

A BLEAK FUTURE BECKONS FOR CLIMATE REFUGEES

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I COMMENTARY

A The Ongoing Debate Concerning 'Climate Refugees'

The facts which give rise to this future judgment are based on real life situations that may become more prevalent over the years. Maryam is a climate refugee from a flooded region in Pakistan and an appellant in the case. Many asylum seekers currently take the route that she did. Although the analysis is far from complete, and many hazards are referenced only marginally, the existence of such claims suggests that a very careful examination of the application of the *Refugee Convention*¹ and its *Protocol on the Status of Refugees*² in such contexts is required. People who face adversity in the context of climate disasters are seen as unfortunate victims of 'natural' forces and deserve humanitarian assistance.

The main question for individuals who are placed in a similar predicament as Maryam is whether such individuals who are fleeing climate emergencies could be considered as 'climate refugees', and whether the principle of non-refoulement under refugee and human rights law extends to such individuals.³

According to the Internal Displacement Monitoring Centre, an increasing number of individuals have been displaced within their own countries since 2017 as a consequence of natural disasters, rather than by conflict - 61 percent compared to 39 percent.⁴ The impacts of climate change like rising sea levels, erosion and desertification have meant that individuals have either been displaced or have migrated, as they have been unable to reside within a safe environment.⁵ Furthermore, the United Nations' expert scientific climate change body, the Intergovernmental Panel on Climate Change, has stated that sea levels will continue to rise well into the future.⁶ It has also noted that financial assistance should be made available if climate goals are to be achieved, and this applies particularly to vulnerable regions.⁷ It has pointed out that the largest climate financial gaps and opportunities reside within developing nations.⁸ People like Maryam will suffer considerably due to the impact of climate-induced emergencies.

¹ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) ('Refugee Convention').

² *Protocol relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).

³ Jane McAdam, 'Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement' (2020) 114 (4) *The American Society of International Law* 708, 708.

⁴ Internal Displacement Monitoring Centre, *Global Report on Internal Displacement* (Report, May 2019) 6.

⁵ *Ibid* 18.

⁶ Hoesung Lee et al, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)* (Report, Intergovernmental Panel on Climate Change, March 2023) <https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_LongerReport.pdf> [3.1], [3.1.3].

⁷ *Ibid* [4.8.1].

⁸ *Ibid*.

The issue of ‘climate refugees’ requires serious attention because, at the time of writing in late 2022/early 2023, there is a gap in the international legal framework that addresses the movement of people who cross borders as a result of climate change.⁹ The *Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise* was adopted by the International Law Association in 2018. Accordingly, the underlying disaster or climate change process does not in itself amount to ‘persecution’, but the Declaration contextualises forms of harm that engage existing international protection regimes where the disaster causes a breakdown of law and order or is used by a government as a pretext for persecutory acts against certain parts of the population.¹⁰ This document considers the issues of displacement owing to the rise in sea levels.

In 2012, the Nansen Initiative on Disaster-Induced Cross-Border Displacement was launched by the governments of Switzerland and Norway, which led to the enactment of the 2015 *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*. This has been endorsed by 109 states.¹¹ The Protection Agenda focuses on issues such as displacement, migration, and planned relocation, and identifies effective practices and policies that States could incorporate into their own laws by integrating mobility into disaster risk reduction and climate change adaptation plans.¹²

As identified by McAdam, a number of further measures on disasters, climate change, and human mobility have been secured in a series of international instruments across a range of policy areas.¹³ These include the *Sendai Framework for Disaster Risk Reduction 2015–2030*,¹⁴ the *2030 Agenda for Sustainable Development*,¹⁵ the 2015 *Paris Agreement* on climate change¹⁶ (including the establishment of the Task Force on Displacement within the Warsaw International Mechanism for Loss and Damage), the *Agenda for Humanity* (annexed to the United Nations Secretary-General’s report for the 2016 World Humanitarian Summit),¹⁷ the 2016 *New York Declaration for Refugees and Migrants*,¹⁸ the 2018 *Global Compact on Refugees*,¹⁹ and the very significant 2018 *Global Compact for Safe, Orderly and Regular Migration*.²⁰ It is significant as it represents the most detailed political commitment pertaining to climate change mobility.²¹ The Compact seeks, firstly, to establish a more improved

⁹ McAdam (n 3) 712.

