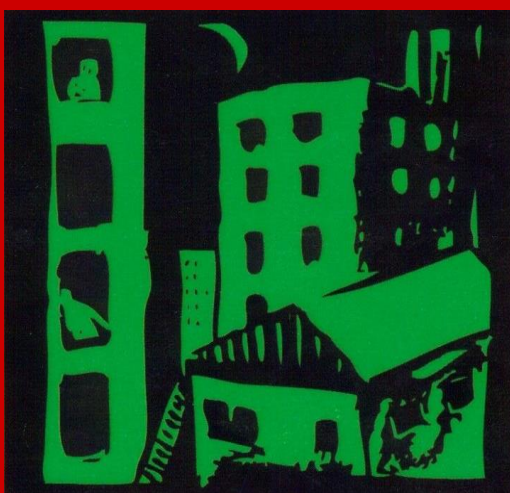
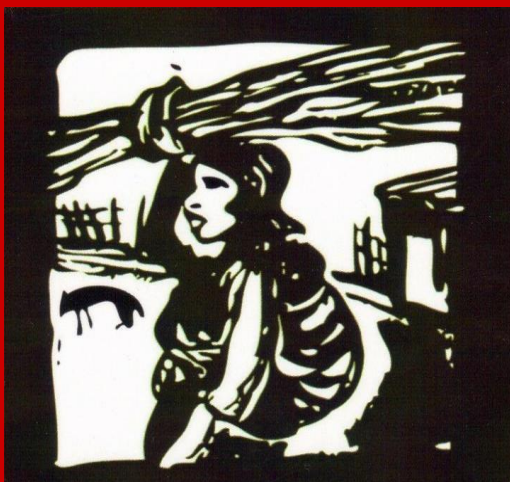


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**Migration and
climate change in
Africa: A
differentiated
approach through
legal frameworks on
the free movement
of people**

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ABSTRACT

The global consequences of rapid climate change cannot be overstated. In Africa, drought, flooding and environmental degradation are increasingly important drivers of migration, affecting already vulnerable and indigenous persons, together with factors such as conflict, poverty, and weak democratic governance. This article argues for alternative ways to protect vulnerable persons, alternatives

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which include regional integration frameworks on mobility. The article interrogates existing regional and subregional migration frameworks in Africa in order to ascertain the level of obligation to protect and facilitate the movement of those compelled to flee disaster-affected areas and seek safety in neighbouring countries. Regional and sub-regional groupings need to learn from each other, as well as utilise and expand on existing provisions for the free movement of people, to effectively accommodate the growing trend of migration due to environmental concerns. A laudable measure to ensure protection and facilitate the movement of such vulnerable persons can be found in the recently endorsed Protocol on the Free Movement of Persons in the Intergovernmental Authority on Development (IGAD).

Keywords: Africa; movement of people; climate change; environmental migration; migration governance; human rights; climate refugees; refugee law.

1 INTRODUCTION

Migration, or the movement of people, is natural and common, and occurs for various reasons, whether for human development or for survival and adaptation in the face of adverse economic conditions. Nwonwu states that migration is a universal principle that propels people to move away from areas of habitual social and economic hardship towards those with more opportunities.² In Africa, intraregional migration is a notable trend.³ Among other factors, this trend can be attributed to the increase in regional integration-based free movement agreements and measures enacted by the African Union (AU)⁴ and the regional economic communities (RECs)⁵ it recognises. These arrangements enable free and voluntary migration between African countries.⁶ At a basic level, they allow citizens of African states to move freely between participating

² Nwonwu F “The neo-liberal policy, free movement of people and migration: Patterns in the Southern African Development Community” (2010) 40(1) *African Insight* at 149.

³ The Africa Migration Report of 2020 highlights that the percentage of intraregional migration within the continent sits at 53 per cent, based on a United Nations Department of Economic and Social Affairs (UNDESA) study. See the “Africa migration report: Challenging the narrative” at 17 available at <https://publications.iom.int/books/africa-migration-report-challenging-narrative> (accessed 2 February 2022).

⁴ Relevant to this article is the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, 2018, and the Revised Migration Policy Framework for Africa and Plan of Action (2018–2027).

⁵ The RECs include the Economic Community of West African States (ECOWAS); the Common Market for Eastern and Southern Africa (COMESA); the Southern African Development Community (SADC); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Community of Sahel-Saharan States (CEN-SAD); the Intergovernmental Authority on Development (IGAD); and the Arab Maghreb Union (AMU).

⁶ For instance, ECOWAS adopted the Protocol on the Free Movement of People and the Right of Residence and Establishment in 1979; the EAC adopted the Common Market Protocol in 2010; IGAD endorsed the Protocol on Free Movement of Persons in 2020; and SADC adopted the Protocol on the Facilitation of Movement of Persons in 2005.

countries through designated points of entry without the need to obtain a visa.⁷ There is a solid legal basis on which the movement of people in Africa is based and enabled, regardless of the slow implementation of such arrangements.

Despite the growing trend of intra-African mobility, the impacts of climate change are altering patterns of mobility. It is noteworthy that Africa is currently one of the regions most vulnerable to environmental degradation and natural disasters caused by climate change. Zickgraf notes that such vulnerability can and will induce internal and cross-border migration.⁸ Therefore, climate change poses a challenge that can influence and increase involuntary temporary or permanent migration on the continent. People are likely to move in order to cope, adjust, or avoid deteriorating environmental conditions that impact on their livelihoods.

It is essential to acknowledge that migration can be a lifesaving strategy when it is well-planned and managed, and that it can have a positive developmental effect. Against that background, despite the slow implementation of regional and sub-regional arrangements for the free movement of people,⁹ the very nature and objective of arrangements for free movement can act as a stop-gap by offering some support to persons affected by climate change.¹⁰ Indeed, this points to new and comprehensive solutions to the multidimensional challenges that climate change creates. Freedom of movement can, at a basic level, facilitate entry into and lawful stay in a country for vulnerable persons, including those displaced by the impact of climate change and natural disasters, granting them access to another territory and place of residence. This protection could alleviate any stress during migration caused by the lack of protection under international law for such individuals.

In supporting that argument, this article, based on recent studies,¹¹ first looks at the challenge of climate change in Africa. It highlights estimates of people displaced in the continent by natural disasters such as drought, floods and cyclones. This underlines the nexus between climate change and the growing trend of migration. After discussing the challenge of climate change in Africa, the article analyses international laws relating to refugees and as well as various arrangements for free movement on the continent, emphasising the limitations of these frameworks. Lastly, the article argues for the need to respond proactively to such limitations by revisiting the relevant arrangements. An expansive interpretation of these free movement arrangements is necessary to protect

⁷ Amadi V & Lenaghan P “Advancing regional integration through the free movement of persons in the Southern African Development Community (SADC)” (2020) 34(1) *Speculum Juris* at 57.

⁸ Zickgraf C “Climate change and migration crisis in Africa” in Menjivar C, Rutz M & Ness I (eds) *The Oxford handbook of migration crises* (2019) 348.

⁹ Adeola R “The African Union Protocol on the free movement of persons in Africa: Development, provisions, and implementation challenges” (2019) 3 *African Human Rights Yearbook* 273.

¹⁰ Wood T “Developing temporary protection in Africa” (2015) 49 *Forced Migration Review* 24.

