

**A Critical Examination of the Humanitarian Visa as
a complementary pathway in ameliorating the plight
of “Climate displaced persons” in Eastern Africa.**

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I, LEAH AOKO KANYANGI, HEREBY DECLARE THAT THE WORK ON WHICH THIS THESIS IS BASED IS MY ORIGINAL WORK (EXCEPT WHERE ACKNOWLEDGEMENT INDICATE OTHERWISE) AND THAT NEITHER THE WHOLE WORK NOR ANY PART OF IT HAS BEEN, IS BEING, OR IS TO BE SUBMITTED FOR ANOTHER DEGREE IN THIS OR ANY OTHER UNIVERSITY.

DATE: 5TH FEBRUARY 2025

DEDICATION

This thesis is dedicated to vulnerabilities resulting from climate change disasters in the global south. This is a testament that You matter!

ACKNOWLEDGEMENTS

I would like to thank God for this great milestone in my academic career. My Mumsy, Phoebe Atieno Otula, who was very excited that I dared to do my PhD, look at how far your daughter has come! Many thanks to my twin sister, Esther, who has been of excellent support in ensuring I was on top of my thesis work, and my dear family (Joy, Jim, Odhiambo, and Tonton) who held my hand throughout this journey. I appreciate my Uncle Paul Agali Otula who gave me a chance in life and believed in me long before I believed in myself. I wish to thank my dear husband Stephen Otieno and precious son Ethan Otieno, whose unwavering love and support have proven to me that indeed all things are possible!

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LIST OF ABBREVIATIONS

COP -	Conference of the Parties
COP24 -	24th Conference of the Parties to the United Nations Framework Convention on Climate Change
COVID-19 -	Coronavirus Disease 2019
EAC -	East African Community
FEWS NET -	Famine Early Warning Systems Network
GCM -	Global Compact for Migration
GDP -	Gross Domestic Product
GHGs -	Greenhouse Gases
IDPs -	Internally Displaced Persons
Ie -	That is (from the Latin phrase id est)
IGAD -	Intergovernmental Authority on Development
IOM -	International Organization for Migration
OAU -	Organization of African Unity
RMPF -	Regional Migration Policy Framework
UN -	United Nations
UNFCCC -	United Nations Framework Convention on Climate Change
UNGA -	United Nations General Assembly

UNHCR - United Nations High Commissioner for Refugees

UNU-EHS - United Nations University Institute for Environment and Human Security

USAID - United States Agency for International Development

USD - United States Dollar

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ABSTRACT

Eastern Africa has grappled with increasing numbers of displaced persons in the past 20 years because of flooding, tropical storms, landslides, and prolonged seasons of drought. Although there is widespread recognition of the impact of climate change on populations in this region, persons displaced across borders due to climate-related disasters still face challenges in finding protection. This is the case because of their unclear legal status under regional and international law as a unique category of refugees, with scholars arguing over their legitimacy in the international humanitarian landscape. In Eastern Africa, regional economic blocs such as the Intergovernmental Authority for Development (IGAD) have recognised the need to safeguard persons fleeing due to climate change-related disasters. This has been attempted using soft law regional policy frameworks to fill the legal vacuum in recognising human mobility because of climate change disasters. Within this afrocentric context, this thesis adopts a systematic qualitative research methodology, utilizing document analysis, policy review, and case studies to explore complementary pathways for climate-displaced persons in Eastern Africa. The study conducts an in-depth examination of key international and regional frameworks, including UN reports, the Global Compacts on Refugees and Migration, UNHCR's Climate Action Reports, and the IPCC Assessment Reports. It assesses regional instruments and policies relevant to climate-induced displacement to provide a comprehensive understanding of existing legal and policy gaps. Through a critical review of these documents and case studies, the research evaluates the effectiveness of current protection mechanisms, if any and identifies potential solutions to enhance the legal status and rights of climate-displaced individuals. In particular, the thesis proposes humanitarian visas as a practical complementary pathway and legally sound approach to addressing protection gaps, offering a structured pathway for displaced persons facing climate-related threats.

CHAPTER ONE

A Critical Examination of the Humanitarian Visa as a Complementary Pathway in ameliorating the plight of “Climate Displaced Persons” in Eastern Africa.

1. Introduction

‘Wreaking havoc’¹ is a phrasal understatement in describing the ravaging impacts of climate-related disasters in Africa which has increased human mobility.² The interrelatedness between climate change and human migration patterns³ is increasingly being explored by scholars such as Mensah and Silchenko⁴ who emphasise that there is need for better migration strategies and humanitarian interventions.⁵ In Eastern Africa, there have been increasing numbers of climate-displaced persons in the past 20 years as a result of flooding, tropical storms, landslides, and prolonged seasons of drought rather than political violence.⁶ Consequently, socioeconomic amenities such as commercial centers, business ventures, schools, churches, residential areas, and other key infrastructure have been destroyed and families left in dire need of humanitarian assistance. This is amidst other complex global phenomena, such as the COVID-19 pandemic in the recent past.⁷ Even in the past decade, erratic rainfall patterns have been observed in several Eastern African countries and the Horn of Africa forcing populations out of their homeland borders.⁸ Research is now warning that this status quo is increasing social inequalities, undermining human rights, and retracting development gains in various parts of Eastern Africa.⁹

¹UNEP ‘Climate changes, sand storms wreak havoc in desert communities’ <https://www.unep.org/news-and-stories/story/climate-changes-sand-storms-wreak-havoc-desert-communities> (accessed 20 July 2023).

²T Debay *The Impact of Climate Change in Africa* ISS Paper 220 (2010) 4–11.

³D Ionesco, D Mokhnacheva & F Gemenne *The Atlas of Environmental Migration* (2016) Routledge 22–33, 102–120.

⁴D Silchenko & U Murray ‘Migration and climate change – The role of social protection’ (2022) 39 *Climate Risk Management* 100472 <https://doi.org/10.1016/j.crm.2022.100472> accessed 20 July 2023.

⁵B Ibrahim & H Mensah ‘Rethinking climate migration in Sub-Saharan Africa from the perspective of tripartite drivers of climate change’ (2022) 2 *SN Social Sciences* 87 <https://doi.org/10.1007/s43545-022-00383-y> accessed 20 July 2023.

⁶World Bank *Groundswell: Preparing for Internal Climate Migration* (2021).

⁷V Clement, K Kumari Rigaud, A de Sherbinin, B Jones, S Adamo, J Schewe, N Sadiq & E Shababat *Groundswell Part 2: Acting on Internal Climate Migration* (2021) The World Bank, Washington, DC, chs 3–4.

⁸M Majid *Famine in Somalia: Competing Imperatives, Collective Failures, 2011–12* (2016) Oxford University Press 60.

⁹A G Zeufack, C Calderon, M Kubota, V Korman, C C Canales & A N Kabundi ‘Africa’s Pulse, No. 24’ (2021) World Bank, Washington, DC <https://doi.org/10.1596/978-1-4648-1805-9> accessed 20 July 2023.

For the purposes of this thesis, persons displaced due to climate-related disasters refers to individuals or communities who are compelled to leave their habitual place of residence temporarily or permanently, primarily because of sudden-onset events such as floods, cyclones, or wildfires, or slow-onset processes such as drought, sea-level rise, and desertification that are either caused or intensified by climate change.¹⁰ A climate-related disaster is thus an environmental event whose frequency or severity is influenced by anthropogenic climate change. While it shares characteristics with other natural disasters (e.g. earthquakes), it is distinguished by its link to climatic variability and human contributions to greenhouse gas emissions.¹¹ For instance, while a flood may occur naturally, its increasing intensity or recurrence due to global warming classifies it as climate-related. Importantly, displacement is rarely caused by climate factors in isolation. Particularly in Eastern Africa, displacement often results from a confluence of drivers including conflict, political instability, and socio-economic fragility that intersect with environmental stressors.¹² In such cases, climate change acts as a threat multiplier, exacerbating underlying vulnerabilities that can escalate tensions or render communities more susceptible to displacement.¹³ For example, prolonged droughts may intensify competition over scarce water and pasture, contributing to intercommunal conflict that ultimately displaces populations.

By acknowledging these intersections, this thesis adopts a cautious and context-sensitive approach. While the focus remains on climate-related displacement, it recognises the blurred

¹⁰ IOM *Glossary on Migration* (2019) International Organization for Migration.

¹¹ IPCC *Climate Change 2022: Impacts, Adaptation and Vulnerability* Contribution of Working Group II to the Sixth Assessment Report (2022) Intergovernmental Panel on Climate Change, esp ch 9 (Africa) and ch 16 (Key Risks across Sectors and Regions).

¹² IDMC *Internal Displacement 2023: Regional Analysis – Sub-Saharan Africa* (2023) Internal Displacement Monitoring Centre.

¹³ C Raleigh & H Urdal 'Climate change, environmental degradation and armed conflict' (2007) 26(6) *Political Geography* 674–694.

boundaries between environmental and non-environmental drivers, particularly in fragile states such as Somalia, Sudan and South Sudan.

1.1. Statement of the Problem

Although there is widespread recognition of the impact of climate change on populations in Eastern Africa, persons displaced due to climate-related disasters still face challenges in finding complementary protection mechanisms such as humanitarian visas. This is due to their unclear status under regional and international law as a unique category of refugees. According to the Internal Displacement Monitoring Centre (IDMC), climate-related hazards triggered 25.3 million new internal displacements in 2023 alone, with the vast majority occurring within national borders.¹⁴ While internal displacement is undoubtedly a critical concern, this thesis focuses on cross-border displacement for two main reasons. First, cross-border displacement remains a significant normative and legal gap in international protection frameworks. Unlike internally displaced persons (IDPs), who fall under national jurisdiction and are often covered by domestic laws or the UN Guiding Principles on Internal Displacement, individuals who cross borders due to climate-related impacts do not enjoy clear or consistent protection under international refugee law, particularly the 1951 Refugee Convention.¹⁵ Second, those displaced across borders face a unique set of challenges compared to internal migrants. These include legal limbo due to the lack of recognised refugee status, restricted access to basic rights and services, and difficulties in securing lawful residence or integration opportunities in host countries.¹⁶ Moreover, the political sensitivities surrounding sovereignty and migration control often hinder the development of cooperative international responses to cross-border climate displacement, leaving affected individuals in particularly precarious situations. By focusing on

¹⁴ *Global Report on Internal Displacement 2024* (2024) Internal Displacement Monitoring Centre.

¹⁵ J McAdam *Climate Change, Forced Migration, and International Law* (2012) Oxford University Press, esp chs 3–5.

¹⁶ W Kälin & N Schrepfer *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches* (2012) UNHCR Legal and Protection Policy Research Series.

cross-border displacement, this thesis aim highlights an under-addressed and complex aspect of climate-induced mobility that urgently requires intervention.

According to the World Bank predictions, 85.7 million persons are expected to be displaced in Eastern by 2050¹⁷ because of climate-related disasters such as flooding, fire, drought, etc. To further put these figures into perspective, in 2024, the International Organization on Migration (IOM)¹⁸ reported that following floods in the Eastern Africa region including countries such as Rwanda and Burundi, about 634,000 persons were affected with over 230,000 persons being displaced. The unprecedented floods continued to unveil the harsh realities of climate change in Sub-Saharan Africa with the figures expected to be higher than the official reported numbers.¹⁹ The interrelatedness of this involuntary migration and climate-related disasters remains untackled at the global level despite growing evidence that this phenomenon could increase in the forthcoming years.²⁰ This is further augmented by the unclear status of persons displaced by climate-related disasters under the global and regional regime, with scholars arguing over the legitimacy of climate-displaced persons in the international humanitarian landscape.²¹ Nonetheless, Chetto et al., insist that there is a need to enhance protection mechanisms for the increasing number of vulnerabilities who continue to be affected by the adverse impacts of climate change.²²

¹⁷ ISS Africa ‘East Africa and the Horn light the way for climate migrants’ available at <https://issafrica.org/iss-today/east-africa-and-the-horn-light-the-way-for-climate-migrants#:~:text=In%202021%2C%202.6%20million%20people,effects%20of%20climate%20change%20worsen> accessed 8 May 2023.

¹⁸ International Organization for Migration (IOM) ‘Floods displace thousands in East Africa: IOM calls for sustained efforts to address climate mobility’ available at <https://www.iom.int/news/floods-displace-thousands-east-africa-iom-calls-sustained-efforts-address-climate-mobility> accessed 5 August 2024.

¹⁹ K R Patil, T Doi & S K Behera ‘Predicting extreme floods and droughts in East Africa using a deep learning approach’ (2023) 6 *npj Climate and Atmospheric Science* 108 <https://doi.org/10.1038/s41612-023-00435-x> accessed 20 July 2024.

²⁰ M Y Abdulmalik ‘Climate-induced migration in coastal areas of Nigeria and its economic effects on coastal ecosystem livelihoods’ (2019) 4(1) *Lafia Journal of Economics and Management Sciences* 128–141.

²¹ S Rashad ‘African climate refugees: Environmental injustice and recognition’ (2020) 10 *Open Journal of Political Science* 546–567 <https://doi.org/10.4236/ojps.2020.103033> accessed 20 July 2024.

²² R Chetto, M Mdemu & J Kihila ‘Climate change-related drivers of migration in East Africa: An integrative review of the literature’ (2024) *Environmental Science & Sustainable Development* 9(1) 42–56 <https://doi.org/10.21625/essd.v9i1.1005> accessed 20 July 2024.

In Eastern Africa, regional economic blocs such as the Intergovernmental Authority for Development (IGAD)²³ have recognised the need to safeguard persons fleeing due to climate change-related disasters. This has been attempted by using regional policy frameworks to fill in the legal vacuum in recognizing human mobility due to climate change disasters.²⁴ In 2020, IGAD states adopted the Protocol on Free Movement of Persons in the IGAD Region to further improve regional mobility.²⁵ Although there is no official definition for climate displaced persons, state blocs such as the East Africa Community (EAC)²⁶ and IGAD²⁷ have strategically signed a declaration on migration, the Kampala Ministerial Declaration on Migration, Climate Change & Environment 2022 (hereinafter the Kampala Declaration).²⁸ The Kampala Declaration was signed in 2022 as a progressive step to recognise the negative impacts of climate change on vulnerable populations, with an urgent call to ramp up support for such communities. It enhances the protection of climate displaced persons through community integration, humanitarian assistance, to prevent disastrous human mobility. The declaration also acknowledges the need to consider other dynamics such as gender and intends to tackle the climate change migration crisis through human rights-based interventions.

Despite this progress in soft law policy-related interventions at a regional level, this thesis submits that more can be done to explore solutions for climate displaced persons in Eastern Africa.²⁹ This is because more people are expected to be displaced in the coming decades with the increase in environmental degradation and resulting scarcity on natural resources.

²³ IGAD states comprise Kenya, Djibouti, Eritrea, Ethiopia, Somalia, South Sudan, Sudan and Uganda.

²⁴ E Piguet, A Pecoud & P de Guchteneire 'Migration and climate change: An overview' (2011) 30(3) *Refugee Survey Quarterly* 1–23 <https://doi.org/10.1093/rsq/hdr006> accessed 20 July 2024.

²⁵ UNHCR *Human Mobility and Climate Change in the IGAD Region: A Case Study in the Shared Border Regions of Ethiopia, Kenya and Somalia* (2023) available at <https://data.unhcr.org/en/documents/details/100724> accessed 20 July 2024.

²⁶ East Africa Community (EAC)

²⁷ EAC Countries include: Kenya, Tanzania, Uganda, Rwanda, Burundi, South Sudan and DRC Congo. Kenya and South Sudan also form part of IGAD

²⁸ *Kampala Ministerial Declaration on Migration, Climate Change and Environment* (2022).

²⁹ J Podesta 'The climate crisis, migration, and refugees' (2019) Brookings Institution available at <https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/> accessed 20 July 2024.

Accordingly, the research herein examines the concept of complementary pathways³⁰ as a means of enhancing the plight of climate-displaced persons in Eastern Africa. It critically examines the use of humanitarian visas as a complementary pathway to ameliorate the plight of climate change vulnerabilities. This will ensure a timeous and safe passage for the displaced to be admitted into countries and allowed to carve out a safer and sustainable future for themselves.

1.2. Research Context

The 2023 Intergovernmental Panel on Climate Change (IPCC) Report³¹ has established that Africa continues to contribute the least to the global emissions yet experiences acute impacts of climate change emanating from the toll of high emissions from the global north.³² As these impacts increase, conflict over already meagre resources is inevitable and persons in the developing countries are moving to safer ground with increasing climate vulnerabilities.³³ Eastern Africa is projected to be the worst affected region in climate related disasters alongside small island states.³⁴ In 2021 alone, Eastern Africa witnessed displacements of 2.6 million

³⁰United Nations High Commissioner for Refugees (UNHCR) ‘Complementary Pathways’ available at <https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/complementary-pathways> accessed 20 July 2024.

³¹ IPCC *Summary for Policymakers. In: Climate Change 2023: Synthesis Report; Contribution of Working Groups I, II and III to the Sixth Assessment Report* [Core Writing Team, H Lee & J Romero (eds)] (2023) IPCC, Geneva, Switzerland 1–34 <https://doi.org/10.59327/IPCC/AR6-9789291691647.00> ; C H Trisos, I O Adelekan, E Totin, A Ayanlade, J Efitre, A Gameda, K Kalaba, C Lennard, C Masao, Y Mgaya, G Ngaruiya, D Olago, N P Simpson & S Zakieldean ‘Africa’ in H-O Pörtner et al (eds) *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022) Cambridge University Press 1285–1455 <https://doi.org/10.1017/9781009325844.011> .

³²B Jafino, B Walsh, J Rozenberg & S Hallegatte *Revised Estimates of the Impact of Climate Change on Extreme Poverty by 2030* (2020) Policy Research Working Paper No. 9417, World Bank, Washington, DC <https://openknowledge.worldbank.org/handle/10986/34555> accessed 20 July 2024.

³³R Black, W N Adger, N W Arnell, S Dercon, A Geddes & D Thomas ‘The effect of environmental change on human migration’ (2011) 21(Suppl 1) *Global Environmental Change* S3–S11 <https://doi.org/10.1016/j.gloenvcha.2011.10.001>; S Adaawen, C Rademacher-Schulz, B Schraven & N Segadlo ‘Drought, migration, and conflict in sub-Saharan Africa: What are the links and policy options?’ (2019) 2 *Current Directions in Water Scarcity Research* 15–31; M Borderon, P Sakdapolrak, R Muttarak, E Kebede, R Pagogna & E Sporer ‘Migration influenced by environmental change in Africa’ (2019) 41 *Demographic Research* 491–544.

³⁴ F Gemenne ‘Climate-induced population displacements in a 4 °C+ world’ (2011) 369(1934) *Philosophical Transactions of the Royal Society A* 182–195 <https://doi.org/10.1098/rsta.2010.0287> accessed 20 July 2024.

people because of climate related disasters, increasing pressure on the already stretched natural resources.³⁵

As stated above, there are no laws yet specifically recognising the legal status of persons fleeing across borders to seek refuge because of climate related disasters. Although there exists a body of global frameworks on refugees, the frameworks do not incorporate the unique contemporary circumstances of climate change and human mobility often experienced across the continent.³⁶

In fact, the terms ‘climate refugees’ or ‘environmental refugees’ as introduced by scholars such as Myers³⁷ remains largely contested and unrecognised under the international legal regime with some arguing that it is daunting to prove the crucial element of “*persecution*” and belonging to a specific “*social group*” with the use of the term.³⁸ Instead, the phrase ‘climate migrant’ is commonly used and preferred, and it refers to an individual compelled to flee the ravaging impact of climate related disasters to safer ground internally or abroad. Unfortunately, it limits the opportunities for acquisition of refugee status and subsequent protection for climate displaced persons.³⁹

This was the largely the situation until the notable case of *Ioane Teitiota v. New Zealand*, brought against the Republic of New Zealand.⁴⁰ The premise of this case was that one Mr. Teitiota had been denied refugee status on the basis that fleeing climate induced crisis was not recognised as a ground for granting refugee status. He cited fleeing climate induced conflict on

³⁵International Organization for Migration (IOM) *UN Migration* (November 2022).

³⁶N Myers ‘Environmental refugees: A growing phenomenon of the 21st century’ (2002) *Philosophical Transactions of the Royal Society B* 357(1420) 609–613.

³⁷ *Ibid.*

³⁸S Atapattu ‘A New Category of Refugees? “Climate Refugees” and a Gaping Hole in International Law’ in S Behrman & A Kent (eds) “*Climate Refugees*”: *Beyond the Legal Impasse* (2018) Routledge.

³⁹O Brown *Climate Change and Forced Migration: Observations, Projections and Implications*, Human Development Report 2007/2008, Occasional Paper No. 2007/17, UNDP Human Development Report Office.

⁴⁰ *Ioane Teitiota v New Zealand*, CCPR/C/127/D/2728/2016, UN Human Rights Committee (advance unedited version).

access to land and water but had been denied reprieve by the New Zealand's authorities.⁴¹ This case, which is later discussed in detail herein, highlighted the challenges faced by climate displaced persons, who are forced to leave their homes due to the impacts of climate change. It underscored the limitations of current legal protections for individuals displaced by environmental factors, as traditional refugee status under the 1951 Refugee Convention does not include environmental causes. In 2020, the United Nations Human Rights Committee, while not overturning the decision, acknowledged that countries could not forcibly return individuals to situations where their lives would be at risk due to climate change. This ruling opened the door for future considerations of climate-induced displacement in international human rights law, potentially paving the way for broader recognition and protection of climate-displaced persons. In deciding this case, the UN Human Rights Committee (HRC) took cognisance of the fact that a state would be dishonouring its international obligations and fundamental rights such as the right to life; if it denied refugee protection to one affected by the impacts of climate change.⁴² This buttressed the fact that states still have an obligation to protect people fleeing the impact of climate change.⁴³

The growing interrelatedness of climate change and human migration perhaps requires an urgent need for global action⁴⁴ in ameliorating the plight of this category of vulnerabilities globally and even more in Eastern Africa.⁴⁵

⁴¹ K Lyons 'Climate refugees can't be returned home, says landmark UN human rights ruling' *The Guardian* (20 January 2020) available at <https://www.theguardian.com/world/2020/jan/20/climate-refugees-cant-be-returned-home-says-landmark-un-human-rights-ruling> accessed 20 July 2024.

⁴² B Burson, W Kälin, J McAdam & S Weerasinghe 'The duty to move people out of harm's way in the context of climate change and disasters' (2018) 37(4) *Refugee Survey Quarterly* 379–407 <https://academic.oup.com/rsq/article/37/4/379/5208892?login=true> accessed 20 July 2024.

⁴³ Amnesty International 'UN landmark case for people displaced by climate change' (2020) available at <https://www.amnesty.org/en/latest/news/2020/01/un-landmarkcaseforpeople-displaced-by-climate-change/> accessed 20 July 2024.

⁴⁴ Foresight *Migration and Global Environmental Change: Final Project Report* (2011) The Government Office for Science, London.

⁴⁵ A Sandalli 'The macroeconomic implications of climate change on Sub-Saharan Africa: A case for sustainable development' (2021) 9(1) *Review of Business and Economics Studies* 8–13.

1.3. International Refugee Law and Climate Displaced Persons: An Overview

The Convention Relating to the Status of Refugees (hereinafter “1951 Refugee Convention”⁴⁶ and its subsequent Protocol Relating to the Status of Refugees (hereinafter “1967 Protocol”)⁴⁷ are the thrust of the international regime of refugee law. The Convention defines a refugee as a person fleeing “*his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group.*” This definition was conjured in a post-World War II era that focused mainly on conflict as the primary reason for persons to flee their homes across the borders. It therefore sought to provide protection to these categories of people. There have been cases where the definitions of social groups have been extended to fit into other contexts.⁴⁸

According to the UNHCR Information notes, the definition of refugee is intended to be applied generously.⁴⁹ Emphasis has often been placed on the requirement for states to apply the 1951 Refugee Conventions with a humanitarian lens as the term refugee was meant to be interpreted in an inclusive manner rather than a restrictive sense to give international protection to all who need it.⁵⁰ The most important consideration in determining refugee status and the extent of its definition is the need for protection for fleeing individuals and adherence to the spirit, purposes, and objectives of the 1951 Refugee Convention. The current international refugee regime does not necessarily lend itself to contemporary circumstances where the impact of climate change

⁴⁶ UN General Assembly *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol 189, 137 available at <https://www.refworld.org/docid/3be01b964.html> accessed 29 June 2023.

⁴⁷ UN General Assembly *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol 606, 267 available at <https://www.refworld.org/docid/3ae6b3ae4.html> accessed 8 May 2023.

⁴⁸ UN High Commissioner for Refugees (UNHCR) *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/02, 7 May 2002 available at <https://www.refworld.org/docid/3d36f23f4.html> accessed 24 July 2023.

⁴⁹ UN High Commissioner for Refugees (UNHCR) *Information Note on Article 1 of the 1951 Convention*, 1 March 1995 available at <https://www.refworld.org/docid/3ae6b32c8.html> accessed 4 July 2023.

⁵⁰ *Ibid.*

has taken center stage⁵¹ causing more human migration than in the previous century.⁵² This is also augmented by the fact that states are reluctant to undertake responsibilities to protect more groups of people under the refugee regime.⁵³ Still, argument has been made that subsequent UNHCR Guidelines on Refugees and displacement⁵⁴ could be extended to fill in this gap. This notwithstanding, there is an inherent disconnect in what the current refugee regime has to offer to climate-displaced persons in this context with some researchers arguing that this category of persons should be covered under a whole new environmental regime altogether.⁵⁵ According to some scholars,⁵⁶ given the current precarious circumstances in affording the typical refugees protection, states are reluctant to have this definition cover more groups of people as this only increases the obligations they are already struggling to fulfil under international and regional law regimes.⁵⁷

It is suggested that this tension could be circumvented through the more recent UNHCR 2020 guidelines discussed under the normative frameworks and and evolving state practice in according to human rights-based approaches to forced climate change migration patterns.⁵⁸ In the past decade, global agreements such as the Cancun Agreements (Decision 1/CP.16), have

⁵¹ A Williams ‘Turning the Tide: Recognizing Climate Change Refugees in International Law’ (2008) 30(4) *Law & Policy* 502–529.

⁵² F Biermann & I Boas ‘Protecting Climate Refugees: The Case for a Global Protocol’ (2008) 50(6) *Environment* 8–17.

⁵³ UN High Commissioner for Refugees *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches* PPLA/2012/01 (2012) 1–33, available at <https://www.refworld.org/docid/4f38a9422.html> (accessed on 14 August 2023).

⁵⁴ UN High Commissioner for Refugees *Legal Considerations for People Fleeing Conflict and Famine Affected Countries* (2017) 1–5, available at <https://www.refworld.org/docid/5906e0824.html> (accessed on 14 August 2023).

⁵⁵ J Morrissey ‘Rethinking the “debate on environmental refugees”’: from “maximalists and minimalists” to “proponents and critics” (2012) 19 *Journal of Political Ecology* 36–49.

⁵⁶ N Spadotto *A Well-Founded Fear of Environment: International Resistance to Climate Refugees* (2018) unpublished LLM thesis, Osgoode Hall Law School, 1–75.

⁵⁷ In the 2015 Climate Change Conference, attempts were made to explicitly recognise the need for protection for persons displaced due to climate change atrocities. These ambitious attempts only went as far as being recognised in the Preamble of the Paris Agreement (UNFCCC, 2015) with some states such as Australia expressing reluctance for the inclusion of climate change migrant’s protection in the final text of the agreement.

⁵⁸ According to Nicole Spadotto, notably, various states are yet to reach consensus over the internal protection of persons affected by climate change under International Law. International Law remains salient regarding issues of mass climate change migration.

been at the fore to recognise the growing impact of climate change in developing countries and its subsequent correlation to human mobility. The Cancun Agreement was reached at the Conference of Parties, where states recognised the increasing climate change vulnerabilities and the subsequent efforts to afford protection and safety for this group of persons under international regimes.⁵⁹ Notably, it does not expressly refer to them as ‘climate or environmental refugees’. These efforts were somewhat advanced in the 2015 Paris Agreement⁶⁰, where states were urged to proactively take steps towards adapting and mitigating climate change disasters by inter alia, cooperating in the protection of climate change vulnerabilities. Taking a leaf from the Cancun Agreement, developed states under the Paris agreement were urged to provide technical and financial assistance to developing countries adversely affected by climate change resulting to mass displacements. This is in recognition of the established principle of common but differentiated responsibilities which posits that states are not equally responsible for the current climate change crisis.⁶¹ Unfortunately, till date, the impacts of climate change in Africa continue to outpace the nascent efforts under the international regime to have clear provisions and remedies for climate displaced persons.

In Africa, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems⁶², the term "refugee" applies 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 compelled

⁵⁹United Nations Framework Convention on Climate Change (UNFCCC) *Report of the Conference of the Parties on its Sixteenth Session, Held in Cancun from 29 November to 10 December 2010* (2010) UNFCCC, Bonn.

⁶⁰United Nations Framework Convention on Climate Change (UNFCCC) *United Nations Framework Convention on Climate Change*, 1992, Arts 8 & 9.

⁶¹ This is reminiscent of the Climate Justice concept where it is recognised that developing states suffer disproportionately from the impact of climate change despite being least contributors to the causal links of the prevailing environmental crises.

⁶²Organization of African Unity (OAU) *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969) 1001 UNTS 45, available at <https://www.refworld.org/docid/3ae6b36018.html> (accessed on 8 May 2023).

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

It has been opined that ‘*events seriously disturbing public order*’ could progressively include climate related disasters. The OAU Convention seemingly incorporated an extended version of the term refugee to fit the African contexts where environmental disasters commonly lead to ‘*events disturbing public order*’.⁶³ The quandary of ‘*environmental refugee’s protection*’ is still being circumvented using regional soft laws and declarations to strengthen their protection. This is because climate disasters tend to occur in regions hence the use of regional and sub-regional bloc interventions to enhance policy interventions during climate-related disasters.⁶⁴

Some sub-regional blocs such as the Intergovernmental Authority for Development (IGAD) have put in place frameworks to enable economic movement and regional integration during or after environmental threats.⁶⁵ For instance, the Kampala Ministerial Declaration of 2022 on Migration, Environment, and Climate Change highlights the need for Africa to put in place interventions for climate-related migrations to secure its future development.⁶⁶ This ministerial declaration is a progressive step for a region heavily impacted by climate change disasters.

In addition to the above regional frameworks, this thesis posits that the progressively accepted 2018 Global Compact on Refugees (GCR)⁶⁷ could be of assistance in setting standards for state practice in enhancing an expanded definition of refugee protection to respond to contemporary global crises. This is because it reiterates the concept of complementary pathways as an additional tool to enhancing protection of displaced populations. The GCR acknowledges the

⁶³T Wood *In Search of the African Refugee: A Principled Interpretation of Africa’s Expanded Refugee Definition* (2018) unpublished PhD thesis, University of Melbourne.

⁶⁴V Kolmannskog & L Trebbi ‘Climate Change, Natural Disasters and Displacement: A Multi-Track Approach to Filling the Protection Gaps’ (2010) 92(879) *International Review of the Red Cross* 713–730.

⁶⁵Intergovernmental Authority on Development (IGAD) *Regional Climate Change Strategy and Action Plan (2023–2030)* (2023).

⁶⁶ So far, 15 African member states have signed the declaration.

⁶⁷ UN High Commissioner for Refugees *Global Compact on Refugees*, available at <https://www.unhcr.org/about-unhcr/overview/global-compact-refugees> (accessed on 10 October 2024).

need to employ complementary pathways such as the issuing of humanitarian visas, in enhancing durable solutions for refugees.⁶⁸ Although the GCR is not legally binding, it is indicative of a strong political will in collaboratively addressing the plight of refugees. The aspect of complementary pathways is useful in ensuring that refugees who generally would lack international protection (such as in this case, the climate displaced persons) are still able to be afforded international protection. Although states tend to hesitate around the recognition of climate change vulnerabilities, there is wide recognition that climate-induced displacements are only ever increasing in developing regions hence the need for effective humanitarian interventions to address them. This paves the way for scholarly research on complementary solutions such as the use of the humanitarian visa.

1.4. Insights into Humanitarian visa as a Complementary Pathway to ameliorate the plight of climate displaced persons

Complementary pathways have been defined by the UNHCR as, alternative avenues of safe passage to countries of refuge that afford international protection and enable the refugees to have sustainable socio-economic interventions.⁶⁹ These include having educational opportunities for refugees, humanitarian visas and enabling labour mobility within the host countries.⁷⁰ These pathways provide a critical avenue in enhancing the socio-economic plight and self-reliance for climate displaced persons⁷¹ as studies have shown that the adverse impact of climate change largely destroy sources of livelihood and societal structures for most affected

⁶⁸United Nations General Assembly (UNGA) *Report of the United Nations High Commissioner for Refugees: Global Compact on Refugees* A/73/12 (Part II) (2018) ch 1, B, para 8.

⁶⁹UN High Commissioner for Refugees *Complementary Pathways for Admission to Third Countries*, available at <https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/complementary-pathways-admission-third-3> (accessed on 8 July 2024).

⁷⁰A Randall 'New Zealand Proposes Humanitarian Visa for "Climate Refugees"' *The Diplomat* (2017), available at <https://thediplomat.com/2017/11/new-zealandproposeshumanitarian-visa-for-climate-refugees/> (accessed on 8 July 2024).

⁷¹T Wood *The Role of "Complementary Pathways" in Refugee Protection* (2020) Reference Paper for the 70th Anniversary of the 1951 Refugee Convention, Andrew & Renata Kaldor Centre for International Refugee Law, UNSW Sydney.

populations.⁷² This approach bridges the gap between humanitarian and developmental assistance by addressing climate change vulnerabilities, thereby providing displaced individuals with the opportunity to rebuild their lives in the host country. Humanitarian visas offer a complementary protection tool, enabling vulnerable persons to legally access a third country often for the purpose of seeking asylum or securing temporary protection when their life, dignity, or fundamental rights are at risk in their home country.⁷³ They are not an alternative to resettlement, which typically involves recognised refugees being permanently relocated from a host or transit country to a third country under an international agreement.⁷⁴ Rather, humanitarian visas function as legal entry mechanisms that allow individuals to travel to safety and potentially initiate an asylum claim once inside the destination country.⁷⁵

This research hence focuses on humanitarian visas as a socio political and humanitarian approach to providing protection to climate-displaced persons across international borders through accelerated application procedures.⁷⁶ Since human migration is one of the reactive adaptive measures for climate change vulnerabilities, the humanitarian visa could be generally used to protect vulnerable persons who are unable to enjoy protection in their country of asylum. It commonly has an extended territorial validity and is often issued on short notice without impeding formal procedures. This expedited process is the main subject of examination in this research, as it has the potential of ensuring that climate displaced persons are safely secured to a receiving country. It is best utilised to timeously assist vulnerable groups during

⁷² S Adaawen, C Rademacher-Schulz, B Schraven & N Segadlo ‘Drought, Migration, and Conflict in Sub-Saharan Africa: What are the Links and Policy Options?’ (2019) 2 *Current Directions in Water Scarcity* 15–31.

⁷³ European Parliament *Humanitarian Visas: Option or Obligation?* (2017) 11–13, 18–20, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578006/IPOL_STU\(2017\)578006_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578006/IPOL_STU(2017)578006_EN.pdf) (accessed on 20 June 2025).

⁷⁴ UN High Commissioner for Refugees *UNHCR Resettlement Handbook* (2011) 3–4, available at <https://www.unhcr.org/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-complete-publication.html> (accessed on 20 June 2025).

⁷⁵ GS Goodwin-Gill & J McAdam *The Refugee in International Law* 3 ed (2007) 379.

⁷⁶ This approach was utilized largely in the resettlement of the typhoon Haiyan survivors from the Philippines to the USA and Canada.

emergencies which often is the case with persons displaced due to the existing climate related shocks.⁷⁷

In many cases, individuals seeking humanitarian visas may not yet have *asylum status*, nor may they meet the narrow definition of a refugee under the 1951 Convention. This is particularly relevant for climate-displaced persons, who often fall outside existing legal refugee categories yet face conditions that threaten their survival or fundamental rights. Humanitarian visas thus provide a pre-emptive form of access to protection, particularly where other routes are inaccessible or unsafe.