¹⁰ Committee on International Law and Sea Level Rise, *Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise* (Resolution 06/2018, 3 October 2018).

¹¹ McAdam (n 3) 721.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Sendai Framework for Disaster Risk Reduction 2015–2030*, UN Doc A/RES/69/283 (23 June 2015).

¹⁵ *2030 Agenda for Sustainable Development*, UN Doc A/Res/70/1 (21 Oct 2015).

¹⁶ *Paris Agreement*, opened for signature 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016).

¹⁷ United Nations Secretary-General, *One Humanity: Shared Responsibility*, UN Doc A/70/709 (2 February 2016).

¹⁸ *New York Declaration for Refugees and Migrants*, UN Doc A/Res/71/1 (3 October 2016).

¹⁹ *Global Compact on Refugees*, UN Doc A/73/12 (Part II) (2 August 2018).

²⁰ *Global Compact for Safe, Orderly and Regular Migration*, UN doc A/RES/73/195 (19 December 2018) obj 2 [18(h)]–[18(l)]; obj 5 [21(g)]–[21(h)] (‘Global Compact’).

²¹ McAdam (n 3) 722

mechanism of information-sharing between different governments, whilst upholding the human rights of such individuals; secondly, it seeks to develop strategies which may include migration whilst factoring in the potential for displacement when devising disaster preparedness strategies; thirdly, it seeks to ensure that people that suffer from disasters, climate change and environmental degradation are able to access humanitarian assistance and finally it seeks to develop coherent approaches to address the challenges of migration movements in this context.²² It also creates possibilities to establish special visas, private sponsorship, access to education for children as well as temporary work permits that could be granted to individuals who suffer from the consequences of climate emergencies.²³

B *Does Human Rights Law Offer More Protection for Climate Refugees?*

By comparison to the *Refugee Convention*, there is a lower threshold to be met under international human rights law given that States are prevented from moving individuals to places where they would face a real risk of being arbitrarily deprived of their life, or being subjected to torture or other cruel, inhuman or degrading treatment or punishment.²⁴

According to the European Court of Human Rights, the removal of individuals to situations of very serious destitution or dire humanitarian conditions may constitute inhuman and degrading treatment.²⁵ The threshold is very high. If Maryam argues that there is a lack of drinkable water, then she would have demonstrate that the supply of inaccessible, insufficient or unsafe water poses a threat of a health risk which would impair her right to enjoy life with dignity or cause her unnatural or premature death.²⁶ In relation to the difficulties her father encountered whilst growing crops, she would have to demonstrate that there was ‘a real and reasonably foreseeable risk’ that the family would be exposed to a situation of indigence, deprivation of food and extreme precarity that would threaten their right to life including the right to live with dignity.²⁷

C *Can the Refugee Convention Bridge This Gap?*

The *Refugee Convention* is widely considered to be ‘by and large, an inappropriate normative framework for responding to the needs of those forced to move on account of environmental or climate change impacts’.²⁸ However, innovative work is being carried out under the auspices of the Nansen Initiative, which through a series of regional consultations developed a Protection Agenda,²⁹ reflects the best practice in responding to the phenomenon of cross-border

²² Global Compact (n 20) obj 2 [18(h)]–[18(l)].

²³ Ibid obj 5 [21(g)].

²⁴ *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 1 November 1950, 213 UTS 221 (entered into force 3 September 1953) Arts 2, 3

²⁵ *MSS v Belgium and Greece* (2011) I Eur Court HR 255; *Sufi and Elmi v United Kingdom* (2012) 54 EHRR 9.

²⁶ Views adopted by the Human Rights Committee under article 5 (4) of the Optional Protocol, concerning communication No 2728/2016, UN Doc CCPR/C/127/D/2728/2016, 24 October 2019 (*‘Ioane Teitiota v New Zealand’*) [9.8].

²⁷ Ibid [9.9].

²⁸ Jane McAdam, ‘The Relevance of International Refugee Law’ in Jane McAdam (ed), *Climate Change, Forced Migration, and International Law* (Oxford University Press, 2012) 39, 39.

²⁹ The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Vol II (December 2015).

displacement in the context of disasters and climate change. As this reflects best practice, countries are encouraged to consult it before devising appropriate policies.

