship into account? It is vital for laws such as the UN's 1951 refugee law to adapt and develop to include all issues that affect victims at a particular period. Persecution at an individualised level was included in the refugee notion because during that particular period, those were types of persecution that most people faced. Globally, issues affecting the people have changed and thus it is vital that these new circumstances be acknowledged. By leaving the refugee definition unchanged suggests that those who suffer from individualised persecution are more worthy of protection than those who suffer due to (for instance) generalised violence or civil strife. It should be acknowledged that a person resorting to fleeing from their country of origin should be an adequate enough reason for the inclusion as a refugee. In as much as caution should be exercised when expanding the refugee definition so that not everyone is classified as a refugee, the goal should be to make the definition inclusive in a way that promotes protecting both non-individualised persecution and individualised persecution. One particular person's suffering cannot be afforded more consideration than another victim's suffering.

3.3.3 Seven reasons why the UN's 1951 Refugee Convention's definition of a refugee should not be expanded

In her article, "Seven reasons the UN Refugee Convention should not include 'climate refugees'", Professor Jane McAdam (2017) claims that critics of the UN's 1951 Refugee Convention seem to fall into two categories. In one category are those individuals that state that this international law is too out-dated to tackle the 21st century's displacement issues such as civil strife and environmental disasters. While, in another category there are those who believe that the legal instrument is too generous, and is in some way liable for saving many refugees that are suffering in many parts of the world today.

Fairly speaking, the treaty does not protect every deserving victim in the world, but then it was not intended to. For instance, it does not include the millions of victims displaced in their own states, other kinds of victims such as economic migrants, and those affected by civil strife. Of late, these additional types of migrants have been recognised groups deserving of protection.

According to McAdam (2017), there are at least seven reasons why this supposition is unsound; they are as follows:

- 1) Many disasters of displacement take place in home countries, not across borders.

- 2) A lot of movement has become more regular as circumstances deteriorate over time, as opposed to more sudden flights of refugees.
- 3) Climate change and disasters alone do not cause movement. Rather, they are, as McAdam (2017) describes, the “straw that breaks the camel’s back”, and are current issues such as conflict, human rights abuses, poverty, and also poor governance. She also posits that it might be challenging to include all of these issues in an expanded UN Refugee Convention definition, because it would be difficult to weight these issues similarly in terms of importance and relevance. This point seems unsound, since how is the refugee definition able to give the same weight of importance of those being harmed due to (for instance) issues of race, religion, or political opinion, but not extend the same importance and weight to other issues? The current refugee definition is based on the persecution of one or more of the five grounds provided in the definition. If those five grounds are acknowledged when considering the hardships of others, then the same can surely be done for those suffering due to natural disasters or generalised violence. Again, this point to one person being considered more worthy of protection than another. In as much as the refugee definition cannot cover all sufferings and hardships, it cannot only recognised certain ways of suffering as the only qualifying criteria to be considered a refugee.
- 4) There is a lack of political motivation to broaden the UN’s 1951 Refugee Convention. If this legal instrument is to be further expanded, its protection would be even weaker, as it would not adequately protect those it currently protects. As the researcher has previously stated, it is important for the refugee definition to be developed to include current issues that are affect other people today. It cannot be assumed that the initial refugee definition is still the only correct definition of a refugee. Consequently, the researcher suggests that it cannot be denied that that many vulnerable are in desperate need of a more sufficient refugee protection system. The current definition of a refugee should be expanded to include those who have a moral right to claim asylum (Ferracioli, 2014, p. 3). Nevertheless, in order for states to develop and expand on the current refugee system, an attempt should be made to form updated Refugee Convention, to assist with the moral rights of all of those who are only able to only protect their most essential human rights by moving to another state (Ferracioli, 2014, p. 4).

3.3.4 How expanding the refugee definition could cause more damage than good

It seems unlikely change that legal reform of the refugee system will be realised, as states are not motivated to effect such change. However, to maintain the UN's 1951 Refugee Convention's definition would be problematic the dire conditions experienced by many refugees would result in severe human rights issues. Nevertheless, there i scholars and practitioners agree that if states attempted to create a new definition, this would create an even weaker legal instrument. In other words, a weak legal instrument that would leave a lot of vulnerable victims outside of the instrument's scope of assistance (Ferracioli, 2014, p. 4).

In light of the above, scholar Joan Fitzpatrick (1996, p. 234) explains:

“The reluctance of the international community to abandon the 1951 foundation reflects not only a sense that the Convention embodies indispensable and enduring values but also a pragmatic awareness that hoped for advances might instead dilute standards of protection”.

Furthermore, Michael Dummett (2001, p. 37) adds that, “any suggestion of renegotiating the Convention is dangerous: there are many signatory states that now consider its terms too generous”. On the surface level, altering the present refugee protection policy is impractical and risky, since forcing for a change of this law may lead to circumstances where even more desperate persons are unable to access adequate help.

3.3.5 The notion of self-determination and the problem of absorbing a large influx of refugees

Joseph Carens (1992, p. 31) states that Walzer claims that states have an extensive moral (as well as legal) right to include or exclude whomever they choose, because control over admission is vital in order to maintain self-determination (Carens, 1992, p. 31). David Miller (2016, p. 63) provides a clear explanation of the notion of self-determination:

“...Self-determination is usually understood to include the right to control membership of the body that decides, subject to the usual human rights provisos. One way to see this is to think of a state that wishes to amalgamate with its neighbour: the second state, we would normally assume, has the right to refuse-this is what self-determination demands...A large part of its value is that it gives us, as citizens, some degree of control over what happens to our political community in the future”.

Miller (2016, p. 63) indicates that self-determination is when a country's citizens are able to prioritize their needs, desires, careers, lives, and overall well-being over those who are outside of the country. However, this can obviously be done only for as long as there is no harm imposed on the next person. Furthermore, citizens have more of a say in how political issues are dealt with in their own state. This means that if a state and its citizens believe that altering the refugee definition to include other types of victims would cause more damage than good, they are entitled only to allow and welcome certain groups of refugees.

The definition of self-determination indicates why Walzer argues that there should be limits to states' obligations to refugees. He calls for a moral principle; he states that self-determination is a morally legitimate problem that may justify the exclusion of refugees.

Additionally, another argument aligned to the importance of self-determination and restricted borders is that the concerned country does not have the resources to accept a large flood of immigrants into its borders. Garrett Hardin provides a metaphorical example pertaining to a lifeboat that signifies the limited means or space that a country may have, he says that lifeboats are almost full and that there is some space left but it is not enough for those in the water to fit into the boat (Kinsella, Russett & Starr, 2012, p. 425). He highlights how it would be difficult to assist all the victims in the water and allow them to board the boat as those who are on it would sink. Nonetheless, even filling the lifeboats to capacity by assisting at least some of the victims in need is difficult because, according to Hardin, the extra space on the boat is important as a "safety factor". Thus, because of their desperate desire to survive, those who are already on the boat are likely think it's better not to admit anyone else onto the boat. Similarly, Hardin believes that lenient border controls put strain and unnecessary pressure on host countries as there may not be sufficient resources or the means to accommodate all people seeking to migrate.