Despite their potential, humanitarian visas remain a largely underutilised tool in the global protection architecture. As of 2023, there were over 110 million forcibly displaced persons worldwide,⁷⁸ yet humanitarian visas accounted for fewer than 100,000 admissions globally per year, most of which were limited to Europe, Latin America, and Australia, and applied narrowly in contexts such as family reunification or specific crises.⁷⁹ For instance, between 2012 and 2017, Brazil issued just over 43,000 humanitarian visas to Haitians following the 2010 earthquake.⁸⁰ In Germany, about 20,000 Syrians were admitted under federal humanitarian admission programmes between 2013 and 2016.⁸¹ In contrast, African states, despite experiencing substantial climate-related and humanitarian displacement, have not established similar legal entry frameworks, leaving a significant gap in the use of humanitarian

⁷⁷ UN High Commissioner for Refugees *Complementary Pathways for Admission to Third Countries*, available at <https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/complementary-pathways-admission-third-0> (accessed on 4 July 2023).

⁷⁸ UN High Commissioner for Refugees *Global Trends: Forced Displacement in 2023* (2024) UNHCR Statistics.

⁷⁹ S Carrera & R Cortinovis *The Use of Humanitarian Visas in the EU: A Policy Brief* (2019) Centre for European Policy Studies (CEPS).

⁸⁰ LL Jubilut & D Jarochinski Silva 'The Haitian Humanitarian Visa in Brazil: An Adequate Response to Environmental Displacement?' (2018) 37(4) *Refugee Survey Quarterly* 440–457.

⁸¹ European Migration Network (EMN) *Ad Hoc Query on Humanitarian Admission Programmes – Germany* (2016).

visas in high-need regions.⁸² The limited use of this mechanism particularly in response to climate-induced displacement highlights its untapped potential. While humanitarian visas have proven operational in practice, their application to environmental displacement remains largely theoretical or ad hoc, reinforcing the need for regional dialogue and policy innovation. Research

1.5. Aims and Objectives

The crux of this research is to critically examine the use of the humanitarian visa as a complementary pathway that is a critical avenue to enhancing the socio-economic plight of climate displaced persons.⁸³ It explores this mechanism as would be applicable to Eastern Africa as a region riddled with the impacts of climate change.⁸⁴ The study specifically addresses itself to the plight of climate change vulnerabilities in Africa, narrowing down to the Eastern Africa, IGAD context. It interrogates the existing regional frameworks that lend itself to the plight of climate displaced persons and the opportunities for applying for a humanitarian visa as a means of addressing rebuilding their lives in their host countries. By critically examining these aspects, this study unearths the concept of the controversial term “environmental refugees” within the Eastern African IGAD context and the need to afford them protection via complementary pathways, in view of their urgent and vulnerable circumstances.⁸⁵

1.6. Research Questions

The main research question being explored is despite the ravaging impact of climate change in Africa, why (and perhaps why not) the humanitarian visa is not yet adopted as a flexible means of creating durable solutions for climate displaced persons.

⁸²MC Okello ‘Climate Displacement and Protection in Eastern Africa: Legal Gaps and Prospects’ (2022) 22(1) *African Human Rights Law Journal* 1–24.

⁸³ DMS Matias ‘Climate Humanitarian Visa: International Migration Opportunities as Post-Disaster Humanitarian Intervention’ (2020) 160 *Climatic Change* 143–156.

⁸⁴ M Mastroiello, R Licker, P Bohra-Mishra, G Fagiolo, LD Estes & M Oppenheimer ‘The Influence of Climate Variability on Internal Migration Flows in South Africa’ (2016) 39 *Global Environmental Change* 155–169.

⁸⁵MT Chazalnoel *Rethinking Migration Management in a Changing Climate* (2020) unpublished policy commentary, International Organization for Migration (IOM).

The following are the sub questions that are intended to meet the objectives discussed above regarding this study;

- i. What is the context within which climate displaced persons exist in Eastern Africa?
- ii. What is the conceptual underpinning of the use of humanitarian visa as a Complementary pathway for climate displaced persons?
- iii. Who are ‘environmental refugees’ in the context of this discourse i.e. their international and regional status of recognition?
- iv. What are the existing normative frameworks on climate displaced persons in Eastern Africa, regionally and sub regionally?
- v. What is the relevance of the humanitarian visa in enhancing the plight of climate displaced persons in Eastern Africa?
- vi. What are the findings recommendations and conclusion on the research study?

1.7. The Conceptual Approach: The Climate Justice Perspective

A climate justice lens is central to this research, as it provides the normative and ethical framework through which climate-induced displacement particularly across borders can be critically examined. Climate justice shifts the conversation from purely environmental or technocratic understandings of climate change to one that emphasizes equity, human rights, and historical responsibility. It highlights the reality that those most affected by climate-related displacement, especially in the Global South, are often the least responsible for greenhouse gas emissions and the least equipped to adapt to the impacts of climate change. This perspective is particularly relevant in examining the protection needs of cross-border climate-displaced persons. A climate justice lens broadens the human rights discourse by advocating for the creation of new, equitable protection pathways such as humanitarian visas that recognise the obligations of historically high-emitting states to support vulnerable populations facing displacement.

Scholars such as Tristos et al have established that the impact of climate change in the global south is the most manifest form of climate injustice.⁸⁶ This is due to the patterns of environmental abuse and degradation often witnessed in the developed north which has repercussions cascading down to the developing countries in the global south.⁸⁷ This research will hence be conceptualized through the climate justice perspective. The term “climate justice” was coined in the late 1980s to address the impact of polluting industries on low-income communities in the United States highlighting the four main interrelated forms of environmental injustice.⁸⁸

These forms include; distributive injustice that refers to the disproportionate exposure of vulnerable communities to toxic air pollutants and waste, highlighting the significant health and socio-economic disparities faced by marginalized groups. On the other hand, procedural unfairness describes the exclusion of these groups from critical decision-making processes regarding environmental policies and developments, often overlooked in the context of substantial economic interests. Both state and non-state actors in the development sector frequently marginalize these communities, leading to decisions that do not reflect their needs or rights. Corrective injustice pertains to the inadequate enforcement of environmental laws, which fails to protect marginalized populations; this is particularly evident in contemporary contexts where indigenous communities risk losing their territories without compensation from the responsible polluters. Finally, social injustice arises from persistent power imbalances between the Global North and South, where the former seeks economic development at the expense of finite resources within the planet’s ecosystems. Consequently, environmental

⁸⁶CH Tristos et al *‘Africa’ in Climate Change 2022: Impacts, Adaptation and Vulnerability* (2022) Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press.

⁸⁷ S Atapattu & CG Gonzalez ‘The North–South Divide in International Environmental Law: Framing the Issues’ in S Alam et al (eds) *International Law and the Global South* (2015) 1–5.

⁸⁸RR Kuehn ‘A Taxonomy of Environmental Justice’ (2000) 30 *Environmental Law Reporter* 10681, 10683–10702.

injustice becomes intertwined with poverty and conflicts over resources, further exacerbating the disadvantages faced by already vulnerable communities.

This four pronged breakdown of environmental injustice facets was later adopted by scholars in defining what climate justice entails.⁸⁹ Climate justice has since developed to advocate for a people centred approach in tackling climate change with the recognition of the disproportionate effects of climate change on the least responsible developing countries.⁹⁰ Over time, this concept has evolved and been called for in successive Conference of the Parties every year with linkages being established between climate justice and human rights elements⁹¹ such as the right to life, health, security, food and a safe environment.⁹²

In fact in 2002, advocacy groups, lead international environmental experts and policy contributors lobbied and came up with the Bali Principles of climate Justice.⁹³ These principles were further cemented by the Universal Declaration of the Rights of Mother Earth, which emerged from the World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia.⁹⁴ These are the primary documents that have since refined the term climate justice highlighting the irresponsible rapid development processes that have in turn undermined the environmental rights of vulnerable communities and groups globally. These documents call for participatory justice and involvement in decision making processes especially where the environment is involved. They also demand corrective justice in enabling those responsible for the climate change crisis to compensate thorough adaptation and

⁸⁹ A Simms 'Front Matter' in *Ecological Debt: Global Warming and the Wealth of Nations* (2009) i–iv, Pluto Press.

⁹⁰ J Timmons Roberts & BC Bradley *A Climate of Injustice: Global Inequality, North–South Politics, and Climate Policy* (2008), N Choucri (ed).

⁹¹ CG Gonzalez 'Environmental Justice and International Environmental Law' in S Alam et al (eds) *Routledge Handbook of International Environmental Law* (2013) 77–85.

⁹² UN High Commissioner for Human Rights *Report on the Relationship between Climate Change and Human Rights* UN Doc A/HRC/10/61 (2009).

⁹³ Climate Watch *Bali Principles of Climate Justice* (2008) CORP WATCH.

⁹⁴ World People's Conference on Climate Change and the Rights of Mother Earth *Rights of Mother Earth*, available at <https://pwccc.wordpress.com/programa/>.

mitigation measures, countries which have been made vulnerable by the growing impacts of climate change.⁹⁵

Although African countries have negligible global emissions, they remain to be uniquely vulnerable⁹⁶ to the impacts of climate change.⁹⁷ The result has been an increase in climate induced conflicts, socio economic challenges and a corresponding increase in human mobility.⁹⁸ This is aggravated by existing vulnerabilities affecting the continent such as food insecurity, armed conflict and poverty.⁹⁹ Without urgent action to address the growing humanitarian crisis induced by climate change, Africa will remain in the vicious cycle of climate induced crises further eroding its socio economic systems.¹⁰⁰

To tackle the growing climate injustice, human rights tribunals allow for individuals to bring forth claims of environmental violations.¹⁰¹ Admittedly, these have been hard to enforce owing to the complex underlying socio economic and political power imbalances.¹⁰² Nonetheless there have been progressive provisions in the International environmental law regime that have attempted to provide for North and South equality. Recognising the need for a just development pattern that does not jeopardise the wellbeing of developing states, the Paris agreement includes the rights of climate displaced persons i.e. persons already affected by the impact of the climate crisis. In its preamble and ensuing articles, it states that parties should take heed to ensure climate action considers the plight of already vulnerable groups such as climate displaced

⁹⁵K Mickelson ‘Beyond a Politics of the Possible? South–North Relations and Climate Justice’ (2009) 10 *Melbourne Journal of International Law* 411, 412–413.

⁹⁶MC Lemos et al ‘Building Adaptive Capacity to Climate Change in Less Developed Countries’ in G Asrar & J Hurrell (eds) *Climate Science for Serving Society* (2013) 437–457.

⁹⁷R Black et al ‘The Effect of Environmental Change on Human Migration’ (2011) 21(Suppl. 1) *Global Environmental Change* S3–S11.

⁹⁸S Rashad ‘African Climate Refugees: Environmental Injustice and Recognition’ (2020) 10 *Open Journal of Political Science* 546–567 doi:10.4236/ojps.2020.103033.

⁹⁹U.S. Global Leadership Coalition (USGLC) *Climate Change and the Developing World: A Disproportionate Impact* (2020) s.l.

¹⁰⁰M Borderon et al ‘Migration Influenced by Environmental Change in Africa: A Systematic Review of Empirical Evidence’ (2019) 41 *Demographic Research* 491–544.

¹⁰¹JH Knox ‘Climate Change and Human Rights Law’ (2009) 50 *Virginia Journal of International Law* 163.

¹⁰²D Hunter, J Salzman & D Zaelke *International Environmental Law and Policy* 4 ed (2011) 464.

persons.¹⁰³ Despite having in place these justice friendly frameworks on addressing the mammoth climate change issue, there has been insufficient strategies towards ameliorating the state of climate displaced persons. The realities of climate injustices have been brutal on global south countries in Africa and need to be urgently addressed for the sake of the already suffering displaced communities. It is worse that they are not recognised in the 1951 Refugee Convention although some scholars have suggested a broader interpretation to circumvent this hurdle.¹⁰⁴ In any case, each of us is a disaster away from being displaced. A mere recognition (or lack thereof per scholarly debates) of this category of vulnerabilities is not sufficient as there is need to develop humanitarian strategies to protect them. By adopting a climate justice lens, this research challenges the structural inequalities that underpin climate-related displacement and makes the case for protection mechanisms that are not only legally sound but also morally and ethically justified. Humanitarian visas, in this context, are presented not simply as a policy option but as a justice-driven obligation that can help address global disparities in climate vulnerability and mobility access.

1.8. Research Methodology

1.8.1. Qualitative Search Strategy

This research is conducted by using scholarly research and academic literature when interrogating the concept of humanitarian visas as a complementary pathway and how this can be applied to climate displaced persons. The study delves into a legal analysis of the current regime on refugees with specific focus on provisions that can be applied to climate displaced persons, and which speak to the implementation of complementary pathways. It also entails a case analysis to establish the narrative of ‘environmental refugees’ in the global and regional international humanitarian regime. There are thus three aspects that are highlighted in this

¹⁰³*Paris Agreement to the United Nations Framework Convention on Climate Change*, Preamble and art 2(2), 12 December 2015, 1771 UNTS 107, 48–50.

¹⁰⁴B Felipe Pérez ‘Beyond the Shortcomings of International Law: A Proposal for the Legal Protection of Climate Migrants’ in S Behrman & A Kent (eds) *Climate Refugees’: Beyond the Legal Impasse* (2018) 218–219.

research i.e. climate displaced persons, humanitarian visas and Complementary pathways. This forms the substance of search engine words that will be utilized in extrapolating the concepts being critically examined. Other useful search engine phrases and key words that will be explored in the study are climate justice, impact of climate change, 1951 Refugee Convention, OAU Refugee framework in Africa, humanitarian assistance, environmental refugee's controversy and climate-induced displacements.

The study heavily benefits from searches on electronic data sources such as: Scopus, Web of Science, Science Direct, Springer, JSTOR, Google scholar and Directory of Open Access Journals (DOAJ). For quality control, the research endeavours to stick to relevant search results. This will also enable it to reach accurate conclusions in building on the existing body of literature. The research also benefits from a critical examination and analysis of UN Reports and reports from other internationally renowned organizations working in the field of climate change vulnerabilities and Complementary solutions. It therefore draws a linkage between recognising the need to protect them and the proposition of the use of humanitarian visas to protect vulnerable populations. It also acknowledges that this will hugely rely on the cooperation and solidarity of states.¹⁰⁵ With an Afrocentric voice, this work emphasises that climate disasters are a recurring theme in Eastern Africa and needs to be flexibly and innovatively addressed to meet the needs of those at the heart of displacements.

1.9. Significance of this Study

This research contributes to and extends existing scholarship at the intersection of climate displacement and humanitarian protection pathways, particularly the evolving discourse on humanitarian visas. While existing literature has extensively documented the impacts of climate change on human mobility including typologies of displacement, legal protection gaps,

¹⁰⁵ *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, GA Res 2625 (XXV), UN GAOR, 25th Sess, Supp No 28, UN Doc A/8028 (1970), arts 1, 13, 55 & 56.

and policy responses¹⁰⁶ there remains a notable gap in the exploration of humanitarian visas as a proactive and rights-based response to cross-border climate-induced displacement. This research is a solid building block on scholarly ‘environmental/climate refugee’ debates by recognising the growing urgent need to protect vulnerable communities affected by climate disasters hence the clarion call for complementary humanitarian solutions. Despite a growing body of literature on climate change and displacement in Africa, as well as increasing scholarly attention on humanitarian visas particularly in the contexts of Latin America and Europe there remains a notable gap in research specifically examining the potential application of humanitarian visas for climate-related displacement within the African context. This thesis addresses that lacuna by exploring the intersection between climate-induced mobility and protection mechanisms on the continent. While African regional frameworks, such as the Kampala Convention and the IGAD Free Movement Protocol, provide valuable tools for internal and cross-border displacement, the concept of humanitarian visas as a complementary pathway remains underexplored. By bridging these domains, this research contributes a novel perspective to ongoing debates on climate justice, mobility, and state responsibility in Africa.

This research essentially contributes to this growing discourse in three key ways. First, it critically examines how humanitarian visa schemes, such as those piloted in Latin America and Europe, could be adapted to the Eastern African context, where displacement is often multi-causal and underpinned by climate vulnerabilities. Second, it foregrounds the context of climate-displaced persons drawing from legal analysis and comparative case studies to ensure that proposed solutions are human rights-compliant. Third, by bridging the climate displacement literature with practical mechanisms like humanitarian visas, this study not only addresses a pressing legal and humanitarian challenge, but also contributes to broader efforts to reimagine mobility justice in the age of climate change. This thesis ambitiously attempts to

¹⁰⁶ International Organization for Migration (IOM) *World Migration Report 2020* (2020).

be the theory-to-practice nexus on a progressive approach in dignifying the plight of climate-displaced persons.

1.10. Conclusion and Proposed Chapter Synopsis

With the background of a broad study outline on the crux of the research, the following are the intended thematic chapters;

Chapter one of this research comprises the proposal herein and lays the thrust of the study. It expounds on what the study entails, justifies it and clarifies its objectives. It lays the context and contains a brief review of the subject matter to highlight its significance and nouvelle contribution to the field of Environmental/ Refugee studies.

Chapter two delves into the contextual framework of Eastern Africa as a region harshly affected by the impacts of climate change disasters resulting into internal and cross border displacements of communities.

Chapter three lays down the conceptual framework for the study. This study is being conducted from a climate justice perspective. This chapter unpacks the origin, and scholarly background of climate justice as a concept, its development, and relevance to the potential solutions being explored for climate-displaced persons. It expounds on climate justice as entailing rights of vulnerable populations in the global south in the face of the prevailing climate change crisis. Finally, it justifies why this research is being conducted from a climate justice lens and its significance in the subsequent discussions on the plight of climate displaced persons in Eastern Africa.

Whereas the previous chapter discusses conceptual human rights framework, chapter four demonstrates the legal gaps by providing an in-depth literature review of the concept of ‘environmental refugees’ from scholarly perspectives to an overview of regional agreements on climate change vulnerabilities. Chapter five analyses the current dominant normative

framework on refugees and their applicability to climate displaced persons in Africa, narrowing down to the Eastern African context. It expounds on the frameworks unpacking the concept of climate-displaced persons. It begins by thematically reviewing frameworks at the international level then delves into the regional and sub-regional laws noting their strengths, weaknesses, and opportunities in addressing the prevailing climate displacement crisis in the region.

Chapter six ties down the findings on the concept of humanitarian visas as a complementary pathway to enhancing the plight of climate-displaced persons in Africa. It defines what the research study refers to by humanitarian visas, their significance, efficacy, past use in other contexts, and its subsequent potential as a tool for use by countries in bridging the gap of climate injustice. This chapter demonstrates that beyond the often-debatable status of climate-displaced persons, there is a crucial need to employ flexible and durable solutions to assist this category of vulnerable persons.

After making a case for humanitarian visas as a durable solution for climate induced migration, chapter seven concludes by providing recommendations to the findings of the study. The recommendations are based on the findings and the discussions on humanitarian visas. They also propose long-term considerations to address the plight of climate displaced persons. These recommendations are intended to be used in influencing growing policy and scholarly work on the use of humanitarian visas.

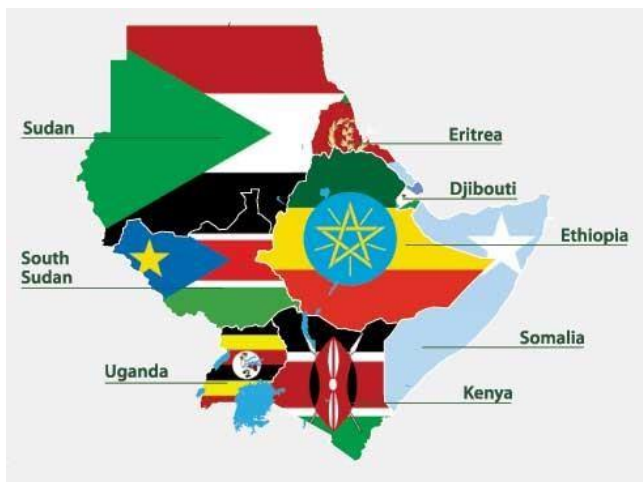
CHAPTER TWO

Context analysis of climate displaced persons in Eastern Africa.

2. Introduction

More Africans are expected to be displaced due to climate-related disasters by 2050 according to the Global Centre on Adaptation Report 2022.¹⁰⁷ The report revealed that as of 2022, 2.9 million people and 1.4 million people had been affected by climate-related disasters in Central and Northern Africa respectively. Unfortunately, Southern Africa continues to be among the worst hit regions with statistics soaring to 12.1 million affected people in 2022. Further, per the Centre for Research on the Epidemiology of Disasters (CRED), between January 2021 and September 2022, more than 54 million people had been affected by climate-related disasters with 33 million in Eastern Africa being killed or injured.¹⁰⁸ . These grim statistics highlight the exacerbated plight of vulnerable communities forced to leave their localities for safer ground and protection across borders.

Eastern Africa region comprises the countries shown in the map below;



Source: IGAD Regional Resource Hub.

¹⁰⁷ Global Center on Adaptation *State and Trends in Adaptation Reports 2021 and 2022: Executive Summaries and Syntheses* (2022) Rotterdam and Abidjan 5–12.

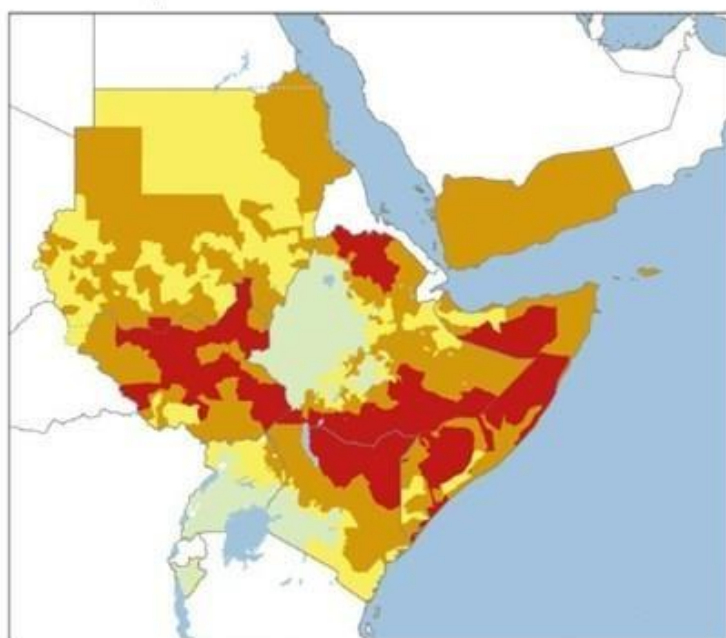
¹⁰⁸ *Ibid.*

This region is infamous for its extreme climatic conditions including prolonged drought or unprecedented flooding that affects its populace internally. This situation often roots into cross border migration for communities in search of water and pasture for survival.

2.1. Context analysis for climate displaced persons in Eastern Africa

Food insecurity in the Horn of Africa

Projected food security
June - September 2022



Sources: FEWS NET, USAID



Source: FEWS NET, USAID. A map showing the gravity of food security in Eastern Africa countries including the horn of Africa.

Climate-induced migration is increasingly becoming a phenomenon in Eastern Africa.¹⁰⁹ Displaced vulnerable populations affected by prolonged drought or unprecedented floods are

¹⁰⁹ Leal Filho W et al 'Assessing causes and implications of climate-induced migration in Kenya and Ethiopia' (2023) 150 *Environmental Science & Policy* 103577 at 6.

increasingly migrating across the Eastern Africa borders¹¹⁰. Millions of people have been forced to evacuate their homes in search of safety and food due to the region's vulnerable ecosystems impacted by climate change.¹¹¹ This movement, which we shall call climate induce-migration, has significant implications on humanitarian aid and overall regional stability¹¹².

One of the countries commonly impacted by prolonged drought in Eastern Africa is Somalia. Somalia is also known as the horn of Africa and has over the decades grappled with civil wars and the harsh impacts of climate change.¹¹³ This has raised alarm over the growing humanitarian crisis resulting in cross-border migration.¹¹⁴ The decades of civil conflict and instability in the country has also left it highly vulnerable to the effects of climate change.¹¹⁵ Recurrent droughts have destroyed livestock, which is a major contributor to the Somali economy, leading to famine and displacement.¹¹⁶ As a result, many Somalis have been forced to seek refuge in the neighbouring countries, such as Kenya, Ethiopia, and Djibouti, resulting in the straining of resources and infrastructure of these already burdened nations.¹¹⁷

In 2021, about 80% of the country was experiencing drought with food insecurity affecting over 2.2 million people.¹¹⁸ This was because of a third failed consecutive rainy season. This has also resulted in livestock deaths and humanitarian crisis with the prevailing conflict

¹¹⁰Borderon M et al 'Migration influenced by environmental change in Africa' (2019) 41 *Demographic Research* 491–544.

¹¹¹Afifi T et al 'Climate change, vulnerability and human mobility: perspectives of refugees from the east and horn of Africa' (2012) 60 *Climate Change* 1–60.

¹¹²Teye J K & Nikoi E G 'Climate-induced migration in West Africa' in Teye J K & Nikoi E G (eds) *Migration in West Africa: IMISCOE Regional Reader* (2022) Cham: Springer International Publishing 79–105..

¹¹³Lind J & Sturman K 'Climate change, displacement, and conflict in the Horn of Africa' (2022) 35(1) *Journal of Refugee Studies* 78–95.

¹¹⁴Odeysuge A S *State Fragility as Drivers of Forced Migration and Displacement in South and Central Somalia* (2020) PhD thesis, University of Nairobi.

¹¹⁵ Scheffran J, Link P M & Schilling J 'Climate and conflict in Africa' (2019) *Oxford Research Encyclopedia of Climate Science* Oxford University Press, New York (online only).

¹¹⁶Omar A A, Hassan S M & Mohamed M J 'Drought Effects in Somalia and Solution Proposals' (2022) 1(1) *African Journal of Climate Change and Resource Sustainability* 13–25.

¹¹⁷Tenaw Z T 'Climate change, pastoral livelihood vulnerability and adaptation strategies: a case study of Sitti Zone, Somali Regional State in Eastern Ethiopia' (2021) *SIGNATURE*.

¹¹⁸IPC *Acute Food Insecurity and Acute Malnutrition Analysis July – December 2021* (Nov 2021).

affecting food distribution efforts by the relief food services. The cost of water in areas such as Juba land almost doubled, and disease was prevalent as communities relied on any water source they could find with disregard for hygiene. In the central and southern region, nearly 100,000 people abandoned their homes in search of food, water and pasture.¹¹⁹ The displacements are also accompanied by diarrhoea related morbidity and malnutrition. In fact, it is estimated that over 1.4 million children over the age of five are likely to be malnourished while over 329,000 are severely malnourished.¹²⁰ The number of people affected by the prevailing drought increased in 2023 to 6.1 million as of March with 760,000 being displaced and in dire need of food shelter and basic sanitary amenities.¹²¹

This translated into cross border migration in search for relief from the harsh impacts of climate change. The International Organization on Migration estimated around 80,000 persons in cross border migration to Ethiopia and Kenya because of the 2022-2023 famine in Somalia.¹²² This has been a common migration pathway for many Somalis affected by drought in their homeland.¹²³ It signifies the need to have a conversation on the growing humanitarian crisis emanating from climate induced migration not just on Somalia but also in the wider IGAD region.

2.2. IGAD region and climate displaced persons

The wider IGAD region, has been faced with the challenges of environmental displacement and its reliance on rain-fed agriculture makes it highly susceptible to the impacts of climate

¹¹⁹DG ECHO, UN, INGOs *Somalia – Severe Drought and Food Insecurity* (ECHO Daily Flash, 19 Nov 2021).

¹²⁰IPC *Somalia: IPC Food Security & Nutrition Snapshot* (Feb 2022); Acute Food Insecurity (Jan–June 2022); Acute Malnutrition (Jan–April 2022).

¹²¹OCHA *Somalia: Drought Situation Report No.6* (20 Apr 2022).

¹²²International Organization for Migration (IOM) *Displacement Tracking Matrix (DTM) Report: East and Horn of Africa* (2023).

¹²³Maxwell D, Majid N & Adan G ‘Famine in Somalia: Compounding factors and the role of displacement’ (2022) 46(2) *Disasters* 358–376.

change¹²⁴. The region has been at the forefront of the global climate crisis¹²⁵. Its reliance on rain-fed agriculture, coupled with fragile ecosystems, has made it particularly vulnerable to the impacts of climate change¹²⁶. Studies have highlighted the role of climate change as a key driver of internal and cross-border migration in the IGAD region¹²⁷. For instance, the link between climate variability and conflict in Africa is elaborated in a study to highlight the vicious circles of climate change vulnerability and violence¹²⁸. Additionally, climate change acts as a threat multiplier, amplifying existing vulnerabilities and increasing the likelihood of displacement¹²⁹.

Pastoralist groups are particularly heavily affected by droughts since their livelihoods depend on pasture and water availability¹³⁰. Consequently, they are forced to migrate in search of pastures and water, often crossing international borders. Similarly, floods have caused widespread devastation, displaced entire communities and forced people to seek refuge in higher ground or in neighboring countries.¹³¹ These cross-border movements of people due to environmental factors have exacerbated existing challenges, strained resources, and created new challenges for governments and humanitarian organizations¹³². The entry of persons in these countries places immense pressure on host communities, leading to competition for

¹²⁴ Mekonnen S F *Challenges and Prospects of Regional Integration in Africa: A Case Study of Inter-Governmental Authority on Development (IGAD)* (2019) PhD thesis.

¹²⁵Omay P O et al 'Observed changes in wet days and dry spells over the IGAD region of eastern Africa' (2023) 13(1) *Scientific Reports* 16894.

¹²⁶ Abdikadir S *Climate Change and Human Security in the 21st Century International System: The Case of Kenya* (2021) PhD thesis, University of Nairobi.

¹²⁷ Wolde S G, D'Odorico P & Rulli M C 'Environmental drivers of human migration in Sub-Saharan Africa' (2023) 6 *Global Sustainability* e9.

¹²⁸ Buhaug H & Von Uexkull N 'Vicious circles: violence, vulnerability, and climate change' (2021) 46(1) *Annual Review of Environment and Resources* 545–568.

¹²⁹ Neef K, Jones E & Marlowe J 'The Conflict, Climate Change, and Displacement Nexus Revisited: The Protracted Rohingya Refugee Crisis in Bangladesh' (2023) 18(3) *Journal of Peacebuilding & Development* 231–247.

¹³⁰ Mulugeta, S. B. (2023). *Drought, Vulnerability and Adaptation: Risk of Food and Livelihoods Insecurity for Pastoralists and Agro-pastoralists in Borana Zone, Southern Ethiopia* (Doctoral dissertation, University of Nairobi).

¹³¹ Ibid n 22.

¹³² Williams, W. (2019). *Shifting Borders: Africa's Displacement Crisis and Its Security Implications*. Washington, DC: Africa Center for Strategic Studies.

scarce resources like water¹³³. Often, the climate-displaced persons often arrive with limited means of survival, making them vulnerable to exploitation and other forms of human injustices¹³⁴.

Research by the Internal Displacement Monitoring Centre (IDMC) has documented the increasing number of people displaced by droughts and floods in countries like Somalia, Ethiopia, and Kenya¹³⁵. As of 2023, climate-related disasters displaced more people annually than conflict and violence combined. According to the Internal Displacement Monitoring Centre (IDMC), 28.4 million new displacements were triggered by disasters largely climate-related compared to 20.5 million caused by conflict and violence.¹³⁶ This trend has been consistent over the past decade, with sudden-onset events such as floods, storms, and droughts driving more internal displacement annually than armed conflict, especially in vulnerable regions like Sub-Saharan Africa.¹³⁷ Notably, these figures reflect internal displacement only, as cross border climate-related displacement lacks formal legal categorisation and global tracking mechanisms, making comprehensive cross-border comparisons difficult. Nonetheless, the magnitude of climate-induced mobility underscores the urgent need for legal protection pathways, including humanitarian visas.

These studies reveal that communities, heavily dependent on natural resources for their livelihoods, are disproportionately affected by climate shocks, leading to livelihood losses and displacement. Different studies illustrate the complex interplay between climate change, conflict, and displacement in the region, emphasising the need to address the root causes of

¹³³ Schneiderheinze, C., & Lücke, M. (2020). *Socio-economic impacts of refugees on host communities in developing countries*. PEGNet, Poverty Reduction, Equity and Growth Network.

¹³⁴ Noack, M. (2020). *Protracted Displacement in the Horn of Africa*. internal report, Transnational Figurations of Displacement (TRAFIG).

¹³⁵ IDMC Global Report on Internal Displacement (GRID) 2021

¹³⁶ Internal Displacement Monitoring Centre (IDMC), *Global Report on Internal Displacement 2024 (GRID)*, May 2024.

¹³⁷ IDMC *Displacement in a Changing Climate* (2022) 8–12.

displacement, including climate change, conflict, and poverty¹³⁸. They argue that a holistic approach is required to effectively address the challenges faced by climate-displaced persons¹³⁹. While the evidence for climate-induced displacement in the IGAD region is growing, there is still a need for further research to better understand the specific drivers, patterns, and impacts of displacement¹⁴⁰.

Addressing the crisis of climate displaced persons in the IGAD region within Eastern Africa requires a multifaceted approach that includes climate change adaptation measures, disaster preparedness, regional cooperation, and support for the affected communities¹⁴¹. Studies that focus on the experiences of climate-displaced persons, including their coping mechanisms and vulnerabilities, are essential for developing effective adaptive policies and interventions¹⁴². Further, research on the gender dimensions of climate displacement is crucial to address the specific needs and challenges faced by women and girls¹⁴³. This will help fill knowledge gaps and inform effective responses to this growing crisis.

2.3. Centering Humanitarian approaches for climate displaced persons in IGAD region

The management of climate-displaced populations has proven to be a difficult undertaking for the IGAD region, given the region's history of underlying poverty, conflict, and weak governance¹⁴⁴. Although there is no single solution that works for all the concerned countries, those in the region have put plans in place to deal with this rising situation. For example, Kenya

¹³⁸Tegebu FN *Climate Change-Induced Migration in the Horn of Africa* (2020) University of the Witwatersrand, Johannesburg.

¹³⁹Lawing MR *Addressing Climate Induced Displacement: An Analysis of Protection Policies for Environmental Migrants* (2021).

¹⁴⁰ Omoyemen O *Contextualizing Forced Climate Change Migrants in East Africa: An Analysis* (2021).

¹⁴¹Addaney M, Jegede A O & Matinda M Z 'The protection of climate refugees under the African human rights system: proposing a value-driven approach' (2019) 3 *African Human Rights Yearbook* 242.

¹⁴²Menu C 'Climate-Migration Nexus: Coping with Security-Oriented "Adaptation-Relocation" Approach Through Emerging Bottom-Up, Global, Subjective, And Multi-Faceted Governance' in *The Migration Conference 2020 Proceedings: Migration and Politics* (2020) Transnational Press London 203–212.

¹⁴³Lama P, Hamza M & Wester M 'Gendered dimensions of migration in relation to climate change' (2021) 13(4) *Climate and Development* 326–336.

¹⁴⁴Warner K et al *Integrating Human Mobility Issues within National Adaptation Plans* (2014) 3–12.

has set up refugee camps to handle many climate migrants, mostly from Ethiopia and Somalia¹⁴⁵. However, there are often resource constraints and overpopulation in these camps. In the recent past, the government has started initiatives to support opportunities for livelihood and resilience enhancement for both host communities and refugees¹⁴⁶. Ethiopia on the other hand, has implemented early warning systems to mitigate the impacts of droughts and floods¹⁴⁷. The government has also invested in irrigation and agricultural extension services to enhance food security and reduce vulnerability to climate shocks¹⁴⁸. It has also established resettlement programs for internally displaced persons, though challenges persist in terms of land allocation and access to basic services¹⁴⁹.

Managing displacement has presented significant challenges for Somalia, a country already struggling with violence and climate change¹⁵⁰. The government has set up camps for Internally Displaced Persons (IDPs) with support of humanitarian organizations, but due to insufficient resources and insecurity, it is unable to provide adequate support¹⁵¹. The country has also witnessed large-scale cross-border migration, particularly to neighboring Kenya¹⁵². South Sudan, is a country already burdened by conflict, has experienced significant displacement due to both conflict and climate change¹⁵³. The government, together with the help of external

¹⁴⁵ UNHCR *Kakuma Refugee Camp – UNHCR Kenya*

¹⁴⁶ Ali J A, Imana D K & Ocha W ‘The refugee crisis in Kenya: exploring refugee-host community causes of tensions and conflicts in Kakuma refugee camp’ (2017) 5(2) *Journal of International Relations and Foreign Policy* 39–51, especially 46–49.