Although most people will not be able to establish eligibility for refugee status (or even complementary protection) in the context of disasters and climate change, it is crucial that such claims are approached from an informed perspective to assess the causes and differential impact of disasters.³⁰ Cross-border disaster related displacement is likely to increase in coming years, and thus a theoretically grounded approach to determining refugee status in this connection is an important complement to wider initiatives. Thus, refugee law should note that the drivers of displacement are caused by multifaceted issues which can encompass natural disasters, conflicts and persecution.³¹

D Do Recent Cases from Other Jurisdictions Give Hope to Maryam?

Following a number of seminal cases in recent years, the United Nations Human Rights Committee has accepted, in principle, that it would be unlawful for States to send individuals to places where the impacts of climate change could expose them to life-threatening risks or to risks of cruel, inhuman or degrading treatment.³² Maryam's situation is similar to such cases.

With regards to the question of future risk, the New Zealand Immigration and Protection Tribunal stated in the case of *AF (Kiribati)* that the risk to the appellant and his family from sea-level rise and other climate disasters may be considered as being 'imminent, however, it fell short of the threshold required to establish substantial grounds for believing that they would be in danger of arbitrary deprivation of life'.³³ It did not specifically discuss the 'imminence' requirement, but there was no suggestion of a change in that position. The Tribunal built on its observations in *BG (Fiji)*³⁴ in relation to the risk assessment, as it considered that past persecution could act as a powerful indicator of the risk of future persecution as well as the failure to continuously protect individuals against known environmental hazards. However, due to the forward-looking nature of this inquiry, the nature of the hazard, including its intensity and frequency, as well as any positive changes in disaster risk reduction and operational responses in the country of origin, or improvements in its adaptive capacity, will need to be accounted for.³⁵ The relevance of this statement of principle for the determination of refugee status is clear. The well-established principle that past persecution creates a presumption of future risk applies equally in the context of disasters as it does in other contexts where the fear of being persecuted is articulated. For Hathaway and Foster, the well-founded fear element

³⁰ Sanjula Weerasinghe, *In Harm's Way: International Protection in the Context of Nexus Dynamics Between Conflict or Violence and Disaster or Climate Change*, UN Doc PPLA/2018/05 (December 2018) 12

³¹ *Ibid* 107

³² Views adopted by the Human Rights Committee under article 5 (4) of the Optional Protocol, concerning communication No 2728/2016, UN Doc CCPR/C/127/D/2728/2016, 24 October 2019 (*Ioane Teitiota v New Zealand*) [9.8].

³³ *AF (Kiribati)* [2013] NZIPT 800413 (NZ) [91].

³⁴ *BG Fiji* [2012] NZIPT 800091 [98]-[102].

³⁵ *AC (Tuvalu)* [2014] NZIPT 501370-371 [29]-[30].

requires decision-makers to determine ‘whether the evidence discloses a future risk that is “real” or “substantial”, rather than merely “fanciful” or “remote”’.³⁶

The requirement for the harm to be ‘imminent’ makes little sense especially as scientific modelling indicates the very high likelihood of future climate-induced disasters and emergencies. Imminence has never been the appropriate test for judging the lawfulness of removal; rather, the substantive question concerns the likelihood of harm that results from such a removal, which is different from how soon after removal, it may manifest.³⁷

It is noteworthy that a comment in an Australian High Court’s judgment³⁸ mirrors the position of the United Kingdom’s Supreme Court,³⁹ and the Canadian Supreme Court,⁴⁰ amongst others,⁴¹ in that those fleeing ‘natural disasters’ cannot be classified as being ‘refugees’. Lord Hope in *Horvath*⁴² opined that the Refugee Convention does not extend to those who have a well-founded fear of threats to life due to a famine or a civil war.⁴³ As stated by Scott, this could constitute a discriminatory approach towards prospective ‘climate refugees’.⁴⁴

E Climate Modelling: The Future of Pakistan

The raging floods that took place in many of the rural parts of Pakistan in August 2021 left one-third of the country submerged under water and exposed its people to various kinds of diseases.⁴⁵ For the past 20 years, Pakistan has been ranked amongst the top ten most vulnerable countries on the Climate Risk Index, as 10,000 fatalities have been reported and losses equating to \$4 billion resulted from 173 extreme weather events.⁴⁶ These challenges will result in climate-related conflicts over resources and, as such, there will be scarcity of water.⁴⁷ It is also

³⁶ James C Hathaway and Michelle Foster, *The Law of Refugee Status*, (Cambridge University Press, 2nd ed, 2014) 123

³⁷ McAdam (n 3) 720.