Garrett Hardin argues that it is unacceptable for some immigration laws to be lenient and to allow foreigners to cross into their international borders because it puts strain on the resources of the host state, ultimately resulting in "population control the crude way" (Kinsella et al., 2012, p. 425). Therefore should there be a demand to expand the refugee definition of the UN's 1951 Refugee Convention if the possible costs of doing so are detrimental or harmful to the 'invaded' state? Carens (1992, p. 31) claims that there should not be an obligation imposed on states, as states are not all capable of accepting migrants without being "overwhelmed". According to Carens (1992, p. 31), identifying appropriate

criteria of selection merely assists in determining what types of migrants to accept and what priorities to establish, not how many should be admitted. States should not be obliged to allow entry to an overwhelming number of foreigner nationals.

The researcher agrees that states should not be obliged to absorb an overwhelming number of refugees as it does put strain on the host country, and states cannot save every victim. However, if the refugee definition is clearly defined to include both individualised and non-individualised persecution, especially non-individualised persecution that accommodates the current and ‘common’ sufferings (civil strife, displacement, generalised violence and statelessness) that coincide with present issues, then states would be making a significant impact in saving lives. It is better to assist a wide variety of victims rather than not assisting any victims at all, however, the fear of overwhelming host states should not detract from the fact that the UN’s 1951 Refugee Convention definition should be expanded to include other victims so that they are also give a chance at protection and better living conditions.

3.4 Conclusion

The aim of this chapter was to show how strengthening and using the current refugee definition is harmful to other potential asylum seekers who are excluded from the definition. This is because it takes away the chance for such persons to enter a host country in which they can be protected. As such, the main theme of this chapter was to highlight the UN’s 1951 Refugee Convention’s limitations on those parties who can claim protection from favoured countries of asylum, which have become more pressing, and which the definition seems to disregard. This has negatively impacted on individuals who want or need to cross international borders, driving them into the care of smugglers. These desperate and risky choices—to accept the services of perpetrators who are criminals—form the victim’s experience, the public’s perception of a trafficked victim’s circumstance, and in most cases, even the extent of the protection that they may receive. The act of migrating illegally has also become expensive and dangerous. This forces migrants, such as those who are not recognised by the refugee definition, to become the prey of smugglers and traffickers. There needs to be more caution and diligence shown when deciding who is and who is not included in the refugee definition, as by failing to do so increases international human rights’ crimes which we should be striving to minimise.

However, there is the other perspective that if the refugee definition is expanded it could lose its significance. Because the definition is specifically assigned to certain group of victims, i.e.

those who experience persecution due to their religion, sex, race, or being a part of a certain social group, these victims in a better position of being protected and accommodated because the definition has been narrowly focused on them. This means that more lives will be adequately considered and also saved from specific dangers.

Therefore, if the refugee definition is expanded to include other types of victims, such as economic migrants, IDPs and those who suffer during war or civil strife, this could undermine the effect and impact of the definition stated in the UN's 1951 Refugee Convention. This would be the case, as it would be difficult to accommodate and adequately assist all of these victims, and it would be costly for host states, as more money would be spent to ensure the safety of all these victims. In as much as it is unfortunate, it is impossible for states to assist everyone who seeks to migrate. There is no country that has an exhaustible capacity. However, in as much as there should be a moral obligation for a country to assist every type of victim, a country still has to take into account factors such as: how many outside victims it can host and how much aid it can provide for those in need.

This is why scholars propose that the refugee definition remain the way it is; if countries also assist all victims, it could compromise how adequately it looks after its own citizens. Every state has priorities of its own and that is why it makes more sense to keep the definition limited to a certain group of victims. This will ensure that the nationals belonging to potential host states do not have their overall wellbeing, their various opportunities, health benefits, and lifestyles compromised or impinged on because their state's resources and time is being allocated to outside victims.

If the requirement of individual persecution is relaxed, it is difficult to know where to stop. If fleeing from war makes a person a refugee, should not fleeing from natural disasters or desperate poverty also make a person a refugee? Defenders of the 1951 Convention Relating to the Status of Refugee's definition sometimes take a more pragmatic stance, stating that even though we should accept that many people other than the persecuted have a moral claim to asylum, there still remains good reason to keep the legal definition of refugee narrow. Wealthy states are already reluctant to admit desperately needy foreigners. They are more likely to be persuaded to fulfil their moral obligations if their duties are restricted under international law to a smaller set of cases.

Thus, in light of the above, these factors indicate why there some believe that it makes sense to constrain the refugee definition, i.e. so that there is not an over influx of people to assist.

Assisting a specific group of victims well amounts to assisting them adequately as opposed to having an unreasonable amount of people to assist and the end result being that it is too costly for the host states and their citizens.

However, throughout this chapter, the researcher has also attempted to show that regardless of the difficulties in expanding the refugee idea, it is something that urgently needs to be done. It can no longer be tolerated that the five grounds of individualised persecution stated in the UN's 1951 Refugee Convention are the only ways in which a person can access refugee status. Such a standpoint would be neglecting other kinds of victims that also need to be protected and recognised under the domain of refugeehood. Currently, it is not only victims of individualised persecution that need to be protected, it is also those who experiencing events such as civil strife, famine, poverty, and violence, as these circumstances could push a person to attempt to leave his or her country of origin. Should these victims that do not fall within the concept of individualised persecution, simply be ignored? Alternatively, would it not be morally appropriate to find ways to help them too?

To claim that the definition of refugeehood would lose its meaning if others were included in it, is an implausible argument. The researcher believes that by maintaining the definition in its current state would in actual fact cause more damage, because so many victims would be neglected and left to suffer. Failure to expand the definition would create more suffering and more people would resort to committing serious crimes in an attempt to escape certain conditions. The expansion of the UN's 1951 Refugee Convention's refugee definition would create more room for more safety in the world. However, the researcher is not suggesting that it would solve all the endemic issues in the world, but its expansion would make a great difference in many lives. The expansion of the definition would make it more powerful, as more lives would be saved and there would be even more transparency in assisting and recognising that people experience other hardships and also deserve attention and assistance. Therefore, the expansion of the refugee definition should be a goal we should strive to achieve.

CHAPTER FOUR - A MOVE TOWARDS A COMPREHENSIVE DEFINITION OF REFUGEE AND THE ALTERNATIVE SOLUTIONS FOR THE DEFINITION

4.1 Introduction

In the previous chapter, the researcher presented the various reasons why it may be advocated that there would be more implications if the UN's 1951 Refugee Convention's refugee definition were to be further expanded. If this were to take place, it could cause the definition's actual meaning and purpose to lose its importance. This could possibly cause those that are already protected by the refugee definition, to not be protected sufficiently. As stated, it would not be easy to cover every victim in the world, which is why there is the other perspective that it is best to leave the current refugee concept unchanged.