¹⁴⁷ Ewbank R et al ‘Building resilience to El Niño-related drought: experiences in early warning and early action from Nicaragua and Ethiopia’ (2019) 43 *Disasters* S345–S367, especially S348–S356.

¹⁴⁸ Tesfaye L et al *Climate-Smart Agriculture Investment Plan for Ethiopia* (2023) 15–23.

¹⁴⁹ Regasa D & Lietaert I ‘In search of the Invisible People: Revisiting the Concept of “Internally Displaced Persons” in light of an Ethiopian case study’ (2022) 41(2) *Refugee Survey Quarterly* 320–341, especially 324–329.

¹⁵⁰ Lwanga-Ntale C & Owino B O ‘Understanding vulnerability and resilience in Somalia’ (2020) 12(1) *Jàmá: Journal of Disaster Risk Studies* 1–9, pg 3–6.

¹⁵¹ Abdinasir I I *International Non-Government Organizations (INGOs) and Protection of Internally Displaced Persons (IDPs) in Somalia: A Case Study of Danish Refugee Council (DRC)* (2021) PhD thesis, Kampala International University.

¹⁵² Abidde S O (ed) *The Challenges of Refugees and Internally Displaced Persons in Africa* (2021) Springer.

¹⁵³ Mohamed E S E ‘Environmental change, conflicts and internal displacement as destabilizing factors to food security in Sudan’ (2020) 10(2) *Journal of Internal Displacement* 2–24.

donors, has established camps for IDPs but faces immense challenges in terms of reintegrating these displaced populations back to the society¹⁵⁴.

Uganda has always been an option of safety for refugees, particularly those displaced by natural disasters¹⁵⁵. The Ugandan government has adopted a liberal refugee policy, which allows refugees to engage in economic activities and access essential services¹⁵⁶. However, the increasing refugee population has placed a strain on the country's resources¹⁵⁷. Djibouti, while relatively less affected by displacement, has experienced some internal and external migration due to drought and desertification¹⁵⁸. The government has focused on building resilience through investments in water management and renewable energy¹⁵⁹.

Despite the efforts that the IGAD region is making significant progress in addressing the challenges caused by climate change effects, the progress is hindered by different constraints across the regional countries. These constraints include inadequate financial resources, weak governance, conflict and poverty¹⁶⁰. The status of climate-displaced persons within the IGAD region is a complex issue, often characterized by different levels of acceptance of the refugees¹⁶¹. While the region has made efforts to accommodate refugee populations, there are some challenges that are being experienced¹⁶². Existing research emphasises the measures taken by the different IGAD countries to ensure safety and to offer support to those displaced

¹⁵⁴Iwuoha V C & Nwagu C 'United Nations and challenges of resettlement and reintegration of IDPs in South Sudan, 2011–2018' (2019) 4(2) *ESUT Journal of Social Sciences*.

¹⁵⁵Katungi M A *Critical Analysis of Uganda's Refugee Regime* (2019) PhD thesis, University of Nairobi.

¹⁵⁶Blair C W, Grossman G & Weinstein J M 'Liberal displacement policies attract forced migrants in the global south' (2022) 116(1) *American Political Science Review* 351–358.

¹⁵⁷Davis K V *Assessing Uganda's Approach to Refugee Management* (2019)

¹⁵⁸Green S N & Snyder J N 'Stuck in limbo: Refugees, migrants, and the food insecure in Djibouti' (2019) 3 *Gates Open Research* 265.

¹⁵⁹Chandrasekharam D et al 'Geothermal energy for desalination to secure food security: case study in Djibouti' (2019) 9 *Energy, Sustainability and Society* 1–11.

¹⁶⁰Dires G B, Mengesha K G & Kumie A G 'Assessing the obstacles of regional integration in the Horn of Africa: The case of IGAD' (2019) 19(3) *Вестник Российского университета дружбы народов. Серия: Международные отношения* 432–438.

¹⁶¹Bereketeab R 'Regional economic communities and peacebuilding: The IGAD experience' (2019) 26(1) *South African Journal of International Affairs* 137–156.

¹⁶²Ahadu M B E 'Evaluating the challenges of IGAD-led peace process of South Sudan' (2019) 7(78) *International Affairs and Global Strategy* 1–10.

by climate change¹⁶³. For instance, the United Nations High Commissioner for Refugees (UNHCR), and other humanitarian organizations have documented the role of refugee camps in providing temporary shelter and basic services to the refugees¹⁶⁴. Further, some countries have implemented policies and programs aimed at integrating climate-displaced persons into host communities¹⁶⁵. In the IGAD context, initiatives focused on livelihood support, access to education, and healthcare have been implemented to facilitate the integration of climate migrants¹⁶⁶.

Climate-induced displacement, particularly when it involves cross-border movement, presents numerous legal and practical challenges that are exacerbated by the absence of formal recognition or legal status. Unlike refugees fleeing persecution, individuals displaced by climate-related events are not currently protected under the 1951 Refugee Convention or its 1967 Protocol, unless their displacement intersects with conventional grounds such as political persecution or conflict.¹⁶⁷ This legal gap forces many climate-displaced individuals to migrate through irregular channels, exposing them to a host of risks and vulnerabilities. One of the most immediate challenges is the lack of lawful entry and residence options in destination countries. Without a legal right to enter, individuals may resort to dangerous journeys, fall prey to human trafficking networks, or face detention and deportation upon arrival. In many cases, they cannot legally work, access healthcare, send children to school, or secure housing all of which compromise their dignity, safety, and long-term integration.¹⁶⁸ Irregular status also undermines

¹⁶³Tanui C C *Challenges and Prospects of Prevention and Management of Conflicts in Africa: The Role of IGAD Early Warning Mechanism* (2020) PhD thesis, University of Nairobi.

¹⁶⁴Canton H 'United Nations High Commissioner for Refugees—UNHCR' in *The Europa Directory of International Organizations 2021* (2021) Routledge 215–234.

¹⁶⁵Simango V *An Analysis of States' Obligations Towards Climate Displaced Persons Under the African Human Rights System* (2022) PhD thesis.

¹⁶⁶Amadi V T & Vundamina M N 'Migration and climate change in Africa: A differentiated approach through legal frameworks on the free movement of people' (2023) 27 *Law, Democracy and Development* 31–54.

¹⁶⁷McAdam J *Climate Change, Forced Migration, and International Law* (2012) Oxford University Press.

¹⁶⁸International Organization for Migration (IOM) *Climate Change and Migration in Vulnerable Countries: A Snapshot of Least Developed Countries, Landlocked Developing Countries and Small Island Developing States* (2021).

their ability to seek protection from abuse or exploitation, as fear of arrest or removal often prevents them from approaching authorities. The absence of legal pathways impedes family reunification and increases the psychosocial toll on displaced individuals, who may be forced to live in legal limbo for extended periods. This insecurity is compounded in cases where host states lack clear procedures for temporary protection or fail to recognise the unique nature of climate-induced displacement, instead treating it under general migration enforcement frameworks.¹⁶⁹

Humanitarian visas and other complementary protection pathways offer a pragmatic and rights-based response to these challenges. Such mechanisms could enable individuals displaced by climate-related events to enter a host country legally and access basic rights and services. Whilst the debates on the status of climate displaced persons rages on, states should explore other flexible means i.e. complementary pathways to protect these vulnerable people affected by climate related disasters. Dr. Tamara Wood expounds that complementary pathways afford additional protection measures for refugees.¹⁷⁰ This can be one of the strategies leveraged upon to afford protection for climate displaced persons. There are several types of complementary pathways including the use of a humanitarian visa. The UNHCR suggests that the humanitarian visa can be used as a pathway to safeguards the rights of displaced persons. It further emphasizes that this would be relevant in protecting the most vulnerable groups of people without documentation delays or bureaucratic procedures.¹⁷¹

It would not only prevent unlawful movement and its associated dangers, but also offer displaced persons legal clarity, safety, and the opportunity to rebuild their lives with dignity.

¹⁶⁹ UNHCR *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* (2022).

¹⁷⁰ Wood T *The Role of “Complementary Pathways” in Refugee Protection* Reference Paper for the 70th Anniversary of the 1951 Refugee Convention, Andrew & Renata Kaldor Centre for International Refugee Law, UNSW Sydney.

¹⁷¹ Ibid.

By facilitating lawful cross-border mobility, such pathways can contribute to burden-sharing, enhance protection outcomes, and promote regional stability in areas already strained by climate and socio-political pressures. In this way, humanitarian visas address a critical gap in the international protection architecture by enabling mobility *before* individuals are forced into dangerous or unlawful migration channels. They represent a shift from reactive to proactive protection, grounded in the principles of human rights, international solidarity, and climate justice.

2.4. Conclusion

The existing uncertainty on the initial definition of refugees causes climate-displaced persons to find themselves in a state of uncertainty, which leaves them devoid of basic rights and services.¹⁷² The challenges of defining and protecting climate-displaced persons under international law and the absence of a clear legal framework have created a protection gap that makes them vulnerable to exploitation and human rights abuses. To effectively address these underlying issues, a human rights-centered approach is crucial for climate-displaced persons.

¹⁷²Mendola D & Pera A ‘Vulnerability of refugees: Some reflections on definitions and measurement practices’ (2022) 60(5) *International Migration* 108–121.

CHAPTER THREE

Conceptual Framework: Climate induced displacements from a human rights lens.

3. Introduction

This chapter postulates climate-induced displacement primarily as a human rights concern, emphasizing the urgent need for protection frameworks that uphold the dignity, rights, and safety of affected populations. While the impacts of climate change have long been documented in environmental and humanitarian literature, only recently has attention turned to its consequences for core human rights, including the rights to life, shelter, health, and mobility.¹⁷³ The increasing frequency and intensity of climate-related events such as droughts, floods, and cyclones are already displacing millions, particularly in vulnerable regions such as Eastern Africa. The impacts of climate change are arguably one of the greatest injustices to developing countries increasing their vulnerability.¹⁷⁴ The resulting catastrophic impacts makes it a global justice issue in which developing countries are disproportionately affected.

In this context, humanitarian visas and other complementary pathways emerge as essential tools for safeguarding the rights of people displaced by climate-related disasters. These mechanisms offer a practical response to protection gaps by facilitating lawful entry and residence for individuals whose movement is compelled by environmental factors, even if they do not qualify as refugees under traditional definitions.¹⁷⁵ This thesis frames humanitarian visas through the lens of climate justice and positions them as part of a broader human rights-based response to displacement one that prioritizes the agency, safety, and dignity of affected individuals. Climate justice is pivotal in justifying the responsibility of Global North states to support African countries who often host most displaced persons with technical, financial, and legal resources. This support should include capacity-building for implementing humanitarian visa schemes, funding relocation programs, and strengthening local protection systems. The

¹⁷³OHCHR *The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants* (2020).

¹⁷⁴ Venables A, Collier P, Conway G & Venables T 'Climate change and Africa' (2008) 24 *Oxford Review of Economic Policy* 337–353.

¹⁷⁵ UNHCR *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* (2022).

concept of climate justice emerged from the idea that historical responsibility for climate change lies with developed countries and yet it disproportionately impacts the poorest and most vulnerable groups of people such as women and children.¹⁷⁶ It also gives an interlinkage between human rights and development with an emphasis on a rights-based approach to addressing climate change issues. However, the normative foundation of the visa mechanism itself rests on international human rights law and the moral imperative to protect individuals whose fundamental rights are threatened by climate-induced harm.

By shifting the emphasis to human rights, this chapter underscores the universality of protection needs and appeals to shared legal and ethical standards, thereby enhancing the normative legitimacy of humanitarian visas within international policy and legal discourse.

3.1. Historical roots of Climate Justice

The concept of climate justice can be traced to the early 1980s in the US following protests from the black community owing to the dumping of toxic wastage from influential industrial actors.¹⁷⁷ These incessant complaints led to the first National People of Color Environmental Leadership Summit in 1991, where attendees set out 17 principles of environmental justice.¹⁷⁸ They reflected indigenous perceptions of the environment, with a first principle to affirm “the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction”. However, there was no mention of climate change. In later years, anticapitalistic organizations started taking interest in how this could relate to the larger challenge of environmental degradation and climate change in vulnerable groups of people globally. This also coincided with global south nations calling upon richer countries to

¹⁷⁶Masson-Delmotte V et al ‘IPCC, 2018: Summary for Policymakers’ in *Global Warming of 1.5°C. An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (2018) Geneva: World Meteorological Organization..

¹⁷⁷Mary Robinson Foundation *Climate Justice Baseline Report* (July 2013).

¹⁷⁸Van Horne Y O et al ‘An applied environmental justice framework for exposure science’ (2023) 33(1) *Journal of Exposure Science & Environmental Epidemiology* 1–11.

take historical responsibility of the impacts of climate change and the reparations owed to developing countries.¹⁷⁹

To culminate this agitation, in 2000, the first ever climate justice summit was held alongside the conference of parties meeting. The summit resulted in an action statement affirming climate justice as a rights issue affecting livelihoods and impacting the progress of sustainable development. In 2002, a group of social and environmental organizations released the 27 Bali Principles. This was aimed at redefining climate change from a human rights and environmental justice perspective. The Bali Principles of Climate Justice were articulated by a coalition of groups, including CorpWatch, World Rainforest Movement, Friends of the Earth International, and the Indigenous Environmental Network. The principles called for the elimination of greenhouse gases, “the rights of indigenous peoples and affected communities to represent and speak for themselves,” and the “recognition of a principle of ecological debt that industrialized governments, and transnational corporations owe the rest of the world,” among other tenets common to the contemporary climate justice movement.¹⁸⁰

Further advocacy culminated in the 2009 COP 15 where climate justice activists and leaders from global south countries agitated for global recognition of the role of developing countries in aggravating the climate crisis.¹⁸¹ Climate justice ideas have also been developed by academics although, according to Dr Michael Mikulewicz, a critical geographer at the Centre for Climate Justice at Glasgow Caledonian University,¹⁸² this has largely taken place in isolation from activism. It has also been noted that majority of the theoretical underpinnings of

¹⁷⁹ Jamieson D ‘Adaptation, mitigation, and justice’ in Gardiner S M et al (eds) *Climate Ethics: Essential Readings* (2010) 263–283.

¹⁸⁰ CorpWatch ‘*Bali Principles of Climate Justice*’ (2002) available at <https://corpwatch.org/article/bali-principles-climate-justice> (accessed 1 August 2024).

¹⁸¹ Jamieson D ‘Climate change, responsibility, and justice’ (2010) 16(3) *Science and Engineering Ethics* 431–445.

¹⁸² Mikulewicz M ‘Politicizing vulnerability and adaptation: On the need to democratize local responses to climate impacts in developing countries’ (2018) 10(1) *Climate and Development* 18–34.

climate justice discourses are northern led despite activism efforts from the global south.¹⁸³ In fact, the first mention of climate justice in academic literature has been identified as a 1989 book on intergenerational inequality by US environmental lawyer, Dr Edith Brown Weiss, of Georgetown University.

More contemporarily, according to Newell et al., there are four dimensions of climate justice.¹⁸⁴ These are procedural, distributive, recognition, and intergenerational. Procedural justice pertains to the processes for decision-making, that these processes should be fair and inclusive, which includes access to information and meaningful participation. Distributive justice means fairness in sharing the burden of climate change¹⁸⁵ including how costs and benefits of goods and burdens are allocated both temporally and spatially and deciding who gets to use what resources. Recognition is related to both procedural and distributional aspects but especially focuses on recognizing the differences faced between groups, and protecting equal rights for all, especially when facing uneven capacity to ‘exercise and defend those rights. Lastly, intergenerational climate justice is about protecting future generations from harm and holding those causing that harm accountable.¹⁸⁶

The climate justice discourse has now taken center stage when highlighting the global south impacts of climate change.¹⁸⁷ It encapsulates the principles of equality, inclusivity, governance, and ecological debt that places responsibility on the developed countries as the greatest global emitters, for the devastating impacts and increased vulnerabilities in developing countries,

¹⁸³ This is according to Dr Shilpi Srivastava from the Institute of Development Studies. Of the 968 papers referencing “climate justice” Carbon Brief found on Web of Science, just 148 featured contributions from global south institutions.

¹⁸⁴ Newell P et al ‘Toward transformative climate justice: An emerging research agenda’ (2021) *WIREs Climate Change* e733 doi:10.1002/wcc.733.

¹⁸⁵ Falkner R ‘The unavoidability of justice and order in international climate politics: From Kyoto to Paris and beyond’ (2019) 21(2) *British Journal of Politics & International Relations* 270–278.

¹⁸⁶ Petz D ‘Exploring Intergenerational Climate Resilience: A Basic Needs-Based Conception’ (2023) *Ethics, Policy & Environment* 1–17 <https://doi.org/10.1080/21550085.2023.2166343>

¹⁸⁷. Puaschunder J *Governance & Climate Justice: Global South & Developing Nations* (2020) <https://doi.org/10.1007/978-3-319-63281-0>

more so in Africa.¹⁸⁸ It took more than twenty years for climate negotiators to incorporate displacement in climate documents, even though it was acknowledged in the first IPCC report in 1990 that human migration may have the biggest impact of climate change. The number of displaced people is increasing due to natural disasters, and climate change is accelerating these scenarios¹⁸⁹. The Environmental Justice Foundation also concurs that the number of climate change-induced displaced people is higher than political, and war refugees¹⁹⁰.

3.2. Principles of Climate Justice and their significance to climate displaced persons

3.2.1. Respect and Protect Human Rights

Climate change remains to be a significant human rights threat multiplier.¹⁹¹ Climate justice therefore promotes a human rights and development approach in tackling the impacts of climate change. In protecting human rights, it is aimed at enhancing state responsibility and accountability for developed partners who play a significant role in global warming.¹⁹² This is crucial since the vast population heavily impacted by climate change are vulnerable groups such as women, persons with disabilities and children. The core of climate justice is to protect their right to dignity, a safe and clean environment and food security. In cases of climate induced disasters resulting to human migration, states should take appropriate and speedy action to move vulnerable groups to safety.¹⁹³ Unfortunately, these groups are also found in developing countries who may not have strengthened mitigation systems in place hence the aid

¹⁸⁸Beer CT 'Climate Justice, the Global South, and Policy Preferences of Kenyan Environmental NGOs' (2014) 8(2) *Global South* 84–100

¹⁸⁹UNHCR *Global Trends: Forced Displacement in 2016* (2017)

¹⁹⁰ Environmental Justice Foundation *Beyond Borders: Our Changing Climate – Its Role in Conflict and Displacement* (2017)

¹⁹¹Barnett J 'Climate Change, Insecurity and Injustice' in WN Adger, J Paavola, S Huq & MJ Mace (eds) *Fairness in Adaptation to Climate Change* (2006) 115–129..

¹⁹² Chandran R 'Concept of Climate Justice' (4 September 2020) SSRN <https://ssrn.com/abstract=3686721> or <http://dx.doi.org/10.2139/ssrn.3686721>.

¹⁹³Knox JH 'Linking Human Rights and Climate Change at the United Nations' (2010) 33(2) *Harvard Environmental Law Review* 477–498; Leary N, Conde C, Kulkarni J, Nyong A & Pulhin J (eds) *Climate Change and Vulnerability* (2008) London: Earthscan.

given is limited by resources. The impacts of climate change are better conceptualised as a human rights concern, rather than an environmental concern.

In fact, the Human Rights Council (HRC), in a historic move, adopted by consensus, the resolution on ‘Human Rights and Climate Change’ in 2008 at its seventh session.¹⁹⁴ The Human Rights Council Resolution 7/23 (2008) was the first official UN resolution to expressly acknowledge the risks that climate change poses to the full enjoyment of human rights globally. This resolution recognised that climate change could have direct and indirect impacts on human rights, particularly for vulnerable populations. A year later, in 2009, the Human Rights Council adopted Resolution 10/4, which called for a panel discussion on the relationship between climate change and human rights. This resolution aimed to further explore the ways in which climate change affects the enjoyment of human rights and to encourage dialogue among states, experts, and stakeholders on how to address these challenges effectively.

These resolutions marked significant steps in integrating human rights considerations into international climate policy discussions, highlighting the necessity of addressing climate change within a human rights framework.¹⁹⁵ It is here that the Council recognised that *‘...climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation’*.

The scale and extent of human vulnerability to climate induced risks on the African continent make a strong case for conceptualising climate change as a human rights issue.¹⁹⁶ As recognised

¹⁹⁴ Office of the United Nations High Commissioner for Human Rights ‘Human Rights and Climate Change’ Preambular §1, accessed on 19 July 2020.

¹⁹⁵ OHCHR Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights UN Doc A/HRC/10/61 (15 January 2009).

¹⁹⁶ UN Human Rights Council Tenth Session Resolution 10/4: Human Rights and Climate Change, accessed on 19 July 2020.

in Resolution 10/4 of 2009, ‘while these implications of climate change affect individuals and communities around the world, the effects of climate change will be felt most acutely by those segments of the population who are already in vulnerable situations who constitute climate displaced persons. This necessitates a humanitarian approach to tackling the resulting colossal damage left behind when climate-induced disasters strike.¹⁹⁷ This is despite the weak legal frameworks in place to acknowledge climate displaced persons. They remain an existing vulnerable group in need of humanitarian interventions.¹⁹⁸ A rights-based approach to climate displacement would recognise displaced persons as rights-holders entitled to legal recognition, protection, and meaningful participation in decisions affecting their future. It would also require governments and international bodies to uphold their obligations under human rights treaties, ensuring that climate-displaced individuals have access to durable solutions such as planned relocation, climate adaptation support, and pathways to legal residency or citizenship in host countries. Without such measures, climate displacement will continue to be a growing humanitarian crisis, deepening inequalities and threatening global stability.

3.2.2. Supporting the Right to Development

The impact of the climate crisis on ecosystems, economies, and societies worldwide is unevenly distributed. Vulnerable communities, particularly in developing countries that have contributed the least to the crisis, bear the brunt of its consequences resulting into huge numbers of persons resulting from climate related disasters. Left destitute, these communities are barely able to realize their right to development despite their negligible role in the overall Green House Gases (GHG) emissions. The world’s richest 10% are responsible for 50% of GHG emissions,

¹⁹⁷Ferris E ‘Research on Climate Change and Migration: Where Are We and Where Are We Going?’ (2020) 8(4) *Migration Studies* 612–625

¹⁹⁸Nansen Initiative *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* Volume 1 (2015) available at <https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf> . Office of the United Nations High Commissioner for Human Rights (OHCHR) *The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants* (2018).

while the poorest 50% are only responsible for 10% of emissions.¹⁹⁹ When historical emission rates are considered, the disparities are even more stark. Yet, climate justice has not been sufficiently centered in climate change debates and action. There is growing recognition that climate justice and just transition are key frameworks for mitigating the impacts of climate change and achieving sustainable development.²⁰⁰ The shift from fossil fuel-dependent economies to sustainable, low carbon economies must be equitable and socially inclusive. The vast gulf in resources between rich and poor, evident in the gap between countries in the North and South and also within many countries (both North and South) is the deepest injustice of our age.

Climate change both highlights and exacerbates the gulf in societal equality.²⁰¹ It also provides the world with an opportunity to lead a new and respectful paradigm of sustainable development. This is based on the urgent need to scale up and transfer green technologies, support low-carbon climate-resilient strategies for the poorest, and establish complementary strategies such as humanitarian visas for those displaced by climate change. By integrating climate justice principles into just transition processes, vulnerable societies prone to climate change disasters can build more inclusive and equitable pathways to sustainable development, ensuring that climate-displaced persons are recognised, protected, and given opportunities to rebuild their lives.²⁰²

¹⁹⁹Ibhawoh B *Climate Justice, Sustainability, and the Right to Development – Thematic Study by the Expert Mechanism on the Right to Development* (2016) OHCHR.

²⁰⁰ United Nations General Assembly *Transforming Our World: The 2030 Agenda for Sustainable Development* A/RES/70/1.

²⁰¹ Pinho-Gomes AC & Woodward M ‘The Association Between Gender Equality and Climate Adaptation Across the Globe’ (2024) 24(1) *BMC Public Health* 1394 doi:10.1186/s12889-024-18880-5.

²⁰²García-Portela L ‘Backward-Looking Principles of Climate Justice: The Unjustified Move from the Polluter Pays Principle to the Beneficiary Pays Principle’ (2023) 29(3) *Res Publica* 367–384 doi:10.1007/s11158-022-09569-w.

3.2.3. Share Benefits and Burdens Equitably

Climate displacement raises complex questions of responsibility and justice. The countries and communities most affected by climate change are often those that have contributed the least to global carbon emissions. Small island nations, low-income coastal communities, and arid regions in the Global South bear the brunt of climate-induced displacement, despite their minimal role in causing the crisis. This disparity underscores the need for a human rights-based response that prioritizes equity, shared responsibility, and long-term solutions rather than temporary humanitarian relief.

Common but differentiated responsibilities responds to the fact that different standards may be necessary for different countries to promote universal participation and equity in addressing the impacts of climate change.²⁰³ Developed countries are required to take accountability and acknowledge the responsibility that they bear in the international pursuit of sustainable development when it comes to addressing developing countries host to climate-displaced persons.²⁰⁴ There is a need to establish partnerships to deal with global environmental problems since no nation can achieve integration of ecological use and development on its own.²⁰⁵ This has been applied for instance in granting different groups of countries, especially developing and least developed regions, different implementation timetables to achieve their commitments towards protecting the environment.²⁰⁶

²⁰³Ole N ‘Understanding the Principle of Common but Differentiated Responsibilities and Its Manifestations in Multilateral Environmental Agreements (MEAs)’ (2021) 11 *Nnamdi Azikiwe Journal of Public and Private Law* 262–284.

²⁰⁴ Piguet E ‘From “Primitive Migration” to “Climate Refugees”’: The Curious Fate of the Natural Environment in Migration Studies’ (2013) 103(1) *Annals of the Association of American Geographers* 148–162

²⁰⁵ Honkonen T *The Common but Differentiated Responsibility Principle in Multilateral Environmental Agreements: Regulatory and Policy Aspects* (2009) US: Walter and Kluwer.

²⁰⁶Fitzgerald JF, Braatz B, Brown S, Isichei AO, Odada EO & Scholes R *African Greenhouse Gas Emission Inventories and Mitigation Options* (Springer) at 5–9, 47–56.

The concept of common but differentiated responsibilities posits the idea that states responsibility to address global environmental problems should be shared based on their respective historical and current contributions to the creation of the problems as well as their capacity to address existing problems.²⁰⁷ The scope under this notion is much wider since its focus is not merely on states responsibilities to protect the environment.²⁰⁸ It calls for partnership which goes beyond mere cooperation between states and encompasses other actors in protecting the environment. In recognizing the need for corporation, the following is taken into consideration.

- i) The differences between countries' contributions to global environmental problems led the international community to recognise the "common but differentiated responsibilities" of states regarding global environmental problems; and
- ii) The need to consider the fundamental development needs of developing countries.²⁰⁹

In addition, those who have benefited and still benefit from emissions in the form of on-going economic development and increased wealth, mainly in industrialised countries, have an ethical obligation to share benefits with climate change vulnerabilities who are today suffering from

²⁰⁷ Stone CD 'Common but Differentiated Responsibilities in International Law' (2004) 98(2) *American Journal of International Law* 276–301 at 276–278, 291–293.

²⁰⁸ International Law Commission *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) at arts 1–2, 31–35.

²⁰⁹ Okoth-Ogendo HWO 'Managing the Agrarian Sector for Environmental Sustainability' in Okidi CO, Kameri-Mbote P & Akech M (eds) *Environmental Governance in Kenya: Implementing the Framework Law* (2008) Nairobi: East African Educational Publishers 222–228

the effects of these emissions, mainly vulnerable people in developing countries.²¹⁰ People in low-income countries must have access to opportunities to adapt to the impacts of climate change and embrace low-carbon development to avoid future environmental damage.

3.2.4. Ensure that Decisions on Climate Change are Participatory, Transparent and Accountable

The opportunity to participate in decision-making processes that are fair, accountable, open, and corruption-free is essential to the growth of a culture of climate justice.²¹¹ The voices of the most vulnerable populations to climate change must be heard and acted upon.²¹² This is because climate displaced persons are the most impacted by climate change as they lose their livelihoods and social structures and are forced to move from their destroyed abodes.

A basic of good international practice is the requirement for transparency in decision-making, and accountability for decisions that are made. It must be possible to ensure that policy developments and policy implementation in this field are seen to be informed by an understanding of the needs of low-income countries in relation to climate justice, and that these needs are adequately addressed.²¹³ Decisions on policies regarding climate change taken in a range of fora from the UNFCCC to trade, human rights, business, investment, and development must be implemented in a way that is transparent and accountable: poverty can never be an alibi for government failure in this sphere.²¹⁴

²¹⁰Singer P *One World: The Ethics of Globalization* (2002) New Haven: Yale University Press at 14–36; Gardiner SM ‘Ethics and Global Climate Change’ (2004) 114(3) *Ethics* 555–600 at 558–572; Miller D ‘Global Justice and Climate Change: How Should Responsibilities Be Distributed?’ (2008) 28 *The Tanner Lectures on Human Values* 117–156 at 122–147.

²¹¹Schlosberg D & Collins LB ‘From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice’ (2014) 5(3) *Wiley Interdisciplinary Reviews: Climate Change* 359–374 at 360–367

²¹² Ngcamu BS ‘Climate Change Effects on Vulnerable Populations in the Global South: A Systematic Review’ (2023) 118 *Natural Hazards* 977–991 at 980–986.

²¹³ Kyung-wha Kang, Deputy High Commissioner for Human Rights, OHCHR ‘Climate Change, Migration and Human Rights’ (2008) Keynote Address, Conference on Climate Change and Migration: Addressing Vulnerabilities and Harnessing Opportunities, Geneva.

²¹⁴Bulkeley H & Newell P *Governing Climate Change* (2015) London: Routledge at 35–52.

3.2.5. Highlighting Gender Equality and Equity

At the heart of climate justice is recognising that those least responsible for the climate crisis often bear its heaviest burdens. Climate-displaced persons are among the most vulnerable. Women and marginalized groups within displaced communities face heightened risks, including loss of livelihoods, limited access to land rights, and exposure to gender-based violence. The impacts of climate change are different for women and men, with women likely to bear the greater burden in situations of poverty.²¹⁵ Women and girls are most affected given their role within the domestic setting. They are reliant on core aspects of the climate to run day-to-day activities and ensure that their families are catered for socio economically. This also includes food and nutrition, which are essentially the preserve of women/ girls within the home.²¹⁶ A just response to climate change must be gender-responsive, ensuring that policies acknowledge and address these disparities. Displacement solutions must go beyond temporary relief to provide long-term stability, including secure housing, access to education, and economic opportunities.

Climate justice is incomplete without gender justice. Addressing the intersection of climate change, displacement, and gender inequality is not only a moral imperative but a necessary step toward a sustainable and equitable future.²¹⁷ Women's voices must be heard and their priorities supported as part of climate justice discourse.²¹⁸ Women and marginalized

²¹⁵ United Nations Commission on the Status of Women *52nd Session: Gender Perspectives on Climate Change* (2008) Issues Paper for Interactive Expert Panel on Emerging Issues, Trends and New Approaches to Issues Affecting the Situation of Women or Equality Between Women and Men at 1–6, available at <http://www.un.org/womenwatch/daw/csw/csw52/issuespapers/Gender%20and%20climate%20change%20paper%20final.pdf>.

²¹⁶ Aguilar Revelo L 'Gender Equality in the Midst of Climate Change: What Can the Region's Mechanisms for the Advancement of Women Do?' (2021) *Gender Affairs Series* No 159 (LC/TS.2021/79), Santiago: ECLAC at 5–11.

²¹⁷ Kwauk CT & Wyss N 'Gender Equality and Climate Justice Programming for Youth in Low- and Middle-Income Countries: An Analysis of Gaps and Opportunities' (2022) 29(11) *Environmental Education Research* 1573–1596 at 1575–1589 <https://doi.org/10.1080/13504622.2022.2123894>.

²¹⁸ Asia Pacific Forum on Women, Law and Development (APWLD), FEMNET, Fòs Feminista & WEDO *Toward a Gender-Transformative Agenda for Climate and Environmental Action: A Framework for Policy Outcomes at CSW66* (2022) at 2–7, available at https://wedo.org/wp-content/uploads/2022/03/WRC_CSW-key-demands_2022-1.pdf.

communities must not be seen merely as victims of climate change but as leaders and innovators in shaping sustainable futures.²¹⁹

3.2.6. Use Effective Partnerships to Secure Climate Justice

The principle of partnership points in the direction of solutions to climate change that are integrated both within states and across state boundaries.²²⁰ Tackling the challenge of climate-displaced persons needs an all-hands-on-deck approach from an international and regional level from both state and non-state actors. Climate justice requires effective action on a global scale which in turn requires a pooling of resources and a sharing of skills worldwide.²²¹ While the nation-state remains the fundamental building block of the international system, tackling climate displacement and broader climate challenges requires openness to coalitions of states, corporate interests, and civil society actors. Without such collaboration, the global response risks being inadequate, leaving entire communities vulnerable and displaced. Openness to partnership is a vital component of any coherent climate action strategy. In the pursuit of climate justice, this must include meaningful engagement with those most affected communities facing displacement, poverty, and a severe lack of resources to adapt to the changing environment. Only through inclusive and coordinated efforts can we create sustainable and just solutions for climate-displaced populations.

3.3. Climate Justice and the Human rights approach by the international agencies

Climate justice principles seek to hold accountable the key players and contributors to climate change, and resolve the challenges faced by vulnerable populations when disasters strike.²²²

²¹⁹ Kwauk CT & Casey OM ‘A Green Skills Framework for Climate Action, Gender Empowerment, and Climate Justice’ (2022) *Development Policy Review* doi:10.1111/dpr.12624.

²²⁰ Global Center on Adaptation (GCA) *Climate-Resilient Infrastructure Officer Handbook* (2021) at 13–18, 42–49.

²²¹ Shue H *Climate Justice: Integrating Economics and Philosophy* (2019) Oxford: Oxford University Press at 15–37, 91–102.

²²² Bodansky D ‘The Copenhagen Climate Change Conference: A Brief Overview’ (2007) 19(2) *Journal of Environmental Law* 179–196 at 185–193.

This necessitates a human rights approach because the impacts of climate change affect other fundamental human rights including food security and personal safety.²²³ A human rights approach implies that states agencies should prioritize the rescue and wellbeing of climate displaced persons.²²⁴ This includes adopting effective migration management strategies, ensuring safe passageways, and providing humanitarian assistance.

Whereas some scholars such as Heddah et al, have argued that the humanitarian approach towards climate displacement absolves developed states of responsibility as agents of climatic catastrophes,²²⁵ it remains a viable means to ensure that displaced populations readily access the assistance they need to live dignified lives. Whilst the loss and damage discourse remain entirely important and indispensable, it is also important and crucial to put in place strategies that will ensure climate displaced persons receive much needed assistance.²²⁶

This then leads to the thorny issue of movement and touches on the crux of this work. When it comes to climate displacement, key questions arise on the concept of ‘refugees’ whether it applies to those displaced by environmental disasters and who holds the moral and political responsibility to ensure justice.²²⁷ Politically, United Nations High Commission for Refugees (UNHCR) member states have opposed extending the category of refugee definition to include those who are displaced due to environmental issues²²⁸.

²²³Opitz S et al *Climate Change, Migration and Displacement: The Need for a Risk-Informed and Coherent Approach* (2017) United Nations Development Programme (UNDP) at 7–12, 25–31.

²²⁴Meyerson F & Lydon C ‘Climate Change and Human Rights: Examining the Link Between Climate Justice and Human Rights’ (2019) 13(1) *Climate Change Law Review* 39–59 at 42–55.

²²⁵Ransan-Cooper H et al ‘Being(s) Framed: The Means and Ends of Framing Environmental Migrants’ (2015) 35 *Global Environmental Change* 106–113 at 110.

²²⁶Human Rights Council *Report of the Special Rapporteur on Human Rights and the Environment, John H. Knox* (2019) UN Doc A/HRC/40/55 at paras 24–38.

²²⁷ Draper J ‘Climate Change and Displacement: Towards a Pluralist Approach’ (2022) *European Journal of Political Theory* <https://doi.org/10.1177/14748851221093446>.

²²⁸ Cole P ‘Climate Change and Global Displacement: Towards an Ethical Response’ in *Rethinking Ethics in International Relations* (1 ed, 2020) *The Routledge Handbook to Rethinking Ethics in International Relations* 345–356.