³⁸ *A v Minister for Immigration and Ethnic Affairs* (1997) 142 ALR 331.

³⁹ *Horvath v Secretary of State for the Home Department* [2000] UKHL 37.

⁴⁰ *Canada (Attorney General) v Ward* [1993] 2 SCR 689.

⁴¹ See, eg, *German Federal Administrative Court, BVerwG 10 C 33.07*, 7 February 2008; *SJL v Refugee Appeals Tribunal* [2014] IEHC 608 [43].

⁴² *Horvath v Secretary of State for the Home Department* [2000] UKHL 37, 5.

⁴³ *Ibid* 7.

⁴⁴ Matthew Scott, ‘Finding Agency in Diversity: Applying the Refugee Convention in the Context of Disasters and Climate Change’ (2016) 35 *Refugee Survey Quarterly* 26, 31.

⁴⁵ Mehrunnisa Wani, ‘A Climate Emergency in Pakistan, and the Way Forward’, *Forbes* (online, 30 October 2022) <<https://www.forbes.com/sites/mwani/2022/10/30/a-climate-emergency-in-pakistan-and-the-way-forward>>.

⁴⁶ David Eckstein, Vera Kunzel and Laura Schafer, *Global Climate Risk Index 2021: Who Suffers Most from Extreme Weather Events? Weather-Related Loss Events in 2019 and 2000-2019* (Briefing Paper, January 2021) 13

⁴⁷ Jumaina Siddiqui, ‘Pakistan’s Climate Challenges Pose a National Security Emergency’, *United State Institute of Peace* (Blog Post, 7 July 2022) <<https://www.usip.org/publications/2022/07/pakistans-climate-challenges-pose-national-security-emergency>>.

anticipated that Pakistan will face further flooding, heatwaves or even tsunamis which could result in climate-induced migration.⁴⁸

The United Nations Secretary-General, Antonio-Guterres, has reportedly stated that Pakistan was responsible for less than one per cent of global greenhouse gas emissions and is ‘paying a supersized price for man-made climate change’.⁴⁹ He described the flood waters covering a landmass three times the total of his own country, Portugal, and explained that many individuals had lost their lives, homes, livestock and their futures.⁵⁰ He also reminded the G20 nations that industrialised nations accounted for 80 per cent of climate-destroying emissions and considered it a ‘moral responsibility’ to assist Pakistan to recover, adapt and build resilience to disasters supercharged by the climate crisis.⁵¹ Whilst Pakistan had been deluged, many other nations faced the threat of extinction.⁵²

Pakistan’s Supreme Court has taken notice of Pakistan’s vulnerability to climate-induced disasters and has advised Pakistan that the development plans for its urban areas should support adaptation, climate resiliency and sustainability.⁵³ According to Pakistan’s Supreme Court, the country’s infrastructure should be able to withstand the effects of climate change that may result from heavy rainfall, floods, earthquakes and other extreme weather.⁵⁴ Failure to do so may impact on the quality of a person’s life, and offend his/her dignity and property which are guarantees enshrined within the Constitution of the Islamic Republic of Pakistan.⁵⁵ Accordingly, ‘shutting eyes to the ominous signs of climate change will plunge us into a world that may not be able to sustain fundamental human values. It could affect our basic physical and larger social needs including harnessing and consuming energy, water and food as well as habitation, travelling and communication potentialities’.⁵⁶

Pakistan has played a pivotal role on the international stage as it participated in COP27 and, as one of the world’s major methane emitters, signed the global methane pledge.⁵⁷ However, Pakistan is a developing nation and may need financial assistance to meet these pledges.

⁴⁸ Quoted in *ibid*.

⁴⁹ Quoted in Qaiser Khan Afridi, ‘Pakistan’s “Climate Carnage Beyond Imagination”, UN Chief Tells General Assembly’, *United Nations News* (Blog Post, 7 October 2022) <<https://news.un.org/en/story/2022/10/1129337>>.

⁵⁰ Antonia Guterres, ‘Secretary-General’s Remarks to the General Assembly on Pakistan Floods [as Delivered]’, *United Nations Secretary-General* (Web Page, 7 October 2022) <<https://www.un.org/sg/en/content/sg/statement/2022-10-07/secretary-generals-remarks-the-general-assembly-pakistan-floods-delivered>>.