¹¹ For instance, see Rigaud KK et al. “Groundswell: Preparing for internal climate migration” Washington DC: World Bank (2018). See also Zickgraf C “Climate change and migration crisis in Africa” in Menjivar C, Rutz M & Ness I (eds) *The Oxford handbook of migration crises* (2019).

new vulnerable groups such as environmental or climate change migrants. This argument is based on the contemporary free movement framework agreed upon by the Intergovernmental Authority on Development (IGAD), a framework which is strengthened by a provision for ensuring access to the territory of participating states for those at risk of natural disasters.

2 CLIMATE CHANGE AND ENVIRONMENTAL MIGRATION IN AFRICA

Climate or environmental change refers to long-term shifts in temperatures and weather patterns.¹² Climate change can affect the most fundamental aspects of human life, particularly health and well-being, by impacting on the ability to grow food and access housing and other infrastructure, as well as on safety, work, and, ultimately, socio-economic development.¹³ A large share of the African population, over 71 million people, lives in poverty. Their livelihood depends on activities, such as agriculture, forestry, and fishing, which are susceptible to climate change.¹⁴ Most of the poorest people in Africa, while at risk of climate change and natural disasters,¹⁵ will also find it difficult to generate income. These factors result directly in population displacement and migration, and increase the number of “climate refugees or migrants”.¹⁶ Rigaud opines that climate change intensifies environmental degradation and natural hazards in many regions. He argues that related impacts are already, directly and indirectly, shifting human movements both within countries and across borders, and will do so increasingly.¹⁷ It is essential to note that climate change and environmental degradation, alongside other socio-economic and political factors, can induce migration.¹⁸ One cannot view climate change and environmental degradation as independent causes or reasons for migration; rather, they are interrelated phenomena

¹²UN Climate Action “What is climate change?” available at <https://www.un.org/en/climatechange/what-is-climate-change> (accessed 4 February 2022).

¹³See UN Climate News “Climate change is an increasing threat to Africa” (27 October 2020) available at <https://unfccc.int/news/climate-change-is-an-increasing-threat-to-africa> (accessed 4 February 2022).

¹⁴ Statista “Largest natural disasters in Africa between 1970 and 2019, by number of deaths” available at <https://www.statista.com/statistics/1271188/biggest-climate-disasters-in-africa-by-human-loss/> (accessed 11 February 2022).

¹⁵International Federation of Red Cross and Red Crescent Societies “African Floods Information Bulletin No. 2, May 2021” (May 11 2021) available at <https://reliefweb.int/report/angola/african-floods-information-bulletin-no-2-may-2021> (accessed 11 February 2022).

¹⁶International Federation of Red Cross and Red Crescent Societies (2011) note 11.

¹⁷Rigaud KK et al. “Groundswell: Preparing for internal climate migration” (2018) 1 World Bank, Washington DC; IOM “Institutional strategy on migration, environment and climate change 2021–2030” 6 available at https://environmentalmigration.iom.int/sites/g/files/tmzbd1411/files/documents/IOM-Institutional-Strategy-MECCC_0.pdf (accessed 2 February 2022).

¹⁸European Commission “Science for Environment Policy Migration in response to environmental change” 51 (2015) 3 available at https://ec.europa.eu/environment/integration/research/newsalert/index_en.htm (accessed 4 February 2022).

that exacerbate the existing vulnerabilities of specific individuals.¹⁹ This complexity influences the generation of data on the exact scale of migration because of both the slow and the sudden effects of climate change.

Displacement data from the Internal Displacement Monitoring Centre (IDMC) indicates that natural disasters such as drought, cyclones, and floods displaced an average of 24.5 million people between 2008 and 2020.²⁰ In West Africa, it is estimated that there were more than 328,000 newly displaced persons as a result of disasters in 2020. The World Bank estimates that climate change could cause more than 86 million people to migrate within Africa by 2050.²¹ Elsewhere, the International Organization for Migration (IOM) projects that, by 2050, more than 200 million people globally will become climate migrants.

In Africa, disasters and other socio-economic and political factors have displaced people. The UN highlights that climate-induced or environmental migration is a growing trend owing to changes in ecological patterns brought about by sudden or slow events, such as flooding, droughts, cyclones, increasing temperatures, desertification, or rising sea levels, which impair people's livelihoods.²² Over the last decade, the intensity of climate change and its adverse effects have exacerbated these natural disasters in the continent,²³ compelling people to utilise migration as a direct or indirect means of survival or adaptation.

For instance, in 2019 Cyclone Idai affected Mozambique, Zimbabwe, Malawi, and Madagascar.²⁴ It left behind long-term catastrophic damage to infrastructure, human resources, and social resources totalling USD 2.2 billion.²⁵ Cyclone Idai affected more

¹⁹Laczko F & Aghazarm C "Introduction and overview: Enhancing the knowledge base" in Laczko F & Aghazarm C (eds) *Migration, environment, and climate change: Assessing the evidence* (2009) 14.

²⁰The data suggests that floods have displaced 23 million people, storms have displaced 2.4 million, and 1.88 million have been displaced by droughts in sub-Saharan Africa. See IDMC "New displacements from 2008-2020" available at <http://internal-displacement.org/database/displacement-data> (accessed 2 February 2022).

²¹World Bank "Groundswell Report: Preparing for internal climate change migration Policy Note No 1" available at <https://openknowledge.worldbank.org/bitstream/handle/10986/29461/GroundswellPN1.pdf?sequence=6&isAllowed=y> (accessed 2 February 2022).

²²UN Climate News "Climate change is an increasing threat to Africa" (27 October 2020) <https://unfccc.int/news/climate-change-is-an-increasing-threat-to-africa> (accessed 4 February 2022).

²³Matseketsa, Manyeruke, and Mutoti "Natural disasters as non-traditional threat (NTT): A human security analysis in light of cyclone Idai case study of Zimbabwe" (2019) *Open Society Initiative for Southern Africa* 129.

²⁴See IDMC "New displacements from 2008-2020" available at <http://internal-displacement.org/database/displacement-data> (accessed 2 February 2022).

²⁵See AON "Global catastrophe recap: First half of 2019" (2019) 7 available at <http://thoughtleadership.aon.com/Documents/20190723-analytics-if-1h-global-report.pdf> (accessed 1 March 2022). See also Matseketsa, Manyeruke & Mutoti (2019) at 129.

than 3 million people directly, leaving hundreds of thousands needing assistance.²⁶ It caused 1,303 deaths, led to more than 2,000 persons being reported missing, and displaced some 165,000 people.²⁷ Similarly, Cyclone Gati struck Somalia in late 2020 and displaced more than 40,000 people.²⁸ In such circumstances, people are forced to relocate to more habitable areas to survive.

3 IDENTIFYING GAPS IN INTERNATIONAL AND REGIONAL LAWS

People fleeing their homes due to emergencies caused by violence and other types of persecution are protected by the United Nations Convention Relating to the Status of Refugees (UN Refugee Convention or URC), the current legal framework for determining the fate and protection of refugees.²⁹ Although the URC is the most comprehensive international legal instrument on refugee law, it fails to consider other factors, such as generalised violence, economic migration, and other events that threaten international peace and security, such as climate change and natural disasters.³⁰

A refugee is defined by the URC³¹ and the Organisation of African Unity (OAU) (now called the African Union) Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention),³² as a person who, “owing to a well-founded fear of being persecuted for the reasons of race, religion, nationality, membership of a particular social group or political opinion” is outside his or her country of origin and does not have the protection of his or her country of origin. The URC³³ is aimed at protecting persons forced to flee their countries for reasons of race, religion, nationality, political opinion, or membership of a particular social group. The OAU Refugee Convention followed suit, with some laudable additions.³⁴ It expands the traditional definition of what a refugee is. Article 1(2) states as follows:

“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 the whole of his country of origin or nationality, is

²⁶ See AON (2019) at 7.