Even so, the UN's 1951 Refugee Convention's definition of a refugee is a poorly created one. Even though it is based on humanitarianism, it is contradictory, as it fails to recognise all victims that are suffering. Its main aim is to only acknowledge specific sufferings; those that are based on race, sex, and a victim's political opinion, and these kinds of experiences tend to ignore other ways of suffering or harm. It is problematic that in order for one to qualify as a refugee, that person has to experience persecution because of either his religion, race, membership to a certain social group, or a have preferred political opinion. This makes the refugee definition unfairly limited and harmful, as it only accommodates a certain group of victims. Consequently, because of its failure to cover these other detrimental experiences, an expansion of the definition of refugee is urgent and vital to minimise the dangers and harm that all victims may experience. An attempt to ensure this could lead to many parts of the world being safer for all individuals.

Therefore, this chapter aims to provide a comprehensive way of improving the current refugee definition as well as what is needed for this to be adequately achieved. However, this chapter will be separated into two parts: part I of this chapter takes into account how we can move towards a comprehensive definition of the notion of who qualifies to be a refugee, whereas part II considers finding substitute solutions to expand the refugee notion. However, even though it is acknowledged that it would be difficult to change the definition of refugee due to the possible impact on its current significance, this difficulty should not lead to the continued suffering of others. It is important that the definition of a refugee is reformed so as to ensure that other victims are adequately and fairly considered.

4.2 Part I: Towards a comprehensive definition of the concept of refugeehood

The current UN's 1951 Refugee Convention's definition of a refugee has shown to be insufficient to take into account the needs of the several forced migrants seeking international aid and protection. This is evident based on the following two major issues. Firstly, the current refugee definition fails to directly and comprehensively take into account the needs of other categories of forced migrants today: those escaping conflict; the IDPs; economic migrants; climate migrants; and stateless persons. Other international forums such as the Guiding Principles on Internal Displacement and the 1969 OAU Convention Governing the Specific Aspects of Refugee problems in Africa have been major but insufficient initiatives. Secondly, although refugees fleeing persecution are well protected by the UN's 1951 Refugee Convention, developed states have recently implemented measures that have undermined the refugees' rights to seek asylum. These problems have left significant gaps in the international community's ability to take into account the protection needs of forced migrants and to assist them.

The UN's 1951 Refugee Convention's refugee definition fails to state what constitutes a well-founded fear of the various kinds of persecution (Howard, 2010, p. 94). According to Tiffany Howard, the statement "well-founded fear" has caused a debate between forced migration scholars and policymakers. This is why there is an urgency for the notion of a refugee to be reviewed and further elaborated to include the modern refugee and not just the refugee of the post-world war period (Howard, 2010, p. 94). The post-World War II refugee was simple to define because political persecution was an issue and it was the main cause of refugees fleeing during that period. In terms of the circumstances that are currently being experienced, numerous threats to a person's well-being add to their flight, but they fall outside the UN's 1951 Refugee Convention's refugee definition, including occurrences such as economic insecurity, displacement, and civil strife, as already stated.

There is a critical need for the definition to be revisited and to include the changing circumstances of the world. The vagueness of the UN's 1951 Refugee Convention has permitted states to forcibly deport and exclude victims from asylum protection under the Convention. This exclusion exacerbates the refugee crisis in some areas and this means that other forms of victims that should be recognised as refugees are disregarded (Howard, 2010, p. 95).

4.2.1 The tools that are needed

Therefore, in order to increase security for all victims of forced migration, and in particular to take into account the major gaps identified, a wide-ranging set of tools is needed. These will ensure that a more comprehensive refugee definition is created. Forbes (2005) rightly proposes three steps to develop forced migration protection comprehensively and meaningfully. Firstly, protection for refugees who are fleeing due to reasons other than persecution needs to be formalised and implemented in the UN's 1951 Refugee Convention's refugee definition. By enforcing new forms of protection, more states will be obliged to assist all victims of forced migration, regardless of the circumstances that they are experiencing. These forced migrants need to be assured that they will not be returned to a country of harm, a protection that is fundamental and the entitlement of all refugees. Robust solutions for victims of forced migration also need to be developed in order to avoid major uncertain legal status faced by most non-refugees today. Such robust solutions should be based on a serious analysis of the situation the migrant has fled (such as the nature, intensity, and duration of conflict, as well as the nature of international diplomatic or military response), with different types of forced migrants requiring different levels of solutions. Furthermore, by considering the circumstances underpinning the victims' suffering and their desire to leave their countries of origin, a comprehensive refugee definition should be well expanded to include considering other hardships that are experienced.

Where systems of subsidiary protection are established, the UN's 1951 Refugee Convention's refugee definition needs to be protected from any undermining factors. In other words, it should be a definition that is adhered to and used by all states.

Additionally, states should be prohibited from denying or restricting the rights of forced migrants to seek asylum. It is important to find ways of potential refugee receiving countries to become part of the UN's 1951 Refugee Convention. Receiving countries also need to develop fair and efficient asylum systems that use a professional corps of asylum adjudicating, follow fair processes, and encourage all victims of forced migration to apply for refugee status (Martin, Fagen, Jorgensen, Schoenholtz & Bondat, 2005, p. 71). Time limits to restrict asylum applications should also be removed in order to avoid compromising migrants who are often traumatised, ignorant of local law, and unable to speak the local language. Simultaneously, nations should not be permitted to return individuals to countries where they face a well-founded fear of persecution, and their rights to seek asylum should be respected

(Martin et al., 2005, p. 71). Additionally, burden-sharing is not stated in the UN's 1951 Refugee Convention, and this is problematic as it is an important factor to consider. It is essential to ensure that all states are involved in providing asylum to victims and that this burden is not only imposed on certain states. The UN's 1951 Refugee Convention has a continuing relevance in protecting refugees, and this is why there should be room for improving it (Quinn, 2011, p. 24).

Whether for political or economic reasons, or for any other reasons, international migration has reached a scale that has made it a major subverting force in the world (Smith, 1981, p. 1464), because it fails to recognise the moral principles behind the importance of protecting and accommodating only certain groups of victims. The failure to recognise other victims causes it to undermine the importance of morality and the importance of extending help to a wider range of people who are in need.

Therefore, the best approach to this dilemma is to categorise the different kinds of migration and then ask what, if anything, international activists can do about the destabilising causes and consequences of large-scale migrations. The international community has failed to develop ways to accommodate other kinds of victims by creating permanent mechanisms that monitor and regulate the flow of refugees. Nevertheless, the growing number of refugees worldwide suggests that we can no longer afford ignoring the problem. The urgency for long-term, effective policy and procedures for handling refugee crises is significant.

As stated by Hathaway in Burson and Cantor (2016, p. 87-88):

“Refugee status should be entitlement of any person or community for whom there is no reasonable likelihood of meaningful protection (Burson and Cantor, 2016, p. 87) of basic human rights-whether civil, political, economic, sexual or cultural- in their own state... The role of refugee law should be to provide a source of interim protection for all such persons, until and unless the risk to human dignity in the country of origin ceases to exist. In this sense, refugeehood becomes an autonomous response to human rights abuse and gives people some amount of direct control over their own lives”.