⁵¹ Afridi (n 49).

⁵² *Ibid*.

⁵³ Hasnaat Malik, ‘Consider Climate Change Angle in Uplift Plans, Rules SC’, *The Express Tribune* (online, 6 July 2022) <<https://tribune.com.pk/story/2364905/consider-climate-change-angle-in-uplift-plans-rules-sc>>.

⁵⁴ *Ibid*.

⁵⁵ *Ibid*. It was observed by the Court that urban authorities should ensure that they are able to support adaptation, climate resiliency and sustainability as part of their development plans.

⁵⁶ *Ibid*.

⁵⁷ Rina Saeed Khan, ‘Pakistan Signs US Led Global Methane Pledge at COP26’, *The Express Tribune* (3 November 2021) <<https://tribune.com.pk/story/2327529/pakistan-signs-us-led-global-methane-pledge-at-cop26>>.

F Speculative Fiction and a Bleak Future for Refugees

While it is possible that refugee law may accommodate climate refugees in the future, at least one work of speculative fiction anticipates an even harsher position on the part of the United Kingdom government. John Lanchester's novel *The Wall*,⁵⁸ set in an indeterminate future, considers debates concerning mass migration, environmental change and the role of nation-state vis-à-vis contemporary global crises.⁵⁹ *The Wall* is set in a time where Britain's sea borders have been fortified with a solid physical barrier: the Wall.⁶⁰ The primary function of the Wall and its 'defenders' is to keep non-citizens, referred to as 'others', from entering the country.⁶¹

Lanchester describes a fictionalised version of Britain that radically enforces one of the key functions of borders: they 'secure their territories, which are the repository of their human and natural resources'.⁶² As in other examples of border fiction, *The Wall* exemplifies how 'border practices and border theories are fast revealing borders as zones of instability in which ethical, political, cultural and national questions are negotiated'.⁶³ Amongst other issues, it focuses on the instabilities that are caused by climate change when environmental change has caused sea levels to rise and beaches to disappear, entire countries have become uninhabitable, and large parts of the world's population are on the move.⁶⁴

Lanchester examines current debates on environmental change through various trajectories and one of his main messages is that environmental changes have led and will continue to lead to increasing levels of global migrancy.⁶⁵ The novel takes readers to the heart of contemporary climate prognosis: environmental change will affect all parts of the Earth as countries will be directly affected by 'increasingly extreme and erratic weather' and 'rising ocean levels' that will make 'low-lying coastal zones' uninhabitable.⁶⁶

The Britishers also fear masses of individuals fleeing from the global South and the Mediterranean, and the numbers of asylum seekers are described as being 'big' and 'dangerous'.⁶⁷ In one scene, a character who assists an 'outsider' to get over the Wall is considered a traitor by the State.⁶⁸ This shows that an increase in migrant numbers has resulted in nations using fear-mongering ideologies. Some argue that offshoring border practices will become ever more prevalent and United Kingdom border guards will be stationed in Bologne,

⁵⁸ John Lanchester, *The Wall* (W.W. Norton & Company, 1st ed, 2019)

⁵⁹ Kirsten Sandrock, *Border Temporalities, Climate Mobility, and Shakespeare in John Lanchester's The Wall* (2020) 43 (3) *Journal of Modern Literature* 163, 164. Also see: Amitav Ghosh, *The Great Derangement: Climate Change and the Unthinkable* (Chicago University Press, 1st ed, 2016).

⁶⁰ Sandrock (n 59).

⁶¹ *Ibid.*

⁶² Lanchester (n 58) 1-12

⁶³ Schimanski Johan and Stephen Wolfe, *Borders Aesthetics. Concepts and Intersections* (Berghahn Books, 1st ed, 2017) 9.

⁶⁴ Sandrock (n 59) 165.

⁶⁵ *Ibid.*

⁶⁶ Lanchester (n 58) 56.

⁶⁷ *Ibid* 111.

⁶⁸ *Ibid* 191-2.