Potential solutions to address such kind of resistance like the Nansen Initiative are investigated in response to this reluctance to encourage global accountability for persons who have been displaced due to environmental circumstances. Initiated in 2012, this initiative aimed at addressing the needs of people displaced across borders by the effects of climate change impacts. It highlights how crucial it is to take measures to avoid or lower the likelihood of disasters, and help vulnerable populations become more resilient. The Agenda for the Protection of Cross-Border displaced people in the context of disasters and climate change, which offers a toolkit of practical techniques and policy choices, is the result of these consultations. To close the current gaps in international protection for vulnerable populations, this agenda aims to provide nations with guidance when developing legal frameworks and policies to effectively manage and protect those displaced by environmental disasters²²⁹. The interplay between justice and politics has influenced the international regime and shaped the Paris Agreement. Despite the dominance of politics, climate justice remains a key topic in climate change discussions. It is therefore important to understand the climate justice issues and they affect the effectiveness of climate change adaptation²³⁰.

The United Nations has taken a leading role in organizing global efforts to combat climate change through its numerous entities, including the United Nations Framework Convention on Climate Change (UNFCCC)²³¹ binding agreements like the Kyoto Protocol and the Paris Agreement which have been negotiated under the UNFCCC emphasize on the principles of equity but differentiated responsibilities by acknowledging the unequal impacts of climate

²²⁹ Norwegian Refugee Council (NRC) *The Nansen Conference: Climate Change and Displacement in the 21st Century*, Oslo, 5–7 June 2011 at 4–8, 23–29.

²³⁰ Okereke C & Coventry P 'Climate Justice and the International Regime: Before, During, and After Paris' (2016) 7(6) *Wiley Interdisciplinary Reviews: Climate Change* 834–851 at 838–847 <https://doi.org/10.1002/wcc.419>.

²³¹ UN General Assembly *United Nations Framework Convention on Climate Change: Resolution Adopted by the General Assembly A/RES/48/189* (20 January 1994), available at <https://www.refworld.org/legal/resolution/unga/1994/en/26583>, accessed on 22 August 2024.

change. The Intergovernmental Panel on Climate Change (IPCC) is also playing an important role in contributing to climate justice by providing scientific assessments that inform global climate change policies.²³² Through its financing of climate adaptation and mitigation programs in developing nations, the World Bank also significantly contributes to the advancement of climate justice. Further, the World Bank's initiatives include climate concerns into more comprehensive development plans to demonstrate how closely linked climate justice is to economic growth and the reduction of poverty²³³.

Despite these significant efforts by the international community to address climate justice several gaps still exist. One major gap is the lack of alignment of national policies with international agreements, leading to differences in implementation and enforcement²³⁴. Many countries in the Global North continue to prioritize economic growth over climate action, resulting in insufficient emission reductions and inadequate support for vulnerable nations. Further, funding targets for financial instruments are frequently not met, leaving many developing nations without the resources they need to adapt to the effects of climate change.²³⁵ Many climate change vulnerabilities leave their homes to other parts of their countries and in some cases to other neighbouring states in search of a new start to life. It is important that they do so as staying in already compromised areas, would expose them to further destruction and in any case most of them have already lost their property and livelihoods in their former abode. An effective migration management strategy should entail the humanitarian visa as an

²³² Pollitt H, Mercure JF, Barker T et al 'The Role of the IPCC in Assessing Actionable Evidence for Climate Policymaking' (2024) 3 *npj Climate Action* 11

²³³ World Bank *Climate Change Overview* (2024) available at <https://www.worldbank.org/en/topic/climatechange/overview>, accessed on 22 August 2024.

²³⁴ Hafner-Burton EM & Tsutsui K 'Human Rights in a Globalizing World: The Paradox of Empty Promises' (2005) 110(5) *American Journal of Sociology* 1373–1411 at 1385–1402 <https://doi.org/10.1086/428442>, accessed on 22 August 2024.

²³⁵ Clark R, Reed J & Sunderland T 'Bridging Funding Gaps for Climate and Sustainable Development: Pitfalls, Progress and Potential of Private Finance' (2018) 71 *Land Use Policy* 335–346 at 336–342 <https://doi.org/10.1016/j.landusepol.2017.12.013>.

intervention to ensure that families and individuals are able to rebuild their lives in safety. This is because as at yet, climate displaced persons are yet to be recognised through a formal legal and policy framework globally.

3.4. Relevance of the climate justice lens in tackling the humanitarian crisis facing climate change vulnerabilities in Eastern Africa

Climate justice has often been framed as the “rich people vs. poor people” which is a interesting perspective when discussing it.²³⁶ As aptly put by the late Prof. Saleemul from ICCAD,

“Those of us who produce more than our fair share of emissions – and I include myself in that group – we owe something to the victims of our pollution.”

Climate change is ‘the largest, most pervasive threat to human societies the world has ever experienced’.²³⁷ The Global North has contributed the most to its onset, but countries in the Global South are more at risk and have less capacity to deal with the impacts of climate change.²³⁸ This then construes climate change as a justice issue.²³⁹

According to the African Development Bank 2023 Report on East Africa Economic Outlook, carbon emissions from the region are still low in global terms.²⁴⁰ None of the EAC member states is in top ten carbon emitters led by South Africa contributing, contributing 435.9 million tonnes, followed by Egypt, with 249.6 million tonnes, and Algeria, responsible for 176.2 million tonnes. The three countries produce more than 60% of the continent’s carbon emissions.

²³⁶ The late Prof Saleemul Huq, who was based at ICCCAD.

²³⁷ United Nations Environment Programme (UNEP) *Climate Change and Human Rights* (2015) Nairobi: UNEP at 7–12, 24–30.

²³⁸ Islam SN & Winkel J *Climate Change and Social Inequality: The Health and Social Costs of Global Warming* (2017) United Nations Department of Economic and Social Affairs Working Paper No 152, New York: UN DESA at 5–14.

²³⁹ Paavola J ‘Climate Change – The Ultimate Tragedy of the Commons?’ in Cole D & Ostrom E (eds) *Property in Land and Other Resources* (2011) Massachusetts: Lincoln Institute for Land Policy 417–433 at 420–430.

²⁴⁰ African Development Bank *East Africa Economic Outlook 2023: Mobilizing Private Sector Financing for Climate and Green Growth in East Africa* (2023) African Development Bank Group at 29–42.

Africa contributes just 4% of global carbon emissions despite being the continent that will suffer the most from climate change.²⁴¹

Africa's carbon emissions are dwarfed by the emissions of other continents. At 11.47 billion tonnes, China is the world's largest emitter followed by the United States (5 billion tonnes), India (2.7 billion tonnes), Russia (1.75 billion tonnes) and Japan (1.07 billion tonnes).²⁴² This notwithstanding it keenly feels the impacts of climate change with displaced populations, increased vulnerabilities, and loss of property.

An analysis of how vulnerability to climate change influences conflict in Africa through migratory movements indicates that increased climate change vulnerability, directly and indirectly, exacerbates internal conflict by reducing shared resources²⁴³. Environmental challenges in Eastern Africa exacerbate conflicts and displacements of people, which increases the overall number of climate-displaced persons in the region.²⁴⁴ The results from a study on forced displacement and the environment therefore advocates for integrating environmental protection into Disaster Risk Reduction and climate change agendas in humanitarian settings.²⁴⁵ Further, water availability reductions in Sub-Saharan Africa due to declining precipitation and increasing temperatures has resulted in increased internal and external

²⁴¹ Abdela KA, Divya S, Mohammed EA et al 'Greenhouse Gas Emission and Mitigation Strategies in Africa: A Systematic Review' (2024) 235 *Water, Air, and Soil Pollution* 613 at 615–626 <https://doi.org/10.1007/s11270-024-07431-8>.

²⁴² Climate Change Writers *Africa's Trajectory Approach Towards Decarbonizing Its Transport Systems*, available at <https://www.climatechangewriters.com/stories/africas-trajectory-approach-towards-decarbonizing-its-transport-systems>, accessed on 23 August 2024.

²⁴³ Tsomb EIBT, Nsoga MHIN & Bitting CD 'Climate Change Vulnerability and Conflicts in Africa: Evidence from the Migrations Channel' (2024) 26 *Environment, Development and Sustainability* 18811–18854 at 18820–18838 <https://doi.org/10.1007/s10668-023-03417-4>.

²⁴⁴ Adano WR, Dietz T, Witsenburg K & Zaal F 'Climate Change, Violent Conflict and Local Institutions in Kenya's Drylands' (2012) 49(1) *Journal of Peace Research* 65–80 at 68–76.

²⁴⁵ Ferris E & Petz D *The Year of Recurring Disasters: A Review of Natural Disasters in 2012* (2013) Washington, DC: Brookings Institution Press at 12–29; Tafere M 'Forced Displacements and the Environment: Its Place in National and International Climate Agenda' (2018) 224 *Journal of Environmental Management* 191–201 <https://doi.org/10.1016/j.jenvman.2018.07.063>.

migration.²⁴⁶ This often has adverse effects on political and social landscapes, poverty, land loss, and ethnic conflicts²⁴⁷.

Africa evidently bears the brunt of climate change harsh impacts. Safety and security in the region are threatened by droughts, desertification, and a reduced adaptive capacity. These factors exacerbate competition for scarce resources, leading to climate-driven conflicts and displacement. Despite these destructive consequences, the international community struggles to find clear solutions for tackling such climate change consequences²⁴⁸ as Africa grapples with a rising tide of displacement due to climate-related disasters. Between 2000 and 2019 alone, floods, droughts, and storms displaced millions. Millions of people are displaced internally and externally due to storms, floods, and droughts, making it the most common type of displacement.²⁴⁹ These increasing numbers indicate that the current approaches are not working. International aid is helpful, but more urgently needed are proactive steps to address the underlying causes and enhanced regional response capacities²⁵⁰. While frameworks exist to protect those affected, stronger strategies are crucial to curb displacement in Africa's most vulnerable countries²⁵¹.

Eastern Africa for instance faces a growing challenge of rising populations which are straining already limited water and food resources, worsened by climate change. This enhances both

²⁴⁶Black R & Adger WN *Migration and Global Environmental Change: Future Challenges and Opportunities* (2011) UK Government Foresight Report at 8–15, 42–47.

²⁴⁷ Onafeso OD *Analysis of Climate Change-Induced Forced Migration in Sub-Saharan Africa* (2020)

²⁴⁸ Lenshie NE, Ojeh VN, Oruonye ED et al 'Geopolitics of Climate Change-Induced Conflict and Population Displacement in West Africa' (2022) 27(3) *Local Environment* 287–308 at 291–299 <https://doi.org/10.1080/13549839.2022.2040461>.

²⁴⁹ Das D & Basu S 'Climate Change, Migration, and Internally Displaced Populations in the Indian Ocean Region – Evidence from South Asia and East Africa' (2023) 19(2) *Journal of the Indian Ocean Region* 167–190 at 172–183 <https://doi.org/10.1080/19480881.2023.2255386>.

²⁵⁰ Ndegwa DG 'Contemporary Forced Migration in Africa' in Ndhambi J & Nshimbi CC (eds) *Routledge Handbook of Contemporary African Migration* (1 ed, 2023) London: Routledge at 203–217.

²⁵¹ Abeldaño Zuñiga RA, Narcizo de Lima G & Quiroga DE 'Climate Change and Population Displacement in Africa' in Reyntjens F & Ntozi JPM (eds) *The Routledge Handbook of African Demography* (1 ed, 2022) London: Routledge at 178–192.

internal migration and migration between countries. Urban areas are particularly stressed by an influx of climate displaced persons, jeopardizing agricultural production. There is a need for a strategy that considers the connections between water, food, and social factors which can effectively guide adaptation strategies that manage migration effectively and contribute to regional goals for climate justice and sustainable development²⁵².

In Kenya, climate change induced disasters often lead to displacement of people. There is a need therefore to examine both the humanitarian needs that are necessary for proper legal frameworks that can help in addressing these challenges²⁵³. Natural disasters in Kenya have increasingly driven migration due to climate change, prompting the international community to manage this issue through policies and regulations published over recent decades. However, these policies are often non-binding and fail to address the specific climate injustices faced by those most affected because they lack the specificity, scope, and authority needed to effectively resolve the problems. Despite climate change causing displacement across Africa, existing legal frameworks within the continent lack clear application to these situations.²⁵⁴ While the concept of climate justice appears in international discussions, its translation into domestic law to protect the displaced remains limited²⁵⁵.

Statistics from the International Disaster Database of the Centre for Research on the Epidemiology of Disasters (CRED 2015)²⁵⁶ reveal that Sub-Saharan Africa was projected to

²⁵² Mpandeli S, Nhamo L, Hlahla S, Naidoo D, Liphadzi S, Modi AT & Mabhaudhi T ‘Migration Under Climate Change in Southern Africa: A Nexus Planning Perspective’ (2019) 12(11) *Sustainability* 4722 at 4725–4738 <https://doi.org/10.3390/su12114722>.

²⁵³ Schade J ‘Challenges to Planned Relocation as a Durable Solution to Environmentally Induced Displacement in Kenya’ in Scott M, Kelman I & Lizarralde G (eds) *Climate Change, Migration and Human Rights* (1 ed, 2017) London: Routledge at 109–122.

²⁵⁴ Rashad S ‘African Climate Refugees: Environmental Injustice and Recognition’ (2020) 10 *Open Journal of Political Science* 546–567 at 550–563.

²⁵⁵ Jegede AO, Yeakula GD, Monyping Ater J, Mothohabonoe Nare M & Fengu ZC ‘Climate Displacement and the Relevance of Climate Justice: A Trend Analysis of South Africa, Zimbabwe, South Sudan and Liberia’ (2022) 6 *Global Campus Human Rights Journal* at 112–126 <http://doi.org/10.25330/2505>.

²⁵⁶ Centre for Research on the Epidemiology of Disasters (CRED) *The International Disaster Database* (2015).

be the worst affected region in climate related disasters alongside small island states.²⁵⁷ In 2021, sub-Saharan Africa witnessed displacements of 2.6 million people because of climate related disasters increasing pressure on the remaining resources.²⁵⁸ These figures are exacerbate the already growing humanitarian crisis stemming from political and civil strife.²⁵⁹ The growing interrelatedness of climate change and human migration perhaps requires an urgent need for global action²⁶⁰ in ameliorating the plight of this category of refugees.²⁶¹

Achieving climate justice in Africa requires a multifaceted approach that encompasses stronger political will, increased financial commitments, and more inclusive governance structures. This complex challenge demands a concerted effort from both national governments and international bodies. While international organizations play crucial roles in advancing climate justice, their efforts must be reinforced by more substantial and consistent support from the global community. Developed nations, historically responsible for a significant proportion of greenhouse gas emissions, bear a moral and ethical obligation to provide comprehensive support to African countries.²⁶² This support should include capacity building and financial assistance to employ humanitarian visa assistance. The introduction of mechanisms such as humanitarian visas is crucial in addressing the human dimension of climate change. They offer a lifeline to those forced to flee their homes, providing them with legal avenues to seek safety

²⁵⁷ Gemenne F ‘Climate-Induced Population Displacements in a 4°C+ World’ (2011) 369(1934) *Philosophical Transactions of the Royal Society A* 182–195 <https://doi.org/10.1098/rsta.2010.0287>.

²⁵⁸ International Organization for Migration (IOM) *UN Migration Report* (November 2022).

²⁵⁹ United Nations Office for Disaster Risk Reduction (UNDRR) *The Human Cost of Disasters: An Overview of the Last 20 Years 2000–2019*, available at <https://reliefweb.int/report/world/human-cost-disasters-overview-last20-years-2000-2019>. According to the United Nations Office for Disaster Risk Reduction, during the period 2000–2019, there were 7,348 major recorded disaster events, claiming 1.23 million lives and affecting 4.2 billion people, resulting in approximately \$2.97 trillion in global economic losses. This is a sharp increase over the previous 20 years and the difference is explained by a rise in climate-related disasters, including extreme weather events: from 3,656 climate-related events (1980–1999) to 6,681 climate-related disasters in the period 2000–2019 (see <https://reliefweb.int/report/world/human-cost-disasters-overview-last20-years-2000-2019>).

²⁶⁰ Foresight *Migration and Global Environmental Change: Final Project Report* (2011) The Government Office for Science, London at 23–35.

²⁶¹ Sandalli A ‘The Macroeconomic Implications of Climate Change on Sub-Saharan Africa: A Case for Sustainable Development’ (2021) 9(1) *Review of Business and Economics Studies* 8–13.

²⁶² Brown D & Sovacool BK ‘Climate Change Ethics: Navigating the Perfect Moral Storm’ in Gardiner S (ed) *The Ethics of Global Climate Change* (2011) 1–24.

and access to essential services in host countries. These visas can help alleviate the pressures on both the displaced individuals and the countries of origin, allowing for more structured and humane responses to climate migration. This holistic approach to climate justice in Africa must also prioritize amplifying the voices of marginalized communities, particularly those most affected by climate change. By integrating their perspectives and experiences into policymaking and implementation processes, we can ensure that the solutions are equitable and address the root causes of vulnerability. Climate justice is not merely an environmental issue; it is deeply intertwined with human rights, social equity, and the need for resilient and sustainable societies. By addressing these interconnected needs and challenges, climate justice can safeguard the rights and dignity of all individuals, promote social equity, and foster resilience across the continent. This comprehensive strategy is essential to secure a just and sustainable future for Africa, where all communities can thrive in harmony with their environment.

3.5. Conclusion

Climate justice as a concept is a crucial link to enhancing interventions for climate change vulnerabilities. Climate justice is a fundamental human rights issue that calls for a fair distribution of the costs and benefits associated with climate change²⁶³. It is not just an environmental issue. Climate justice in Africa is crucial for safeguarding human rights and promoting social equity²⁶⁴. Many African countries have limited capacity to respond effectively to the impacts of climate disasters, leaving vulnerable populations, such as women, children, and indigenous peoples at greater risk. These groups often lack access to adequate resources, infrastructure, and services needed to cope with the climate impacts. To ensure that the most

²⁶³Shue H *Climate Justice: Vulnerability and Protection* (2014) Oxford: Oxford University Press at 19–44, 91–108.

²⁶⁴ Gardiner SM ‘Climate Justice’ in Gardiner SM, Caney S, Jamieson D & Shue H (eds) *Oxford Handbook of Environmental Ethics* (2011) Oxford: Oxford University Press <https://doi.org/10.1093/oxfordhb/9780199566600.003.0021> at 309–327.

impacted and vulnerable communities are not left behind, climate justice advocates for the fair and equitable distribution of resources and support²⁶⁵. By addressing these inequalities, climate justice helps to protect human rights, promote social inclusion, and foster resilience within communities.

The concept of climate justice emphasises the developed world's accountability for its role in climate change and its need to support developing nations, such as those in Africa²⁶⁶. Africa contributes the least to global greenhouse gas emissions but suffers some of the most severe consequences. Climate justice calls for developed countries to provide financial aid, technology transfer, and capacity-building support to help African nations mitigate and adapt to climate change²⁶⁷. Taking responsibility not only for the damage caused but also for the reparatory works to enable survivors rebuild their lives is important in achieving a sense of justice for the increasing vulnerabilities.

This approach is also core to recognising the intrinsic dignity of every human being that should not be violated and highlights the importance of enhancing sustainable development that takes into account the plight of vulnerable populations. This is important in addressing the question of equity in reducing emissions through common but differentiated responsibilities. The addition of humanitarian visas highlights a practical approach to addressing climate displacement, aligning with the broader goals of climate justice. Humanitarian visas can offer safe and legal pathways for individuals displaced by climate-related disasters to seek refuge

²⁶⁵ Amorim-Maia AT, Anguelovski I, Chu E & Connolly J 'Intersectional Climate Justice: A Conceptual Pathway for Bridging Adaptation Planning, Transformative Action, and Social Equity' (2021) 41 *Urban Climate* 101053 at 3–11 <https://doi.org/10.1016/j.uclim.2021.101053>.

²⁶⁶ Alves MWF & Mariano EB 'Climate Justice and Human Development: A Systematic Literature Review' (2018) 202 *Journal of Cleaner Production* 360–375 at 362–370 <https://doi.org/10.1016/j.jclepro.2018.08.091>.

²⁶⁷ Homberg MV & McQuistan C 'Technology for Climate Justice: A Reporting Framework for Loss and Damage as Part of Key Global Agreements' in Mechler R, Bouwer L, Schinko T, Surminski S & Linnerooth-Bayer J (eds) *Loss and Damage from Climate Change* (2019) Cham: Springer, Climate Risk Management, Policy and Governance Series 409–426 https://doi.org/10.1007/978-3-319-72026-5_22.

and build new lives in more stable environments. To uphold climate justice, global north states must support humanitarian visa programs in the global south.

CHAPTER FOUR

Tracing the roots: A critical analysis of 'environmental refugees'

4. Introduction

This chapter hence turns its attention to tracing climate displaced persons controversially termed ‘environmental refugees’ and situating them in literary expositions that deal with cross-border mobility. It also illustrates the protection gap under the international and regional refugee conventions for cross-border climate-displaced persons.

This section demonstrates that despite the contentions around the terminologies for this unique category of displaced persons, they are part of a growing humanitarian crisis and that it is crucial to ensure that states meet this crisis through humanitarian approaches, including complementary pathways.

4.1. Tracing the term ‘Environmental refugees’

Up until now, this thesis has referred to these persons as climate displaced persons. This chapter now delves into the concept of ‘environmental refugees’ because it is crucial to unpack what this term means in the context of this discourse and why it is conservatively used whilst terms such as climate displaced persons are preferred by scholars. Scholars and institutions increasingly prefer the term "climate-displaced persons" over "environmental refugees" due to its alignment with legal frameworks. Advocates like Walter Kälin, through the Nansen Initiative and Platform on Disaster Displacement, and Jane McAdam, in her work on climate and forced migration law, emphasise the term's precision and legal grounding. Researchers like Koko Warner of UNU-EHS and François Gemenne highlight its ability to address the complexities of climate-induced migration without conflating it with refugee law. International organisations, including the UNHCR and IOM, also favour this terminology, recognising the legal inaccuracy of "environmental refugees" and advocating for nuanced protections for those displaced by climate change. This shift reflects a deliberate effort to ensure policy relevance and scientific accuracy while addressing the unique needs of climate-displaced populations.

According to the International Organisation on Migration, ‘environmental refugees’ are people or groups of people who move permanently or semi-permanently, from their homes to other places within or outside their country of residence due to adverse effects of harsh climatic changes.²⁶⁸ From a scholarly lens, the term environmental refugees has been defined as ‘people who have been forced to leave their traditional habitat temporarily or permanently because of a marked environmental disruption that jeopardized their existence or seriously affected the quality of their life’.²⁶⁹ Norman Myers has further defined the term as ‘persons who no longer gain a secure livelihood in their traditional homelands because of what are primarily environmental factors of unusual scope.’²⁷⁰ An ‘environmental refugee’ is considered a broad classification that entails causes from natural disasters to human-induced ones including climate change.²⁷¹ There has been contention as to what the term means and its scope because there are diverse literary approaches proposed by various scholars.

There have been various suggestions by different scholars on possible solutions to the problem of ‘Environmental Refugees.’ In his article, *Environmental Refugees: a growing phenomenon in the 21st Century*²⁷² Myers describes environmental refugees as persons who no longer have sources of livelihood in their habitual residence due to extreme climatic conditions such as drought, soil erosion, deforestation, floods and desertification. He posits that these groups of people are forced to permanently or semi permanently migrate within their country or across the border. He records that by 1995, a total of at least 25 million people were forced to migrate due to harsh climatic conditions. This number was compared to the 27 million people who

²⁶⁸ International Organization for Migration (IOM) *World Migration Report 2021* (2021) at 115–128.

²⁶⁹ Masters SB ‘Environmentally Induced Migration: Beyond a Culture of Reaction’ (2000) 14 *Georgetown Immigration Law Journal* 855 at 866–867, citing El-Hinnawi E *Environmental Refugees* (1985) 4.

²⁷⁰ Ibid n 36; Doran AA ‘Where Should Haitians Go: Why Environmental Refugees Are Up the Creek Without a Paddle’ (2011) 22 *Villanova Environmental Law Journal* 117–140 at 125.

²⁷¹ Sutton V ‘Fiji: Climate Change, Tradition and Vanua’ in Abate RS & Kronk EA (eds) *Climate Change and Indigenous Peoples: The Search for Legal Remedies* (2013) Cheltenham: Edward Elgar at 363–369.

²⁷² Ibid n270.

migrate due to other reasons apart from climatic conditions such as political instability, religious and ethnic oppression.²⁷³ At the time Myers was writing the article, he noted that by the year 2010, the number of ‘environmental refugees’ would double.

A proposal for a new Convention on Climate Change Refugees is Bonnie Docherty and Tyler Giannini’s take on the subject of ‘environmental refugees’. They propose that this new Convention should take an ‘innovative, international and interdisciplinary approach’²⁷⁴ to suit the peculiar circumstances that environmental refugees find themselves in. They insist on a three-pronged premise for protecting such ‘refugees’ i.e. humanitarian assistance, shared responsibility amongst affected and host states and an established binding international regime to include an administrative authority for these ‘refugees’. They oppose the policy frameworks that attempt to resolve the question of ‘environmental refugees’ as they are not binding. As it is, the term ‘*environmental refugees*’ connotes a correlating obligation including non-refoulement for states on refugees hence the reluctance by most to embrace this term legitimately. A new convention would have to overcome mammoth challenges from the connection of climate related disasters and human migration as well as other exacerbating factors such as civil conflicts.

To support this vein of argument, Biermann and Boas²⁷⁵ suggest incorporating ‘climate refugees’ in international law. They propose this through the addition of a sui generis protection mechanism in form of a protocol to the United Nations Convention on Climate change (UNFCCC). They elaborate that this protocol should be premised on 5 principles to protect

²⁷³ Ibid

²⁷⁴ Docherty B & Giannini T ‘Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees’ (2009) 33 *Harvard Environmental Law Review* 349 at 404.

²⁷⁵ Platform on Disaster Displacement ‘Platform on Disaster Displacement, Follow-Up to the Nansen Initiative: Addressing the Protection Needs of Persons Displaced Across Borders in the Context of Disasters and Climate Change’ in McLeman R & Gemenne F (eds) *Routledge Handbook of Environmental Displacement and Migration* (2018) London: Routledge 421–425; Biermann F & Boas I *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees* (2007) Global Governance Project, Global Governance Working Paper No 33.

‘climate refugees.’ These principles include: relocation or resettlement, international cooperation and assistance within states, collective rights granted to the host communities, resettlement instead of offering temporary protection and the promotion of burden sharing in the international community. This ambitious proposal sees an establishment of the climate protection and refugee resettlement fund to be run for the benefit of the climate refugees. This proposal aims to tie climate change impacts, protection of resulting refugees and state responsibility. However, this approach still does not resolve the age-old question of who would effectively fall under the category of ‘climate refugees’ and who would be excluded. Bonnie and Tyler attempted to answer the question of criteria by providing some pointers for determination. These pointers included;

- i. The existence of an involuntary movement/ forced migration which is linked to the intrinsic survival of the person;
- ii. Presence of temporary or permanent resettlement of the affected individual;
- iii. There being strictly cross border migration of the individual;
- iv. There being an environmental disaster or upheaval that is attributable to climate change impacts;
- v. A sudden climate related disaster or gradual environmental upheaval;
- vi. A discernible link of the upheaval and human action can be established on a flexible basis

Hodgkinson et al²⁷⁶ have also proposed a new convention for ‘persons displaced by climate change’ with a flexible definition to those displaced internally, regionally and cross border.

They also have a five-pronged approach of requirements to determine who should be protected

²⁷⁶ Hodgkinson D, Burton T, Dawkins S, Young L & Coram A ‘Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses’ (2008) (8) *The New Critic*, September, available at <http://www.ias.uwa.edu.au/new-critic/eight/hodgkinson>; Burton T & Hodgkinson D ‘Climate Change Migrants and Unicorns: A Discussion Note on Conceptualizing Climate Change Displaced People’ (2009), available at <http://www.hodgkinsongroup.com/documents/PeopleDisplacedByClimateChange.pdf>.

including; having long term resettlement measures for displaced persons, common but differentiated responsibilities when addressing resettlement mechanisms; this incorporates arguments on climate justice considering countries emitting more greenhouse gases and vulnerable states, having a fund specifically for those impacted by climate change and putting in place adaptation and mitigation measures.

Authors such as Elizabeth Keyes have failed to agree on the status and the usage of the term ‘environmental refugees’.²⁷⁷ Keyes argues that the use of this term would place unnecessary strain on the application of the Refugee Convention which is already under international policy scrutiny. Further, she contends that although the impacts of climate change are being felt globally including by pacific island states such as Kiribati, it is legally illegitimate as it stretches to obligations not agreed upon by states under the current Refugee convention. According to Simon et al., this issue was significantly challenged in the *Teitiota* case, (discussed in detail in this chapter) where, for the first time, the Human Rights Appeals Council acknowledged the plight of "environmental refugees" within an extended interpretation of the term *refugee*. The case involved Ioane Teitiota, a citizen of Kiribati, who sought asylum in New Zealand on the grounds that climate change and rising sea levels had made his home country uninhabitable. While his claim was ultimately unsuccessful, the case marked a pivotal moment in international refugee law by bringing attention to the legal gaps faced by individuals displaced due to environmental factors.²⁷⁸ In their analysis, Simon et al. highlight that the Human Rights Appeals Council recognised environmental refugees as a distinct social group persecuted by climate-related disasters, which significantly threaten their livelihoods, security, and human rights. They argued that such individuals deserve international protection, as their

²⁷⁷ Keyes E ‘Environmental Refugees? Rethinking What’s in a Name’ (2019) *North Carolina Journal of International Law* 461 at 465–479, available at https://scholarworks.law.ubalt.edu/all_fac/1082.

²⁷⁸ Behrman S & Kent A ‘The Teitiota Case and the Limitations of the Human Rights Framework’ (2020) (75) *Questions of International Law (QIL)* 25–39.

forced displacement is driven not by conventional forms of persecution, but by the severe and life-threatening consequences of environmental degradation. Although the *Teitiota* case did not result in formal refugee status being granted, it set a legal precedent for future discussions on how international protection frameworks could evolve to accommodate those displaced by climate change. This case underscores the growing need for states and international organizations to develop legal mechanisms that address climate-induced displacement, ensuring that affected populations are not left without protection or pathways to resettlement.²⁷⁹ For E. Wasuka, this was a watershed moment in history as the impact of climate change on vulnerable groups of people came and the subsequent need to afford them protection under international regimes came to the fore.²⁸⁰

On a global plane, countries are already reluctant in granting the current eligible refugees the required attention and thus for authors such as Castles. S. the extension of this term could further increase protection challenges for yet another group of people.²⁸¹ It has been the argument that the current 1951 Refugee Convention is already overstretched in application and state obligations on the international plane. McAdam J. opines that to address this gap, regions have undertaken to put in place frameworks that address the plight of ‘environmental refugees’²⁸². This is also the standpoint by Keyes who posits that although affording ‘environmental refugees’ protection at the international level may be face huge obstacles, protection mechanisms can be explored by wider reaching regional frameworks. This has been

²⁷⁹Kent A & Behrman S ‘Facilitating the Resettlement and Rights of Climate Refugees: An Argument for Developing Existing Principles and Practices’ in Kent A & Behrman S (eds) *Climate Refugees: Beyond the Legal Impasse* (2018) London: Routledge ch 2.

²⁸⁰ Wasuka E ‘Landmark Decision from UN Human Rights Committee Paves Way for Climate Refugees’ *ABC News* (21 January 2020), available at www.abc.net.au/news/2020-01-21/un-human-rights-ruling-worlds-first-climate-refugee-kiribati/11887070.

²⁸¹ Castles S *Environmental Change and Forced Migration: Making Sense of the Debate*, UNHCR Issues in Refugee Research Working Paper No 70 (2002), available at www.unhcr.org/research/RESEARCH/3de344fd9.pdf

²⁸²McAdam J *Climate Change, Forced Migration, and International Law* (2012) Oxford: Oxford University Press at 100.

the case in the signing of Kampala Convention (by the IGAD and EAC countries) and the IGAD Declaration (by IGAD Countries). These progressive pieces of policy demonstrate goodwill towards persons affected by the climate crisis. However, according to Abebe, they remain to be soft law that cannot be enforced on an international standard.²⁸³ This means that the humanitarian protection of such vulnerable groups remains at the discretion of countries.

The climate crisis is not a matter of if it occurs but rather, when it occurs. Persons are bound to be affected and these vulnerable group of persons will need protection; that is gist of addressing the plight of environmental refugees. Kalin et al recognises that indeed there is a huge need to address the state of ‘environmental refugees’²⁸⁴ regardless of how states want to reference them. The International Organisation on Migration (IOM) even emphasises that the raging debate on whether they are refugees proper or not is inconsequential to the fact that there exists this increasingly vulnerable group of people who need intervention and protection. According to the IDMC Global Report, the impacts of climate change remain a biting reality beyond the scholarly debates of environmental refugees.²⁸⁵ The reality is that there has been an increase of climate related disasters globally and regionally in Africa.

Victoria Sutton explores the prospects of having either a protocol to the 1951 Refugee Convention, a protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or a new treaty. It is her view that the process of achieving the proposed protocols would open discussions by opponents that would delay and defeat the very objective for which it was begun.²⁸⁶ She opts for having a new treaty as this would prevent ‘political pitfalls’ and

²⁸³Abebe M ‘The Kampala Convention and Environmentally Induced Displacement in Africa’ (Paper presented at the IOM Intersessional Workshop on Climate Change, Environmental Degradation and Migration, 29–30 March 2011, Geneva, Switzerland).

²⁸⁴Kalin W & Weerasinghe S ‘Environmental Migrants and Global Governance: Facts, Policies and Practices’ in McAuliffe M & Klein Solomon M (conveners) *Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration* (2017) Geneva: International Organization for Migration.

²⁸⁵Internal Displacement Monitoring Centre (IDMC) *Global Report on Internal Displacement 2017* (2017) at 31; Nansen Initiative *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (2015) Vol II, Annex I.

²⁸⁶Sutton V ‘Fiji: Climate Change, Tradition and Vanua’ (2013) *Journal of South Pacific Law* 363–376.

offer an opportunity for extensive coverage of the plight faced by ‘Environmental Refugees’. Gregory S. McCue, on the other hand, is convinced that the answer to this perplexity lies under International Environmental Law and not Refugee Law.²⁸⁷ He posits that International Environmental norms and principles are well settled and appropriate to legally protect victims of environmental disasters and climate change. On the other hand, Tiffany Duong’ calls for a human rights-based approach²⁸⁸ given that there is an established link between human rights and the environment. She advocates for a human rights-based approach to environmental issues, emphasising the critical link between human rights and environmental protection. This perspective is particularly significant in the context of climate displacement, as climate change-induced disasters such as rising sea levels, desertification, and extreme weather events continue to force millions of people from their homes. Unlike traditional migration, climate displacement often lacks clear legal protections, leaving affected populations vulnerable to poverty, exploitation, and statelessness.

Ramlogan in *Environmental refugees: a review*²⁸⁹ states that the concept of environmental refugees came up in the mid 1980s. He further notes that the definition of a refugee has morphed over the years from a social perspective, individual perspective and the Eurocentric view of refugees. The rise of the Nazi in Germany brought about the social perspective of refugees, the end of the second world war on the other hand, introduced an individualistic approach which led to the drafting of the United Nations Convention on the Status of Refugees 1951, a Convention which defines a refugee and one who should be granted refugee status. Being that environmental refugees are a new set of ‘migrants’, and a phenomenon in

²⁸⁷ McCue GS ‘Environmental Refugees: Applying International Environmental Law to Involuntary Migration’ (1993) 6 *Georgetown International Environmental Law Review* 151 at 190.

²⁸⁸ Duong TTV ‘When Islands Drown: The Plight of Climate Change Refugees and Recourse to International Human Rights Law’ (2010) 31 *University of Pennsylvania Journal of International Law* 1239 at 1266.

²⁸⁹ Ramlogan R *Environmental Refugees: A Review* (1996) Cambridge: Cambridge University Press.

international law and policy, most countries are reluctant to increase the protective nature of the existing Convention.