Thus, Hathaway believes that the UN's 1951 Refugee Convention's refugee definition should conceptualise basic human rights and how the definition should be expanded bearing these rights in mind. However, it remains clear that refugee law should remain distinct from international human rights laws, and it could even be the means through which to address the inadequacies of laws such as the UN's 1951 Refugee Convention.

4.2.2 The OAU Convention and the Cartagena Declaration's definitions of a refugee

National and regional methods based on the OAU Convention's definition of a refugee are suitable means to provide legal protection for the majority of today's refugees who flee from serious forms of dangers (Martin et al., 2005, p. 70). The OAU provides a wider definition of the term 'refugee':

“The term “refugee” shall also apply to every person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country origin or nationality” (Jackson, 1999, p. 177).

The above definition does not consider the idea of individual persecution as important in determining refugee status, instead it makes reference to the external circumstances of violence. Moreover, the refugee definition indicates that refugees are mainly people whose protection and freedom is threatened (Kneebone, 2017, p. 5). The inclusion of generalised violence, internal conflict, and massive violations of human rights expands the refugee notion beyond that of the 1969 OAU Convention, which is a motivation and an evident recognition of closing the gaps in the 1951 refugee definition.

Furthermore, the OAU's 1969 definition makes reference to situations of “external aggression, occupation, foreign domination or events seriously disturbing public order”, while the Cartagena Declaration refers to circumstances of “generalised violence, foreign aggression, internal conflicts, massive violation of human rights”. In ethnic and religious conflicts, the UN's 1951 Refugee Convention can be considered relevant when the violence is aimed at a certain part of the population because of the biased nature of the harm.

By taking into account the situations of violence in the countries of origin, the OAU's 1969 Convention provides a different meaning to the notion of asylum, whereby the danger experienced by a refugee in their home state is estimated based on outside factors. In the African environment, where government organisations have experienced extensive corruption and violence in the post-decolonisation period, individuals have often taken flight from the impact of various kinds of violence that were caused by the collapse of state structures (Crepin, 2016, p. 5-6). The individualistic focus on persecution present in the UN's 1951 Refugee Convention has not always been adequate in those circumstances, even with the moderately wide interpretation of its refugee definition (Crepin, 2016, p. 6).

However, the OAU's 1969 Convention created a new refugee policy that was more appropriate in the regional context. Moreover, not only did the OAU's 1969 definition show "markedly different historical context(s)", as claimed by Andrew Shacknove (1985: 276), it also revealed a diverse geopolitical environment, as its goal was to align the native asylum systems to particular needs and concerns of refugees in the area.

The OAU's 1969 Convention's definition of refugee is substantial as it provides a broader understanding of the type of refugee definition that is needed, and an everyday understanding of what it means to be a refugee. Unlike the refugee definition in the UN's 1951 Refugee Convention, the OAU's 1969 Convention provides other ways in which a victim can suffer or be harmed, and it is not limited only to individualised persecution. When looking into a more comprehensive definition of refugee, it would be progressive and beneficial to use the variations evident in the refugee definition provided in the OAU's 1969 Convention. It would facilitate more widespread protection for all victims.

In addition to the OAU's 1969 Convention's refugee policy, there are other definitions available in other international laws. For instance, the Cartagena Declaration (2000, p 123) includes other forms of refugees that experience various types of harm. This definition includes:

"...among refuge persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed the public order" (UNHCR, 2000, p. 123).

This definition provides different reasons for flight stated in the OAU's 1969 Convention, specifically "generalised violence", "internal aggression", and "massive violation of human rights", and thus expands the notion of protection for refugees. While the definitions of a refugee provided in the OAU's 1969 Convention and the Cartagena Declaration are not necessarily the same, they clearly accept the same ideas as to what constitute a refugee (Crepin, 2016, p. 7). They both refer to the definition of the refugee from the UN's 1951 Refugee Convention and deliver new provisions, which expand the meaning of a refugee to various situations experienced by victims across the board. The definition of a refugee from the 1984 Declaration is significant as it extends beyond individual persecution, and it adopts a more modern definition of a refugee, which is aligned to the many problems that are being experienced today. While it may be the case that the present refugee definition in the 1951

Convention still maintains its strength, its rigid application has shown to be insufficient in reacting to the needs of refugees escaping different types of harm.

Accordingly, it would be beneficial to use these two international instruments to expand the refugee definition, as they attempt not to exclude other forms of victims from the refugee paradigm. This means that victims such as economic migrants, IDPs, climate migrants, and those being harmed due to general violence, are acknowledged as are their ways of suffering. For that reason, in order for there to be a more comprehensive definition of the notion of a refugee, there should be an attempt to combine the definitions from the UN's 1951 Refugee Convention, the Cartagena Declaration, and the OAU's 1969 Convention, and in turn, develop it into one precise, expanded, and inclusive definition.

Taken together, the broader set of principles provided in the OAU's 1969 Convention and the Cartagena Declaration take into account a migrant's pressure to flee from his native country in pursuit of refuge from threats to his life, security, or freedom because of "foreign occupation, aggression, or domination; internal conflict; generalized violence; massive violation of human rights; or (other) serious disturbances to the public order" (Van Selm, Kamanga, Morrison, Nadig, Spoljar-Vrzina & Van Willigen, 2003, p. 35). The Cartagena Declaration and the OAU's 1969 Convention's definitions mirror the combination of maltreatment and fear in a country's situation on an individual's fear. The Cartagena Declaration and the OAU's 1969 Convention's definitions also reflect the influence of individual suffering on the country's situation. In sum, combining all three refugee definitions' provisions would provide a more substantial refugee definition.

4.2.3 The problem of non-refoulement and the struggle to cross other international borders

However, the main problem with these definitions is that the initial step towards being identified as a refugee, is that the concerned victim has to be able to cross the border of their country. This requirement does not consider those who are unable to cross borders, such as those who are (for example) internally displaced and those who are caught up in war zones. These victims may struggle to escape, and thus, is it fair to exclude them? It would be unreasonably unjust to prohibit a victim from being recognised as a refugee simply because they are unable to cross the border into another state. This is also problematic, because the reasons behind victims fleeing or wanting to flee their countries are not always based on the grounds of persecution stated in the UN's 1951 Refugee Convention's refugee definition.

These victims may be fleeing because they are in other kinds of danger in their countries of origin. Hence, because these victims could be fleeing for other reasons unstated in the UN's 1951 Refugee Convention's refugee definition, their safety is compromised because this international policy fails to recognise them as refugees.

This is why it is essential that a broader definition of who a refugee is, is provided, as there has to be an inclusion of provisions that take into account those helpless victims that are unable to cross their country's borders.

Simultaneously, the most important factor of refugee status is the protection against returning a person to a country where that person has reason to fear persecution (The UN Refugee Agency, 1977). This protection is evident in the principle of non-refoulement, and it is widely accepted and also used by many states. Article 33(1) of the UN's 1951 Refugee Convention provides that "no contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on his race, religion, nationality, membership of a particular social group or political opinion" (The UN Refugee Agency, 1977). To put it differently, international states are prohibited from returning people who have the right to be classified as refugees, to their original countries, or to any country where they could be forced to endure persecution.