Brussels, Calais, Coquelles, Dunkerque, Fretun, Lille and Paris to guard national border zones.⁶⁹ However, Scotland will open its borders to migrants.⁷⁰

Lanchester's Britain is a safe haven for the privileged, while Western societies are responsible for aggravating the climate crisis.⁷¹ Though the Wall is designed to keep out the high water, its real purpose is to prevent the influx of climate refugees.⁷² Those fleeing floods, like Maryam, have been described as 'people who want you to drown'.⁷³ In the dystopian world of the novel, British people are the small, privileged fraction of humanity, who even after a massive climate crisis enjoy access to healthcare, university education, public transport, can grow their own food/crops, go on holiday and have access to clean water.⁷⁴ Nevertheless, Britain continues to show hostility towards those who are 'uninvited'.⁷⁵

Thus, in this futuristic scenario, the current immigration environment becomes even more hostile towards migrants, which may explain why Maryam's case is refused, even though it falls within the newly expanded *Refugee Convention* and the judge finds her to be credible.

II JUDGMENT

HIGH COURT OF JUSTICE IN LONDON

Delivered on: 25 October 2040

Judge: Colin LJ

The facts of this case, as set out in the applicant's statement through her interpreter (see Appendix A) are, in summary, as follows. The case concerns Maryam X, who has travelled across the continent and much of Asia to reach our shores. She is claiming asylum as she identifies herself as a 'climate refugee'. Her application for asylum was rejected by the Immigration and Asylum Tribunal on 10 October 2040. Maryam's lawyers have appealed against the decision, and this matter has now come before me on appeal.

Maryam states that her hometown has been submerged in water and that her father has lost his job as a farmer due to the floods that took place a few years ago. It is my understanding that her hometown encountered further flooding earlier this year. Her family is being supported by aid agencies and she explained that they are due to leave that region by next month. Maryam is, as one would be in her situation, extremely worried about her family and she fears for their future.

⁶⁹ Cathal McCall, 'Debordering and Rebordering in the United Kingdom. A Companion to Border Studies' in Thomas Wilson and Donnon Hastings (eds), *A Companion to Border Studies* (Blackwell Publishing, 1st ed, 2012) 215, 216.

⁷⁰ Sandroek (n 59) 173.

⁷¹ Ewa Rychter, 'Testing the Limits: Boundaries and Fault Lines of Dystopia in John Lanchester's *The Wall*' (2022) 12 *Polylogue Neophiological Studies* 292, 293.

⁷² Lanchester (n 58) 26

⁷³ Lanchester (n 58) 112.

⁷⁴ Rychter (n 71) 293.

⁷⁵ Lanchester (n 58) 112.

A number of issues have been raised as a result of this case. Firstly, I need to identify whether there is a safe area within Pakistan that Maryam can relocate to. Secondly, I need to consider how the *Convention Relating to the Status of Refugees 1951*⁷⁶ (hereinafter the *Refugee Convention* or *Convention*) applies to her situation, and whether she can be classed as being a ‘refugee’ under this Convention. I will also consider how the *Bill of Rights 2034*⁷⁷ (hereinafter the *Bill of Rights*) applies to her case.

I shall firstly deal with the *Refugee Convention*, to which the United Kingdom is a signatory. The *Convention* did not initially include ‘climate emergencies’ as a reason for being recognised as a refugee. According to the Convention, a refugee was someone who had a profound fear of being persecuted due to their race, religion, nationality, particular social group and ethnicity.⁷⁸ I am also acutely aware of the principle of non-refoulement, in Article 33, according to which a State cannot expel or return a person to a territory where their life or freedom would be threatened.

Several climate disasters have shaken much of the world recently. These include, although are not limited to, the 2034 earthquake that destroyed much of Japan, and resulted in 100,000 casualties; the severe floods that inundated New Zealand in 2033 as a result of which 200,000 people were left homeless and 50,000 lost their lives; the floods in Bangladesh that left 20,000 casualties in 2034; the ongoing floods that the rural parts of Pakistan have been experiencing since 2022; and, finally, the sandstorms that have been causing havoc in much of the Middle East.

A Committee was established in 2036 with the purpose of extending the application of the *Refugee Convention*. The Committee examined the argument that environmental degradation that resulted from climate change or other natural disasters should create a pathway into the *Refugee Convention*. These now constitute ‘other reasons’ under Article 99 of the *Convention*. These ‘other reasons’ include displacement that occurs as a result of food shortages, poverty and climate emergencies.