²⁷ See AON (2019) at 7.

²⁸ Eumestat “Tropical Cyclone Gati historic landfall in Somalia” (undated) available at <http://Eumestat.int/tropical-cyclone-gati-historic-landfall-somalia> (accessed 2 February 2022).

²⁹ Rose L “The world after Teitiota: What the HRC decision means for the future of climate migration” (2020) 12 *San Diego Journal of Climate & Energy Law* 41.

³⁰ See Goldenziel JI “The Curse of the nation-state: Refugees, migration and security in international law” (2016) 48(3) *Arizona State Law Journal* at 581.

³¹ Article 1(A)(2) of the Convention Relating to the Status of Refugees, 1951.

³² Article 1(1) of the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention), 1969.

³³ Article 1(1) of the OAU Refugee Convention.

³⁴ See Goldenziel (2016) at 580.

compelled to leave his place of habitual residence to seek refuge in another place outside his country of origin or nationality.”³⁵

The inclusion of “events seriously disturbing public order” as valid reasons for fleeing one’s country of origin and seeking refugee protection has been hailed for its move from the individual’s fear of persecution to extending the umbrella of refugee protection to people fearing forms of harm such as generalised violence and potentially even natural disasters.³⁶ The OAU Refugee Convention serves as an influential instrument – given, for instance, its influence on the Cartagena Declaration on Refugees – by providing refugee protection to those who would otherwise not be covered by Article 1A(2) of the URC.³⁷

Nonetheless, the implementation of the OAU Refugee Convention’s expanded definition has been lacking, to say the least. There is a critical failure to apply this expanded definition accurately in African countries, as well as a lack of effort by African courts to develop jurisprudence interpreting Article 1(2).³⁸ For Africa to achieve progressive refugee protection, urgent action must be taken to overcome the lack of legal and institutional capacity, resources, and political willingness to develop refugee law.³⁹ Within the scope of international and regional refugee law, people are offered refugee protection only if they fall within the five listed grounds for refugee protection. Hence, emerging vulnerable persons such as climate refugees or migrants are not provided refugee protection in refugee law due to the strict requirements that must be met for them to be considered.⁴⁰ As a result, climate refugees or migrants are left almost unprotected because there is no international law that explicitly protects the majority of displaced persons and migrants who do not fall under the umbrella of “traditional refugees”.⁴¹

The UN Human Rights Committee (HRC) recognised this gap in the protection of forcibly displaced persons in *Ioane Teitiota v New Zealand (Kiribati case)*.⁴² The HRC identified the gaps in international human rights and humanitarian laws related to people

³⁵Article 1(1) of the OAU Refugee Convention.

³⁶Wood T “The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa” in Juss SS (ed) *Research handbook on international refugee law* (2019) 19.

³⁷See Wood (2019) at 21.

³⁸See Wood (2019) at 27.

³⁹See Wood (2019) at 27.

⁴⁰Vundamina MND *An empirical study of unfair discrimination against female asylum-seekers in South Africa* (Masters dissertation, Nelson Mandela University, 2021) at 10. See also Ndimurwimo LA & Opara LC “Access to justice for internally displaced persons: The global legal order” (2019) 6(1) *Journal of Law Society and Development* 15.

⁴¹See Vundamina (2021) at 10.

⁴²UN Human Rights Committee (HRC), CCPR/C/127/D/2728/2016.

displaced by other factors such as climate change and called for them to be addressed.⁴³ In the *Kiribati* case, the HRC set a precedent by recognising that forcing people to return to a place where their lives would be at risk from climate change might violate the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR).⁴⁴ The Applicant's claim was unsuccessful, but the ruling was, nonetheless, hailed as a "landmark" because it recognised that states have an obligation not to return citizens to places where climate change poses a real threat to their lives.⁴⁵ The *Kiribati* case therefore represents an important jurisprudential development in protecting climate refugees under international human rights law.

Obtaining refugee protection solely on the basis of claims of climate change is insufficient. For protection to be granted, the claimant must provide evidence of a nexus between the environmental factors and a "well-founded fear of being persecuted" or "real risk of irreparable harm".⁴⁶ The standards of proof in refugee and human rights law must be met, along with evidence of the immediacy or imminence of such threats.⁴⁷ Interestingly, the Global Compact on Refugees (GCR) noted that climate change and environmental degradation are not the only reasons for climate refugee movements, as there is increased interaction with other factors such as violence and physical insecurity.⁴⁸

Nonetheless, in the *Kiribati* case the dynamics of the nexus were relied upon. According to the HRC, Teitiota was not eligible for refugee status under the URC since he did not face a "well-founded fear of persecution".⁴⁹ Furthermore, he was not entitled to be protected from deportation under Article 6 of the ICCPR because he did not face a "real risk" of torture, inhuman or degrading treatment, or arbitrary detention. Lastly, he failed to demonstrate that the danger he claimed to be in was imminent. The applicant had not suffered persecution in his home country and showed no evidence that the conditions from which he fled were so "perilous that life would be jeopardized".⁵⁰

⁴³ *Ioane Teitiota v New Zealand* (Kiribati case) CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC) 7 January 2020 available at <https://www.refworld.org/cases,HRC,5e26f7134.html> (accessed 11 February 2022).

⁴⁴ Sinclair-Backlemore A "Climate refugees under international human rights law?" available at <https://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law/> (accessed 11 February 2022).

⁴⁵ See generally Sinclair-Backlemore (2022).

⁴⁶ Katsoni S & Graf JP "The future of 'climate refugees' in international law" (2021) *Völkerrechtsblog* available at <https://voelkerrechtsblog.org/the-future-of-climate-refugees-in-international-law/> (accessed 23 April 2022).

⁴⁷ Anderson A et al. "Imminence in refugee and human rights law: A misplaced notion for international protection" (2019) 68(1) *International & Comparative Law Quarterly* at 111.

⁴⁸ UNHCR "Refugee law in a time of climate change, disaster and conflict" (2020).

⁴⁹ Article 1(A)(2) of the Convention Relating to the Status of Refugees, 1951.

⁵⁰ Rose L "The world after Teitiota: What the HRC decision means for the future of climate migration" (2020) 12 *San Diego Journal of Climate & Energy Law* at 48.

Anderson et al., however, argue that the immediacy or imminence of that harm should not be the basis on which protection is granted or denied, because such decisions fail to consider the long-term impacts of climate change on health and well-being.⁵¹ Nevertheless, in addition to protection claims under the URC and the ICCPR, the harm must already be imminent. This constitutes an additional barrier to people seeking international protection.

Although the *Kiribati* case failed, it demonstrates how the international principle of non-refoulement can offer a path forward in such situations. This principle is the crux of refugee law since refugee protection would falter at its core without it. According to this customary international law principle, a state is not to return a refugee forcibly to a country where he or she is likely to face persecution or danger to life.⁵² Reading this in line with Article 1(2) of the OAU Refugee Convention, the danger to life extends to all threats to a person's life, including natural disasters. Aside from custom, this principle has been codified under Article 33(1) of the URC,⁵³ Article 2(3) of the OAU Refugee Convention,⁵⁴ and Article 12(4) of the Banjul Charter.⁵⁵ Consequently, it may be said that states cannot return environmental migrants to unsafe conditions under the principle of non-refoulement.