Still, this definition of non-refoulement is challenging as it only protects victims from being forced to return to danger or harm based on persecution once they have escaped from it, but it does not allow a victim to flee his country of origin when he faces danger. The principle of non-refoulement obligates international states not to forcefully return victims to danger, but it fails to oblige states to assist those who are in danger in their countries of origin. Thus, this begs the question regarding what happens to those victims that are in need assistance or being protected from danger, but cannot leave their countries of origin. Surely it is urgent and also important for them to be accommodated as well.

These factors indicate that a wider definition of the principle of non-refoulement is needed as it will compliment an extensive definition of refugee, which will ensure that international states assist those who are unable to escape their current borders without difficulty. In order for there to possibly be a more expanded definition regarding who qualifies as a refugee, the right to reside in a country in order to be safe is necessary, as is the right to migrate to another state; especially when a person needs to flee from violence or other forms of threat. As a result, the present UN's 1951 Refugee Convention refugee description does not

adequately accommodate the circumstances of other vulnerable groups that should be accommodated, and thus, the UN's 1951 Refugee Convention's refugee definition needs to be thoroughly revised.

4.2.4 Constraints in the UN's 1951 Refugee Convention's definition of refugee

It is acknowledged that in as much an expanded definition of refugee is necessary, there have to be reasonable constraints in the definition. In other words, there have to be reasons for including and excluding certain victims, so that the reason for and aim of the definition does not lose its meaning.

Furthermore, it should be noted that the researcher does not propose that all victims of some hardships should be included in expanding the UN's 1951 Refugee Convention refugee definition. It is impossible to include every victim who is experiences some form of hardship. The researcher argues that the current refugee definition can include other victims besides those experiencing individualised persecution. Again, that does not mean that all victims should be included.

The current UN's 1951 Refugee Convention's definition of a refugee should not be disregarded, as it still plays a significant role in protecting many people. The refugee definition seeks to protect those groups that are being discriminated within their country of origin. It protects them from discrimination, which is based on their, "race, religion, nationality, membership of a particular social group and political opinion" (The 1951 Convention Relating to the Status of Refugees, 1951). It does not take into account the circumstances of a particular state, but it does consider an individual's circumstances. For example, if a person was castrated in a Zimbabwean community because of their religious beliefs, they may be excluded and discriminated against because of their religious beliefs that may not coincide with the larger majority of the population of Zimbabwe. Therefore, that person would be likely to seek refuge in another host country in order to escape such ill-treatment. This would be a case where the UN's 1951 Refugee Convention's definition of a refugee protects a person because he or she is being individually persecuted due to their religious beliefs. Thus, this would be the kind of circumstance that should continue to be protected within the domain of UN's 1951 Refugee Convention's definition of a refugee. If a person is being excluded and discriminated against by their community or society, there is reason to include them in an expanded refugee definition. In this regard, the present definition should be retained and practiced.

However, it is important to expand the UN's 1951 Refugee Convention's definition of a refugee so that it not only represents individuals within a society, but also the society as a whole. This is why it is important to expand the UN's 1951 Refugee Convention's definition of a refugee to include a number of events that negatively impact a society as whole and indefinitely cause harm to a group of people. As the OAU's 1969 Convention and Cartagena Declaration state, this would include events such as external aggression, generalised violence, internal conflicts, great violation of human rights, and other events that may disrupt the overall public order. It is vital to include these types of occurrence as they show that countries of origins can also imperil people and thus a person may want to flee from that specific state.

As a result, the expansion of the UN's 1951 Refugee Convention's definition of a refugee should be purely based on the persecution of individuals and classes of people. In this way, a wider variety of circumstances can be taken into account when assisting certain victims. Conversely, this begs the question of how we determine who should be included and excluded.

The researcher has already provided who should be included. To determine who should be excluded is not an easy task, but it has to be done so that the definition does not lose its purpose and meaning. For instance, a woman who experiences domestic violence in her home would not qualify as a refugee because it is an experience that does not coincide with being persecuted based on her race, religion, nationality, or political opinion. In as much as her circumstance is unacceptable and requires attention, it is not the type of experience that would necessarily force a person to flee to another country. There are other alternatives that could be exhausted, such as separating herself from the abuser or going to the police to report the abuse. In her case, these alternatives would have to be the first options that would have to be considered before the fleeing to another country. Nevertheless, the researcher is not trying to suggest that a victim of abuse's circumstances should be disregarded, instead she is trying to state is that there are other solutions that can be used to assist abuse victims. For that reason, victims of domestic abuse should not fall within the ambit of the refugee definition. It is imperative that a victim of circumstance shows that he or she is being targeted based on her race, religion, political opinion, or nationality.

Moreover, a class of people who are experiencing some form of emotional distress because they are being retrenched from their offices do not qualify as refugees. In order for a class of

people from a society to count as refugees, they have to be in danger due to the state's actions or non-actions. In other words, when I state that a group of people can count as refugees due to the non-actions of the state is if (for example) a war breaks out due to the invasion of another state but the invaded state is unable to stop the war or invasion. Additionally, famine and displacement also warrant a group of persons qualifying as refugees. These factors show that the threat has to affect a large group of people to the extent that they have no other alternatives but to leave their countries of origin. Experiencing generalised violence or famine are acceptable reasons for persons fleeing from their current nation states. Their lives and safety are significantly threatened and they will indefinitely endure these fundamental types of abuse if they remain in those countries.

As a result, the researcher has attempted to illustrate the reasons that warrant the inclusion and exclusion of certain victims. Victims experiencing individualised persecution purely based on the five grounds provided in the present UN's 1951 Refugee Convention's definition of a refugee, along with classes of persons who are in danger because of their states or because of the lack of protection of their states are those people who should be included in the ambit of an expanded definition of a refugee.

4.3 Part II: Alternative solutions to expanding the current refugee definition

Further to part I of this chapter, a new definition of a refugee could be created, one that shows various and complementary ways that would allow a person or group to be categorised as a refugee. This definition could also provide a more complete and unified framework of protection. It is vital that an expanded refugee policy also protect vulnerable migrant victims. Overall, what has been established by this research is that there are two categories of vulnerable people that can be identified as refugees: (i) those who need to be protected from individual persecution; and (ii) those who need this protection, but are experiencing harm that is not linked to individual persecution. Additionally, in terms of (ii) these people would include IDPs, those who are stateless, economic migrants, those experiencing general violence, and climate migrants. However, it should be recognised that this list is not limited to these types of vulnerable people. Furthermore, the principle of non-refoulement should not only be based on states not returning vulnerable groups to their countries of origin where they might be endangered, it should be based on the imperative to assist those who need to flee their countries of origin, but are unable to do so.

These points indicate how an alternative solution to the definition of refugee is to create a new one, a definition that does not overlook the suffering of others, and is expanded in a way that unifies the different hardships that will allow a person to seek refugee status.