Richard Black in *Environmental Refugees: myth or reality*²⁹⁰ notes that “environmental refugees” is a new typology of migrants in the realm of international law and policy. He hammers on the issue that the meaning and the concept of environmental refugees is being watered down by numerous literature that do not really speak clearly on the causes of migration by environmental refugees. He says that, although the authors hint at the existence of environmental refugees, they do not clearly distinguish the reasons for their migration from those of other refugees affected by political instability and so on. Richard basically finds fault in the way the authors bring out the concept of environmental refugees. For example, he criticizes the works of authors such as Ramlogan where he points out that whereas Ramlogan stated that one million people in Ethiopia were about to migrate because of famine, he fails to state clearly whether they indeed migrated. He further reviews the works of Myer and Kent who give statistics on the number of refugees available at the time- being as high as 25 million.²⁹¹ He emphasises that these numbers are unclear and that the meaning of environmental refugees as stated by Myers,²⁹² is a poor definition. This he says, gives the international policy makers little to work with when trying to define “environmental refugees” and even accord them protection. He further questions the value of the policy makers against the backdrop of the existence of environmental refugees who need protection and recognition under international law and policies.

The gist of Richard’s argument is that, yes, environmental refugees may exist, however, the definition being given by different scholars do not give a clear guide to international policy

²⁹⁰ Black R *Environmental Refugees: Myth or Reality?* UNHCR New Issues in Refugee Research Working Paper No 34 (2001).

²⁹¹ Ibid

²⁹²“Persons who no longer gain a secure livelihood on their traditional homelands because of what are primarily environmental factors of unusual scope.”

makers when considering the recognition and protection of this group. He raises a concern as to whether too much concentration on these refugees reduces the amount of attention that should be given to the climatic changes and how to curb it. However, Richard fails to record that the number of environmental refugees, those moving due to harsh climatic conditions, are gradually increasing and this raises an alarm to the international community to draft policies and laws leading to their recognition and protection. On the other hand, Rashad in *African Climate Refugees: Environmental Injustice and Recognition*²⁹³ emphasises that ‘environmental refugees’ are victims of climate change such as global warming, disasters, poverty, crises and “environmental accidents.

The imperative to protect climate-displaced persons has gained significant attention within academic, legal, and policy discourses, despite persistent debates surrounding the appropriate terminology. Terms such as "environmental migrants," "climate refugees," and "climate-displaced persons" each carry distinct implications for legal frameworks and policy interventions. For instance, the 1951 Refugee Convention and its 1967 Protocol provide protection to individuals fleeing persecution based on specific grounds but do not extend to those displaced by environmental or climatic factors. This exclusion has highlighted a critical legal gap, prompting scholars, practitioners, and policymakers to advocate for alternative terminologies and frameworks that better reflect the realities of climate-induced displacement. As climate change exacerbates the frequency and intensity of disasters, including rising sea levels, desertification, and extreme weather events, millions of individuals are increasingly at risk of displacement, underscoring the urgent need for effective protections that transcend terminological disagreements.

²⁹³Rashad S ‘African Climate Refugees: Environmental Injustice and Recognition’ (2020) 10(3) *Open Journal of Political Science* 546–567; Cournil C ‘The Protection of “Environmental Refugees” in International Law’ (2011) in Léonard S & Kaunert C (eds) *Globalisation and International Security: An Introduction* London: Routledge at 109–123.

The debate over terminology is not merely semantic but has significant implications for policy formulation and the allocation of rights and protections. The term "climate refugees," for example, is criticised for its legal inaccuracy, as it implies a connection to international refugee law, which does not currently encompass climate-induced displacement. On the other hand, "climate-displaced persons" is often viewed as a more precise and inclusive term, capturing both internal and cross-border displacement while avoiding misinterpretation of existing legal instruments. However, this terminology remains contentious, as some argue that its neutrality risks diminishing the urgency of advocacy efforts. Despite these debates, the core issue is ensuring that those displaced by climate change are not rendered invisible within the international legal system and are provided with adequate protections and support mechanisms.

Addressing the protection needs of climate-displaced persons requires a shift in focus from linguistic precision to the development of robust legal, policy, and operational frameworks. These frameworks must address the multifaceted vulnerabilities of affected populations, including the loss of livelihoods, displacement from ancestral lands, and limited access to essential services. National governments, regional bodies, and international institutions must collaborate to design comprehensive strategies that integrate climate adaptation measures, disaster risk reduction, and mobility governance. Moreover, long-term solutions such as planned relocation, sustainable development initiatives, and the establishment of legal protections tailored to climate-induced displacement are essential. While the terminology debate remains significant within academic and policy circles, it must not overshadow the pressing need for actionable responses to safeguard the dignity, rights, and well-being of climate-displaced persons in the face of a rapidly changing global climate. This necessitates a

human rights approach for strategic interventions to assist climate-displaced persons in the global south.²⁹⁴

At this juncture, this work buttresses the non-recognition of climate displaced persons within global and major regional frameworks and the ensuing implications.

4.2. An examination of the 1951 Convention and other related frameworks on ‘climate displaced persons’

Despite the increasing urgency of climate displacement, the current international legal framework offers inadequate protection.

The 1951 Refugee Convention in article 1(1) defines a refugee is defined as:

“any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...”

Literary references made to this definition expressly imply that only refugees who meet this definition are categorized as refugees proper with those failing to make the criteria regarded as voluntary migrants. The Convention together with its 1967 additional protocol do not address the issue of climate change as a primary source for migration nor do they recognise climate displaced persons. The history behind the formulation of the 1951 Refugee Convention was to cater for the person's displaced during World War 2. Therefore, this Convention was tailor made for that scenario but has since been applied in instances where persons are forced to migrate due to political instability, persecution from their country and war. This then results into an existing normative gap on climate displaced persons.

²⁹⁴ Aminzadeh S ‘A Moral Imperative: The Human Rights Implications of Climate Change’ (2007) 30 *Hastings International and Comparative Law Review* 231–265.

The refugee convention underscores universally recognised principles of non-refoulement and non-discrimination. Non refoulement principle refers to a state's obligation not to involuntarily remove/return the refugee to the origin of conflict or persecution where they are likely to be harmed while non-discrimination principle urges states to eliminate bias on any ground for attending to refugees and securing their rights.²⁹⁵ Reservations may not be signed to these two rights. This principle, however, is mostly interpreted to protect the traditional categories of refugees excluding those who are contemporarily displaced by climate related climate disasters. It does not afford 'environmental refugees' the much need protection in host countries.

The 1951 Refugee Convention does not protect those displaced by climate change disasters probably because it was not meant to protect them in the first place owing to its post second world war roots. Further, the climate change discourse had not evolved extensively to foresee the new forms of international migration and specifically highlight the plight of displaced persons in vulnerable African countries. The convention was not made with the plight of climate displaced persons in mind.

Efforts to cling onto one of the grounds for qualification of refugee status have not been entirely fruitful as, for example, the element of persecution is often deduced as personal persecution and not public persecution because of climate change disasters.²⁹⁶ Persecution often connotes unjust treatment and that the country is not offering one adequate protection hence the need to seek alternative security, surrogate protection as referred to by Hugo Storey.²⁹⁷ Unfortunately,

²⁹⁵United Nations High Commissioner for Refugees (UNHCR) *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, UN Doc HCR/IP/4/Eng/REV.1 (1992).

²⁹⁶Maiani F 'The Concept of "Persecution" in Refugee Law: Indeterminacy, Context-Sensitivity, and the Quest for a Principled Approach' (2010) (Special Issue 4) *Les Dossiers du Grihl* [Online], published 28 February 2010, accessed 19 August 2024, available at <http://journals.openedition.org/dossiersgrihl/3896>, <https://doi.org/10.4000/dossiersgrihl.3896>.

²⁹⁷Storey H 'The Meaning of "Protection" within the Refugee Definition' (2016) 35(3) *Refugee Survey Quarterly* 1–34 <https://doi.org/10.1093/rsq/hdw012>.

in climate displacement scenarios, the repercussions occur despite the government's protection owing to the country's vulnerability to climate change impacts. Many African countries remain powerless in the face of sudden and prolonged environmental disasters resulting to humanitarian crises.²⁹⁸ Further, some environmental disasters result mainly into internal migration hence displacements cannot categorically be placed under the convention owing to the respect of national territoriality and state sovereignty as key international law principles.²⁹⁹ No matter how devastating may be epidemic, natural disaster or famine, a person fleeing from them is not a refugee within the terms of the Convention.³⁰⁰ This indeed is the general perception not only of the courts but of the international community as well. It then follows that persons fleeing natural disasters and environmental hazards emanating from climatic change are accorded no legal protection. Principles such as non-refoulement (basically that no refugee shall be expelled or returned to any country where he or she is likely to face persecution or torture)³⁰¹ are inapplicable to them and they can easily be returned to face the very same hazards they have fled from. They are incapable of enjoying the rights and aid granted to the conventional refugees despite their intrinsic human dignity which should be respected by States. Clearly, a lot is at stake for such people: their very own lives and livelihoods.³⁰²

Given that the effects of climatic change are yet to be fully felt, more people are prone to bear a disproportionate burden regarding environmental hazards which include displacement and

²⁹⁸Mayer B & Crépeau F (eds) *Research Handbook on Climate Change, Migration and the Law* (2017) Cheltenham: Edward Elgar; Mayer B *The Concept of Climate Migration* (2016) Cheltenham: Edward Elgar; Kälin W & Schrepfer N *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches* (2012) UNHCR Legal and Protection Policy Research Series; Biermann F & Boas I 'Climate Change and Human Migration: Towards a Global Governance System to Protect Climate Refugees' in Scheffran J et al (eds) *Climate Change, Human Security and Violent Conflict* (2012) Berlin: Springer at 291–307.

²⁹⁹Ruppel OC & Van Wyk S 'Climate-Change-Induced Movement of Persons in Africa: Human Rights Responses to Aspects of Human Security' in Ruppel OC et al (eds) *Climate Change: International Law and Global Governance* (2013) Baden-Baden: Nomos 799–826 https://doi.org/10.5771/9783845242774_799.

³⁰⁰Dawson J in *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 at 248.

³⁰¹Goodwin-Gill GS & McAdam J *The Refugee in International Law* 3 ed (2011) Oxford: Oxford University Press.

³⁰²Waldinger M & Fankhauser S *Climate Change and Migration in Developing Countries* (2015) ESRC Centre for Climate Change Economics and Policy; Stapleton SO, Nadin R, Watson C & Kellett J *Climate Change, Migration and Displacement* (2017) Overseas Development Institute / United Nations Development Program.

loss of land. Left in this quagmire, even those displaced outside their country of origin, namely climate displaced persons are not able to receive protection under international law. This is because they have no basis of recognition as they no longer enjoy legal protection under their countries and are unable to be accorded functional protection by their countries as is obligatory. It has therefore been challenging to decipher how the “well-founded fear of persecution” can be integrated to resolve the question of climate change refugees where all the other grounds fall short or are met. There is urgent need to address the legal gap regarding such persons who undoubtedly are the victims of environmental injustice with a view of securing the legal protection of their rights.

This notwithstanding, the Convention has (in previous instances) been generously interpreted to respond to developments in international law particularly in the field of international human rights and humanitarian law.³⁰³ For example, the definition has been extended to include claims not anticipated in 1951 under the ground of persecution “member of a particular social group”. States now recognise people fleeing armed conflict as refugees; and most states also recognise gender-based violence including rape, female genital mutilation and forced sterilization as a form of persecution as provided in the UN Convention.³⁰⁴

As stated above, these are all personal persecutions inflicted by another human being and in addition where governments have failed to protect or were unable to protect. Applying the "persons from a particular social group" (PSG) test under the 1951 Refugee Convention to climate-displaced persons presents significant legal complexities. The PSG category requires shared characteristics that are either immutable or fundamental to identity, along with social distinction. While climate-displaced persons from specific regions may argue that their shared vulnerability to environmental impacts constitutes an immutable characteristic, proving social

³⁰³ Boom CD ‘Beyond Persecution: A Moral Defence of Expanding Refugee Status’ (2018) 30(3) *International Journal of Refugee Law* 512–531 <https://doi.org/10.1093/ijrl/eev048>.

³⁰⁴Ibid.

distinction is challenging, as broader societies may not uniformly recognise them as a distinct group.

To address these evolving dynamics, the UNHCR's 2020 *Legal Considerations*³⁰⁵ provide updated guidance on how the 1951 Convention and regional instruments might be interpreted in climate-related contexts. It presents a critical advancement in the legal understanding of how existing international protection frameworks may apply to individuals displaced by environmental factors. Although the document reaffirms that climate change alone does not constitute a ground for refugee status under the 1951 Convention Relating to the Status of Refugees, it outlines how the adverse effects of climate change may, in specific cases, contribute to situations that do fall within the scope of international protection.

A key contribution of the document is its insistence on a contextual and case-by-case analysis. It acknowledges that environmental factors can intersect with other human rights violations or forms of discrimination, potentially amounting to persecution. For example, if a state fails to protect a specific group from the impacts of a disaster in a discriminatory manner, or uses environmental crises as a pretext for forced displacement or denial of assistance, such actions may satisfy the threshold of persecution under the Convention. The document further highlights that the concept of persecution must be interpreted in light of evolving international human rights standards, and that discrimination in access to environmental protection or relief efforts could qualify as such when linked to a Convention ground, such as race, religion, or membership of a particular social group.

The UNHCR also draws attention to the regional context, particularly in Africa, where the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems provides a broader definition of a refugee. This definition includes persons fleeing “events seriously disturbing

³⁰⁵United Nations High Commissioner for Refugees (UNHCR) *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* (2020).

public order.” The UNHCR notes that sudden or slow-onset environmental events such as droughts, floods, or rising sea levels could fall within this expanded scope, especially where such events lead to state breakdown, civil unrest, or mass displacement. This regional instrument, though not universally applied, provides important normative support for the recognition of climate-displaced persons as refugees in certain African contexts.

Another critical area addressed in the Legal Considerations is the application of the principle of non-refoulement. While the principle is well established under refugee law, the UNHCR notes that it also applies under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR). In this regard, the 2020 ruling of the UN Human Rights Committee in *Ioane Teitiota v. New Zealand* is particularly important.

In this case, Ione Teitiota a Kiribati man from a low-lying atoll in the North of Tarawa pursued the claim to be identified as a ‘climate change refugee’ in the High Court and Court of Appeal in New Zealand.³⁰⁶ In Kiribati, he practiced fishing and farming but later moved to New Zealand in 2007 with his family.³⁰⁷ In New Zealand, they overstayed their work permit and therefore lacked the proper legal status to be in the country.

He applied to be considered as a refugee under the New Zealand Immigration Act of 2009 which expressly adopts the definition of a refugee found in the 1951 Refugee Convention. In his application he cited the effects of climate change such as causes of his migration from Kiribati. This application was rejected by the Immigration tribunal and the case reached the high court. The high court had to determine whether Teitiota was a refugee for purposes of the domestic Refugees Act³⁰⁸ and the 1951 UN Refugee Convention. The high court highlighted what has been widely acknowledged that the five protected grounds listed in the Convention

³⁰⁶Ibid n 40.

³⁰⁷ Allgood L & McNamara KE ‘Climate-Induced Migration: Exploring Local Perspectives in Kiribati’ (2017) 38 *Singapore Journal of Tropical Geography* 370 at 381.

³⁰⁸New Zealand *Immigration Act 2009*, Part 5.

does not include environmentally displaced persons or those fleeing climate change effects. The court also faulted the lack of a persecutor as provided for in the Convention. According to the view of the court, persecution needs to emanate from a human agent: It could be the government through its agents or non-state actors. In the latter case, the Government should be unable or unwilling to control the ‘persecutors. What comes out clearly is the need for government deficiency whether willingly or otherwise. In this instance, the plaintiff conceded that the Kiribati Government was indeed taking measures to counter the effects of climate change such as building sea walls and therefore could not be pointed out as the persecuting agent.

The International Community, particularly the developed states, was cited by Teitiota as being a persecutor based on their huge GHGs emissions which have resulted in climatic change. The contribution of developed countries to climate change cannot be overemphasized however as noted by the court, there is lack of intent or motive by developed states to harm the low-lying states like Kiribati and as such they cannot qualify as persecutors. The high court was also influenced by the fact that accepting Teitiota’s claim would encourage an influx of many other cases brought by the victims of climate change effects. It dismissed the case which then proceeded to the Court of Appeal. The court of appeal though sympathizing with the situation Teitiota and his family found themselves in, concurred with the high court stating categorically that ‘the Refugee Convention is not the solution to Kiribati’s problem.’

The Teitiota’s Case clearly depicts the inadequacy of Refugee Law to cater for those who have been displaced by effects of climate change.³⁰⁹ The expansion of the definition of a refugee has been suggested as a remedy to fill in this gap. However, the refugee problem has only gotten

³⁰⁹Williams A ‘Turning the Tide: Recognizing Climate Change Refugees in International Law’ (2008) 30(4) *Law & Policy* 502–529; Atapattu S ‘A New Category of Refugees? “Climate Refugees” and a Gaping Hole in International Law’ in Behrman S & Kent A (eds) *Climate Refugees’: Beyond the Legal Impasse* (2018) Abingdon: Routledge

worse globally with the effect of an increase in the numbers of refugees.³¹⁰ This has resulted in host countries being burdened with the mass influx of refugees. Increasingly more developed countries are turning away refugees at their borders and adopting strict migrant policies. Despite the fronting of a global compact on refugees³¹¹ which aims to enhance equitable, responsibility sharing and sustainable approaches³¹² to tackling the refugee conundrum at the global level, a culture of ‘refugee apathy’ has characterized most states’ approach.³¹³ This is evident when they are not living up to their commitments and obligations under International Law.³¹⁴ It would not be favourable therefore to expand the scope of refugee definition as this would be negatively perceived by states as an additional burden. This points to the gradually growing jurisprudence in developing countries on the status of climate displaced persons. It is important to note that it is mostly developing countries creating this jurisprudence due to their unique and vulnerable circumstances. The baseline is that this is a legitimate group and if the global trends are anything to go by, more displacements are expected by 2050. This necessitates practical solutions to enable this category of persons safe passage and immediate humanitarian assistance.

Although the Committee did not find in Teitiota’s favour, it did affirm that returning someone to a country where climate change poses a real risk to life could, under certain circumstances, violate the right to life. The UNHCR therefore urges states to consider their non-refoulement

³¹⁰De Wit E, Seneviratne S & Calford H ‘Climate Change Litigation Update’ (Norton Rose Fulbright, February 2020) accessed 8 June 2020; United Nations Environment Programme *The Status of Climate Change Litigation – A Global Review* (2017) at 25, 32.

³¹¹UN General Assembly *Global Compact on Refugees* (2018) available at <https://www.refworld.org/legal/agreements/unga/2018/en/124198> accessed 16 June 2024.

³¹²Al Fara H ‘Global Compact on Refugees: A Transformative Moment in Refugee Policy?’ (2022) *Bath Papers in International Development and Wellbeing* No 71, University of Bath, Centre for Development Studies.

³¹³Gammeltoft-Hansen T ‘The Normative Impact of the Global Compact on Refugees’ (2019) 30 *International Journal of Refugee Law* 605–610 <https://doi.org/10.1093/ijrl/eev061> .

³¹⁴United Nations General Assembly *Report of the United Nations High Commissioner for Refugees: Global Compact on Refugees* UN Doc A/73/12 (Part II) ch 1B para 8 (2018).

obligations in situations where returnees would face serious harm due to environmental degradation, food insecurity, or climate-related conflict.

Finally, the document underscores the importance of complementary protection mechanisms such as humanitarian visas, temporary protection regimes, or national asylum procedures as critical tools to fill the existing legal gap. The UNHCR encourages states to enhance domestic frameworks to account for the complex drivers of displacement and to integrate climate risks into asylum assessments where appropriate. It recognises that while the 1951 Convention may not offer universal protection to climate-displaced persons, its principles when interpreted dynamically can and should be responsive to contemporary realities of displacement in the context of the climate crisis.

In sum, the 2020 UNHCR Legal Considerations do not propose a new category of “climate refugees.” Instead, they advocate for an evolution in the interpretation and application of existing protection regimes, grounded in international refugee and human rights law, to respond more effectively to the realities of climate-induced displacement. The document is thus an important normative step toward bridging the gap between environmental vulnerability and international legal protection.

4.3. The OAU Refugee Convention (1969)

The Refugee Convention has been supplemented by various regional refugee laws such as the Organisation of African Unity (OAU now known as African Union) Convention addressing specific aspects of Refugees in Africa.³¹⁵

Following the postcolonial period, Africa witnessed a significant increase in the number of refugees crossing borders, primarily due to political instability, civil unrest, and violent conflicts that erupted across newly independent states. The decolonization process often left

³¹⁵ United Nations *Convention Relating to the Status of Refugees* (1951) and *Protocol Relating to the Status of Refugees* (1967), UN General Assembly Res 2198 (XXI), with Introductory Note by the Office of the United Nations High Commissioner for Refugees at 5.

behind fragile political structures, contested leadership, and ethnic tensions, which led to widespread displacement as individuals and communities sought safety in neighboring countries. In response to this growing refugee crisis, the OAU recognised the need for a comprehensive legal framework tailored to the continent's unique challenges.³¹⁶

The framework was enacted in Addis Ababa. The adoption of the Convention was to govern the specific aspects of Refugee problems in Africa.³¹⁷ It was tailored for specific problems relating to refugees in Africa. Article 1 of the Convention gives meaning to the word "Refugee".³¹⁸ This landmark legal instrument expanded upon the 1951 UN Refugee Convention by broadening the definition of a refugee to include not only individuals fleeing persecution but also those displaced due to external aggression, occupation, foreign domination, and events seriously disturbing public order.

According to Moberg '*events disturbing public order*' can be understood to cover persons fleeing the devastating impacts of climate change but this definition must be further extrapolated by a treaty monitoring body.³¹⁹ Events serious disturbing the public, unlike the UN convention, does not require the individual to prove individual persecution. What is required is that the person fleeing demonstrates significant risks to their lives.

This extended interpretation has proven to be particularly useful in addressing large-scale displacement caused by environmental disasters. A notable example of its application was during the 2011–2012 Somali drought, which led to the forced migration of thousands of people from Somalia into neighboring countries. The drought, which resulted in severe food and water

³¹⁶ Art II(4) of the *1967 Protocol Relating to the Status of Refugees*.

³¹⁷ Organisation of African Unity (OAU) *Convention Governing the Specific Aspects of Refugee Problems in Africa* 1001 UNTS 45 (10 September 1969), available at <https://www.refworld.org/legal/agreements/oau/1969/en/13572> accessed 28 February 2024.

³¹⁸ Art 1 of the *Convention Governing the Specific Aspects of Refugee Problems in Africa* (OAU Convention), 1969.

³¹⁹ Moberg KK 'Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection' (2009) 94 *Iowa Law Review* 1121.

shortages, occurred in the context of ongoing civil war and political instability. Under the OAU Refugee Convention, both the environmental crisis and the conflict could be classified as *events seriously disturbing public order*, thereby justifying the admission of Somali refugees without requiring them to prove individualized persecution.³²⁰ Notably, this drought occurred in the context of prevailing civil war which could be constituted under the OAU framework as an event seriously disturbing public order.

The OAU Convention does not expressly make provision for ‘environmental refugees’ in the continent. At the time of its conception, there were a lot of pre- and post-independence civil wars in Africa resulting in large numbers of displaced persons who fitted the description of the expanded definition of a refugee³²¹. Again, during this time, involuntary migration patterns because of the impacts of climate change were not rampant. Over the years it has been evident that Africa’s particularly weak adaptive capacity to climate change displacements has increased the number of climate induced populations internally and externally.³²² This threatens to retract the gains of development and regress the journey to achieving sustainable development goals, (SDGS). For instance, in 2021, 2.6 million people had been displaced because of climate change disasters with the World Bank predicting about 85.7 million climate change vulnerabilities in Sub-Saharan Africa by 2050 putting climate change as a core driver of cross-border migration, disrupting livelihoods, and destroying societal structures.³²³ It also raises the complex problem of the exact approach to be taken towards climate displaced persons in Africa. The expanded OAU definition has not been widely or consistently applied to climate-related displacement in Eastern Africa. While many states he such as Kenya, Uganda and Ethiopia

³²⁰ Kolmannskog V “‘We Are in Between’”: Case Studies on the Protection of Somalis Displaced to Kenya and Egypt during the 2011 and 2012 Drought’ (2014) 2(1) *International Journal of Social Science Studies* published by Redfame Publishing <http://ijss.redfame.com>.

³²¹ Okoth-Obbo G ‘Thirty Years On: A Legal Review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa’ (2001) 20(1) *Refugee Survey Quarterly* 79–138.

³²² Intergovernmental Panel on Climate Change (IPCC) *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* (2012).

³²³ Mbiyozo A-N ‘East Africa and the Horn Light the Way for Climate Migrants’ *ISS Today* (2022).

have domesticated the OAU Convention into their national refugee laws, these laws are often interpreted narrowly by refugee status determination bodies and administrative officials. The emphasis remains on conflict-related displacement or persecution, not slow-onset environmental degradation or sudden climate disasters. Moreover, the absence of climate change as an explicit category under the OAU Convention and national instruments leads to interpretative ambiguity, especially in cases where environmental stressors interact with conflict or economic collapse. Without explicit guidance or jurisprudence, refugee determination officers may default to conventional readings that overlook the climate dimension of displacement.

Although the OAU Refugee Convention is binding in African states that have ratified it,³²⁴ it has no monitoring mechanism and has seldom been applied to adequately respond to the plight of climate displaced persons.

4.4. Viability of regional and global soft laws to address the plight of climate-displaced persons

The apparent weaknesses in the refugee protection regime regarding the protection of climate displaced persons have inspired this scholarly work to explore how these legal weaknesses could be practically addressed through complementary pathways.³²⁵ These are³²⁶ legitimate, safe and regulated pathways for persons who need international protection to stay in a host country or be afforded passage to a third country of refuge. This is usually done through inter alia, the issuance of humanitarian visas enabling persons to enjoy legitimate stay in another jurisdiction. This is the thrust of the argument herein; that this can be a viable protection

³²⁴ 46 out of 55 African states have ratified it as the only binding regional instrument on refugees in Africa.

³²⁵ Falstrom DZ 'Stemming the Flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment' (2002) 13 *Colorado Journal of International Environmental Law and Policy* 17.

³²⁶ UNHCR *Complementary Pathways for Admission of Refugees to Third Countries – Key Considerations* (2019) 5, available at <https://www.refworld.org/docid/5cebf3fc4.html>.

mechanism for climate-displaced persons from countries plagued by the impacts of climate change disasters to address the legal lacuna.

It is really a question of interpretation when it comes to climate displaced persons as there is hardly any binding legal instruments providing legal protection for them. For instance, aside from the OAU Refugee framework, the 1984 Cartagena Declaration on Refugees obliges its member states to consider a refugee as one who inter alia, migrates from their home country in fear of their lives, safety or freedom being threatened by a massive violation of human rights and other factors disturbing public order.³²⁷ The Declaration, adopted in 1984, broadened the definition of a refugee beyond the criteria set by the 1951 UN Refugee Convention similar to the expanded definition later adopted by the OAU Refugee Convention.

In the aftermath of the 2010 Haiti earthquake, (later discussed in detail) which caused widespread destruction and displacement, many Haitians sought refuge in neighboring countries. The Cartagena Declaration on Refugees did not directly establish specific assistance mechanisms for Haitian refugees following the devastating earthquake. However, it played a crucial role in shaping the regional legal framework that enabled several Latin American and Caribbean countries to extend protection to displaced Haitians. While traditional refugee law did not explicitly cover natural disaster-induced displacement, the broader *Cartagena* framework provided a basis for governments in the region to offer temporary humanitarian protection to Haitian migrants. Countries such as Brazil, Argentina, and Chile established special visa programs and temporary residency policies, granting Haitians legal status and access to basic rights, including employment and social services. Although the *Cartagena Declaration* itself is non-binding, its influence on national and regional policies demonstrated its importance in addressing new and emerging forms of forced displacement, including those

³²⁷*Cartagena Declaration on Refugees*, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena, Colombia, 22 November 1984, Conclusion III(3), available at <https://www.refworld.org/docid/3ae6b36ec.html> accessed 28 June 2025.

driven by environmental disasters. The Haitian case underscored the need for continued legal evolution to ensure that those displaced by climate change and natural disasters receive adequate protection within existing migration and refugee frameworks.³²⁸

The 2018 Global Compact for Safe, Orderly and Regular Migration (GCM) is another non-binding global agreement that aims to address the challenges and opportunities of international migration³²⁹. It was adopted by 164 member states of the United Nations in July 2018, representing a significant step towards global cooperation on migration issues. The 2018 Global Compact covertly addresses climate-induced displacement primarily in its objective 2, which emphasises minimizing the adverse drivers, including environmental factors like climate change, that compel people to leave their countries of origin. While the Compact does not explicitly mention "climate-displaced persons," it acknowledges the role of environmental degradation in migration, urging the integration of climate adaptation and resilience strategies into migration policies. The GCM outlines a framework for international cooperation on migration, focusing on five key areas: ensuring that all migrants are treated with dignity and respect, minimizing the risks of migration, promoting the benefits of migration, facilitating orderly and regular migration, and strengthening international cooperation on migration. It also emphasises the need to address the root causes of migration, such as conflict, poverty, and inequality³³⁰.

A notable strength of the compact in its objective 5 and 7 lies in its emphasis on the necessity for international cooperation to support nations grappling with climate-related displacement.

³²⁸ Rodrigues (Chair) 'South America and the Cartagena Regime: A Comprehensive Approach to Forced Migration Responses' *Forum on the New EU Pact on Migration and Asylum in Light of the UN GCR*.

³²⁹United Nations *Global Compact for Safe, Orderly and Regular Migration* UN Doc A/RES/73/195 (2018) para 18 (Objective 2), available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195 accessed 28 June 2025.

³³⁰Cholewinski R, Minderhoud P, Mantu S & Zwaan K 'The Global Compact for Safe, Orderly and Regular Migration: What Now with Standards' in Minderhoud P *et al* (eds) *Caught in Between Borders: Citizens, Migrants and Humans – Liber Amicorum Elspeth Guild* (2019) 315–325 Wolf Legal Publishers.

The 2018 Global Compact for Safe, Orderly and Regular Migration addresses international cooperation and the use of humanitarian visas in Objective 5 and Objective 7. These objectives specifically provide that:

Objective 5: "Enhance availability and flexibility of pathways for regular migration." This objective encourages states to develop practices such as humanitarian visas, temporary work permits, or other pathways to ensure safe, orderly, and regular migration, especially for individuals displaced by natural disasters and climate-related factors.

Objective 7: "Address and reduce vulnerabilities in migration." It highlights the importance of international cooperation in providing assistance and protection to migrants, particularly those in vulnerable situations, including those displaced by climate change and environmental factors.

These sections emphasise the need for collaborative efforts to manage migration effectively and humanely, particularly in the context of climate-induced displacement. They advocate for the integration of migration considerations into national climate strategies and disaster risk reduction frameworks. Such an integrated approach is essential for developing comprehensive policies that address immediate humanitarian needs while simultaneously fostering long-term resilience among affected populations. However, the non-binding nature of the compact raises critical questions concerning its practical efficacy.

The absence of enforceable commitments allows for considerable variability in the interpretation and implementation of its principles across different states. This discrepancy can lead to national policies that impose barriers to migration, thereby inadequately addressing the unique challenges faced by individuals displaced by environmental crises. Moreover, while the compact encourages the establishment of safe and legal migration pathways, the effectiveness of these mechanisms is contingent upon the political will and administrative capacity at the national level. Many countries may lack the requisite resources or infrastructure to implement

these pathways effectively, resulting in a pronounced gap between the compact’s aspirational objectives and the on-ground realities.

The GCM provides a framework for countries to work together to address the challenges and opportunities of migration in a more comprehensive and coordinated manner. However, the success of the GCM depends on the commitment of states to implement its provisions and to work together to build a more just and equitable world for all³³¹.

This is to show that these promising legal frameworks, were not specifically framed or drafted with climate-displaced persons in mind hence the need to curate solutions through complementary pathways for such vulnerable persons.³³²

4.5. Conclusion

Although climate-displaced persons are not legally recognised and protected under binding international law and policy, there is a crucial need to provide them with complementary pathways to tackle the growing humanitarian crisis.³³³ The existence of climate-displaced persons is an undeniable reality, yet they often lack legal recognition during migration, leaving them vulnerable and unprotected. The number of individuals displaced by climate change is steadily increasing, necessitating urgent attention to their recognition and protection within national and international legal frameworks. The harsh realities of shifting climate patterns, rising sea levels, and environmental degradation have resulted in the displacement of millions across Africa, intensifying health risks, food insecurity, and the loss of livelihoods³³⁴. These

³³¹ Gammeltoft-Hansen T, Guild E, Moreno-Lax P, Panizzon M & Roele I ‘What is a Compact? Migrants’ Rights and State Responsibilities Regarding the Design of the UN Global Compact for Safe, Orderly and Regular Migration’ (2017) available at SSRN: <https://ssrn.com/abstract=305129> (accessed 30 June 2025).

³³² The 1969 OAU Convention governing Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees, extend the definition of a ‘refugee’ to persons fleeing ‘events seriously disturbing public order’, which may equally apply to persons fleeing sudden-onset disasters. However, this position has yet to be fully tested.”

³³³ Ibid

³³⁴ Zickgraf C *Climate Change and Migration: The State of the Evidence* (2018) International Organization for Migration.

factors contribute not only to immediate humanitarian crises but also to long-term socio-economic instability, exacerbating existing vulnerabilities in affected communities.

Despite these profound challenges, there remains a significant gap in legal frameworks and policies specifically designed to address climate displacement and ensure climate justice on the continent.³³⁵ The lack of a clear legal status for climate-displaced persons complicates their ability to seek refuge and access essential services, such as healthcare, education, and employment. Further, the absence of recognition in international law hinders the development of comprehensive policies that could facilitate safe migration and resettlement, leaving many individuals with few options but to undertake perilous journeys in search of safety. Therefore, employing complementary pathways such as humanitarian visas for these individuals is crucial to safeguarding their protection under international humanitarian law.

³³⁵Schwerdtle PN *et al* 'Health and Migration: Addressing the Impact of Climate Change on Population Movement in the Context of Health' (2018) 13(12) *Environmental Research Letters* 123006.

CHAPTER FIVE

Examination of the Normative Frameworks around Climate-Related Disasters and Climate-Displaced Persons in Eastern Africa.

5. Introduction

Despite the evident statistics on the repercussions of climate change in Africa, efforts for international recognition of the phenomenon of ‘climate displaced persons’ have encountered literary and legal obstacles and seemingly a state of denial for protection of these existing vulnerabilities. Disasters and increased risks are a lived reality for many already vulnerable groups who must cope with weak systems, poverty, and the impacts of environmental degradation.³³⁶ This makes it even more challenging to equitably address the needs of displaced persons on a regional and international level.³³⁷

Climate change is a crucial factor and contributor to cross-border migration in Eastern Africa more so when there is prolonged drought, flooding or fire disasters in neighbouring countries, causing person to flee their abode for safer areas.³³⁸ Unfortunately, there are no clear laws and guidelines recognising such persons as refugees. This notwithstanding, there are non-binding regional instruments that have been interpreted as protective of those affected by climate change disasters.³³⁹

To that end, this chapter critically examines existing legal frameworks and instruments in the Eastern Africa region that pertain to climate displaced persons and their rights if any, to migrate, settle and establish in various territories. Most importantly, this chapter builds on the aspects of climate justice in distributing the burdens borne by developing countries and illustrates the dire need for international synergy in addressing the humanitarian crisis caused

³³⁶African Union *Programme of Action for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030 in Africa, in Line with the Africa Regional Strategy for Disaster Risk Reduction* (November 2017) 5–14, available at https://www.unisdr.org/files/49455_poaforsendaiimplementationinafrica.pdf (accessed 4 December 2023).

³³⁷Advisory Group on Climate Change and Human Mobility *Climate Change and Human Mobility Solution Agenda – Resilience* (2015) 2–6, Paris: COP21.

³³⁸Babiker A *et al* ‘Eastern Sudan: Hosting Ethiopia Refugees under Tough Conditions’ (2021) *Sudan Brief* No 2, 1–4, Chr. Michelsen Institute.

³³⁹Brenn L ‘Regional Policies on Human Mobility in the Context of Climate Change, IGAD Region’ (Presentation, 22 February 2022) slides 5–10.

by the impacts of climate change. It calls for a coherent global and regional framework to address the phenomenon of climate displaced persons. Its elucidation sets the pace to concretize practical complementary solutions to an existing vulnerable group continually exposed to the vagaries of climate change.