There have been developments in this area of climate refugee protection at the domestic level. Some states in the Horn of Africa admitted persons displaced by the 2011–2012 drought in Somalia as climate refugees based on the definition of extended refugees in the OAU Refugee Convention.⁵⁶ Additionally, Latin American states granted asylum to victims displaced by the 2010 earthquake in Haiti.⁵⁷ More recently, the Bordeaux appeal court ruled in an interesting case that an asylum-seeker from Bangladesh (Mr A) could not be returned to his home country due to environmental conditions that worsened his medical conditions, allergic asthma and sleep apnoea.⁵⁸ For the first time in a decision of this kind, a French court took pollution into

⁵¹See Anderson et al. (2019) at 111.

⁵²UN High Commissioner for Refugees (UNHCR) "Note on *non-refoulement*" (submitted by the High Commissioner), 23 August 1977, EC/SCP/2; Norton Rose Fulbright *Refugee law: A practical guide for practitioners* (2017) at 5.

⁵³UN Refugee Convention, 1951.

⁵⁴OAU Refugee Convention, 1969.

⁵⁵Banjul Charter, 1981.

⁵⁶See also Addaney M, Jegede AO & Matinda MZ "The protection of climate refugees under the African human rights system: Proposing a value-driven approach" (2019) *African Human Rights Yearbook* at 250.

⁵⁷See Addaney, Jegede & Matinda (2019) at 251.

⁵⁸France, Administrative Court of Appeal of Bordeaux, 2nd chamber, December 18, 2020, 20BX02193,20BX02195 available at <https://juricaf.org/arret/FRANCE-COURADMINISTRATIVEDAPPELDEBORDEAUX-20201218-20BX0219320BX02195> (accessed 2 August 2022).

account.⁵⁹ These decisions reaffirm the need for people affected by climate change to be afforded protection under international human rights law.

It can be concluded that internal and cross-border migration can be expected to arise as a result of accelerated climate change and environmental degradation with unprecedented impacts on lives and livelihoods. In such circumstances, ensuring orderly, safe and regular migration becomes imperative, and arrangements for the free movement of people can prove essential. It is also necessary that – with emerging policies like the UN Global Compact for Safe, Orderly and Regular Migration – existing frameworks on mobility must recognise this category of persons and offer fundamental human rights protections that allow for their freedom of movement. The next section looks closely at regional and sub-regional frameworks relating to the movement of people in Africa.

3.1 Overview of regional and sub-regional frameworks relating to the free movement of people

The idea of the free movement of people is firmly grounded in the Treaty Establishing the African Economic Community (Abuja Treaty) under Article 43. This article allows AU members to adopt, whether individually or at bilateral or regional levels, the necessary measures to progressively achieve the free movement of people and ensure the enjoyment of the right of residence and the right of establishment by their nationals within the Community.⁶⁰ To bring about an integrated continent, the AU underpins the “African passport and the free movement of people” so as to ensure the seamless cross-border movement of people in Africa. In 2018, the AU adopted a binding Protocol on the Free Movement of People. Unfortunately, this Protocol is still not in force because it requires 15 states to ratify it.⁶¹ At present, it has been signed by 32 states and ratified by four.⁶² Also, in 2018, the AU issued a more contemporary non-binding policy framework for migration in the Revised Migration Policy Framework. Both legal frameworks will be analysed below from a regional standpoint.

It is important to note that free movement arrangements were primarily made to further the idea of regional integration and development under a common market, with no considerations of protection for specific persons such as those affected by natural

⁵⁹Gubbay I & Hilton J “Air pollution and asylum: A legal first” available at <https://www.hausfeld.com/en-us/what-we-think/perspectives-blogs/air-pollution-and-asylum-a-legal-first/> (accessed 2 August 2022).

⁶⁰Article 43 of the Abuja Treaty, 1991.

⁶¹See Article 33 of the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Rights of Residence and Right of Establishment (hereafter AU Protocol on Free Movement of Persons) 2018.

⁶²Hirsch A “The African Union’s Free Movement of Persons Protocol: Why has it faltered and how can its objectives be achieved?” (2021) 28(4) *South African Journal of International Affairs* at 497.

disasters.⁶³ However, contemporary sub-regional arrangements on the free movement of persons, as will be seen in subsequent discussion of the IGAD, guarantee some protection from return to specific persons affected by natural disasters.⁶⁴ In the author's view, this arrangement reinforces the prohibition on states against returning persons displaced by disasters to situations where they will be at risk of harm.

3.1.1 *AU Protocol on the Free Movement of Persons*

The AU Protocol on Free Movement of Persons underscores its rationale for integration and development,⁶⁵ with the free movement of persons understood to mean:

“[t]he right of nationals of a member state to enter, move freely, and reside in another member state by the laws of the host member state and exit the host member state by the laws and procedures for exiting that member state.”⁶⁶

It is within this context of allowing movement between states that this article is based. The Protocol articulates the progressive realisation of free movement in three phases: entry, residence, and establishment.⁶⁷ Phase one requires states to “implement the right of entry by permitting nationals of member states to enter into their territory without a visa”.⁶⁸ This provision requires states to allow entry into their territories for 90 days.⁶⁹ The provision on the right of entry is further enabled through Article 7, which stipulates that entry into the territory of a member state shall be permitted for persons entering through an official port of entry with a recognised and valid travel document who are not prohibited persons.⁷⁰ These provisions aim at facilitating unrestricted transnational movement of persons, by liberalising access to the territory of participating states. Based on this provision, African citizens who are vulnerable persons or displaced due to climate change can gain some level of protection by having access to the territory of another African state. Nevertheless, such access requires a valid travel document.

⁶³Wood T “The role of free movement of persons agreements in addressing disaster displacement: A study of Africa” (2019) 12 available at https://disasterdisplacement.org/wp-content/uploads/2019/06/52846_PDD_FreeMovement_web-single_compressed.pdf (accessed 8 August 2022).

⁶⁴ See section 4 of this article.

⁶⁵The Protocol envisages that the free movement of people will promote integration and pan-Africanism, enhance science, technology, education, research, and foster tourism, facilitate inter-African trade and investment, increase remittances within Africa, encourage mobility of labour, create employment, improve the standards of living of the people of Africa, and facilitate the mobilisation and utilisation of the human and natural resources of Africa to achieve self-reliance and development. See AU Protocol on Free Movement of Persons, 2018 at 4.

⁶⁶Article 1 of AU Protocol on the Free Movement of Persons, 2018.

⁶⁷Article 5 of AU Protocol on the Free Movement of Persons, 2018.

⁶⁸Article 6(2) of AU Protocol on the Free Movement of Persons, 2018.

⁶⁹Article 6(4) of AU Protocol on the Free Movement of Persons, 2018.

⁷⁰Article 7(1)(a)–(c) of AU Protocol on the Free Movement of Persons, 2018.

In addition to the right of entry, the Protocol extends this idea of free movement by advocating for procedures to protect specific groups of people. However, the benefits of unrestricted access to the territory of participating AU member states do not expressly apply to victims who are on the move in the context of climate change and environmental degradation. Article 24 prescribes that:

“[i]n addition to the measures provided for by international, regional, and continental instruments, States Parties may establish specific procedures for the movement of specific vulnerable groups, including refugees, victims of human trafficking and smuggled migrants, asylum seekers, and pastoralists.”