The goal should be to provide both an international policy that adheres to the above guidelines and to create a definition based on inclusion (Crepin, 2016, p. 16). Furthermore, the guidelines should result in circumstances that would allow victims to attain refugee protection. For a comprehensive system of protection, the UN's 1951 Refugee Convention and its provisions of refugee protection need to draw on the principles set out in the expanded classifications of a refugee evident in the OAU's 1969 Convention and the Cartagena Declaration, in order to secure and more equitable definition of a refugee. It is important that governments include the definitions from these two international frameworks when expanding the out-dated definition of a refugee, so that they achieve a sound policy and definition to ensure that all entitled migrants are entitled to and can access international security.

According to Crepin (2016, p. 16), the Executive Comity (Excom) of the UNHCR's Conclusion No. 103. acknowledges "the value of regional instruments, as and where applicable, including notably the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, as well as the 1984 Cartagena Declaration on Refugees" and the stated the obligation of "establishing general principles upon which complementary forms of protection for those in need of international protection may be based". The gap created by the current UN's 1951 Refugee Convention should be expanded to take into account different types of protection that are aligned to the comprehensive definitions of a refuge that exist. Although such an expanded definition might not inflict legal responsibilities on governments, it would provide a step towards a more consistent refugee policy for protection seekers internationally, via a practical approach (Crepin, 2016, pp. 17-18).

Updating the refugee definitions, based on the comprehensive definitions of a refugee under the OAU's 1969 Convention and the Cartagena Declaration, would provide more certainty and safety for potential asylum seekers. In addition, the variations between the two systems of protection, specifically individual protection and protection against other forms of harm, permit states to ensure that asylum structures are aware of the various kinds of hardships suffered by migrants seeking asylum. For example, hardships based on religion or one's political opinion could be grouped under individual protection, whereas hardships based on

different forms of danger or violence that are unrelated to individual persecution, could be grouped under victims of harm, which are not linked to individual persecution.

Essentially, the UN's 1951 Refugee Convention, the OAU's 1969 Refugee Convention, and the Cartagena Declaration are all provisions of international law (Moore, 2012, p. 159). Each recognises the basic rights and needs of refugees based on non-discrimination and non-refoulement. Additionally, all three pieces of legislation acknowledge the qualifying criteria for being granted refugee status in terms of individualised persecution, displacement, and armed conflicts. The Cartagena Convention includes an additional human rights dimension because it is the only refugee policy that acknowledges extensive human rights' threats as reasons for flight and the basis upon which asylum should be granted.

4.3.1 Proposal of a new definition

Described hereunder is an alternative definition of who should be considered a refugee.

In order for a person to be classified as a refugee, they should belong to one of the following two categories:

(1) *Individual persecution*

An individual who is outside of their country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on their race, religion, nationality, political opinion, or membership of a particular social group.

(2) *Individuals who are exposed to elements of danger that are unconnected to individual persecution*

An individual who has fled or needs to flee his or her country because their lives, safety, or freedom have been threatened or undermined by generalised violence, foreign aggression, internal conflicts, displacement, climate danger, poverty, statelessness, and massive violation/s of human rights or other circumstances that have seriously disturbed the public order or undermined a concerned person's overall well-being.

These victims should be assisted when they need to flee from their countries of origin and they should not be forced to leave international borders if they experience individual persecution or other forms of danger in their countries of origin.

The above expanded definition is important because in as much as the refugee notion from the UN's 1951 Refugee Convention is restricted, this restriction still does not mean this

definition has not saved and protected many people seeking asylum as a refugee. Today, there are still many people experiencing individual persecution, and therefore, it would still be beneficial for the UN's 1951 Refugee Convention's refugee notion to continue to exist. Its limitations do not mean we should completely eliminate it but rather, ways should be found to improve it, in order for it to be defined in a way that includes more vulnerable people. For this reason, the researcher has chosen to expand the UN's 1951 Refugee Convention's refugee definition by adding the victims that the Convention does not recognise, namely those people that suffer in ways that are not connected to individual persecution. The OAU's 1969 Convention and the Cartagena Declaration have covered these victims. Combining the criteria from both of these international laws that allow any victim to qualify as a refugee is sufficient. Furthermore, the reason why the researcher combined all three laws' definitions was because they complement each other in ways that will allow more lives to be saved. All three international laws combine to make a stronger definition in the attempt to find an approach to deal with the cracks that currently exist in international migration laws.

4.4 Conclusion

It is essential that the perception of humanitarianism is transcended and that legislators are bold enough to change the way in which they approach the phenomenon of refugeehood in the world (Smith, 1981, p. 1495). It is necessary to provide ample protection to those individuals who find themselves in risky and life-threatening situations. There is a global urgency to adopt "a refugee definition to conform to the tenets of humanitarianism as well as the dictate of pragmatism" (Smith, 1981, p. 1495). This chapter sought to provide a comprehensive notion of who a refugee is, as well an alternative definition of a contemporary refugee, a definition that includes all victims of suffering that are entitled to be classified as refugees.

CHAPTER FIVE - THE IMPORTANCE OF EXPANDING THE REFUGEE DEFINITION

5.1 Introduction

In the previous chapter, the researcher provided a comprehensive approach to improving the UN's 1951 Refugee Convention's current refugee definition and provided alternative solutions (a new definition) to assist in formulating a comprehensive definition. Part I provided a skeleton of how encompassing any contemporary definition of refugee should be, part II related to part I as it provided the expanded definition. This is a definition that fairly acknowledges all victims that may be affected in their countries of origin, due to various experienced hardships.

For that reason, the aim of this chapter is to consider the importance of expanding the UN's 1951 Refugee Convention's current refugee definition. In other words, why should it be considered essential for the refugee definition to be broadened? This question will be answered in various ways within this chapter. This chapter will take into account the possibility of expanding the definition in order for it to include other victims besides those that suffer due to not qualifying to any of the five grounds of persecution currently cited in the UN's 1951 Refugee Convention's refugee definition. If this definition was altered in a way that includes other forms of suffering, it would provide more vulnerable people with a safe haven. Ultimately, this final chapter seeks to establish that such a broadening of the definition falls within the spirit and purpose of the UN's 1951 Refugee Convention's refugee policy, and because of these vital factors, such expansion of the refugee definition is desirable and reasonable.

Furthermore, this chapter seeks to illustrate how the expansion of the refugee definition should occur, as the reasons for forced migration have changed and refugees fleeing war and also displacement are among the greatest component of forced migrants. An expanded definition is also aligned to the aims of international communities. Therefore, an expanded definition should be attempted, because refusing to do so is a refusal to show tolerance and compassion towards today's increased pool of victims enduring hardship and suffering.

5.2 The importance of expanding the UN's 1951 Refugee Convention refugee definition to recognise and include other vulnerable and at-risk migrants

There are many individuals suffering in their home countries, and this is because they are not being provided with the necessary protection and care that they need in order to survive adequately (Lister, 2013, p. 645). In order to assist these individuals, they require assistance from significant international policies such as the UN's 1951 Refugee Convention. If international policies such as the UN's 1951 Refugee Convention seek to meet the obligations of assisting these neglected victims, it is vital that those who are unable to meet their basic needs on their own are recognised by the UN's 1951 Refugee Convention as a matter of urgency.