Aside from the scholarly debates on who fits into the category of refugee and who would be recognised as a climate displaced persons proper, there are international instruments that have lent themselves to the discourse in both overt and covert provisions, through omission and by insinuation. A critical analysis has been undertaken of the following instruments.

- a. United Nations Plan on Disaster Risk Reduction for Resilience
- b. 2015 Sendai Framework for Disaster Risk Reduction (SFDRR)
- c. Decision 22/COP.14 of the United Nations Convention to Combat Desertification (UNCCD)
- d. Human Rights Council Resolution A/HRC/RES/35/20
- e. UN General Assembly Resolution A/RES/74/148
- f. 2010 Cancun Agreement
- g. Nansen agenda
- h. United Nations Framework Convention on Climate Change (UNFCCC)
- i. Paris agreement

The themes of risk reduction and resilience, climate induced-displacement, human rights as an issue in climate induced displacement, and protecting the climate induced displaced have been identified after studying the above-mentioned instruments. The purpose of the analysis is to establish whether these instruments can meaningfully protect those who were forced to cross a border because of climate disasters.

5.1. Integrating Climate-Displaced Persons into the resilience agenda

Incorporating climate-displaced persons into the United Nations Plan on Disaster Risk Reduction for Resilience (UNPDRRR) is paramount, particularly considering the escalating impacts of climate change on migration and displacement.³⁴⁰ Based on the 2015 Sendai Framework for Disaster Risk Reduction (SFDRR), it aims to reduce disaster risks by addressing their root causes and enhancing the preparedness of vulnerable populations.³⁴¹

The Sendai Framework for Disaster Risk Reduction (SFDRR) acknowledges that disasters especially those exacerbated by climate change can displace individuals, resulting in complex humanitarian challenges beyond immediate response efforts and requiring a comprehensive understanding of the dynamics involved. An analytical examination of this issue necessitates a multifaceted approach that considers the specific vulnerabilities of climate-displaced populations.

To effectively address these vulnerabilities, it is crucial to assess various factors, including socioeconomic status, geographic location, cultural context, and pre-existing inequalities. For instance, marginalized communities often face heightened risks during climate-related disasters, which can lead to forced migration.³⁴² The Sendai Framework highlights the necessity of incorporating such vulnerabilities into disaster risk reduction (DRR) strategies, ensuring that the unique needs of climate-displaced persons are explicitly recognised and addressed throughout both the prevention and response phases of disaster management. This can include targeted interventions that provide immediate relief and promote long-term resilience. It emphasizes a proactive approach that integrates disaster risk reduction into

³⁴⁰ Ionesco, D., Mokhnacheva, D., & Gemenne, F. (2017). "The Atlas of Environmental Migration." Routledge.

³⁴¹ United Nations *Sendai Framework for Disaster Risk Reduction 2015–2030* (2015) paras 4 and 32–33, available at https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf (accessed 28 June 2025).

³⁴² McAdam, J. (2016). "Climate Change, Forced Migration, and International Law." Oxford University Press.

sustainable development strategies, ensuring that countries are better placed to handle both natural and human-induced hazards³⁴³.

Emphatically, the framework addresses the *complexities of human migration* caused by climate-induced disasters.³⁴⁴ It provides that states should put into consideration the relocation and settlement of human migration in disaster management and response.³⁴⁵ It encourages states to coordinate disaster management efforts with migrants in host communities.³⁴⁶ It also recognises that migrants have useful skills that can enhance the resilience and livelihoods of host communities.³⁴⁷ It, however, does not specify the origin of these migrants as emanating from climate-induced disasters or other circumstances related to climate change.

The UNPDRRR highlights the importance of international cooperation and partnerships in disaster risk reduction³⁴⁸. Since disasters frequently cannot be contained within borders, coordinated international action is needed³⁴⁹. The plan works to foster cooperation between countries to share resources, knowledge, and best practices in disaster risk reduction³⁵⁰. Through international frameworks, capacity-building initiatives, and financial support, the plan ensures that developing countries and those most at risk are better equipped to mitigate, prepare for, and recover from disasters. Building resilience at all levels and lessening the overall impact of disasters on humanity depend on this global cooperation. The plan is people-centered, inclusive, and forward-looking. It recognises displacement as a critical consequence of

³⁴³ Haraguchi, M., & Lall, U. (2019). Concepts, frameworks, and policy tools for disaster risk management: linking with climate change and sustainable development. *Sustainable Development in Africa: Concepts and Methodological Approaches*, Spears Media Press, Denver, 57-84.

³⁴⁴ Guadagno L 'Human Mobility in the Sendai Framework for Disaster Risk Reduction' (2016) 7 *International Journal of Disaster Risk Science* 30–40 <https://doi.org/10.1007/s13753-016-0077-6>

³⁴⁵ UNISDR *Sendai Framework for Disaster Risk Reduction 2015–2030* (2015a) at 10, 18, and 23.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ Peters K & Tanner T *Resilience Across the Post-2015 Frameworks: How to Create Greater Coherence* (2022) Overseas Development Institute at 4–12.

³⁴⁹ Yamori K & Goltz JD 'Disasters Without Borders: The Coronavirus Pandemic, Global Climate Change and the Ascendancy of Gradual Onset Disasters' (2021) 18(6) *International Journal of Environmental Research and Public Health* 3299.

³⁵⁰ Seddiky MA, Giggins H & Gajendran T 'International Principles of Disaster Risk Reduction Informing NGOs Strategies for Community-Based DRR Mainstreaming: The Bangladesh Context' (2020) 48 *International Journal of Disaster Risk Reduction* 101580.

disasters and climate change, and implicitly encourages states to adopt mechanisms that protect and assist climate-displaced persons although it stops short of offering binding legal protections.

5.2. Climate change disasters as a catalyst for climate-induced displacement

Climate-induced displacement often leads to complex humanitarian challenges, including loss of infrastructure, resources, and cultural identity, as well as legal complications regarding refugee status and resettlement. Climate-induced displacement, resulting from the escalating impacts of climate change, including rising sea levels, extreme weather events, and environmental degradation, presents significant global humanitarian and governance challenges.³⁵¹ As communities are increasingly forced to relocate due to environmental threats, such displacement exacerbates vulnerabilities by leading to the loss of infrastructure, livelihoods, and cultural heritage, while also raising complex legal issues surrounding refugee status and international protections.³⁵² Deliberate steps such as Decision 22/COP.14 of the United Nations Convention to Combat Desertification (UNCCD) address critical issues related to climate-induced displacement, emphasizing the need for coordinated responses to the challenges posed by land degradation and desertification.³⁵³ This decision recognises that environmental factors, particularly those exacerbated by climate change, can lead to the forced migration of vulnerable populations.

By focusing on the intersection of land management, sustainable development, and human rights, the decision lays the groundwork for a comprehensive approach to addressing climate-

³⁵¹Ferris E & Weerasinghe S 'Protection and Planned Relocations in the Context of Climate Change' (2020) *Forced Migration Review* 64: 17–19.

³⁵²Gemenne F 'Climate-Induced Population Displacements in a 4°C+ World' (2011) 369(1934) *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* 182–195.

³⁵³United Nations Convention to Combat Desertification, Decision 22/COP.14: *Addressing Desertification, Land Degradation and Drought as Drivers for Migration* (2019) paras 1–2, 5–6, available at <https://www.unccd.int/official-documents/cop-14-decision-22> (accessed 28 June 2025).

induced displacement.³⁵⁴ It emphasises the importance of sustainable land management practices in enhancing resilience to climate change, reducing poverty, and improving food security. By promoting land restoration and sustainable agriculture, the decision aims to create more stable and resilient communities, thereby reducing the need for people to migrate due to environmental challenges. Further, it calls for increased international cooperation and knowledge sharing to address the challenges posed by desertification and climate induced migration. It encourages countries to work together to develop and implement effective policies that promote sustainable land use and reduce the vulnerability of communities to climate change.³⁵⁵ Climate-induced displacement is a global challenge that transcends national borders, necessitating collaborative efforts to develop effective responses. By sharing best practices and lessons learned, countries can enhance their capacity to address the complexities of displacement and leverage resources more effectively.

The escalating impacts of climate change have precipitated an urgent need to understand and address climate-induced displacement as a significant humanitarian concern. Individuals and communities are increasingly compelled to migrate due to environmental degradation, extreme weather events, and the resulting socio-economic destabilization. Although it is non-binding, the UNCCD underscores the need for coordinated, rights-based responses to the realities of climate-induced displacement, especially in regions heavily affected by environmental stressors.

5.3. The human rights lens in the context of climate induced disasters

Soft laws such as the Human Rights Council Resolution have been enacted to address the critical intersection of human rights and climate change, particularly the implications for

³⁵⁴Rosendahl J, Erlewein A & Hecheltjen A 'UNCCD COP 14: Mirroring Soil and Land's Growing Relevance at the Interface of Climate and Biodiversity; Discussion Focus on Drought and Land Tenure' in H Bürgi & K J Joy (eds) *International Yearbook of Soil Law and Policy 2020/2021* (2022) 211–224 Cham: Springer International Publishing.

³⁵⁵ Ibid

populations facing climate-induced displacement.³⁵⁶ This resolution frames climate change as a pressing human rights issue, underscoring the profound risks it poses to vulnerable communities. An analytical examination of the resolution reveals its multifaceted approach to understanding and addressing the challenges of displacement in the context of climate change.³⁵⁷ A key tenet of the resolution is the recognition of state responsibility in mitigating the impacts of climate change on human rights.

The resolution asserts that governments must adopt proactive policies that not only address climate change but also protect the rights of individuals at risk of displacement. This obligation includes ensuring access to essential services such as housing, healthcare, and livelihoods, which are critical for maintaining dignity and agency among displaced populations.³⁵⁸ An analytical lens reveals that failure to uphold these responsibilities can exacerbate vulnerabilities, leading to further marginalization of affected groups.³⁵⁹ It highlights that climate change poses a threat to the actualization of a wide range of human rights, including the rights to life, health, food, water, housing, and adequate standard of living³⁶⁰. Another resolution³⁶¹ that calls upon countries to take immediate action to adapt to climate change while fully respecting human rights³⁶². It highlights the importance of adopting climate-resilient

³⁵⁶United Nations Human Rights Council *Resolution 35/20: Human Rights and Climate Change* A/HRC/RES/35/20 (2017) paras 5, 7–8, available at <https://undocs.org/A/HRC/RES/35/20> (accessed 28 June 2025).

³⁵⁷Boyd DR *The Right to a Healthy Environment: Revitalizing Human Rights and Safeguarding the Planet* (UN Special Rapporteur on Human Rights and the Environment, 2018); United Nations General Assembly *Resolution 76/300: The Human Right to a Clean, Healthy and Sustainable Environment* A/RES/76/300 (2022) paras 1–3, available at <https://undocs.org/A/RES/76/300> (accessed 28 June 2025).

³⁵⁸Limon M ‘Human Rights and Climate Change: Constructing a Case for Political Action’ (2009) 33 *Harvard Environmental Law Review* 439–476.

³⁵⁹*Ibid* n165.

³⁶⁰Lewis B ‘The Potential of International Rights-Based Climate Litigation to Advance Human Rights Law and Climate Justice’ (2021) 9(1) *Griffith Journal of Law & Human Dignity*.

³⁶¹United Nations Human Rights Council *Resolution 47/24: Human Rights and Climate Change* A/HRC/RES/47/24 (2021) paras 6–9, available at <https://undocs.org/A/HRC/RES/47/24> (accessed 28 June 2025).

³⁶²Ogunniyi D ‘Climate Change and the Modern Slavery Conundrum in Africa: Reimagining the Relevance of Human Rights Law’ (2024) 24(1) *Human Rights Law Review*.

policies and measures that protect the rights of vulnerable groups³⁶³. It also underscores the need for international cooperation and solidarity in addressing the global challenges of climate change and its human rights implications³⁶⁴. The resolution emphasises the importance of integrating a human rights-based approach into climate change adaptation and disaster risk reduction strategies. This approach is analytical, calling for the participation of affected communities in decision-making processes. By prioritising the voices of those directly impacted by climate-induced displacement, the resolution highlights the necessity of context-specific solutions that resonate with local realities. This encourages the development of national human rights action plans on climate change which ensure that human rights are integrated into all climate-related policies and measures³⁶⁵. Further, recognising that climate change transcends national boundaries, the resolution underscores the need for collaborative efforts among states, international organisations, and civil society. A critical exploration of this cooperation reveals the potential for shared resources and knowledge to strengthen resilience-building initiatives.

The resolution represents an important acknowledgment of the human rights dimensions of climate change and provides a framework for countries and other actors to take action to protect rights in the face of intensifying climate crisis. It addresses the intersectionality of climate-induced displacement and human rights, addressing issues such as gender, age, and socio-economic status. An analytical approach to this intersectionality reveals that certain groups are disproportionately affected by climate change, necessitating tailored responses that account for these disparities. For instance, women and children often bear the brunt of displacement, facing

³⁶³Mayrhofer M ‘Framing UN Human Rights Discourses on Climate Change: The Concept of Vulnerability and its Relation to the Concepts of Inequality and Discrimination’ (2024) 37(1) *International Journal for the Semiotics of Law* 91–117.

³⁶⁴Heinämäki L ‘Human Rights and the Environment’ (2017) 28 *Yearbook of International Environmental Law* 97–103.

³⁶⁵Vliet JMM *The International Legal Protection of Environmental Refugees: A Human Rights-Based, Security and State Responsibility Approach* (Eleven International Publishing 2020).

heightened risks of violence and exploitation. Thus, the resolution's emphasis on inclusive and equitable responses is not only just but essential for fostering resilience among the most vulnerable populations.

Within this complex landscape, another soft law UN General Assembly Resolution³⁶⁶ serves as a critical framework that articulates the protection of migrants' rights amid these challenges. This resolution is noteworthy not only for its recognition of the diverse drivers of migration including climate-related factors but also for its emphasis on the inherent vulnerabilities of displaced populations. It fundamentally redefines the discourse surrounding migration by situating climate change at its core. The resolution champions enhanced international cooperation, highlighting the transnational nature of climate-induced displacement. This cooperative framework is essential for developing comprehensive, cohesive responses to the multifaceted challenges posed by climate change. However, a critical analysis of this aspect raises questions about the political feasibility of such cooperation, particularly in an era marked by rising nationalism and divergent state interests.³⁶⁷ This UNGA resolution underscores the importance of integrating migration policies with climate adaptation and disaster risk reduction strategies. This integration is crucial for addressing the root causes of displacement and ensuring that the needs of climate-displaced populations are met effectively.³⁶⁸ Analysing this aspect reveals the necessity for interdisciplinary collaboration among environmental, humanitarian, and development actors to create synergistic policies that enhance resilience and facilitate safe migration pathways. This resolution crucially addresses the intersectionality of migration and human rights, advocating for protections that consider gender, age, and socio-

³⁶⁶ UN General Assembly *Global Compact for Safe, Orderly and Regular Migration* A/RES/73/195 (2018) Preamble para 18 (Objective 2), available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195 (accessed 28 June 2025).

³⁶⁷ Warner K 'Global Environmental Change and Migration: Governance Challenges' (2010) 20(3) *Global Environmental Change* 402–413.

³⁶⁸ IOM *Migration, Environment and Climate Change: Assessing the Evidence* (2014) International Organization for Migration.

economic factors. This focus on intersectionality is vital, as it reveals how climate-induced displacement disproportionately impacts marginalized groups. These dynamics emphasises the need for a rights-based approach that empowers the most vulnerable, ensuring that their specific needs are prioritised in policy frameworks.

The UNGA Resolution alongside other similar resolutions³⁶⁹ provides a critical analytical lens through which to understand the intersection of climate change and migration. By highlighting the vulnerabilities of climate-displaced populations, promoting international cooperation, and advocating for integrated policy responses, the resolution establishes a comprehensive framework for protecting rights. As the challenges of climate-induced displacement continue to evolve, this resolution underscores the necessity of centring human rights in global migration policies, ensuring that the dignity and agency of all individuals are upheld in the face of environmental upheaval. This Resolution is a significant document that addresses the complex issue of migration. The resolution reaffirms the fundamental human rights of all migrants, regardless of their status, and calls for countries to adopt comprehensive measures to protect and promote these rights. It also emphasises the importance of international cooperation in managing migration flows and addressing the root causes³⁷⁰ that force people to leave their homes³⁷⁰.

The resolution recognises that migration is a global phenomenon with implications for individuals, societies, and economies³⁷¹. It highlights the need for a human rights-centered approach to migration that respects the dignity and worth of all people, regardless of their origin, nationality, or legal status³⁷². The resolution also acknowledges the challenges faced by

³⁶⁹UN General Assembly *The Human Right to a Clean, Healthy and Sustainable Environment* A/RES/76/300 (2022) paras 1–3, available at <https://undocs.org/A/RES/76/300> (accessed 28 June 2025).

³⁷⁰D’Orsi C ‘Migrant Smuggling in Africa: Challenges Yet to Be Overcome’ (2021) 13(4) *African Journal of Legal Studies* 471–500.

³⁷¹Nirmal BC & Nirmal A ‘Human Rights in the Global Compact for Migration: Some Reflections’ in B Nirmal & A Nirmal (eds) *The Paradox of Planetary Human Entanglements* (2022) 51–69 Routledge.

³⁷²Brittle R ‘A Rights-Based Policy Approach to Realising Education Rights in the Context of International Migration’ in C Baillie Smith & A Geddes (eds) *Research Handbook on Migration and Education* (2023) 449–464 Edward Elgar Publishing.

migrants, including discrimination, exploitation, and violence, and calls for nations to take action to address these abuses.³⁷³ The resolution serves as a reminder that migration is a complex issue with no easy solutions, but that by working together, we can find ways to manage it in a way that respects the rights and dignity of all people.³⁷⁴ It is an important tool for promoting the human rights of migrants.³⁷⁵

5.4. Navigating the protection of persons displaced by climate change disasters

The increasing frequency and intensity of climate-related disasters are reshaping the landscape of human displacement, raising urgent questions about how to effectively protect those who are forced to migrate across borders.³⁷⁶ As environmental conditions deteriorate, millions find themselves uprooted, seeking safety and stability in unfamiliar territories. International agreements such as the 2010 Cancun Agreement, established during the UN Climate Change Conference, represents a pivotal milestone in the global effort to address these interrelated challenges.³⁷⁷

By explicitly recognising the links between climate change and human mobility, the agreement offers a comprehensive framework for nations to formulate strategies aimed at mitigating displacement and safeguarding vulnerable populations. The Cancun Agreement's³⁷⁸ key components elucidate its role in promoting adaptation measures, facilitating financial support, and fostering international cooperation, all of which are critical for effectively addressing the complexities surrounding climate-induced displacement in an increasingly uncertain future.

³⁷³Garlick M & Inder C 'Protection of Refugees and Migrants in the Era of the Global Compacts: Ensuring Support and Avoiding Gaps' (2021) 23(2) *Interventions* 207–226.

³⁷⁴Gudadze A 'Ameliorating the Protection of the Human Rights of Refugees and Asylum Seekers—What Is In Place Within the UN System and What Should Be Improved?' (2022)

³⁷⁵Guild E & Weiland R 'The UN Global Compact for Safe, Orderly and Regular Migration: What Does it Mean in International Law?' (2020) *Global Community: Yearbook of International Law and Jurisprudence*.

³⁷⁶Fry I *Providing Legal Options to Protect the Human Rights of Persons Displaced Across International Borders Due to Climate Change* A/HRC/53/34, UN Human Rights Council, 18 April 2023, available at <https://www.refworld.org/reference/themreport/unhrc/2023/en/124268> (accessed 15 October 2024).

³⁷⁷Liu J 'The Cancun Agreements' (2011) 13(1) *Environmental Law Review* 43–49.

³⁷⁸UNFCCC *The Cancun Agreements – Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action* Decision 1/CP.16 FCCC/CP/2010/7/Add.1 (2010) para 14(f), available at <https://unfccc.int/documents/6527> (accessed 28 June 2025).

Although it did not establish legally binding commitments, it laid the groundwork for crucial climate actions and mechanisms that continue to shape the global climate policy agenda³⁷⁹.

On the other hand, the Nansen Agenda serves as a pivotal framework for addressing the complexities of cross-border displacement linked to climate change and disasters. By fostering a comprehensive approach that combines national and regional policy development, international cooperation, and the prioritisation of displaced individuals' rights, the Nansen Agenda not only seeks to mitigate the immediate impacts of displacement but also to enhance the resilience of vulnerable communities facing environmental threats. This exploration emphasises the critical intersection of climate change and human displacement, highlighting the necessity for robust frameworks that protect displaced persons while promoting adaptive strategies to withstand future challenges.

The Nansen Agenda is a critical international initiative that addresses the growing challenge of displacement due to climate-related disasters.³⁸⁰ It was developed as a non-binding framework aimed at filling gaps in the protection of individuals displaced across borders due to natural disasters and the impacts of climate change³⁸¹. The agenda recognises that while climate change is a global problem, its effects are often felt most acutely by vulnerable populations, particularly those in developing regions, and calls for cooperative international efforts to address the displacement crisis³⁸². Further, it emphasises that climate change and environmental

³⁷⁹Andresen S & Boasson EL *International Climate Cooperation: Clear Recommendations, Weak Commitments in International Environmental Agreements* (2012) 49–65 at 49–65.

³⁸⁰Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC) *The Nansen Conference: Climate Change and Displacement in the 21st Century* (7 June 2011) available at <https://www.refworld.org/reference/confdoc/idmc/2011/en/97308> (accessed 8 September 2024) at 1–24.

³⁸¹Nansen Initiative *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (2015) Parts I–II available at <https://disasterdisplacement.org/the-platform/the-nansen-agenda> (accessed 28 June 2025) at 1–34; Schloss C 'Cross-Border Displacement Due to Environmental Disaster: A Proposal for UN Guiding Principles to Fill the Legal Protection Gap' in Behrman S & Kent A (eds) *Climate Refugees* (2018) 243–264 at 243–264.

³⁸²Goodwin-Gill GS & McAdam J *UNHCR and Climate Change, Disasters and Displacement* (2017) United Nations High Commissioner for Refugees, Geneva at 1–20.

degradation are increasingly becoming triggers for cross-border displacement³⁸³. Extreme weather events such as hurricanes, floods, droughts, and rising sea levels are causing people to leave their homes in search of safety. The Nansen Agenda highlights the unique vulnerabilities of those displaced by disasters, including their lack of legal status, limited access to essential services, and increased risks of exploitation and discrimination and calls for more comprehensive legal frameworks to protect these individuals³⁸⁴.

One of its key recognitions is the protection gaps in existing international law. While the 1951 Refugee Convention and its 1967 Protocol provide protection to individuals fleeing persecution, they do not extend to those displaced by natural disasters or climate change³⁸⁵.

The Nansen Agenda is the only non-binding initiative that seeks to bridge this gap by proposing innovative legal and policy measures to ensure that displaced individuals can access protection, even if they do not fit the traditional definition of refugees³⁸⁶. They include temporary protection status, humanitarian visas, and safe migration pathways, as well as bilateral and regional agreements between states to manage displacement in a cooperative manner.³⁸⁷

Another important focus of the Nansen Agenda is disaster risk reduction and climate adaptation. Recognising that prevention is key to reducing displacement, the agenda calls for stronger efforts to address the root causes of climate-induced displacement³⁸⁸. This involves enhancing resilience in at-risk communities, investing in infrastructure that can withstand extreme weather events, and promoting sustainable development practices that reduce

³⁸³Kälin W 'Disaster Displaced Persons in the Age of Climate Change: The Nansen Initiative's Protection Agenda' in Eckenwiler L & Hunt M (eds) *Routledge Handbook of Human Rights and Disasters* (2018) 346–363.

³⁸⁴Okeowo AO *The Nansen Initiative and the Development of an International Protection Norm for Cross-Border Disaster-Displaced Persons* (PhD thesis, University of British Columbia, 2018) at 1–275.

³⁸⁵Schloss C 'Cross-Border Displacement Due to Environmental Disaster: A Proposal for UN Guiding Principles to Fill the Legal Protection Gap' in Behrman S & Kent A (eds) *Climate Refugees* (2018) 243–264.

³⁸⁶McDonnell N 'Falling Through the Protection Gaps: Inappropriate Protection of Climate Displaced Persons in the International Refugee Legal Structure' (2024) 10(1) *Transnational Human Rights Review* 1–27.

³⁸⁷UN Office of the High Commissioner for Human Rights (OHCHR) 'Climate Change Adaptation: A Human Rights Based Framework for Internal Displacement Necessary' (21 July 2011) available at <https://www.refworld.org/policy/statements/ohchr/2011/en/80480> (accessed 8 September 2024) at 1–4.

³⁸⁸ Kälin W 'Disaster Displaced Persons in the Age of Climate Change: The Nansen Initiative's Protection Agenda' in Eckenwiler L & Hunt M (eds) *Routledge Handbook of Human Rights and Disasters* (2018) 346–363.

vulnerability. The agenda also emphasises the need for robust early warning systems and disaster preparedness measures to mitigate the impact of disasters and minimize displacement³⁸⁹. This is because of the escalating urgency climate change manifests in having profound implications for human displacement, compelling millions to migrate in response to extreme weather events, rising sea levels, and other climate-related phenomena.³⁹⁰

Similarly, the United Nations Framework Convention on Climate Change (UNFCCC) plays a pivotal role in addressing the issue of climate-displaced persons i.e. individuals forced to flee their homes due to environmental degradation, climate change, and extreme weather events.³⁹¹

The UNFCCC acknowledges that climate change disproportionately affects vulnerable populations, including those living in areas most susceptible to environmental impacts. The body has established mechanisms to address loss and damage associated with climate impacts, providing crucial support for affected populations and ensuring their rights are upheld. By fostering international cooperation and promoting dialogue on climate change and displacement, the UNFCCC encourages countries to collaborate on policies that address the needs of climate displaced persons. Although the UNFCCC does not explicitly categorize climate displaced persons within its legal framework, its emphasis on adaptation, loss and damage, and international cooperation lays a foundation for addressing their needs, ensuring their voices are heard in the broader discourse on climate action and human rights.

Recognising the growing humanitarian crisis caused by climate change-induced displacement, the UNFCCC established the Taskforce on Displacement in 2018³⁹². The UNFCCC Taskforce

³⁸⁹ Thalheimer L, Simperingham E & Jjemba EW ‘The role of anticipatory humanitarian action to reduce disaster displacement’ (2022) 17 *Environmental Research Letters* 014043 at 1–10.

³⁹⁰ Warner K ‘Human migration and displacement in the context of adaptation to climate change: the Cancun Adaptation Framework and potential for future action’ (2012) 30 *Environment and Planning C: Government and Policy* 1061–1077 at 1065–1072.

³⁹¹ United Nations Framework Convention on Climate Change *Decision 2/CP.19: Warsaw International Mechanism for Loss and Damage* FCCC/CP/2013/10/Add.1 (2013) paras 1–7, available at <https://unfccc.int/documents/8107> (accessed 28 June 2025).

³⁹² Vanhala L & Calliari E ‘Governing people on the move in a warming world: Framing climate change migration and the UNFCCC Task Force on Displacement’ (2022) 76 *Global Environmental Change* 102578 at 3–9.

on Displacement was established to identify and assess the impacts of climate change on displacement, including slow-onset events like sea-level rise and drought.³⁹³ The taskforce aimed to promote awareness of the displacement challenges associated with climate change and the urgent need for action to address these issues³⁹⁴. The Taskforce's recommendations, adopted at COP24 in Katowice, Poland, included strengthening early warning systems to anticipate and respond to displacement risks, promoting climate-resilient development to reduce the need for displacement, enhancing international cooperation to address the needs of climate-displaced people, and recognising the specific vulnerabilities of certain groups, such as women, children, and indigenous peoples, are essential steps in mitigating the impacts of climate change on displacement³⁹⁵. The Paris Agreement and the UNFCCC, together with the work of the Taskforce on Displacement, provide a critical framework for addressing the global challenge of climate change and its human consequences.³⁹⁶

A critical dimension of the Paris Agreement pertains to its implications for climate displaced persons individuals compelled to migrate due to climate-related factors such as extreme weather events, rising sea levels, and environmental degradation.³⁹⁷ The Paris Agreement explicitly acknowledges the necessity of considering the social dimensions of climate change, including its impact on migration and displacement, thereby addressing the growing phenomenon of climate-induced displacement. It advocates for enhanced support for adaptation efforts, particularly in vulnerable communities, emphasising the importance of building resilience to mitigate the risk of displacement and to assist those already affected.

³⁹³UNFCCC *Report of the Task Force on Displacement under the Warsaw International Mechanism for Loss and Damage* (2018) available at <https://unfccc.int/documents/231468> (accessed 28 June 2025).

³⁹⁴Odeyemi C 'UNFCCC's posture on displacement riskification: Conceptual suggestions' (2021) 10 *Progress in Disaster Science* 100164 at 2–6.

³⁹⁵Nash SL 'From Paris to Katowice: Moving from Agenda Setting to Recommendations' in S L Nash (ed) *Negotiating Migration in the Context of Climate Change* (Bristol University Press, 2019) 85–108.

³⁹⁶Barnett J & Webber M 'Accommodating migration to promote adaptation to climate change' (2010) 13(8) *Environmental Science & Policy* 139–148 at 142–147.

³⁹⁷United Nations Framework Convention on Climate Change *Paris Agreement* (2015) Art 8(4)(f), available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf (accessed 28 June 2025).

Further, the Paris Agreement incorporates provisions for loss and damage, recognising that certain climate change impacts are unavoidable and necessitating support for affected communities, including those experiencing displacement.³⁹⁸ By fostering international cooperation, the Agreement encourages collaborative efforts among nations to confront climate change and its associated challenges, ensuring that the rights and needs of climate displaced persons are integrated into national climate policies through Nationally Determined Contributions (NDCs). The Paris Agreement represents a significant advancement in the academic and policy discourse surrounding climate change and human mobility, providing a comprehensive framework for supporting climate displaced persons and recognising their rights in the face of escalating climate impacts. By strengthening international cooperation, promoting climate-resilient development, and supporting vulnerable communities, states can work towards a more sustainable and equitable future for all.

The above global frameworks examined have addressed the international communities' steps to addressing the devastating impacts of climate change including increased human mobility. The manifestly evident gap is the lack of concretized binding provisions for the protection of climate displaced persons internationally. The best has been propositions in soft law documents such as the Nansen Initiative and deductive interpretation of legal provisions which, though progressive, do not legitimately accord such persons the critical recognition and protection in the face of growing climate-induced disasters.

The next section of this work now explores regional frameworks as potential instruments (or not) in catering to climate-displaced persons.

5.5. An analysis of the regional frameworks on climate displaced persons

Climate change and related disasters have increasingly led to the displacement of people across Africa, posing significant challenges to human mobility and the protection of displaced

³⁹⁸Gemenne F 'Climate Change and Forced Migration: The Role of the Paris Agreement' (2011) 3(3) International Journal of Global Warming 345–356.

individuals. Regional frameworks in Africa play a crucial role in addressing these issues by establishing policies, legal instruments, and collaborative initiatives to mitigate the impacts of climate-induced displacement. This section explores the existing regional frameworks in Africa and Eastern Africa that address climate-displaced persons and disaster-induced mobility. It evaluates their relevance to the rights and protections of affected individuals, highlighting key mechanisms designed to safeguard their dignity, safety, and livelihoods. To do this, this chapter makes an analysis along the themes of human mobility, protection of the displaced beyond borders from the instruments listed below:

- b. The African Union (AU) Climate Change and Resilient Development Strategy and Action Plan 2022-2032
- c. Kampala Ministerial Declaration of 2022 on Migration, Environment and Climate Change Declaration
- d. IGAD Regional Migration Policy Framework
- e. IGAD Free Movement Protocol
- f. IGAD Regional Climate Change Adaptation Strategy 2023-2030

The integration of climate displacement is an increasingly critical aspect in the context of global climate change, particularly in regions such as Eastern Africa that are disproportionately affected by its impacts.³⁹⁹ As climate change results in more frequent and severe environmental disruptions such as droughts, floods, and rising sea levels communities face significant threats to their livelihoods and security, often leading to forced migration.⁴⁰⁰ This integration necessitates the development of comprehensive strategies that not only address the immediate

³⁹⁹Warner K, Afifi T & St Clair AL ‘The impact of climate change on human migration’ (2013) 23(2) Global Environmental Change 456–468.

⁴⁰⁰Meles FM ‘The impacts of climate change on migration and displacement in East Africa’ (2019) 49(4) Environmental Policy and Law 253–262.

challenges associated with displacement but also enhance the long-term resilience of vulnerable populations.

To effectively mitigate displacement, it is essential to understand the underlying factors that exacerbate vulnerabilities, including socio-economic conditions, governance structures, and environmental degradation. By fostering adaptive capacity through sustainable development practices, communities can better withstand climate shocks, thereby reducing the likelihood of migration driven by environmental factors.⁴⁰¹ Further, collaborative approaches among governments, local organisations, and international partners are vital to ensure that policies are inclusive and responsive to the specific needs of displaced persons. The emphasis on integrating climate resilience and displacement mitigation highlights the importance of robust data collection, empirical research, and community engagement in formulating effective interventions. It necessitates innovative solutions that align climate action with broader development objectives, ensuring that the rights and needs of displaced populations are prioritised.⁴⁰² Understanding some of the policy complexities of climate-induced migration is essential for formulating effective strategies that protect the rights of displaced persons and foster sustainable development in a rapidly changing climate in Africa.

5.5.1. Examining climate induced displacements within the AU strategy on climate action

Adopted by the Africa Union, the African Union (AU) Climate Change and Resilient Development Strategy and Action Plan 2022-2032 entails an ambitious framework. It is aimed at addressing the multifaceted challenges posed by climate change across the continent,⁴⁰³ with

⁴⁰¹Mughogho J & Ngwira A ‘Climate change, displacement, and migration: A review of policy responses in Africa’ (2015) 9(7) *African Journal of Environmental Science and Technology* 566–575.

⁴⁰²Scheffran J, Marmar E & Sow P ‘Climate change, vulnerability and adaptation in developing countries’ in Scheffran J et al (eds) *Climate Change, Human Security and Violent Conflict* (2012) Springer.

⁴⁰³ African Union *Climate Change and Resilient Development Strategy and Action Plan (2022–2032)* (2022) Strategic Action Area 3, Priority Action 3.5 available at <https://au.int/en/documents/20220718/climate-change-and-resilient-development-strategy-and-action-plan-2022-2032> (accessed 28 June 2025)

particular attention to climate-displaced persons individuals and communities forced to migrate due to climate impacts such as extreme weather events, droughts, and rising sea levels.⁴⁰⁴

The strategy explicitly acknowledges the growing phenomenon of climate-induced displacement within Africa, emphasising the need to address the vulnerabilities of affected populations. A core objective is to enhance the resilience of communities to climate change impacts by implementing adaptive measures that reduce the risk of displacement and support individuals in coping with environmental changes. The AU strategy advocates for integrated approaches that combine climate action with development goals, aligning resilience efforts with broader socio-economic initiatives to tackle the root causes of vulnerability contributing to displacement. This strategy is aimed at enhancing the resilience of communities in Africa and increasing the adaptive capacity of persons vulnerable to the impacts of climate change.⁴⁰⁵

This strategy framework for addressing climate change in Africa is built on nine principles summarised hereinafter and which prioritise sustainability, equity, and resilience, while addressing the challenges faced by climate-displaced persons. Firstly, and central to this approach is a people-centred principle, ensuring that individuals, especially those displaced, are key participants and beneficiaries of low-carbon transitions. The principle of common but differentiated responsibilities recognises Africa's unique vulnerabilities and the disproportionate burden of climate impacts, including displacement.⁴⁰⁶ Conserving ecosystems focuses on biodiversity preservation to prevent further displacement and support affected communities. Further, aligning national policies with Agenda 2063 and global goals ensures cohesive climate strategies that address displacement. The principle of intersectionality

⁴⁰⁴ Brown O & Crawford A 'Climate change and forced migration: The case of sub-Saharan Africa' in Pelling M (ed) *Climate Change and Human Security* (2009) Cambridge University Press 103–121.

⁴⁰⁵Tango G 'The role of regional cooperation in managing climate-induced migration in Africa' (2018) 12(6) *African Journal of Environmental Science and Technology* 199–210.