Procedures established by a member state under this Article shall be consistent with the obligations of the member state under the international, regional, and continental instruments relating to the protection of each group of persons referred to in paragraph 1.⁷¹ Article 24, in particular, does not expressly recognise the growing category of vulnerable persons in the continent who are compelled to move by the increasing problems in the environment. Without having express recognition, these people’s vulnerability to environmental stress and degradation remains largely unprotected. In terms of Article 24, some legal recognition can be afforded to persons affected by climate change, affording this specific group some assistance and protection to facilitate their movement and, consequently, not hamper their mobility through bureaucratic processes and procedures. Such recognition can be underpinned by giving an expansive interpretation to “refugees” or making specific reference to environmental migrants or climate change migrants based on emerging international law jurisprudence.⁷²

Whether climate change or ecological migrants should be recognised as a distinct category of migrants has been a contested matter, rendering the concept of climate change or environmental migrants vague. The International Organization for Migration (IOM) uses the term “environmental migrants”, defining them as:

“[p]ersons or groups of persons who, for compelling reasons of sudden or progressive change in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.”⁷³

⁷¹ Article 24 of AU Protocol on the Free Movement of Persons, 2018.

⁷² See Bergova I “Environmental migration and asylum: *Ioane Teitiota v New Zealand*” (2021) 42(2) *Justice System Journal* at 224, where it is mentioned that the official definition of refugees does not recognise climate change as a reason to seek asylum. In *Ioane Teitiota v New Zealand*, the Human Rights Committee recognised that the effects of climate change could become a reason for individuals to seek asylum and that countries cannot deport individuals who would face the harmful consequences of climate change.

⁷³ International Organization for Migration “Discussion note: Migration and the environment” para 6 MC/INF/288 Nov 2007.

Myers, for instance, uses the term “environmental refugees”.⁷⁴ Betts, in arguing for a new protection framework, proposes the term “survival migrants”, which encompasses both climate change and economic migrants.⁷⁵ Laczko and Aghazarm refer to “environmental migrants or refugees”, highlighting that, with such migrants, movement stems from environmental factors, threats, or events.⁷⁶ Hartman is critical of this categorisation, however, suggesting that it naturalises the economic and political causes of environmental degradation and masks the role of institutional responses.⁷⁷

Given these diverse understandings of regional and sub-regional migrants, conceptual clarification of vulnerable groups under Article 24 will be critical in putting environmental migrants at the core of regional frameworks so as to make movement easier.

3.1.2 Revised Migration Policy Framework in Africa (2018–2030)

In 2006, AU member states adopted the Migration Policy Framework for Africa (MPFA) in order to explore ways to address migration issues and harness the benefits of migration for development in Africa. The objective of this framework is to:

“[c]ontribute to addressing the challenges posed by migration and ensure the integration of migration and related issues into national and regional agendas for security, stability, development, and cooperation; work towards the free movement of people and strengthen intra-regional and inter-regional cooperation in matters concerning migration, based on the established processes of migration at regional and sub-regional levels; [and] create an environment conducive to facilitating the participation of migrants, in particular those in the diaspora, in the development of their own countries.”⁷⁸

The MPFA focused on nine thematic areas: labour migration; border management; irregular migration; forced displacement; the human rights of migrants; internal migration; migration data; migration and development; and inter-state cooperation and partnerships. Other cross-cutting issues related to migration include health, the environment, gender, and conflict.

Considering the dynamics of migration and constant changes in trends and patterns, the AU Commission, based on recommendations from the various RECs in Africa, updated

⁷⁴Environmental refugees are persons who can no longer gain a secure livelihood in their traditional homelands due to environmental factors of unusual scope, notably drought, desertification, deforestation, soil erosion, water shortages and climate change, and natural disasters such as cyclones, storm surges, and floods. See Myers N & Kent J “Environmental exodus: An emergent crisis in the global arena” (1995) at 18 available at <http://climate.org/archive/PDF/Environmental%20Exodus.pdf> (accessed 2 February 2022).

⁷⁵Betts A “Survival migration: A new protection framework” (2010) 16(3) *Global Governance* at 365.

⁷⁶See Laczko & Aghazarm (2009) at 19.

⁷⁷Hartmann B “Rethinking climate refugees and climate conflict: Rhetoric, reality and the politics of policy discourse” (2010) 22(2) *Journal of International Development* at 235.

⁷⁸Migration Policy Framework for Africa 2006 EX.CL/279(IX).

the MPFA. It formulated a plan of action for its implementation in 2016. This resulted in the revised MPFA and Plan of Action (2018–2030). The revised framework, unlike its predecessor, covers eight key areas: migration governance; labour migration and education; diaspora engagement; border governance; irregular migration; forced displacement; internal migration and migration; and trade.⁷⁹ Under each area, the framework makes policy recommendations⁸⁰ for countries to adopt.

Climate change is not a crucial thematic area of the MPFA but is recognised as a cross-cutting issue. The MPFA highlights the relationship between migration and the environment, noting that climate change is one of the major factors for migration and mobility on the continent.⁸¹ The framework provides strategies by which state parties could address this link, including integrating environmental considerations in existing domestic migration policies, and addressing environmental degradation to minimise displacement.⁸² The framework also recognises that migration is a multi-faceted phenomenon that demands the action of different stakeholders at national and regional levels.⁸³ However, as noted by Nalule, the framework lacks concrete, practical propositions on how to attain the desired goals, on who bears specific obligations or responsibilities, and on the question of by when the goals should be achieved.⁸⁴

3.2 Sub-Regional migration frameworks

Migration frameworks at a sub-regional level have existed long before the regional frameworks on mobility discussed above. These have progressed at a better pace, and are centred on the regional integration and development objective of achieving a common market. From this perspective, the free movement of people can facilitate free trade in goods and services between member states.⁸⁵ In the West African sub-region, the Economic Community of West African States (ECOWAS) a 15-member state⁸⁶ organisation, adopted a Protocol on the Free Movement of People and the Right of Residence and Establishment in 1979. This Protocol was adopted in response to the Treaty's objective

⁷⁹See Migration Policy Framework (2006).

⁸⁰For instance, in the key area of migration governance, the policy recommends complying with international standards and law and securing migrants' rights; developing evidence-based policies through a whole-of-government approach; engaging with partners to address migration and related issues; employing migration governance to aid the socioeconomic well-being of migrants and society; addressing the migration aspects of crises; and facilitating safe, orderly, and dignified migration.

⁸¹See Migration Policy Framework (2006).

⁸²See Migration Policy Framework (2006).

⁸³See Migration Policy Framework (2006).

⁸⁴Nalule C "Migration in Africa: Filling in the gaps and strengthening the regional refugee protection and migration regime" (2020) 1 *Journal of the African Union Commission of International Law* at 44.

⁸⁵Amadi & Lenaghan (2020) at 61.