Therefore, I concede that Maryam’s case falls within the newly expanded *Refugee Convention* given that her hometown was submerged and flooded severely. She could, potentially, be classified as being a ‘climate refugee’. We, as judges, must ascertain whether Britain can be precluded from removing asylum seekers to places where they face risks arising from the impacts of climate change. The crucial question is whether the principle of non-refoulement extends to individuals whose lives may be impacted by adverse effects of climate change or climate disasters under refugee and human rights law. I will return to this issue later.

I will now consider the new *Bill of Rights* that the United Kingdom passed in 2034.⁷⁹ The *Bill of Rights* mirrors much of the *European Convention on Human Rights* (hereinafter the ECHR).⁸⁰ Section 10 of the *Bill of Rights* mirrors Article 2 of the ECHR, which stipulates that:

⁷⁶ Refugee Convention (n 1).

⁷⁷ *Bill of Rights 2034* (UK)

⁷⁸ Refugee Convention (n 1) Article 1

⁷⁹ *Bill of Rights 2034* (UK).

⁸⁰ *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 1 November 1950, 213 UTS 221 (entered into force 3 September 1953).

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which the penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.⁸¹

Similarly, Article 3 of the ECHR mirrors section 11 of the *Bill of Rights*. Article 3 of the ECHR stipulates that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.⁸²

The *Bill of Rights* has additional provisions which have been, admittedly, interpreted very narrowly in previous cases.⁸³ According to section 21 of the *Bill of Rights*, individuals who are fleeing climate emergencies have a right to seek humanitarian protection in a safe country of refuge.

I will now apply these provisions to Maryam's situation. I acknowledge that Maryam has lost her home due to the impact of climate change and that, due to climate impacts, half of her country is now under water. However, Maryam has the option of relocating to a region in Pakistan that is not submerged. I also understand that Maryam has been displaced from her home. Displacement for the purpose of the *Refugee Convention*, as amended, can occur due to food insecurity, climate change and other reasons.

I have, however, reservations about Maryam's case. From the evidence that has been presented, there was nothing to suggest that Maryam did not have access to clean water. Aid agencies are distributing clean water there. I understand that a number of water wells have been built in Dadu and other areas that have been impacted by floods. The Pakistani Government is also ensuring that clean water is made available to all its residents free of charge, by working with international organisations such as Clean Water Everywhere and Quench Thirst.

There is also little to suggest that the environmental conditions that she faced or would face on return would be so perilous that her life would be endangered. Although her father has lost his job as a farmer, he can relocate to one of the major cities within Pakistan such as Karachi, Lahore, Islamabad or Rawalpindi and find work as a gardener or farmer there, as he appears to be quite resourceful. Maryam can also relocate to one of the major cities and seek work there. She is young, fairly well educated and well spoken. She has managed to cross several countries to reach the United Kingdom, so surely she can relocate to one of the major cities within Pakistan.

⁸¹ Ibid Art 2.

⁸² Ibid Art 3.

⁸³ For example, in *R (Amina) v Secretary of State for the Environment* [2035] 1 AC 663, it was held that climate emergencies only include severe devastation caused by natural disasters. Similarly, in *Hassan v Secretary of State for Environment* [2036] 10 AC 891, the Court adopted a very restrictive approach in deciphering what amounts to 'severe devastation'.

I must, in addition, point out that in order to attain victim status in such cases, the requirement of imminence primarily attaches to the decision to remove the individual. In that regard, Maryam's circumstances will be considered in light of today's conditions and cannot encompass a hypothetical future harm due to a lack of clean water and employment possibilities, and/or a hypothetical future threat of serious violence caused by environmental degradation. I understand from the report that was submitted by Dr Anges Oluwale that Pakistan is likely to face further severe droughts and flooding in the next twenty years due to the effects of climate change. However, as stipulated above, the law compels me to consider the present circumstances only. Pakistan is not fully flooded. As reiterated above, Maryam can take advantage of a number of options that are available to her.

I acknowledge that the Articles of the ECHR discussed earlier apply to Maryam's situation. Environmental degradation as a result of the effects of climate change signifies one of the most pressing and serious threats to the ability of present and future generations to enjoy their right to life. However, Maryam has failed to provide evidence to substantiate her claim that, upon her removal to Dadu, she faces actual or imminent harm at the present time or that she faces the risk of being arbitrarily deprived of her life. I, however, wish to reiterate the important principle that environmental degradation can compromise one's effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life.