⁴⁰⁶UNHCR *UNHCR's Position on Climate Change and Displacement* (2018) 1–8 United Nations High Commissioner for Refugees.

highlights the compounded vulnerabilities faced by displaced persons due to socio-economic factors, while evidence-based practices draw on indigenous knowledge and local expertise to inform policies. African-led solutions emphasise the importance of locally driven strategies and funding mechanisms tailored to African contexts while a whole-of-economy approach integrates multisectoral collaboration to support climate resilience, particularly for displaced populations. Finally, the principle of a just transition ensures that vulnerable groups, including climate-displaced persons, are not marginalised but instead empowered to strengthen their adaptive capacities. This framework offers a comprehensive, inclusive, and equitable strategy for addressing climate change and displacement in Africa.⁴⁰⁷

The strategy emphasises the importance of collaboration among African states, regional organisations, and international partners to develop comprehensive responses to climate displacement. This includes facilitating the sharing of best practices and resources to support affected populations.⁴⁰⁸ It provides a vital framework for addressing the challenges faced by climate-displaced persons in Africa, seeking to create a holistic approach that enhances resilience and supports vulnerable populations in the face of escalating climate impacts. It also recognises that for some vulnerable groups, migration is a form of adaptation both internal and cross border and that this could increase in the coming decade. This calls for a collaborative approach to tackling the challenge of growing human mobility and the ensuing humanitarian crisis that is often caused by climate-induced disasters.

Further, adopting a development approach can significantly enhance the legal protection of climate-displaced individuals by providing them with secure legal status and facilitating the

⁴⁰⁷Chinweze C & Abara CJ ‘Climate change adaptation and mitigation strategies in Africa: From rhetoric to action’ (2019) 13(8) African Journal of Environmental Science and Technology 311–319

⁴⁰⁸Anyadike O ‘Africa's new climate strategy: A pathway to resilient development?’ (2022) 24(2) Journal of African Development 95–108

issuance of humanitarian visas, thereby addressing the protection of persons beyond borders.⁴⁰⁹ This approach emphasises the integration of displaced persons into host communities through the establishment of legal frameworks that recognise climate displacement as a legitimate ground for protection. By offering pathways for regularization and legal status, such as temporary or permanent residency, this approach ensures that displaced individuals have access to essential rights and services, thereby reducing their vulnerability. More specifically, the inclusion of humanitarian visas within this framework offers a structured mechanism for safe and legal migration, specifically tailored to the needs of those displaced by environmental factors. By addressing cross-border displacement, the development approach fosters international cooperation and shared responsibility, ensuring that the rights of climate-displaced persons are upheld regardless of their location.⁴¹⁰ This comprehensive strategy not only addresses immediate protection needs but also supports the long-term resilience and integration of displaced populations in host societies.

5.5.2. Situating climate displaced persons within the IGAD Regional frameworks in Eastern Africa

In 2021, 7.4 million new disaster displacements were recorded in Sub-Saharan Africa alone indicative of growing migration crises.⁴¹¹ Over the last decade, extreme weather events have been linked to the displacement of an average of 23 million people each year. In 2020, over 30 million people were newly displaced.⁴¹² Most people displaced by disasters are internally displaced, but some cross borders into neighbouring countries.⁴¹³ Climate-induced displacement is a growing challenge given the minimal financial commitment by the

⁴⁰⁹ Bennett C ‘Legal pathways for climate migrants: The case for temporary protection’ (2018) 19(4) *Journal of International Migration and Integration* 819–836.

⁴¹⁰ Hunt P ‘Human rights and climate change: Assessing the impact of climate change on human rights protection’ (2012) 23(3) *European Journal of International Law* 721–742.

⁴¹¹ International Organization for Migration *Establishing an Accessible and Flexible Financing Mechanism: An Assessment of Institutional Arrangements and Appropriate Financial Instruments* (2022).

⁴¹² Internal Displacement Monitoring Centre *Global Report on Internal Displacement* (2021).

⁴¹³ UNHCR *Global Trends: Forced Displacement in 2021* (2021a).

government to address resulting humanitarian crises.⁴¹⁴ Unfortunately, in the Eastern African region, the impacts of climate change interact with other drivers of human displacements such as conflict, insecurity, and public health emergencies as was witnessed during COVID 19. Africa continues to face multiple crises including COVID-19 pandemic, climate change, and conflicts.⁴¹⁵ Amidst such crises are the underlying socioeconomic challenges such as unemployment, social inequalities, and gender-based violence, poverty and debt crises.⁴¹⁶ The pandemic however, exacerbated the state of these socio-economic challenges across the continent.⁴¹⁷ For many marginalized societies, it weakened social structures, limited access to economic resources, aggravated the impact of climate change on vulnerable groups, highlighted the gender divide, and hampered crucial access to healthcare services.⁴¹⁸ Consequently, this greatly retracted the gains of social equity in Africa with a few studies also exploring the impact of the pandemic on the adverse effects of climate change. The continent's vulnerability to climate change is exacerbated by limited adaptive capacity, socio-economic disparities, and high poverty rates. The emergence of the COVID-19 pandemic increased vulnerability across the region.

According to the International Federation of Red Cross and Red Crescent Societies, a combination of natural and biological hazards, including floods, swarms of locusts and the COVID-19 pandemic in 2020, stretched the coping mechanisms and resources of populations,

⁴¹⁴ Mixed Migration Centre Climate mobility in Khartoum Process countries: an exploration of interventions (2022) available at <https://www.khartoumprocess.net/resources/library/reference> and <https://mixedmigration.org/resource/climate-mobilitykhartoum-process-countries/> (accessed 22 February 2023).

⁴¹⁵ United Nations Economic Commission for Africa Impact of COVID-19 in Africa (2020) available at https://www.uneca.org/sites/default/files/PublicationFiles/sg_policy_brief_on_covid-19_impact_on_africa_may_2020.pdf (accessed 22 February 2023).

⁴¹⁶ African Research and Impact Network (ARIN) 'Science engagement to support evidence-informed policy responses to COVID-19 in Africa' (2021) available at <https://www.arin-africa.org/2021/04/28/science-engagement-to-support-evidence-informed-policy-responses-to-covid-19-in-africa/> (accessed 22 February 2023).

⁴¹⁷ Hosseinpoor A R, Parker L A, Tursan d'Espaignet E & Chatterji S 'Socioeconomic inequality in smoking in low-income and middle-income countries: Results from the World Health Survey' (2012) 7(8) PloS One e42843 <https://doi.org/10.1371/journal.pone.0042843>.

⁴¹⁸ Cocks T 'How inequality and poverty undermined South Africa's COVID response' Reuters (2020) available at <https://www.reuters.com/article/us-healthcoronavirus-safrica-response-a-idUSKCN24W1OL> (accessed 22 February 2023).

governments and the humanitarian and development sector in Eastern Africa.⁴¹⁹ For instance, by the end of October 2022, Ethiopia was hosting 878,027 refugees and asylum seekers, mainly from other IGAD countries due to widespread drought season adding to its internal burden of 4.57 million IDPs.⁴²⁰ On the other hand, Somalia has been affected by 30 years of conflict with civil wars having left casualties internally and externally. It has a high level of deforestation and one of the highest human mobility patterns in the world.

As of August 2022, there were an estimated 2.97 million IDPs with more than 630,000 Somalis seeking refuge in Kenya and Ethiopia.⁴²¹ Climate-induced displacement in the IGAD region is driven by the region's extreme vulnerability to environmental challenges such as droughts, floods, and desertification, compounded by socio-political instability and poverty. These factors have severely impacted climate-sensitive livelihoods like agriculture and pastoralism, displacing communities across the region. Addressing this displacement requires a regionally coordinated, multi-faceted approach⁴²² aligned with global frameworks such as the Sendai Framework. Establishing robust legal protections for climate-displaced persons, enhancing transboundary resource management, and incorporating conflict-sensitive approaches have been identified as crucial for mitigating displacement-related tensions. A holistic response focused on resilience, sustainability, and regional cooperation is essential to address the complex drivers of climate-induced displacement in the IGAD region and safeguard the well-being of affected communities.⁴²³

⁴¹⁹ International Committee of the Red Cross *When Rain Turns to Dust: Understanding and Responding to the Combined Impact of Armed Conflicts and the Climate and Environment Crisis on People's Lives* (7 July 2020).

⁴²⁰ United Nations High Commissioner for Refugees *Human Mobility and Climate Change in the IGAD Region: A Case Study in the Shared Border Regions of Ethiopia, Kenya and Somalia* (2023).

⁴²¹ Federal Democratic Republic of Ethiopia *National Voluntary Report on the Implementation of the Global Compact on Migration for the United Nations Economic Commission for Africa* (2020) National Partnership Coalition on Migration, Addis Ababa.

⁴²² Intergovernmental Authority on Development (IGAD) *IGAD Drought Disaster Resilience and Sustainability Initiative (IDDRSI) Strategy* (2018) IGAD Secretariat.

⁴²³ Intergovernmental Authority on Development (IGAD) *IGAD Climate Prediction and Applications Centre (ICPAC) Strategy 2021–2025* (2020) IGAD Secretariat.

In 2022, leaders from across Africa, (mostly from the horn and Eastern Africa) held a conference in Kampala, Uganda themed, " *Enhancing cooperation in relation to climate change induced human mobility, including migration, displacement, and planned relocation.*" The aim of the conference was to highlight the experiences of climate change and mobility and with an emphasis on the importance of regional cooperation in enhancing the plight of climate displaced persons across borders. It also highlighted climate induced migration because of the climate crisis affecting vulnerable populations such as women and children from pastoralist communities.⁴²⁴ This meeting was pivotal in that it developed the Declaration that recognised the impacts of climate change were universal, causing involuntary migration patterns that should be addressed. Climate change is strongly influencing human mobility patterns in the Eastern Africa region.⁴²⁵ Through the Kampala Ministerial Declaration of 2022 on Migration, Environment and Climate Change Declaration,⁴²⁶ the relationship between human mobility and the impacts of climate change has increasingly been recognised at a regional level.⁴²⁷ This is especially the case for the Eastern Africa region that is prone to slow and sudden onsets of unpredictable and prolonged climate disasters.

The Ministerial Declaration of 2022 addresses the critical intersection of these pressing global issues, particularly concerning climate-induced human displacement. The declaration recognises that climate change significantly exacerbates migration patterns, forcing individuals and communities to relocate due to environmental degradation, extreme weather events, and other climate-related impacts. It explicitly acknowledges climate change as a major driver of human displacement and advocates for a comprehensive approach that integrates migration

⁴²⁴ Croome A & Hussein M 'Climate Crisis, Gender Equalities and Local Response in Somalia/Somaliland' (2020) 64 *Forced Migration Review* (Climate Crisis and Local Communities).

⁴²⁵ Intergovernmental Authority on Development *IGAD Regional Climate Change Strategy and Action Plan (2023–2030)* (26 August 2022).

⁴²⁶ IGAD *Kampala Ministerial Declaration on Migration, Environment and Climate Change* (2022) paras 5, 7, 12–14 available at <https://www.iom.int/news/east-and-horn-africa-ministers-adopt-kampala-declaration-address-impact-climate-change-migration> (accessed 28 June 2025).

⁴²⁷ As at 2023, 48 African countries had agreed to adopt the Declaration.

management, climate action, and environmental sustainability, ensuring that policies are synergistic and address the root causes of displacement. The declaration calls upon states to assume responsibility for protecting the rights and welfare of climate-displaced persons, urging them to develop and implement policies that address both migration and climate resilience. The Kampala Ministerial Declaration represents a significant step forward in recognising and addressing the challenges of climate-induced human displacement, providing a framework for developing effective strategies that promote resilience and sustainability while ensuring that the voices of displaced individuals are heard in policy discussions at both national and international levels.

As of 2023, a total of 48 African countries had agreed to adopt the Kampala Ministerial Declaration on Migration, Environment and Climate Change (KDMECC) to address the nexus of human mobility and climate change in the continent. The declaration is, however, not binding and relies on adoption and domestication by member states. In the absence of a regional migration framework that is consistently applied and domesticated in the national legislation of member states in Eastern Africa, the response to displacement across borders requires the application of international human rights and refugee law frameworks that meet international protection needs.

The IGAD Regional Migration Policy Framework (RMPF) is another crucial framework in addressing Climate-Induced Displacement and highlights the critical intersection of climate change, migration, and policymaking within the context of Eastern Africa.⁴²⁸ As the region faces increasing environmental challenges, such as extreme weather events, droughts, and flooding, the impact on human mobility becomes increasingly pronounced.⁴²⁹ The adoption of

⁴²⁸ IGAD *Regional Migration Policy Framework for the IGAD Region* (2012, revised ed) ch III, 3.3.5, available at <https://igad.int/divisions/health-and-social-development/1947-igad-regional-migration-policy-framework> (accessed 28 June 2025)

⁴²⁹ This framework was adopted by the 45th Ordinary Session of the IGAD Council of Ministers July 11th, 2012, Addis Ababa, Ethiopia.

this Framework was inspired by and developed in response to African Union Banjul decision requesting the relevant stakeholders of the Regional Economic Communities (REC) to formulate and implement policies to assist member states to establish sound migration policies. Therefore, IGAD in response and with financial support from the International Organisation for Migration, (IOM), came up with this Framework to address human migration and insecurity, migration and pastoralism.⁴³⁰

Section 3.3.5 of the framework recognises environmental degradation and natural disasters as key drivers of forced displacement. It urges Member States to develop and harmonize policies on disaster preparedness, early warning systems, and post-disaster recovery as part of migration management. Most importantly, it also calls for strengthening the protection of persons displaced by environmental and climate change impacts albeit without defining the legal parameters of such protection. In the same section, the Framework goes further in linking climate change to mobility. It encourages IGAD states to integrate environmental concerns into migration planning and to mainstream climate change adaptation and mitigation strategies into national development and migration policies. This framing acknowledges climate change as both a slow-onset and sudden-onset driver of mobility, and it positions migration as a potential adaptation strategy.⁴³¹

This Framework provides a promising strategy to guide IGAD's objectives in migration management programmes in pursuit of its mandate. It further enables the member states to develop national migration policies that address specific migration-related challenges and

⁴³⁰ Castillejo C *The Influence of EU Migration Policy on Regional Free Movement in the IGAD and ECOWAS Regions* (Discussion Paper No 11/2019, DIE, Bonn 2019) available at <https://doi.org/10.23661/dp11.2019> (accessed 28 June 2025)

⁴³¹IGAD *Regional Migration Policy Framework for the IGAD Region* (2012, revised ed) ss 3.5–3.6 (highlighting priority areas on climate and environmental migration) available at <https://igad.int/divisions/health-and-social-development/1947-igad-regional-migration-policy-framework> (accessed 28 June 2025).

concerns more holistically.⁴³² It provides a strategic vision and guiding principles for managing migration in a safe and orderly way. By providing a shared vision and framework for cooperation, it aims to contribute to regional integration, economic development, and social cohesion within the IGAD region.⁴³³

The RMPF addresses migration dynamics within the IGAD states, holding significant implications for climate-displaced persons individuals compelled to migrate due to the adverse impacts of climate change, such as extreme weather events, environmental degradation, and resource scarcity. Recognising that climate change exacerbates existing vulnerabilities and contributes to displacement, the RMPF emphasises the need for comprehensive migration management that integrates climate considerations into policy frameworks. It explicitly acknowledges climate change as a significant driver of migration, highlighting the necessity to address the specific challenges faced by climate-displaced persons within regional policies. The framework also underscores the importance of protecting the rights and dignity of all migrants, advocating for policies that ensure access to basic services and support for those affected by climate impacts. By promoting a holistic approach to migration management that aligns with climate resilience and adaptation strategies, the RMPF aims to create synergies that benefit both migrants and host communities. Further, it emphasises the necessity of regional cooperation among member states to effectively tackle the challenges posed by climate displacement, facilitating the sharing of resources and best practices. It provides a vital foundation for addressing the needs and rights of climate-displaced persons, promoting sustainable development and resilience in the IGAD region amid the growing challenges posed

⁴³²IGAD *IGAD Regional Migration Program* (Background Paper to the IGAD Best Practices on Migration Workshop, Djibouti, 28–29 March 2017) — focus on *section 3 (regional coordination)* and *section 5 (monitoring and evaluation)*.

⁴³³Njuki C ‘The IGAD Migration Programme – an Overview’ (Presentation, Workshop on Best Practices in the IGAD Region, 28–29 March 2017, Djibouti).

by climate change.⁴³⁴ Despite this being a progressive instrument in terms of articulating the intricacies and complexities of migration in the Eastern Africa region,⁴³⁵ it remains soft law hence not obligatory and dependent on a state's goodwill for implementation. It however remains a key landmark framework in highlighting migrations from different angles i.e. across border, internal migration, border management, irregular migration and labour migration.⁴³⁶ Another progressive framework in Eastern Africa is the IGAD Free Movement Protocol that seeks to enhance regional economic integration, promote trade, and improve the lives of citizens by reducing barriers that hinder cross-border movement. The Protocol, adopted in February 2020, seeks to promote regional integration by allowing the free movement of IGAD citizens across member states for purposes of work, residence, and establishment. The Protocol applies to IGAD's member states.⁴³⁷ As of mid-2025, the Protocol is not yet in force, as it requires ratification by a minimum number of states four out of eight before entering into legal effect. So far, only South Sudan and Somalia have ratified the Protocol, while Uganda, Kenya, and Ethiopia have expressed political support but have yet to complete domestic ratification procedures.⁴ Implementation measures are still in early stages. The IGAD Secretariat has nonetheless developed a Roadmap for Implementation, which includes steps for harmonising national immigration laws, creating mutual recognition of travel documents, and building border management capacity.

⁴³⁴IGAD *Regional Migration Action Plan* (2013, Djibouti), see sections 2.1 (*strategic interventions*) and 3.4 (*cooperation and implementation mechanisms*).

⁴³⁵ Njuki C 'The IGAD Regional Migration Policy Framework' (Presentation, Workshop on Best Practices in the IGAD Region, 28–29 March 2017, Djibouti) see discussion on *Priority Areas 3–5*, with emphasis on environmental displacement and return management.

⁴³⁶RMMS *A Certain Catalyst: An Overview of the (Mixed) Migration and Development Debate with Special Focus on the Horn of Africa Region* Study 9 (2015) 9–14, 27–31.

⁴³⁷IGAD *Protocol on Free Movement of Persons in the IGAD Region* (2020) Arts 2, 14–15, available at <https://igad.int/divisions/health-and-social-development/2450-igad-protocol-on-free-movement-of-persons> (accessed 28 June 2025).

The protocol is expected to contribute to regional development by promoting labor mobility, increasing trade, and fostering cultural exchange.⁴³⁸ The Protocol represents a significant advancement in facilitating the free movement of people across member states within the Intergovernmental Authority on Development (IGAD) region, with important implications for climate displaced persons i.e. individuals compelled to migrate due to climate-related factors such as environmental degradation, drought, and extreme weather events. By streamlining and enhancing cross-border mobility, the protocol mitigates bureaucratic barriers that often hinder the movement of climate displaced persons, thereby enabling them to access safer areas, essential resources, and vital support services.

The IGAD Protocol represents a significant step toward regional integration and mobility rights in East Africa. However, while the Protocol is commendable in facilitating intra-regional movement, it falls short in addressing the specific vulnerabilities and legal uncertainties faced by persons displaced by climate-related disasters. Although the Protocol includes general provisions for temporary residence and the right to stay in another IGAD Member State, it does not explicitly recognise climate-induced displacement as a distinct ground for mobility or legal protection. For instance, article 16(1) provides for admission and stay on humanitarian grounds, yet it does not define what constitutes "humanitarian grounds," nor does it expressly include climate-related disasters within its scope. This ambiguity leaves interpretation to the discretion of individual Member States, which may lead to inconsistent application or exclusion of climate-displaced persons from protection. Further, while article 16, 18 and 19 discusses the rights of vulnerable persons, it does not name environmentally displaced individuals among the categories covered, such as the elderly, persons with disabilities, or unaccompanied minors. This absence implies that climate-displaced persons are not recognised as a specific group

⁴³⁸ Hirsch A A *Strategic Consideration of the African Union Free Movement of Persons Protocol and Other Initiatives towards the Freer Movement of People in Africa* (2021) South African Institute of International Affairs 3–6, 14–18, available at <http://www.jstor.org/stable/resrep29589> (accessed 19 August 2024).

deserving of tailored protections, despite the region's high exposure to environmental shocks such as drought, flooding, and desertification.

Another notable gap lies in the lack of procedural safeguards or dedicated mobility pathways for persons displaced by sudden-onset disasters. The Protocol's provisions on residence permits in articles 9,10 are largely structured around economic migration, labor mobility, or family reunification, none of which correspond to the urgent, often involuntary nature of climate-induced displacement. As a result, individuals fleeing a climate disaster may not qualify under existing categories and may find themselves in legal limbo. The Protocol also lacks provisions for cross-border disaster preparedness or coordinated regional response mechanisms that would ensure protection before, during, and after displacement. It remains silent on how environmental mobility intersects with state obligations to prevent, mitigate, or respond to such displacement.

In sum, while the IGAD Free Movement Protocol offers a progressive model for regional mobility, its failure to explicitly include climate-displaced persons or create a dedicated framework for their protection leaves a significant normative and practical gap. For the Protocol to serve as a meaningful tool in addressing climate mobility in Eastern Africa, it must evolve to reflect the growing reality of environmental displacement and include clear legal pathways tailored to this group.⁴³⁹

Still Complementary to the AU Strategy is the IGAD Regional Climate Change Adaptation Strategy 2023-2030 which is a blueprint for states to have a coordinated approach to addressing climate risks and increasing the region's resilience to the ensuing impacts of climate change.⁴⁴⁰

This IGAD strategy was put in place considering the prevailing catastrophic climatic conditions

⁴³⁹ AU, *Progress Report on the Free Movement of Persons in Africa*, presented to the Third Meeting of the Specialised Technical Committee on Migration, Refugees and Internally Displaced Persons, 4–8 November 2019.

⁴⁴⁰ IGAD, *Regional Climate Change Adaptation Strategy 2023–2030* (2023) Strategic Objective 2, available at: <https://igad.int/strategy-climate-change-adaptation-2023-2030> (accessed 28 June 2025).

that often impacts the region.⁴⁴¹ The Strategy serves as a comprehensive framework aimed at enhancing resilience to climate change impacts across the IGAD member states. It recognises the urgent need to address the multifaceted challenges posed by climate change in a region vulnerable to prolonged droughts, erratic rainfall, and rising temperatures, which can lead to climate-induced displacement. More specifically, it emphasises building resilience among communities, ecosystems, and economies through adaptive measures that strengthen the capacity of vulnerable populations, including climate-induced persons, to cope with and recover from climate impacts. It promotes an integrated approach that aligns climate considerations with broader development goals across various sectors, including agriculture and disaster risk reduction, ensuring that the needs of those displaced by climate change are addressed.

The IGAD region is already home to one of the highest numbers of forcibly displaced persons in the world, with the number being more than 4.5 million refugees and asylum seekers. In fact, as of 2022, there were more than 3.1million internal and external displacements because of climate change disasters.⁴⁴² Long periods of drought are also drivers of cross border movements in the IGAD region. This is also exacerbated by prevailing conflict in countries such as Sudan, South Sudan and Somalia.⁴⁴³; The impacts of climate change have had devastating consequences for the conflict-prone IGAD region increasing its vulnerability

⁴⁴¹ Trisos CH, Adelekan IO, Totin E, Ayanlade A, Efitre J, Gameda A, Kalaba K, Lennard C, Masao C, Mgaya Y *et al* 'Africa' in Pörtner H-O, Roberts DC, Tignor M, Poloczanska ES, Mintenbeck K, Alegría A, Craig M, Langsdorf S, Löschke S, Möller V *et al* (eds) *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) 1171–1274 DOI: 10.1017/9781009325844.010.

⁴⁴²IGAD & IOM *Displacement Related to Disaster and Climate Change in the IGAD Region: A Baseline* (2023) 6–9 <https://igad.int/publications/displacement-climate-change-baseline> (accessed 28 June 2025); Internal Displacement Monitoring Centre *Global Report on Internal Displacement 2023* (2023) 24–25 <https://www.internal-displacement.org/global-report/grid2023/> (accessed 28 June 2025).

⁴⁴³IGAD & ICPAC *Report on State of Climate, Peace and Security in the Horn of Africa* (2022); Van Baalen S & Mobjörk M 'Climate Change and Violent Conflict in East Africa: Integrating Qualitative and Quantitative Research to Probe the Mechanisms' (2018) 20 *International Studies Review* 547–575 doi:10.1093/isr/vix043; Maystadt JF, Calderone M & You L 'Local warming and violent conflict in North and South Sudan' (2014) 15 *Journal of Economic Geography* 649–671 doi:10.1093/jeg/lbu033

status. For instance, communities often fight over meagre environmental resources such as water, and pasture for their livestock.⁴⁴⁴ This negatively affects community structures and well-being and puts populations into mere survival for the fittest mode to cope with the underlying effects of climate change.⁴⁴⁵ To ameliorate the plight of climate displaced persons, the strategy hails the IGAD's Free Movement Protocol as potentially being instrumental in ensuring that such persons are accommodated if it is unreasonable to return them back to their countries of origin. It also allows those at risk of facing climate-induced disasters to move pre-emptively as way to mitigate the impacts of impending disasters. The strategy recognises the need for a durable solution to the unplanned human mobility resulting from the impacts of climate change which could exacerbate the prevailing humanitarian crisis.⁴⁴⁶

A key innovation in the strategy is the promotion of the IGAD Protocol on Free Movement of Persons as a tool to facilitate protection for climate-displaced persons. By enabling cross-border movement in anticipation of or response to climate-related disasters, the strategy offers a pathway to safety that is both preventive and protective particularly important where returning to one's country would be unreasonable or unsafe. This stands in contrast to many international frameworks that address displacement only after it has occurred.

The strategy's emphasis on pre-emptive movement is especially notable: it acknowledges the right of individuals to move in advance of climate disasters to reduce harm, which aligns with principles of climate adaptation and disaster risk reduction. This proactive framing marks a

⁴⁴⁴Gupta TD *et al*, *How does climate exacerbate root causes of conflict in Kenya?* (CGIAR 2023) <https://igadcaep.org/download/climate-security-pathway-analysis-factsheetkenya-2023/>; Sax N *et al*, *How does climate exacerbate root causes of conflict in Sudan?* (CGIAR 2023); Madurga Lopez I *et al*, *How does climate exacerbate root causes of conflict in Uganda?* (CGIAR FOCUS Climate Security 2021); Kenduiywo B *et al*, *Climate security: Resilience, fragility and displacement in the borderlands of the Horn of Africa* (CGIAR 2023)

⁴⁴⁵Cissé G *et al*, 'Health, Wellbeing, and the Changing Structure of Communities' in Pörtner H-O *et al* (eds) *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) 1041–1170 doi:10.1017/9781009325844.009.

⁴⁴⁶UNHCR *Human Mobility and Climate Change in the IGAD Region: A Case Study in the Shared Border Regions of Ethiopia, Kenya and Somalia* (2023) <https://www.unhcr.org/africa/media/66275>

shift from reactive humanitarian responses toward resilience-building and forward-planning. The strategy calls for durable and inclusive policy frameworks to govern cross-border migration, recognizing that temporary and ad hoc responses are inadequate for the scale and permanence of climate displacement challenges. By advocating for legal and policy reforms that facilitate safe, dignified, and lawful mobility, IGAD positions itself as a regional leader in integrating mobility into climate resilience.⁴⁴⁷ However, while the strategy sets an important normative precedent, its implementation will depend heavily on political will, institutional capacity, and harmonisation of national laws across IGAD member states. Without this, the aspirational provisions may remain underutilised.

5.6. Policy frameworks on climate induced displacements in IGAD: A step in the right direction?

Despite the positive progress that has been made through normative policy frameworks, there is a lack of a binding framework to protect climate displaced persons, more specifically Eastern Africa. In fact, at the regional level most of the frameworks are soft law and hence not binding on states, this means that their application is largely on a discretionary, good faith basis.

For instance, the Kampala Ministerial Declaration on Migration, Environment and Climate Change (KDMECC) was adopted as a response to the growing challenges posed by climate change-induced human mobility. The declaration represents a significant step towards addressing the complex challenges posed by climate change and human mobility in the region. It provides a framework for cooperation and action among member states and recognises the significant impact of climate change on human mobility, including displacement and migration. It outlines commitments by signatory countries to address this issue. The framework champions for enhanced cooperation and action in areas such as desertification, extreme

⁴⁴⁷IPCC *Summary for Policymakers* in Masson-Delmotte V *et al* (eds) *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2021).

weather events, rural-urban migration, and data collection. It also seeks to develop an integrated approach to climate change-induced mobility in the region and raises the profile of human mobility in the context of climate change at the global level. Despite these progressive provisions, the declaration remains to be a soft law which states can decide to implement in good faith or not.⁴⁴⁸ Its implementation is not necessarily a state priority.

On the other hand, the IGAD Free Movement Protocol is primarily focused on facilitating labor mobility and economic integration, this protocol does not specifically address the unique circumstances of climate-induced displacement⁴⁴⁹. While it represents a significant milestone in regional migration governance, it does not directly address the unique circumstances of climate-induced displacement. Its structure is largely centred around economic objectives and regular migration pathways, rather than humanitarian or protection-based needs. That said, the Protocol does contain one progressive feature in article 16⁴⁵⁰ which allows for entry and stay of persons displaced in anticipation of, during or in the aftermath of a disaster.⁴⁵¹ This provision is exceptional within the context of regional free movement regimes, as it explicitly acknowledges disaster displacement as a legitimate basis for cross-border mobility.⁴⁵² It potentially allows displaced persons to relocate pre-emptively, stay temporarily or permanently, and even return voluntarily when conditions permit. However, the Protocol falls short of offering specific protection standards or legal status for climate-displaced persons, leaving the scope and implementation of Article 16 subject to the discretion of member states.

⁴⁴⁸Dick E & Schraven B 'Regional cooperation on migration and mobility: Insights from two African regions' (2018) 2(1) *Proceedings of the African Futures Conference* 102–118.

⁴⁴⁹Castillejo C *The influence of EU migration policy on regional free movement in the IGAD and ECOWAS regions* Discussion Paper 11/2019 (2019).

⁴⁵⁰IGAD *Protocol on Free Movement of Persons in the IGAD Region* (2020) art 16, available at <https://igad.int/divisions/health-and-social-development/2450-igad-protocol-on-free-movement-of-persons> (accessed 28 June 2025)

⁴⁵¹Wood T 'Regional Agreements for Free Movement of Persons as Pathways towards Protection of Climate-Displaced Persons: Lessons from the IGAD Region' (2022) 69 *Forced Migration Review* 24–26, available at <https://www.fmreview.org/climate-crisis/wood> (accessed 28 June 2025).

⁴⁵²Brenn L, Makela F, Panizza M, Amdihun N & Rudari R 'The IGAD Protocol on Free Movement of Persons: A Tool to Protect Disaster-Displaced Persons' (2022) 69 *Forced Migration Review* 27–29, available at <https://www.fmreview.org/climate-crisis/brenn-makela-panizza-amdihun-rudari> (accessed 28 June 2025).

The Protocol also marks a significant step in addressing the protection gap of growing numbers of people in the region displaced by disasters, who often do not qualify for refugee status or other forms of international protection.⁴⁵³⁴⁵⁴ Although the IGAD Free Movement Protocol does not comprehensively resolve the legal and protection needs of climate-displaced persons, it sets a valuable precedent. By incorporating disaster displacement within a mobility framework, it offers a flexible and adaptive policy tool. Its future potential will depend heavily on member state political will, cross-border coordination, and legal harmonisation, all of which are essential for transforming regional agreements into effective protection mechanisms.

Although the IGAD Regional Migration Policy Framework (RMPF) is broader in scope, its primary focus is on general migration governance. While it acknowledges the challenges posed by climate change, it does not provide a clear and comprehensive framework for addressing the specific needs of climate-displaced persons⁴⁵⁵. The RMPF does not provide detailed guidance on legal status, cross-border mobility pathways, or the procedural safeguards needed for climate-displaced persons. It operates as a policy coordination tool rather than a legal framework, and its recommendations are not binding. Moreover, the Framework lacks mechanisms for implementation, monitoring, or enforcement, making its impact largely dependent on the political will and capacity of Member States. Nevertheless, the RMPF is significant because it lays a foundational normative framework for future legal and policy developments, such as the IGAD Protocol on Free Movement. It signals growing regional recognition of the climate-migration nexus and creates a basis upon which more specific,

⁴⁵³Zickgraf C '(Re)Framing Human Mobility in the Context of Climate Change: The Regional Approach of IGAD' in Gemenne F & Baldwin A (eds) *Research Handbook on Climate Change, Migration and the Law* (Cheltenham: Edward Elgar 2022) 136–153.

⁴⁵⁴ Weldesellassie K I 'IGAD as an International Organization, its Institutional Development and Shortcomings' (2011) 55(1) *Journal of African Law* 1–29

⁴⁵⁵Dick E & Schraven B *Regional Cooperation on Migration and Mobility: Experiences from Two African Regions* in Panizzon M, Akgündüz Y & de Andrade GC (eds) *The Dynamics of Regional Migration Governance* (Cheltenham: Edward Elgar Publishing 2019) 109–127.

rights-based instruments such as humanitarian visa schemes or regional protection directives could be developed.

The Kampala Ministerial Declaration on Migration, Environment and Climate Change (2020) marked a significant milestone in politically acknowledging the interlinkages between climate change and human mobility within the African context.⁴⁵⁶ However, despite its symbolic importance, the Declaration remains a political instrument rather than a legally binding framework. It articulates shared commitments and aspirations, but lacks codified obligations, justiciable rights, or a formal compliance mechanism. Its implementation is contingent on the political will and administrative capacity of Member States, many of whom face significant resource constraints and competing national priorities.⁴⁵⁷ As such, while it serves as a powerful normative guide, it does not create enforceable legal obligations nor guarantee protection for climate-displaced persons. Moreover, the Declaration does not prescribe specific protection mechanisms such as mobility pathways, visa arrangements, or temporary protection directives that states are required to adopt. This leaves a critical gap between regional recognition of the problem and concrete legal tools to address it. Without a corresponding implementation framework or accountability mechanism, the Kampala Declaration risks remaining a well-intentioned statement of political consensus with limited practical impact on the ground.

Nevertheless, it remains an important foundation upon which more robust legal and policy instruments such as IGAD's regional frameworks or national legislation could be built, especially if supported by sustained technical and financial investment from international partners.⁴⁵⁸

⁴⁵⁶IOM & IGAD *Addressing the Impact of Climate Change on Human Mobility in the IGAD Region: A Policy Brief on the Kampala Declaration* (2021) 5–7, available at <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/Kampala-Declaration-Policy-Brief.pdf> (accessed 28 June 2025).

⁴⁵⁷Scott M & Thalheimer L 'Climate Change and Migration in Africa: Policy Challenges and Legal Gaps' in Behrman S & Kent A (eds) *Climate Refugees: Beyond the Legal Impasse?* (Routledge 2021) 102–118.

⁴⁵⁸Dos Santos Soares A 'Displaced by Environmental Disasters: Evaluating the Kampala Convention's (In)Effectiveness Ten Years after It Came into Force' (2023) 14(1) *Revista Catalana de Dret Ambiental*.

All these frameworks, though not binding, recognise climate change disasters as important drivers of human mobility in the IGAD region within Eastern Africa.⁴⁵⁹ They are all mutually reinforcing, and taken together, they provide a comprehensive set of principles for action on migration, climate change and the environment. The causes and effects of Climate Change have a global impact with no respect to national or territorial boundaries.⁴⁶⁰ In this case, the plight of climate displaced persons calls global and regional attention, consensus, and cooperation. Whether viewed from a human rights lens or in a bid to attain environmental justice, the matter is one that cannot be ignored. The gravity of environmental displacement and the impact of climate change on individuals, families, communities, and whole nations justifies an appeal to the international community to intervene.⁴⁶¹ It is from a point of convergence that these grievances can be addressed, and this can only be achieved through the international cooperation of states in recognising the vulnerability of developing countries to the impacts of climate change.⁴⁶²

5.7. Conclusion.

As already observed, there is no specific and binding legal framework that succinctly and directly addresses the issue of climate displaced persons in globally and in Eastern Africa.⁴⁶³ Amanda Doran⁴⁶⁴ contends that the lack of precision with regards to who is an ‘environmental refugee’ is the underlying cause of the term’s illegitimacy under International Law. She advocates for a solid and narrow definition as the first step towards international recognition and protection of such persons. This notwithstanding, there are ‘soft law (non-binding)

⁴⁵⁹ Kälin W ‘Conceptualising Climate-Induced Displacement: Normative Gaps and Legal Responses’ (2020) 18 *International Journal of Refugee Law* 10–14

⁴⁶⁰ Waldinger M *The Effects of Climate Change on Internal and International Migration: Implications for Developing Countries* LSE Working Paper No 192 (2015)

⁴⁶¹ Wood T & Abuya E ‘It’s Time for Answers for Africa’s “Climate Refugees”’ *Thomson Reuters Foundation News* (2021)

⁴⁶² Trisos CH, Adelekan IO, Totin E, et al ‘Africa’ in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) 1285–1455 doi:10.1017/9781009325844.011.