According to Lister (2013, p. 646), the world has many people in urgent need of assistance, who may or may not have the chance of being supported by other nations. At times, states are unable to adequately protect migrants or provide them with resources in order for them to live adequate lives. These victims have no choice but to rely on international laws such as the UN's 1951 Refugee Convention, in order for them to be classified as refugees and thus gain the assistance they need in order to escape their dire circumstances. Outside of this first group of people is another larger group that needs international attention and also protection. This larger group consists of those people who experience very little economic opportunities and live under restricted political systems, possibly one that is prejudiced against them. These group should be acknowledged as they are also in need of humanitarian assistance. Accordingly, this begs the question as to why are migrant groups are not covered within the framework of the UN's 1951 Refugee Convention refugee policy?

These groups do not fall under the ambit of the UN's 1951 Refugee Convention refugee definition because their (as stated in the previous chapters) situations are not considered to require protection and to be classified as a refugee. The definition only covers those who face persecution on the basis of the UN's 1951 Refugee Convention's five protection grounds. Hence, those groups that do not fear persecution, even if they are in desperate circumstances, are not considered as refugees within the UN's 1951 Refugee Convention's refugee definition. Consequently, the researcher's goal is to show that these limitations have an irrational basis, one that is supported by considerable political factors. This means that the appeals and drive to expand the UN's 1951 Refugee Convention's refugee definition should not be repelled.

5.3 Scholars' differing views of the UN's 1951 Refugee Convention's refugee definition

Claims that the UN's 1951 Refugee Convention's definition of a refugee is a sound one, is not supported by many scholars. Scholars like Michael Dummet call for a wider definition of what it means to be a refugee, and he further claims that, while "the principles embodied in the 1951 Convention are manifestly correct", "the qualification laid down by the Convention for being entitled to claim asylum is too restrictive", and this means that there should be a broader view, that is a definition that enables one to seek refuge if they are unable to live a safe life in their current country. (Lister, 2013, p. 651). These points indicate the necessity of expanding the UN's 1951 Refugee Convention's definition of a refugee, that is because the current guidelines covered in the UN's 1951 Refugee Convention that cover the criteria for applying for refuge are too limited, to the extent that many other vulnerable people suffering persecution and hardship are excluded from its protection.

Expanding the UN's 1951 Refugee Convention's refugee definition will ensure that these vulnerable people also have a chance to escape any suffering and danger they may experience in their countries of origins. These victims should have the option and the freedom to find better ways of living as well as political, economic, and social prospects that will allow them to live in better conditions, even if it requires them to cross other borders. This is clearly a plea to expand the UN's 1951 Refugee Convention's refugee definition. However, as claimed by Lister (2014, p. 651), while it is unclear how far this expanded definition should go is unclear, but there must be clarity regarding the "minimal conditions for a decent human life". A new, expanded definition of the UN's 1951 Refugee Convention's refugee definition should cover the desperate circumstances that a person experiences that render them vulnerable and imperilled. Nonetheless, Dummet (2001) states that justice requires the right of entry for those seeking to flee from hardship because their lives are threatened in any possible way (Lister, 2013, p. 652). Additionally, Dummet (2001) claims that there is an obligation to support and assist the poor, and insists that opening borders to the poor from other nations is a prerequisite. The researcher believes that this obligation of justice should also include other types of vulnerable people in addition to the global poor, and acknowledges that it may have been Dummet's (2001) aim to include other vulnerable migrant groups too, since they also deserve justice and recognition in terms of their hardship and suffering. The researcher believes that society is obliged to ensure that safety of vulnerable groups excluded by the UN's 1951 Refugee Convention's refugee definition is

also prioritised; this can only be achieved when the subject refugee definition is further elaborated. To put it differently, international states should recognise and strive to ensure the security of all people, especially those whose lives are under threat.

5.4 The definition of a refugee should reach beyond the confining criterion of persecution

It is important to expand the refugee definition in order to assist countries and the international community to better fulfil their obligations and duties towards migrants (Lister, 2013, p. 655). Currently, according to the UN's 1951 Refugee Convention's refugee definition, only those people suffering due to their countries of origins actions, or the negligence of their countries of origins, are covered. Shacknove's (1985) interpretation is closer to the UNHCR's definition, as he argues against there being any link between the refugee definition and persecution (Lister, 2013, p. 656). This is evident persecution is the only way in which individuals can achieve their needs; if the idea of refugeehood is based on a lack of protection for a victim's needs, then persecution cannot be the only important criterion in the definition.

Even so, it should be noted that Shacknove (1985) provides more than the OAU's 1969 Convention's definition, as he claims that there is no important link between refugeehood and having crossed a border. Additionally, the OAU and the UNHCR definitions, in order to be classified as a refugee, a person should be outside of their country of origin, or habitual residence. Shacknove (1985) believes that what is essential is not that a person has crossed an international border, but instead that a person has actually been supported and assisted by the international community.

When it comes to the expanding of the refugee definition, we should not only include the connotations having to do with persecution, since persecution is too precise, and as currently described in the UN's 1951 Refugee Convention's refugee definition, it does not reveal the different scenarios that contribute to a person seeking refuge. Expanding this definition is important as there are various ways other than persecution that can undermine the well-being and safety of vulnerable people. By further expanding the definition of a refugee, there will be a much more encompassing notion of what defines a refugee, one that is not just bound to persecution.

Scholars such as Joseph Carens argues that from a moral standpoint, the UN's 1951 Refugee Convention's refugee definition should be reviewed so that the severity of the harm or threat

are the most important considerations (Goldenziel, 2016, p. 10-11). Additionally, according to Benhabib (2004, p. 36), the right to hospitality, which all victims are entitled to, “imposes upon us an imperfect moral duty to help and offer shelter to those whose life, limb, and well-being are endangered”. This suggests how a broader definition of the notion of refugeehood should be expanded so as to take in to account the harm that may be imposed on a victim.

Hathaway (1997, p. 115) claims that it is important for refugee law to be re-examined so that it is more aligned with human rights protection. This is vital, because international refugee law is experiencing a crisis. According to Hathaway (1997, p. 115), UN’s 1951 Refugee Convention’s refugee definition is restrictive, because the qualification grounds that it provides do not sufficiently include all vulnerable people requiring protection or those who have been forced to migrate. This author claims that the UN’s 1951 Refugee Convention’s refugee definition developers “intentionally left the meaning of ‘persecution’ undefined because they realised the impossibility of enumerating in advance all of the forms of maltreatment”, which may validate a victim’s claim to foreign protection (Hathaway, 1991, p. 109). Hathaway advocates that the fear of persecution can continue to be used as a significant concept if it is revised to include:

“Any person whose basic human dignity is at risk in her home state must be empowered to leave the abusive situation. Refugee law should be an effective means of enabling persons to disengage from states which have forfeited their claim to international legitimacy by failure to adhere to basic standards of human rights law” (Crock, 2015, p. 66).