⁸⁶Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

to abolish obstacles to the free movement of persons, services, and capital.⁸⁷ The Protocol provides for three phases (entry, residence and establishment) to allow the free movement of people in the region.⁸⁸

Phase one deals with the right of entry, and offers visa-free entry and stay for 90 days to citizens of ECOWAS member states, provided that they have a valid travel document and health certificate and are not inadmissible migrants under the laws of the host state.⁸⁹ In 1986, a protocol that enables the second phase, on the right of residence, was adopted. This phase prescribed the right to seek and have income-earning employment in an ECOWAS member state, provided the applicant had obtained an ECOWAS residence card.⁹⁰ In 1990, in phase three, the right of establishment was adopted through a supplementary protocol. This phase allows ECOWAS citizens to set up and manage businesses under the same conditions as nationals in the host member state.⁹¹

Although the protocols above have not been fully implemented, Hirsch asserts that they appear to offer a solid basis for establishing the free movement of people and are widely recognised as a best practice for international cooperation and labour migration.⁹² Even though these arrangements are recognised as best practices, the provisions in the protocols do not expressly refer to vulnerable people such as environmental migrants or climate change migrants. Regardless of this omission, this article argues that the very nature of the arrangements to cater to “ECOWAS citizens”, the first phase of which emphasises the right of entry, can implicitly grant climate change migrants or persons displaced by disasters the right to enter and remain in any ECOWAS member state, thus supporting their assistance and protection.

In addition to these substantive protocols, the ECOWAS Common Approach on Migration (ECOWAS Common Approach) is a fundamental policy framework for migration initiatives in the region. Although not legally binding on the ECOWAS member states, the ECOWAS Common Approach provides a strategic guide for the member states in drafting their respective migration policies. It highlights the effect of migration on development in six priority areas: the promotion of free movement within the ECOWAS zone; the promotion of the management of regular migration; harmonising policies; the control of irregular migration and human trafficking; the protection of the rights of migrants, asylum seekers, and refugees; and recognising the gender dimension

⁸⁷See Article 2(2)(e) read with 27 of the Treaty of the Economic Community of West African States (ECOWAS), 1975. See also Article 3(2)(d) read with Article 59(1) of the Revised Treaty Establishing ECOWAS, 1993.

⁸⁸Article 2(3) of the Protocol Relating to Free Movement of Persons, Residence and Establishment A/P 1/5/79.

⁸⁹Article 3(1) and (2) of the Protocol Relating to Free Movement of Persons, Residence and Establishment A/P 1/5/79.

⁹⁰Article 2 of the Supplementary Protocol on the Right of Residence A/SP.1/7/86.

⁹¹Article 1 of the Supplementary Protocol on the Right of Establishment A/SP.2/5/90.

⁹²See Hirsch (2021) at 505.

of migration.⁹³ The ECOWAS Common Approach also provides strategies and solutions for supporting people moving in the midst of disasters, climate change and environmental degradation.⁹⁴

In East Africa, the East African Community (EAC), a seven-member⁹⁵ organisation, has also established visa-free travel for citizens of the EAC-participating member states. This right is underpinned by the Treaty establishing the EAC,⁹⁶ and elaborated in the Protocol on Establishing the EAC Common Market (EAC Common Market Protocol).⁹⁷ The EAC Common Market Protocol prescribes that EAC member states are obliged to ensure, without discrimination, the free entry and exit of EAC citizens into their territories without a visa, and ensure that their stay within a member state is renewable for six months.⁹⁸ This right is subject to limitations on the grounds of public policy, security or public health.⁹⁹

The implementation of this right is to be in accordance with an Annexed Regulation on the Free Movement of Persons of 2009. This Annexed Regulation highlights the essential requirements and procedures for entry into another member state. It prescribes the presentation of a valid common standard travel document or identity card and all information required for entry and exit.¹⁰⁰ Upon fulfilling the requirements set out in Article 5(2) of the Annex, the citizen is issued a pass for the duration of the standard travel document that entitles him or her to enter the host state's territory and stay for a period of up to six months.¹⁰¹

Similarly, the Southern African Development Community (SADC)¹⁰² has attempted to enable cross-border movement of people through the Protocol on Facilitation of Movement of Persons (Facilitation Protocol). The latter aims to ensure the movement of people in three phases: entry; residence and establishment; and controls at the border.¹⁰³ Regarding the first phase, Article 14 prescribes that a citizen of a state party that wishes to enter the territory of another state party as a visitor shall be admitted

⁹³ ECOWAS Common Approach on Migration, 2008 available at <https://www.unhcr.org/49e47c8f11.pdf> (accessed 3 February 2022).

⁹⁴ ECOWAS Common Approach on Migration, 2008 available at <https://www.unhcr.org/49e47c8f11.pdf> (accessed 3 February 2022).

⁹⁵ Kenya, Tanzania, Uganda, Burundi, Rwanda, South Sudan and the Democratic Republic of Congo.

⁹⁶ See Article 76 and 104 of the Treaty Establishing the East African Community, 1999.

⁹⁷ Protocol for the Establishment of the EAC Common Market, 2010.

⁹⁸ Article 7(1) – (2) of the Protocol for the Establishment of the EAC Common Market, 2010.

⁹⁹ Article 7(5) of the Protocol for the Establishment of the EAC Common Market, 2010.

¹⁰⁰ Regulation 5(2)(a)–(b) of the EAC Common Market Free Movement of Persons Regulations.

¹⁰¹ Regulation 5(3)–(8) of the EAC Common Market Free Movement of Persons Regulations.

¹⁰² The SADC member states are Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia, and Zimbabwe.

¹⁰³ Article 5 of the SADC Protocol on Facilitation of Movement of Persons, 2005.

without a visa.¹⁰⁴ This visa-free admission is to be granted on the condition that the visit is for a maximum of 90 days; the visitor has a travel document; proof of financial support; the visitor is not a prohibited person; and entry is sought through an official port of entry.¹⁰⁵ To date, this Protocol has been ratified by only six SADC member states, falling short of the two-thirds of the member states required for its enforceability.¹⁰⁶ This prolonged status quo of unenforceability highlights that the right to free movement is hardly embraced and protected.

Combining North, Central, East and Southern African countries, the Common Market for Eastern and Southern Africa (COMESA)¹⁰⁷ adopted the Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residences in 1998. This Protocol sets out a progressive vision of a common market that will establish mechanisms for citizens to move freely.¹⁰⁸ The Protocol incorporates provisions relating to the relaxation of visa requirements,¹⁰⁹ entry without a visa for up to 90 days,¹¹⁰ and elimination of visa requirements six years from entry into force of the Protocol.¹¹¹

While these arrangements make no particular reference to climate or environmental migrants, they do broadly give “citizens” of the respective communities the right of entry, or “facilitated entry”, as is the case with the SADC, to enter another member state. In the context of the interpretation of “citizenship” across the regional and sub-regional frameworks discussed above, climate migrants or refugees, though not expressly covered in these arrangements, can be afforded blanket protection and have the right to enter or access the territory of member states. Nalule, in her discussion of the EAC free movement arrangement, notes that the regional free movement protocol and its provisions relating to the free movement of persons need to be expansive in their interpretation and hinge their application on the idea of “EAC citizenship”.¹¹² Although it is not defined in the AU Free Movement of People Protocol, such citizenship status is indeed clearly defined and recognised within sub-regional arrangements such as to refer to a national of a member state recognised under the laws governing citizenship in

¹⁰⁴ Article 14(1) of the SADC Protocol on Facilitation of Movement of Persons, 2005.

¹⁰⁵ Article 14(1)(a)-(e) of the SADC Protocol on Facilitation of Movement of Persons, 2005.

¹⁰⁶ Amadi & Lenaghan (2020) at 57.

¹⁰⁷ COMESA is a 21-member state organisation comprising Burundi, Comoros, Djibouti, the Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Swaziland, Tunisia, Uganda, Zambia, and Zimbabwe.

¹⁰⁸ Article 2 of the Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence, 1998 (COMESA Protocol).