In terms of Maryam's credibility, I find her to be entirely credible and I accept the evidence she has presented. However, the evidence provided did not establish that the risk is imminent, or that there is a likely risk of arbitrary deprivation of life upon being returned to Dadu. In particular, the Tribunal found that there was no evidence that, firstly, her family was currently suffering, apart from the fact that her father was unable to grow his crops for the time being, and secondly, that Maryam had no access to the aid authorities. Furthermore, Maryam is an educated woman who would be able to provide for her family back home, by taking up employment opportunities in one of the major cities within Pakistan; and, finally, the Government of Pakistan has not failed to take steps to provide for the basic necessities of life, in order to meet its positive obligation to protect Maryam's right to life. I am therefore of the opinion that the Government of Pakistan, in collaboration with the various aid agencies that are present there, has indeed taken steps to address the effects of climate change. Accordingly, I uphold the Tribunal's decision that Maryam cannot be granted refugee status.

Appendix A

Statement of Maryam X

I am a 24 -year-old Pakistani woman. I left Pakistan on 27 March 2039 and travelled through various countries to arrive in the United Kingdom in August 2040. I left Pakistan as my hometown, Dadu was submerged in water. My father, Imtiaz used to work as a farmer prior to the floods that occurred throughout December 2038. My mother is a housewife. I do not have any siblings and my grandparents had passed away when I was a child.

I was previously studying geography at the University of Sindh. I developed an interest in this field following the severe drought that occurred in regions within Pakistan in June 2035. My eventual plan was to become a lecturer to educate others on the effects of climate change.

I initially travelled to Tehran in a lorry and slept rough. Thereafter I walked and reached Iraq and stayed near the border with Syria at a city called Qaim and continued sleeping rough, either in streets or forests. After a few days, I reached a city named Al-Jalaa in Syria, which bordered Syria. I later reached a region named Gaziantep in Turkey, where a wonderful woman named Yilgrim befriended me. Yilgrim looked after me, provided me with food and shelter for three months. I felt rested and felt a sense of normalcy in my life during those three months.

I had to bid Yilgrim goodbye and continued my journey. I walked endlessly and slept in forests until I reached Istanbul around January 2040. I met a group of individuals who were boarding a dinghy and they allowed me to access the dinghy free of charge. Owing to the arctic winds, the dinghy kept tilting from one direction to another. After the most frightening ten hours of my life, I reached a place called Varna Bapha in Bulgaria, near the Romanian border. I continued walking and reached a place named Bacau in Romania after a few days. However, soon after that, in March 2040, I was arrested by four female police officers and placed within a detention centre. I remained there for a few months and was fed one piece of bread in the morning and soup for dinner. I was kept in a room with ten different women and we all shared one bathroom. The Romanian authorities decided to release me after a few months, in June 2040, as they were unable to remove me to Pakistan. At this point, I was frail and lacking in energy.

I met a woman named Rada who provided me with food and shelter for three weeks. After those weeks, I left Rada's house and continued walking through forests in pitch darkness until I reached a town named Karlsburgh, near the French border.

Eventually, around August 2040, I reached the Calais jungle and noticed that it was flooded with asylum seekers. There I met a wonderful doctor by the name of Kate. Kate volunteered at the jungle once a week and attended to the new arrivals. Kate conducted a medical assessment and diagnosed me as suffering from severe malnutrition and post-traumatic stress disorder. I was housed within a tent that I shared with another Pakistani woman, named Tara. After spending a few weeks there, I boarded a lorry successfully and reached the English Channel. I met a group of asylum seekers who allowed me to board a boat free of charge. The boat was very unstable and a boy sitting next to me drowned in the Channel. Everyone else, including myself, managed to reach Dover in England successfully.

I was arrested upon arrival and was placed at Dumburling Detention Centre. I claimed asylum upon arrival. I waited for three weeks and was allocated a solicitor named Chinonso, who visited me a couple of times and was always accompanied by a female interpreter. During the initial appointment, Chinonso spent approximately three hours with me in which she obtained my instructions and went through the relevant law. A week later, she took my witness statement.

My asylum interview took place through an expedited procedure on 10 October 2040. The interview lasted for six hours. After two weeks my case was refused. I was and remain distraught.