From a human rights perspective, persecution is believed to be a failure of state protection. Shacknove (1985, p. 276) supports this notion, as he states that “persecution is but one manifestation of a broader phenomenon: the absence of state protection of the citizen's basic needs”. For Hathaway (1991, p. 104-105), the issue with the UN’s 1951 Refugee Convention’s definition is the condition that the well-founded fear of persecution be should be based on race, religion, nationality, membership of a particular social group, or political opinion. This is why he claims that “persecution may be defined as the sustained or systematic violation of basic human rights demonstrative of a failure of state protection” (Hathaway, 1991, p. 104-105).

5.5 All victims need a safe-haven

With the intention of maintaining autonomous rights of all individuals, the expansion of the refugee definition can take place. Furthermore, a strong argument for the development of the UN's 1951 Refugee Convention's refugee definition, along with clearly defined restrictions and powers was proposed by Shacknove (1985). If our understanding of what defines a modern refugee was more inclusive, other vulnerable people would undoubtedly be seen as genuinely needing a safe-haven from the threats they may be experiencing, and this is the other reason why the definition needs to be expanded.

Likewise, according to Lister (2013), if the current refugee crises are being caused primarily by events such as armed conflict, civil strife, statelessness, and forced displacement, then, it would make sense to expand the UN's 1951 Refugee Convention's refugee definition so as to cover these other victims.

International law should be improved to protect individuals seeking refuge from violent issues and persecution (Goldenziel, 2016, p. 2). There are millions of people who risk their lives to flee terrible situations, people who mistakenly believe that they will qualify as refugees in another state. Unfortunately, instead, many experience (for instance) ill-treatment and the threat of being returned to their countries that have become war zones. In terms of those people who flee from violence across international borders, international law only covers certain victims, i.e. those who have fled persecution on the grounds of race, religion, country of origin, political opinion, or membership of a certain social group. Already defined refugees are qualified for international legal protection. All other victims that fall outside of the scope of the current UN's 1951 Refugee Convention's refugee definition may be forced to return the dire conditions in their countries of origin or residence. Therefore, is there a way for international policies such as the UN's 1951 Refugee Convention to be expanded in a fruitful way, so that it accounts for the human rights and dire circumstances of victims fleeing both persecution and other ways of suffering?

5.6 The importance of expanding the UN's 1951 Refugee Convention's refugee definition

As time progresses, and as the world changes, there are different circumstances and issues that may affect various individuals' lives. This is why it is important for any law that attempts to accommodate the suffering of others, to adapt according to the circumstances that are more prevalent during periods of upheaval. For example, when the UN's 1951 Refugee

Convention's refugee definition was first developed to consider the five grounds of persecution during World War II, it was perhaps the case that during that period these were the ways in which various victims were affected. In other words, perhaps many victims fled their countries of origin in order to seek asylum elsewhere, because many, if not most, experienced persecution based on (for instance) their race, religious beliefs, and membership of certain groups. Therefore, in order to accommodate these situations, the UN's 1951 Refugee Convention's refugee definition was created to protect and permit persecuted victims to apply for asylum as refugees. At that time, the UN's 1951 Refugee Convention's refugee definition was created to cover those in need of the protection and safe-haven provided by this definition. However, are the particulars of the definition still applicable and is the concept of the UN's 1951 Refugee Convention's refugee definition satisfactory?

The answer to the above question is that the UN's 1951 Refugee Convention's refugee definition is satisfactory, but it is not the only satisfactory way of defining a refugee. This is clear as, in addition to individualised persecution, it is imperative for the refugee concept to be further expanded so that other forms of suffering are recognised. Today, victims in many parts of the world are suffering because their states are failing to protect them from occurrences such as war, economic hardship, and numerous forms of displacement. It is imperative for the UN's 1951 Refugee Convention's refugee definition to evolve and to consider the present types of hardship and suffering that many people experience. As time goes on, different issues and circumstances are affecting the world and its concerned people, which is a fact that cannot be disregarded.

Thus, the researcher suggests that the UN's 1951 Refugee Convention's refugee definition should not continue to be stagnant. It is vital for it to expand and for it to continue to evolve to accommodate the consequences of the many occurrences that cause people to flee to other nations, whether those reasons are motivated by persecution or other events.

Consequently this is why the researcher believes that the UN's 1951 Refugee Convention's refugee definition does not need to be completely abandoned. Instead, she believes that it is possible find ways to expand it so that it includes a wider variety of vulnerable people whose reasons for migrating are both connected and unconnected to individualised persecution. This new way of defining (as shown from the new definition in chapter four) what it means to be a refugee will offer new insights that allow for better protection of vulnerable people because it combines the present UN's 1951 Refugee Convention, the 1969 OAU Convention, and the

Cartagena Declaration's refugee definitions. The UN's 1951 Refugee Convention's refugee definition covers vulnerable people that are unfairly persecuted due to their race, nationality, religion, political opinion, or their membership of a certain group. It is important for these people to still be recognised within the ambit of the UN's 1951 Refugee Convention's refugee definitions' five stated criteria of individualised persecution. Nonetheless, as the researcher mentioned in the proposed new definition in Chapter Four, victims that are not linked to individual persecution should also be included as suffering due to generalised violence, foreign aggression, internal conflicts, displacement, climate dangers, poverty, statelessness, and massive violations of human rights, or other circumstances that have compromised the public order or undermined a concerned person's overall safety and welfare. By expanding the definition of what it means to be a refugee, vulnerable people such as IDPs, stateless people, and climate migrants would successfully be included in an expanded definition, which would in turn, allow them to qualify as refugees. Because the world progresses and new problems and occurrences affect people, it is important for international laws such as the UN's 1951 Refugee Convention's refugee policy to transition and develop too, since it will not always be the same types of people suffering. Different experiences of hardship and challenges will create vulnerable groups and thus, the researcher's proposed expanded definition of a refugee allows for a variety of vulnerable people to be considered as refugees. It is important that the new definition is revised in a way that coheres with the present refugee experience generally, and the researcher believes that the new definition that she has provided successfully achieves this aim.

5.7 Conclusion

The researcher is well aware of the fact that not every vulnerable person can be saved and accommodated in every international state. Countries will no doubt have to choose which migrant victims they will accept into their borders and which migrants they will turn away. Not every vulnerable person can qualify as a refugee. However, although this is the case, this does not mean the current UN's 1951 Refugee Convention's refugee definition should remain stagnant and in force merely because not every vulnerable person can be assisted. The UN's 1951 Refugee Convention's refugee definition should be extended to include other vulnerable parties, as that would make a difference in saving maybe twenty lives instead of only five. Such an expanded definition would assist in allowing many more victims to flee dangerous circumstances and cross international borders where there would be more opportunities to enable them to lead safer and fulfilling lives. The expansion of a definition of who qualifies

as a refugee would assist in sparing many people from further and on-going suffering. However, as the researcher has stated, although it is unfortunate that some vulnerable people will be excluded, it is still not a good enough reason not to expand on the UN's 1951 Refugee Convention's narrow and stagnant definition of who qualifies as a refugee.

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