¹⁰⁹ Article 3 of the COMESA Protocol.

¹¹⁰ Article 4 of the COMESA Protocol.

¹¹¹ Article 5 of the COMESA Protocol.

¹¹² Nalule C “Defining the scope of free movement of citizens in the East African community: The East African Court of Justice and its interpretive approach” (2018) 62(1) *Journal of African Law* at 2.

the partner states.¹¹³ Consequently, these sub-regional arrangements can play a pivotal role in facilitating the cross-border movement of displaced persons.

4 CONTEMPORARY DEVELOPMENTS UNDER THE IGAD

The IGAD has the primary task of coordinating efforts to address regional resource issues. It was formed in 1996 to replace the Intergovernmental Authority on Drought and Development (IGADD).¹¹⁴ Its experience as an REC is different from that of other African RECs, as it originated in a drought emergency.¹¹⁵ Its membership consists of six countries: Djibouti, Eritrea, Ethiopia, Kenya, Sudan, and Uganda. In Article 7 of the Agreement Establishing the Intergovernmental Authority on Development (IGAD Agreement), there is a solemn reaffirmation of the goal of harmonising policies on trade, customs, transport, communications, agriculture, and natural resources, and promoting the free movement of goods, services, and people, and the establishment of residence.¹¹⁶ The objective set out in Article 7 of the IGAD Agreement is patterned after the AU approach to ensuring people's free movement.

This article's earlier section shows that natural disasters bedevil the Horn of Africa, which, alongside other factors such as regional instability, has sparked migration and forced displacement.¹¹⁷ Migration within the region has thus gained some attention recently. In 2015, IGAD adopted a Regional Migration Policy Framework, followed by a Migration Action Plan. Later, in February 2020, it adopted the Protocol on Free Movement of Persons in the IGAD Region, with an annexed roadmap for its implementation. Though not in force, the Protocol allows for free movement of persons to be realised progressively in four phases: the right of entry; movement of workers; right of residence; and right of establishment.¹¹⁸

The first phase, which is relevant to this article, grants citizens¹¹⁹ of IGAD member states the right to enter, stay, move freely, and exit the territory of another member state according to the host state's policies, laws, regulations, and procedures.¹²⁰ The member states are to guarantee this right by ensuring the entry of citizens without a

¹¹³ Article 1 of the Protocol Relating to Free Movement of Persons, Residence and Establishment A/P 1/5/79; see Article 1 of the EAC Common Market Protocol; see Article 1 of the COMESA Protocol; see Article 1 of the SADC Protocol on Facilitation of Movement of Persons, 2005.

¹¹⁴ Preamble to the Agreement Establishing the Intergovernmental Authority on Development (IGAD) (1986).

¹¹⁵ See Hirsch (2021) at 507.

¹¹⁶ Article 7 of the Agreement Establishing the IGAD, 1986.

¹¹⁷ See Hirsch (2021) at 506. See also Woldermariam SB & Nega RA "Internally displaced persons in the IGAD region: The need for a legal regime" (2020) 1 *Journal of the African Union Commission on International Law* at 83.

¹¹⁸ Article 4(1)(a)-(d) of the Protocol on Free Movement of Persons in the IGAD Region, 2020.

¹¹⁹ A citizen means a person holding the nationality of member states of IGAD as defined by the laws of the member states.

¹²⁰ Article 5 of the Protocol on Free Movement of Persons in the IGAD Region, 2020.

visa as well as ensuring stay and free movement for 90 days from the date of entry or for a more extended period determined by the host state.¹²¹ Article 16 of the Protocol uniquely and explicitly provides as follows:

1. The Member States shall allow citizens of another member state who are moving in anticipation of, during or in the aftermath of a disaster to enter their territory, provided that they shall be registered by national law upon arrival.
2. The Member States shall take measures to facilitate the extension of stay or exercise other rights by citizens of other Member States who are affected by disasters in accordance with the provisions of this Protocol when return to their state of origin is not possible or reasonable.¹²²

Article 16 offers additional support and protection alongside provisions such as Article 5. First, vulnerable persons such as those affected by natural disasters are afforded the right to enter so far as they are registered upon entry. Secondly, this creates the possibility of resettling, as it allows for an extension of stay in instances where return to the state of origin is impossible or unreasonable. It can be argued that this provision aligns with emerging jurisprudence under international law as discussed above in that forcing people to return to a place where their lives would be at risk owing to climate change could violate the right to life.

By allowing for an extension of stay for those affected by disasters, this provision is a notable addition to free-movement arrangements in Africa and should be an example to regional and sub-regional frameworks in the continent. With each free-movement arrangement prescribing valid travel documentation to access another territory, some vulnerable persons, particularly those driven by sudden disasters, may find it difficult to meet such a requirement. In instances like these, provisions such as Article 16 of the IGAD Protocol on Free Movement of Persons mentioned above can put member states in a position to consider a waiver of travel document requirements when such documents have been lost or damaged thanks to natural disasters.

5 CONCLUSION

Current trends point to climate change causing migration. This is projected to become more prevalent due to the vulnerability of the environment; so managing and facilitating such movements is therefore fundamental. This article recommends making use of existing regional and sub-regional frameworks that enable regular migration. The frameworks highlighted above are progressive and forward-looking, setting the tone for an enabling environment for migration in Africa. They can provide relevant migration management solutions to respond to the challenges posed by environmental disasters. Such solutions can provide a status for people who move in the context of climate change impacts, authorising their entry and stay without requiring travel documents and visas. Fundamentally, vulnerable persons such as those displaced by disaster or

¹²¹ Article 5(2)(a)-(c) of the Protocol on Free Movement of Persons in the IGAD Region, 2020.

¹²² Article 16 of the Protocol on Free Movement of Persons in the IGAD Region, 2020.

climate-induced migrants who are African citizens and citizens of respective RECs could enter and remain in the territory of another member state.

Some of these frameworks can be bolstered to ensure that those who migrate because of gradual or sudden environmental changes, drought, flooding, volcanoes, and desertification can move quickly across borders. Embedding climate migration into such arrangements can build and ensure resilience for those displaced by disasters. Freedom of movement could curtail the risks that border controls pose to such categories of persons. Migration regulation in Africa is fragmented, with different regions and states seeking different pathways to regulate migration. Harmonisation of migration measures at the regional level is thus essential. One opportunity for accomplishing this lies within the AU Free Movement Protocol, particularly when dealing with vulnerable people.

AUTHORS' CONTRIBUTIONS

The first author conducted the analysis of the regional policy frameworks for the free movement of people. The second author examined the correlation between climate change and refugee law/international human rights law concerning climate refugees and the extent of the recent climate disasters in Africa.

BIBLIOGRAPHY***Chapters in books***

Laczko F & Aghazarm C “Introduction and overview: Enhancing the knowledge base” in Laczko F & Aghazarm C (eds) *Migration, environment, and climate change: Assessing the evidence* 1st ed Geneva: International Organization for Migration (2009)

Wood T “The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa” in Juss S (ed) *Research handbook on international refugee law* 1st ed United Kingdom: Edward Elgar Publishing (2019)

Zickgraf C “Climate change and migration crisis in Africa” in Menjivar C, Rutz M & Ness I (eds) *The Oxford handbook of migration crises* 1st ed Oxford: Oxford University Press (2019)

Journal articles

Addaney M, Jegede AO, Matinda MZ “The protection of climate refugees under the African human rights system: Proposing a value-driven approach” (2019) 3 *African Human Rights Yearbook* 242–259

Adeola R “The African Union Protocol on the Free Movement of Persons in Africa: Development, provisions, and implementation challenges” (2019) 3 *African Human Rights Yearbook* 260–275

Anderson A et al. “Imminence in refugee and human rights law: A misplaced notion for international protection” (2019) 68(1) *International & Comparative Law Quarterly* 111–140

Amadi V & Lenaghan P “Advancing regional integration through the free movement of persons in the Southern African Development Community (SADC)” (2020) 34(1) *Speculum Juris* 51–67

Betts A “Survival migration: A new protection framework” (2010) 16(3) *Global Governance* 361–382

Bergova I “Environmental migration and asylum: Ioane Teitiota v New Zealand” (2021) 42(2) *Justice System Journal* 222–224

Flauhaux ML & De Haas H “African migration: Trends, patterns, drivers” (2016) 4(1) *Comparative Migration Studies* 1–25

Goldenziel JI “The curse of the nation-state: Refugees, migration and security in international law” (2016) 48(3) *Arizona State Law Journal* 579–636

Hartmann B “Rethinking climate refugees and climate conflict: Rhetoric, reality and the politics of policy discourse” (2010) 22(2) *Journal of International Development* 233–246

Hirsch A “The African Union’s Free Movement of Persons Protocol: Why has it faltered and how can its objectives be achieved?” (2021) 28(4) *South African Journal of International Affairs* 497–517

Nalule C “Defining the scope of free movement of citizens in the East African Community: The East African Court of Justice and its interpretive approach” (2018) 62(1) *Journal of African Law* 1–24

Nalule C “Migration in Africa: Filling in the gaps and strengthening the regional refugee protection and migration regime” (2020) 1 *Journal of the African Union Commission of International Law* 27–56

Ndimurwimo LA & Opara LC “Access to justice for internally displaced persons: The global legal order” (2019) 6(1) *Journal of Law Society and Development* 1–26

Nishimura L “Climate change migrants: Impediments to a protection framework and the need to incorporate migration into climate change adaptation strategies” (2015) 27(1) *International Journal of Refugee Law* 107–134

Nwonwu F “The neo-liberal policy, free movement of people and migration: Patterns in the Southern African Development Community” (2010) 40(1) *African Insight* 149–168

Rose L “The world after Teitiota: What the HRC decision means for the future of climate migration” (2020) 12 *San Diego Journal of Climate & Energy Law* 41–53

Woldermariam SB & Nega RA “Internally displaced persons in the IGAD region: The need for a legal regime” (2020) 1 *Journal of the African Union Commission on International Law* 79–97

Wood T “Developing temporary protection in Africa” (2015) 49 *Forced Migration Review* 23–25

Case law

Ioane Teitiota v New Zealand (Kiribati case) CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC) 7 January 2020 available at <https://www.refworld.org/cases,HRC,5e26f7134.html> (accessed 11 February 2022)

Reports and policy papers

Francis A “Free movement agreements and climate change-induced migration: A Caribbean case study” (2019)

UNHCR “Refugee law in a time of climate change, disaster and conflict” (2020)

Treaties & conventions

African Union (AU) Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, 2018

AU, Migration Policy Framework for Africa, 2006

AU Revised Migration Policy Framework for Africa and Plan of Action (2018–2027)

EAC Common Market Protocol, 2009

ECOWAS, Protocol on the Free Movement of People and the Right of Residence and Establishment, 1979

The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

Protocol on Free Movement of Persons in the IGAD Region, 2020

SADC Protocol on the Facilitation of Movement of Persons, 2005

UN Convention Relating to the Status of Refugees, 1951

Internet sources

AON “Global catastrophe recap: First half of 2019” (2019) 7 available at <http://thoughtleadership.aon.com/Documents/20190723-analytics-if-1h-global-report.pdf> (accessed 1 March 2022)

Chitagu T, Schemm P & O’Grady S (2019) available at https://www.washingtonpost.com/world/mozambique-mourns-cyclone-deaths-as-rescuers-struggle-to-reach-those-affected/2019/03/20/aa48c260-4a87-11e9-8cfc-2c5d0999c21e_story.html (accessed 1 March 2022)

Eumestat “Tropical cyclone Gati historic landfall in Somalia” (undated) available at <http://Eumestat.int/tropical-cyclone-gati-historic-landfall-somalia> (accessed 2 February 2022)

France, Administrative Court of Appeal of Bordeaux, 2nd chamber, 18 December, 2020, 20BX02193,20BX02195 available at <https://juricaf.org/arret/FRANCE-COURADMINISTRATIVEDAPPELDEBORDEAUX-20201218-20BX0219320BX02195> (accessed 2 August 2022)

Gubbay I & Hilton J “Air pollution and asylum: A legal first” available at <https://www.hausfeld.com/en-us/what-we-think/perspectives-blogs/air-pollution-and-asylum-a-legal-first/> (accessed 2 August 2022)

International Federation of Red Cross and Red Crescent Societies “African Floods Information Bulletin No. 2, May 2021” (May 11 2021) available at <https://reliefweb.int/report/angola/african-floods-information-bulletin-no-2-may-2021> (accessed 11 February 2022)

Internal Displacement Monitoring Centre (IDMC) “New displacements from 2008–2020” available at <http://internal-displacement.org/database/displacement-data> (accessed 2 February 2022)

International Organization for Migration “Africa Migration Report: Challenging the narrative” Switzerland (2020) available at <https://publications.iom.int/books/africa-migration-report-challenging-narrative> (accessed 2 February 2022)

International Organization for Migration “Institutional strategy on migration, environment and climate change 2021–2030” available at https://environmentalmigration.iom.int/sites/g/files/tmzbd11411/files/documents/IO-M-Institutional-Strategy-MECCC_0.pdf (accessed 2 February 2022)

Katsoni S & Graf JP “The future of ‘climate refugees’ in international law” *Völkerrechtsblog* (2021) available at <https://voelkerrechtsblog.org/the-future-of-climate-refugees-in-international-law/> (accessed 2022-04-23).

Science for Environment Policy “Migration in response to environmental change” Thematic Issue (2015) available at <http://ec.europa.eu/science-environment-policy> (accessed 4 February 2022)

Statista “Largest natural disasters in Africa between 1970 and 2019, by number of deaths” available at <https://www.statista.com/statistics/1271188/biggest-climate-disasters-in-africa-by-human-loss/> (accessed 11 February 2022)

UN Climate Action “What is climate change?” available at <https://www.un.org/en/climatechange/what-is-climate-change> (accessed 04 February 2022)

UN Climate News “Climate change is an increasing threat to Africa” (27 October 2020) available at <https://unfccc.int/news/climate-change-is-an-increasing-threat-to-africa> (accessed 04 February 2022)

Wood T “The role of free movement of persons agreements in addressing disaster displacement: A study of Africa” (2019) 12 available at https://disasterdisplacement.org/wp-content/uploads/2019/06/52846_PDD_FreeMovement_web-single_compressed.pdf (accessed 8 August 2022)

World Bank “Groundswell Report: Preparing for internal climate change migration: Policy Note No 1” available at https://openknowledge.worldbank.org/bitstream/handle/10986/29461/Groundswell_PN1.pdf?sequence=6&isAllowed=y (accessed 2 February 2022)

Thesis

Vundamina MND “An empirical study of unfair discrimination against female asylum-seekers in South Africa” 2021 (Master’s Dissertation, Nelson Mandela University)