⁴⁶³ Nyamori V ‘The Legal Protection of Climate Refugees in East Africa’ (2020) Africa Portal

⁴⁶⁴ Doran AA ‘Where Should Haitians Go: Why Environmental Refugees are up the Creek without a Paddle’ (2011) 22(1) *Villanova Environmental Law Journal* 117, 121.

frameworks' put in place within the region to ensure climate displaced persons do not suffer more as they migrate escaping harsh climatic conditions. These frameworks are intended to inspire the formulation of policies by member states regarding climate displaced persons rights within their territory and the region.⁴⁶⁵ This is a positive step to ensuring that human rights approaches are explored when cross border migration due to climate related disasters takes place.

The lack of clear recognition and exclusive protection for climate-displaced persons in the regional instruments represents a significant protection gap in the region's legal and policy framework. While these instruments provide a foundation for addressing migration and displacement challenges, they fail to provide adequate safeguards for those displaced by climate change. It would then be imperative for this research to critically examine the humanitarian visa as a critical tool to potentially address the legal impasse.

⁴⁶⁵Lennartz T, Remlinger J, Ries F & Rischewski D '*Generating Political Commitment to Address Human Mobility in the Context of Climate Change on the Regional and National Level*' (2021) Internal Displacement Monitoring Centre.

CHAPTER SIX

Humanitarian visas as a complementary pathway for climate displaced persons

6. Introduction

Building on the previous discussion, climate-displaced persons are increasingly affected by harsh climatic conditions in their countries of origin, forcing them to seek asylum or refuge either internally or across borders. The term ‘environmental refugee,’ as explored earlier, has been widely regarded as an international misnomer, lacking legal legitimacy due to its absence of formal recognition. This thesis has examined the various scholarly perspectives on ‘environmental refugees’ and has highlighted the gaps in how this term is understood at both global and regional levels. It now shifts focus to case studies that illustrate the ways humanitarian approaches have attempted to address the legal void surrounding climate displacement. Drawing on examples from Zimbabwe, Malawi, Thailand, and Haiti, the thesis explores how these countries have responded to migration patterns triggered by climate-related disasters.

At the heart of this chapter is the recognition of humanitarian approaches as crucial in alleviating the suffering of ‘environmental refugees’ or, depending on one's perspective, ‘climate-displaced persons.’ While acknowledging the complexities of offering legal protection to these groups under international law (primarily due to their lack of legitimate protection status) the chapter emphasizes the critical role of humanitarian responses in mitigating the vulnerabilities of such groups during climate change crises. This thesis underscores the urgency of finding legal protections for climate-displaced persons, particularly through the strategic use of humanitarian visas. Consequently, this chapter explores instances in which humanitarian approaches have been applied and highlights these as opportunities to be expanded upon through the use of humanitarian visas, presenting a potential pathway for more effective legal protection in the future.

6.1. Case studies on incidences of climate displaced persons and humanitarian approaches

6.1.1. Haiti Earthquake and its subsequent impact.

Haiti is one of the poorest countries in the Latin America and Caribbean region with a GDP per capita of USD 1694.1.⁴⁶⁶ The country has often been rocked with lingering political crises, violent gang attacks and vulnerability to climate related disasters. In January 2010, a devastating earthquake struck the island nation of Haiti, causing disastrous destruction to buildings, infrastructure, and human lives.⁴⁶⁷ The earthquake left approximately 230,000 people were killed, 3 million negatively affected, and more than 200,000 structures damaged and collapsed.⁴⁶⁸ The damage assessment program undertaken in the aftermath revealed the extent of the devastation, with nearly half of all structures in the epicentral area left in ruins⁴⁶⁹.

Beyond the immediate physical destruction, the earthquake had profound social and economic impacts. The country was thrown into a greater financial crisis, and economic activity was hindered by the loss of property and buildings leading to devastating economic consequences.⁴⁷⁰ The earthquake also displaced a significant number of the population which caused breakdown in community structures. Children became especially vulnerable with many of them being orphaned and getting split off from their families.⁴⁷¹ The public health sector was critically affected as the collapse of healthcare facilities and the resultant poor living conditions contributed to the spread of diseases such as cholera⁴⁷². Amidst the tragedy, the

⁴⁶⁶World Bank 'Haiti Overview' available at <https://www.worldbank.org/en/country/haiti/overview>, accessed on 25 August 2024.

⁴⁶⁷Garvey Lundy 'The Haiti Earthquake of 2010: The Politics of a Natural Disaster' (2011) 42(2) *Journal of Black Studies* 127–130 available at <http://www.jstor.org/stable/41151332>, accessed on 25 August 2024.

⁴⁶⁸DesRoches R et al *Social Impacts of the 12 January 2010 Haiti Earthquake* (2011).

⁴⁶⁹Miyamoto HK et al *Massive Damage Assessment Program and Repair and Reconstruction Strategy in the Aftermath of the 2010 Haiti Earthquake* (2011).

⁴⁷⁰Cavallo E, Powell A & Becerra O 'Estimating the Direct Economic Damages of the Earthquake in Haiti' (2010) 120(546) *The Economic Journal* 298–312.

⁴⁷¹Chen B, Halliday TJ & Fan VY 'The Impact of Internal Displacement on Child Mortality in Post-Earthquake Haiti: A Difference-in-Differences Analysis' (2016) 15 *International Journal for Equity in Health* 114 <https://doi.org/10.1186/s12939-016-0403-z> (accessed 26 January 2025)

⁴⁷² Lantagne D, Nair GN Balakrish, Lanata CF & Cravioto A 'The Cholera Outbreak in Haiti: Where and How Did It Begin?' in Nair GN & Takeda Y (eds) *Cholera Outbreaks* (2013) 379 *Current Topics in Microbiology and Immunology* 145–164 (Berlin: Springer) https://doi.org/10.1007/82_2013_331 (accessed 26 January 2025)

Haiti earthquake brought to the forefront the issue of climate justice⁴⁷³. It highlighted the existing differences of the impact of environmental disasters on different populations. Being one of the poorest countries, Haiti was exceptionally vulnerable due to its fragile infrastructure, widespread poverty, and inadequate resources to effectively respond to such natural disasters⁴⁷⁴. The concept of climate justice emphasises that those who contribute the least to climate change often suffer the most from its effects, and this was evident in Haiti⁴⁷⁵. The earthquake's aftermath saw not only immediate devastation but also long-term socio-economic impacts that disproportionately affected the most vulnerable and marginalized communities. Although international aid played a critical role during this disaster, it failed to address the underlying inequalities, leading to questions about the effectiveness of the global response mechanisms⁴⁷⁶.

The response to the 2010 Haiti earthquake presents an early and illustrative example of the use of humanitarian visa type mechanisms in the context of disaster-induced displacement. Following the earthquake several countries the United States, Brazil, and the Dominican Republic adopted temporary humanitarian measures to accommodate displaced Haitians. In the United States, the Department of Homeland Security (DHS) designated Temporary Protected Status (TPS) for Haitian nationals present in the country at the time of the disaster. TPS is not formally a “visa” but functions similarly in providing lawful status for a defined period.⁴⁷⁷ Under this regime, beneficiaries were granted protection from removal (deportation), work

⁴⁷³Mika K *Disasters, Vulnerability, and Narratives: Writing Haiti's Futures* (2018) (London: Routledge)

⁴⁷⁴Zorn M 'Natural Disasters and Less Developed Countries' in Pelc S & Koderman M (eds) *Nature, Tourism and Ethnicity as Drivers of (De)Marginalization* (2018) 3 *Perspectives on Geographical Marginality* 57–75 (Cham: Springer) https://doi.org/10.1007/978-3-319-59002-8_4 (accessed 26 January 2025)

⁴⁷⁵Schlosberg D 'Climate Justice and Capabilities: A Framework for Adaptation Policy' (2012) 26(4) *Ethics & International Affairs* 445–461 <https://doi.org/10.1017/S0892679412000615> (accessed 26 January 2025).

⁴⁷⁶Kirsch T, Sauer L & Guha Sapir D 'Analysis of the International and US Response to the Haiti Earthquake: Recommendations for Change' (2012) 6(3) *Disaster Medicine and Public Health Preparedness* 200–208 <https://doi.org/10.1001/dmp.2012.48>

⁴⁷⁷United States Department of Homeland Security *Designation of Haiti for Temporary Protected Status* Federal Register Vol 75 No 14 (21 January 2010) 3476–3478 available at <https://www.federalregister.gov/documents/2010/01/21/2010-1084/designation-of-haiti-for-temporary-protected-status> (accessed 28 June 2025)

authorization, and access to limited public benefits.⁴⁷⁸ The TPS designation was initially granted for 18 months but has since been extended multiple times in response to ongoing humanitarian concerns. However, TPS was only available to those already in the U.S. as of the earthquake date, meaning that Haitians attempting to flee the disaster after January 12, 2010, were not eligible a significant limitation in its protective reach.

Brazil took a more expansive and instructive approach. Through Normative Resolution No. 97 of 2012, Brazil created a specific humanitarian visa scheme for Haitians, allowing them to apply for residency on humanitarian grounds albeit on discretionary basis without giving them any refugee rights.⁴⁷⁹ This made it possible for many Haitians to evacuate and restart their lives. The Brazilian government officially implemented the humanitarian program in 2012, recognizing the urgent need for a coordinated response to the plight of Haitian earthquake survivors⁴⁸⁰. This initiative was significant as it represented one of the first large-scale immigration policies in South America specifically designed to address a humanitarian crisis⁴⁸¹. The Haitian entry documents were initially granted for a period of five years, with the possibility of renewal, allowing specific recipients to work, study, and access public services in Brazil. This policy provided a sense of stability and hope for many Haitians who had lost

⁴⁷⁸Chazal N & Curtis R ‘The Temporary Protected Status (TPS) Program: A Critical Human Rights Analysis of US Immigration Policy’ (2019) 17(2) *International Journal of Migration and Border Studies* 137–155; Migration Policy Institute *Relief from Removal: Temporary Protected Status as a US Humanitarian Tool* (2020) available at <https://www.migrationpolicy.org/research/temporary-protected-status-us-humanitarian-tool> (accessed 28 June 2025)

⁴⁷⁹ Kingston L N ‘Haitians Seeking Refuge in Brazil’ (2016) 28 *Peace Review* 482–489 <https://doi.org/10.1080/10402659.2016.1237118>

⁴⁸⁰ Sadiq A ‘The Impact of the 2010 Haiti Earthquake on Disaster Policies and Development’ in Kapucu N & Liou K (eds) *Disaster and Development: Environmental Hazards* (2014) (Cham: Springer) https://doi.org/10.1007/978-3-319-04468-2_23

⁴⁸¹ Uebe R R G & da Silva C A ‘Politics, Policies and International Immigration in Brazil: Recent Changes and Perspectives’ (2019) 13(1) *Revista de Estudos e Pesquisas sobre as Américas* <https://doi.org/10.21057/10.21057/repamv13n1.2019.31032>

everything in the earthquake. Brazil's humanitarian program also had broader implications for regional cooperation and migration policies in Latin America. ⁴⁸².

Unlike the TPS model, this mechanism enabled displaced persons to travel legally to Brazil and regularize their status upon entry. The visa allowed for permanent residency and access to social services, employment, and, eventually, the possibility of naturalization.² Between 2012 and 2015, over 43,000 Haitians entered Brazil under this regime. While the Brazilian humanitarian visa was lauded for its innovation and inclusivity, it also faced significant challenges. Processing delays, lack of adequate reception infrastructure, and xenophobic backlash in some areas limited its effectiveness. Nonetheless, the program demonstrated that a state-led humanitarian visa scheme can provide lawful, durable solutions for those displaced by sudden-onset environmental disasters particularly where traditional refugee law does not apply. Although the humanitarian assistance was largely discretionary and has since ceased, the program highlighted the importance of shared responsibility and regional solidarity in managing migration flows. Brazil's decision to take in Haitians through the issuance of humanitarian visas (albeit with limited timelines and rights) signified an important act of solidarity and international cooperation.⁴⁸³ In contrast, the Dominican Republic, despite its geographic proximity and shared island with Haiti, adopted a far more restrictive approach. While it provided emergency aid and temporary accommodations in the immediate aftermath, its migration policies did not offer formal protection or visa options to Haitians fleeing the disaster. In some cases, displaced persons were forcibly returned a practice that drew international criticism.

⁴⁸²Espinoza M V 'The Limits and Opportunities of Regional Solidarity: Exploring Refugee Resettlement in Brazil and Chile' (2018) *Global Policy* available at <https://doi.org/10.1111/1758-5899.12534>

⁴⁸³ Pacífico A P & Ramos É P 'Humanitarian Asylum for Forced Migrants: The Case of Haitians' Arrival in Brazil' (2015) in Simeon J C (ed) *Exploring the Boundaries of Refugee Law* https://doi.org/10.1163/9789004265585_011

The Haiti case illustrates the potential and limits of humanitarian visa mechanisms. While models like Brazil's show that tailored humanitarian visas can offer legal status and integration opportunities for disaster-displaced persons, the variability in state responses and absence of binding international obligations result in uneven protection. This underscores the need for more coherent, rights-based frameworks for humanitarian mobility in the context of environmental disasters.

6.1.2. Tropical cyclone Freddy: Impacts on Malawi, Zambia, Zimbabwe

Malawi, Zambia and Zimbabwe are low-income countries situated in southern Africa. In 2023, a tropical cyclone swept through these southern states causing massive destruction and human displacements.⁴⁸⁴ Malawi, which is already struggling with poverty and environmental hazards, was most severely affected⁴⁸⁵. The cyclone's impact was disastrous, with intense flooding, landslides, and destruction to infrastructure⁴⁸⁶. Beyond the immediate human life interference, cyclone Freddy highlighted the realities of climate injustice, particularly as it affected the nation's climate displaced persons. Malawi's vulnerability to extreme weather events is a direct consequence of its geographical location and low adaptive capacity⁴⁸⁷. The cyclone's devastation exacerbated existing inequalities, with marginalized communities suffering the most. These individuals, often displaced because of deforestation, land degradation, and other environmental stressors, are particularly vulnerable to the effects of climate change. The cyclone highlighted an existing gap in the efforts towards achieving climate justice.

⁴⁸⁴Mkodzongi G 'The Political Economy of the Climate Crisis in Southern Africa' (2023) 50(177–178) *Review of African Political Economy* 374–387 available at <https://doi.org/10.1080/03056244.2023.2289748>

⁴⁸⁵Lutala P & Makwero M 'Cyclone Freddy in Malawi: Reflections from a Primary Care Perspective' (2023) 15(1) *African Journal of Primary Health Care & Family Medicine* 1–2 available at <https://dx.doi.org/10.4102/phcfm.v15i1.4142>

⁴⁸⁶Braka F, Daniel E O, Okeibunor J, Rusibamayila N K, Conteh I N, Ramadan O P C, Byakika-Tusiime J, Yur C T, Ochien E M, Kagoli M, Chauma-Mwale A, Chamla D & Gueye A S 'Effects of Tropical Cyclone Freddy on the Social Determinants of Health: The Narrative Review of the Experience in Malawi' (2024) 2 *BMJ Public Health* e000512

⁴⁸⁷Molua E L, Mendelsohn R O & Akamin A 'Economic Vulnerability to Tropical Storms on the Southeastern Coast of Africa' (2020) 12(1) *Jàmà: Journal of Disaster Risk Studies* 1–14 available at <https://dx.doi.org/10.4102/jamba.v12i1.676>

Although the international community offered support, the response to the needs of the climate displaced persons was not adequate. Many people lost their homes, livelihoods, and access to basic services, which increased their existing vulnerabilities. The lack of targeted support programs to the affected communities highlighted the broader failure to address the root causes of their displacement and to recognise their specific needs within disaster response frameworks⁴⁸⁸. Moreover, the cyclone underscored the urgent need for climate-resilient development strategies⁴⁸⁹ such as in early warning systems, disaster preparedness, and sustainable land management practices⁴⁹⁰. However, these efforts require substantial financial resources and technical expertise, often beyond the capacity of developing nations. The international community has a moral obligation to provide the necessary support to build resilience and prevent future tragedies⁴⁹¹.

Tropical Cyclone Freddy was a meteorological phenomenon that lasted an unprecedented period and caused significant damage along its path⁴⁹². In Zambia, the cyclone caused destruction of infrastructure, agricultural land and livelihoods⁴⁹³. The event illustrated the vulnerability of Zambia to extreme weather events caused by climate change. The cyclone resulted in a significant number of human displacements, which was one of the greatest negative aftereffects of the cyclone. Thousands were displaced from their homes due to

⁴⁸⁸ Serele C, Kouadio M & Kayitakire F ‘Mitigating proximate impacts of tropical cyclone landfalls in the Southwest Indian Ocean’ (2023) 22 *Western Indian Ocean Journal of Marine Science* 147–161.

⁴⁸⁹ Adebayo W G ‘Resilience in the face of ecological challenges: Strategies for integrating environmental considerations into social policy planning in Africa’ (2024) *Sustainable Development* (forthcoming).

⁴⁹⁰ Van den Homberg M & Trogrlić R Š ‘Towards a socially just flood risk management in developing countries: Lessons from serving the last mile in Malawi’ in Trogrlić R Š & Van den Homberg M (eds) *Handbook of Flood Risk Management in Developing Countries* (2023) 350–374 (Routledge).

⁴⁹¹ Gondwe A, Nankwenya B, Chilora L K & Goeb J ‘Pre-disaster preparedness and post-disaster response measures in the District Councils of Southern Malawi’ (2024) (manuscript on file/forthcoming).

⁴⁹² Ricciardulli L, Howell B, Jackson C R, Hawkins J, Courtney J, Stoffelen A et al ‘Remote sensing and analysis of tropical cyclones: Current and emerging satellite sensors’ (2023) 12 *Tropical Cyclone Research and Review* 267–293.

⁴⁹³ Ibid.

flooding, landslides, and the destruction of essential infrastructure.⁴⁹⁴ These individuals faced many challenges, including food insecurity, lack of shelter, and access to basic healthcare. Following the tropical Cyclone, the plight of climate displaced persons brought up important concerns regarding the need for a comprehensive humanitarian approach as a strategy.⁴⁹⁵ While the Zambian government and humanitarian organizations responded to the crisis with efforts to provide aid and relief, the challenges were vast. Many displaced persons found themselves in dangerous living conditions, with limited access to essential services⁴⁹⁶. This situation highlighted the need for comprehensive and long-term strategies to address the needs of climate displaced persons. For instance, Zimbabwe, already grappling with economic challenges, was severely impacted by the cyclone Freddy's torrential rains, which led to widespread flooding, landslides, and infrastructure damage⁴⁹⁷. The cyclone displaced thousands of people, exacerbating the already existing humanitarian crisis in Zimbabwe and highlighting the vulnerabilities of its population to extreme climatic events⁴⁹⁸.

The cyclone disproportionately affected marginalized communities, as well as rural populations that depend on agriculture and those living in environmentally sensitive areas⁴⁹⁹. These communities, often lacking adequate resources and infrastructure, were particularly vulnerable to the cyclone's impacts. The destruction of homes, crops, and livelihoods forced many to leave their homes, leading to an increase in the number of internally displaced

⁴⁹⁴Chilaule S M, Macuacua X V, Mabica A P, Miranda N A, Pereira H D S, Gudo E S et al 'Natural Disasters' Impact on Water Quality and Public Health: A Case Study of the Cyclonic Season (2019–2023)' (2024) 4 *Pollutants* 212–230.

⁴⁹⁵Bond P 'Elite summits amplify Africa's climate catastrophes' (2024) 51(3) *The Journal of Peasant Studies* 738–756.

⁴⁹⁶Libanda B, Rand E, Gyang G N, Sindano C T, Simwanza L & Chongo M 'Recent and future exposure of water, sanitation, and hygiene systems to climate-related hazards in Zambia' (2024) 15(3) *Journal of Water and Climate Change* 958–977.

⁴⁹⁷Hungwe M G, Gumindoga W, Manuel Baez Villanueva O & Rwasoka D T 'Comparative analysis of the variability and impacts of tropical cyclones in flood-prone areas of Zimbabwe' (2024) 6 *Frontiers in Climate*.

⁴⁹⁸Ralisaona F, Randimbarison J R, Mauluka C, Konate B & Ranjatoson R 'Supporting Preparedness and Response to Cyclone Freddy in Madagascar—A Contribution from the Social and Behaviour Change Communication' (2024) (unpublished).

⁴⁹⁹ Ibid.

persons⁵⁰⁰. The Zimbabwean government with the help of external support tried to help the victims of the cyclone through various response mechanisms⁵⁰¹. The response measures to help those affected during the cyclone were not adequate and hence brought up debates on the subject of climate change and its impacts and the aspect of climate justice in the global south⁵⁰². Many affected people faced difficulties accessing essential services, including food, shelter, and healthcare⁵⁰³. Moreover, the long-term recovery process was hindered by limited resources and capacity. The cyclone's effects on Zimbabwe highlighted how important it is for nations to work together on tackling climate change and assisting those who are most vulnerable to it⁵⁰⁴.

It also underlined how critical it is to acknowledge and cater to the particular needs of climate. Notably, the United Nations High Commissioner for Refugees (UNHCR) provided assistance to climate-displaced individuals in Malawi, despite these persons not meeting the traditional definition of refugees under the 1951 Refugee Convention.⁵⁰⁵ This intervention highlights UNHCR's evolving mandate, which recognises the complex and increasing displacement driven by environmental factors, such as climate change. Following Tropical Cyclone Idai in 2019, which affected several countries in Southern Africa, including Malawi, UNHCR provided critical support to climate-displaced individuals by offering shelter, sanitation, and clean water. This action aligns with UNHCR's broader responsibility to protect vulnerable populations, including those displaced by environmental disasters, even when they do not meet the specific criteria for refugee status. While the Refugee Convention does not explicitly

⁵⁰⁰Nyahunda L, Nemaconde L D & Khoza S 'Exploring the determinants of disaster and climate resilience building in Zimbabwe's rural communities' (2024) *Natural Hazards* 1–19.

⁵⁰¹Tirivangasi H M, Nyahunda L, Mabila T & Zingwena T 'Exploring humanitarian response strategies in the aftermath of disasters induced by climate change in Zimbabwe' (2023) 40(2) *Development Southern Africa* 313–328.

⁵⁰²Runga A *An Investigation into the Effectiveness of Climate-Related Policies on Disaster Preparedness and Response in Zimbabwe: The Case of Cyclone Idai in Chimanimani District* (unpublished Master's thesis, University of Agder, 2023).

⁵⁰³ Kulanthaivelu E *Macroeconomic Consequences in the Aftermath of Tropical Cyclones: Empirical Approaches* (unpublished Doctoral dissertation, Université de la Réunion, 2023).

⁵⁰⁴ Maviza G, Caroli G, Makanda J, Tarusarira J, Sax N, Gadu S et al 'Towards a common vision of climate, peace, security and migration in Mozambique' (2024).

⁵⁰⁵UNHCR *Climate Change and Disasters: Protecting People on the Move* (2020).

address climate-induced displacement, UNHCR's involvement underscores its commitment to ensuring that displaced persons, regardless of their legal status, receive necessary humanitarian aid and protection.

6.1.3. 2011 Floods in Thailand.

The devastating floods that struck Thailand in 2011 showcased an example of the complex relationship between the environment and human migration⁵⁰⁶. Millions of people were displaced and significant economic losses were caused by the high magnitude and long duration of the floods, which submerged large portions of the nation⁵⁰⁷. The flooding incident demonstrated how climate change conditions can act as major triggers for human migration, exposing both vulnerability and level of resilience in equal measure⁵⁰⁸. The flooding caused rivers to overflow and low-lying areas to be submerged because of prolonged, heavy monsoon rains that were made severe by deforestation and irresponsible land use practices⁵⁰⁹.

The devastating effects of environmental mismanagement and the vulnerability of Thailand's ecosystems were made evident by the floods⁵¹⁰. The disaster disproportionately affected vulnerable populations, including farmers, and the urban poor⁵¹¹. Some of the impacts included the loss of large number of lives, destruction of homes and means of livelihood which led to forced migration of people as they looked for safer places to resettle⁵¹². This forced migration

⁵⁰⁶Phongsathorn P 'Environment and migration: The 2011 floods in Thailand' in *The State of Environmental Migration 2011* (2011).

⁵⁰⁷Ghaderi Z, Mat Som A P & Henderson J C 'When disaster strikes: The Thai floods of 2011 and tourism industry response and resilience' (2015) 20(4) *Asia Pacific Journal of Tourism Research* 399–415.

⁵⁰⁸Khaikham L & James H 'Socio-political transformation after the 2011 floods in Thailand' in *Population, Development, and the Environment: Challenges to Achieving the Sustainable Development Goals in the Asia Pacific* (2019) 227–253.

⁵⁰⁹Lebel L, Manuta J B & Garden P 'Institutional traps and vulnerability to changes in climate and flood regimes in Thailand' (2011) 11 *Regional Environmental Change* 45–58.

⁵¹⁰Marks D 'Climate change and Thailand: Impact and response' (2011) *Contemporary Southeast Asia* 229–258.

⁵¹¹Tahira Y & Kawasaki A 'The impact of the Thai flood of 2011 on the rural poor population living on the flood plain' (2017) 12(1) *Journal of Disaster Research* 147–157.

⁵¹²Poaponsakorn N, Meethom P & Pantakua K 'The impact of the 2011 floods, and flood management on Thai households' in *Resilience and Recovery in Asian Disasters: Community Ties, Market Mechanisms, and Governance* (2014) 75–104 (Tokyo: Springer Japan).

had far-reaching implications, straining resources in host communities and disrupting social and economic resources. While the government and humanitarian organisations responded with relief efforts, the long-term consequences of displacement, such as trauma, poverty, and social exclusion were not adequately addressed⁵¹³. The need for Thailand to address its environmental challenges and build resilience to future disasters was necessitated by the 2011 floods⁵¹⁴. Challenges remain even in the aftermath of the floods, including balancing economic development with environmental protection, ensuring equitable access to resources and support for vulnerable populations.⁵¹⁵

As climate change continues to occur, the frequency and severity of extreme weather events are expected to also increase, leading to more displacement. Thailand's experience and the other case studies highlight the urgent need for global cooperation to address climate change, reduce disaster risk, and support those affected by environmental displacement.⁵¹⁶ This includes providing immediate humanitarian assistance and long-term support by employing burden sharing mechanisms to improve the plight of displaced communities.

6.2. Analysis of burden sharing as part of the humanitarian approaches towards climate displaced persons.

From the above case studies, it is evident although there is no binding framework recognising climate displaced persons, various affected countries attempt to address the consequences of the different environmental disasters that they experience. Addressing these environmental

⁵¹³ Yeo J & Comfort L K 'An expected event, but unprecedented damage: Structure and gaps of large-scale response coordination of the 2011 Thailand floods' (2017) 26(4) *Disaster Prevention and Management: An International Journal* 458–470.

⁵¹⁴ Lebel L, Manuta J B & Garden P 'Institutional traps and vulnerability to changes in climate and flood regimes in Thailand' (2011) 11 *Regional Environmental Change* 45–58

⁵¹⁵ Khaikham L & James H *Socio-political transformation after the 2011 floods in Thailand* in *Population, Development, and the Environment: Challenges to Achieving the Sustainable Development Goals in the Asia Pacific* (2019) 227–253.

⁵¹⁶ Singkran N 'Flood risk management in Thailand: Shifting from a passive to a progressive paradigm' (2017) 25 *International Journal of Disaster Risk Reduction* 92–100.

disasters raises the questions of climate justice. Through the established lens of climate justice, it is evident that the countries bearing the brunt of the impacts of climate change are the developing countries and low-lying states in the Pacific. It calls into question the aspect of burden sharing when these states and neighboring territories are flooded with climate displaced persons. Developing countries are disproportionately affected by the impacts of climate change⁵¹⁷ bringing into sharp focus how burden sharing can alleviate this as they employ humanitarian approaches for climate displaced persons. This analysis delves deeper into what this means in terms of burden sharing for developing countries impacted by climate change and its aftermath being human migration.

As climate change exacerbates natural disasters, extreme weather events, and gradual environmental degradation, it forces millions of people to leave their homes in search of safety and stability. This displacement often disproportionately affects vulnerable populations in developing countries, which typically have lower adaptive capacities and fewer resources to cope with climate impacts. Burden sharing therefore refers to the equitable distribution of responsibilities, costs, and support among countries and stakeholders in responding to climate change and its consequences. In the context of climate-displaced persons, it emphasises that wealthier nations, which have historically contributed more to greenhouse gas emissions and possess greater resources, should take on a larger share of the responsibility in aiding and protection to displaced populations. This can include issuing humanitarian visas as proposed herein and the establishment of legal frameworks to safeguard the rights of climate-displaced persons.⁵¹⁸ It is a concept mostly applied in traditional refugee discourses, but which would nonetheless be relevant considering the climate justice narrative underpinning this thesis. In

⁵¹⁷Schneider S H et al ‘Assessing key vulnerabilities and the risk from climate change’ in Parry M L et al (eds) *Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (2007) 779–810.

⁵¹⁸Migration Policy Institute ‘Burden-sharing in the new age of immigration’ available at <http://www.migrationpolicy.org/article/burden-sharing-new-age-immigration>, accessed on 14 August 2024.

application of this concept, the cost of accommodating refugees should be distributed equitably amongst states. This would relieve developing nations of the difficulties faced in providing adequately for displaced persons.⁵¹⁹

Burden sharing recognises that granting asylum may be daunting for developing states which are still struggling to provide basic needs for their citizenry. Burden sharing may be viewed in two aspects: the first is mainly through distributing financial assistance to countries of asylum that are already economically strained. This would assist such states in providing for the refugees within their borders.⁵²⁰ Such an approach would be appropriate for region-based handling of refugees. It would keep refugee families intact in the aftermath of conflict and facilitate repatriation when peace and stability have been achieved.⁵²¹

The second aspect is commonly referred to as physical burden-sharing. Under this form, various states take up individual refugees for short-term resettlement.⁵²² Burden sharing recognises the effects of increased human migration into host countries, and such include aspects such as: economic, environmental, socio-political as well as matters pertaining to peace and security.⁵²³ Economically, the presence of increasing refugee populations often leads to pressure on public services such as health and sanitization, education and water facilities. There needs to be structural adjustment programs in host developing countries to expand infrastructure and ease the humanitarian demands on the economy.⁵²⁴ An increase in displaced human populations usually leads to rampant environmental degradation and eco-system

⁵¹⁹Grahl-Madsen A 'Plan for distributing asylum seekers' (1965) 35 *Nordisk Tidsskrift for International Ret* 175–190.

⁵²⁰ Ibid.

⁵²¹ Ngira D O & Mogeni H S 'Burden Sharing as an Effective Mechanism of Handling the Refugee Dilemma' (7 March 2016) available at SSRN: <https://ssrn.com/abstract=2743177> or <http://dx.doi.org/10.2139/ssrn.2743177>.

⁵²² Ibid

⁵²³ Boswell C 'Burden-sharing in the new age of immigration' (2003) *Migration Information Source* available at <https://www.migrationpolicy.org/>.

⁵²⁴ Dowd R & McAdam J 'International Cooperation and Responsibility-Sharing to Protect Refugees: What, Why, and How?' (2017) 66 *International and Comparative Law Quarterly* 863–891 doi:10.1017/S0020589317000343.

imbalances. Hosting often leads to demand for natural resources such as land, fuel, water, food and shelter materials which are already scarce. Regarding the socio-political aspect, the effect is felt when the displaced communities are from different cultural, ethnic, religious, or linguistic background from the host population.⁵²⁵ This leads to an exacerbation of social tensions and frequent attacks from the host communities. Most of these displaced persons are thus looked down upon as second-class citizens undeserving of government services.⁵²⁶

Thielemann argues that when it comes to handling refugees, there is need for a common unifying burden sharing policy which is lacking now.⁵²⁷ He correctly observes that the distribution of refugees is largely uneven with some countries having to bear more burdens than others. In a similar vein, he points out the fact that countries should be committed by virtue of solidarity and sharing of financial responsibility as well as practical international cooperation to protecting vulnerable groups such as refugees. In his view, burden sharing needs to be explored in terms of policy harmonization and quota-based initiatives. The same has been pointed out by Goodwin-Gill⁵²⁸ as he observes that any host countries have been heavily burdened as the number of the current refugees increases. In the absence of a legal framework, no state can be obligated to support developing states to cope with this common occurrence. The adverse economic implications of admitting refugees into one's territory have kept most countries at bay.

Milner brings into sharp focus the definition of burden-sharing, emphasising that the principle extends beyond financial contributions to include the physical resettlement of refugees. This

⁵²⁵Gottwald M 'Burden Sharing and Refugee Protection' in Fiddian-Qasmiyeh E, Loescher G, Long K & Sigona N (eds) *The Oxford Handbook of Refugee and Forced Migration Studies* (2015) 522–534 (Oxford: Oxford University Press).

⁵²⁶Horst C 'Transnational Nomads: How Somalis Cope with Refugee Life in the Dadaab Camps of Kenya' (2006) 19 *Journal of Refugee Studies* 481–490 doi:10.1093/jrs/fej017.

⁵²⁷Thielemann E *International Politics of Refugee Protection* Working Paper No 134 (March 2006) London School of Economics, available at <https://eprints.lse.ac.uk/842/>, accessed 28 June 2025.

⁵²⁸Goodwin-Gill GS *The Refugee in International Law* 2 ed (1996) 1–525 (Oxford: Clarendon Press).

broader interpretation highlights the multifaceted nature of international responsibility, underscoring the need for both monetary support and direct action in accommodating displaced populations. However, in the absence of a binding framework, many states prioritize financial aid over resettlement, often treating their contributions as discretionary rather than obligatory.⁵²⁹

Newland shifts emphasis to other aspects of burden sharing by focusing on small scale agreements between countries during the aftermath of a conflict.⁵³⁰ She points out international cooperation as a vehicle to implement burden sharing. She further emphasises that its implementation largely relies on the goodwill of the states and embodies other critical domains such as state sovereignty. Steven Roper and Lilian Barria point out that the UNHCR has been internationally mandated to cater to refugees, particularly given their frequent movement across less developed countries. However, the organization is heavily dependent on donor funding, which is often unpredictable. This funding instability further weakens the capacity of host countries to provide adequate support for displaced populations.⁵³¹ Industrialized nations do not feel obligated to increase or sustain their financial contributions, as refugee assistance is generally viewed as a discretionary matter rather than a binding responsibility.⁵³² Susan Masarat Akram⁵³³ also brings out the fact that the lack of a proper binding mechanism to implement the principle of burden sharing continues to place a huge socioeconomic restraint on the host countries. Consequentially, the asylum seekers face poor living conditions in

⁵²⁹Milner J *When Norms Are Not Enough: Understanding the Principle and Practice of Burden and Responsibility Sharing for Refugees* Series Paper No 2 (2016) 1–24.

⁵³⁰Newland K ‘Cooperative Agreements to Share Burdens and Responsibilities in Refugee Situations of Mass Influx’ UNHCR Expert Meeting on International Cooperation to Share Burdens and Responsibilities (2011) available at <https://www.unhcr.org/>, accessed 28 June 2025.

⁵³¹Roper SD & Barria LA ‘Burden Sharing in the Funding of the UNHCR: Refugee Protection as an Impure Public Good’ (2010) 54 *Journal of Conflict Resolution* 616–637 available at www.jstor.org/stable/20773710, accessed 28 June 2025.

⁵³²Ibid.

⁵³³Musarat-Akram S ‘The World Refugee Regime in Crisis: A Failure to Fulfill the Burden-Sharing and Humanitarian Requirements of the 1951 Refugee Convention’ (1999) 93 *Proceedings of the Annual Meeting (American Society of International Law)* 213–216 available at www.jstor.org/stable/25659295, accessed 28 June 2025.

camps.⁵³⁴ Diane Kayongo agrees that in addition to development problems, almost half of African countries are saddled with refugees' problems.⁵³⁵ There is need to address these matters using a model that enables the principle of burden sharing to be applied.

While the existing literature provides valuable insights into the concept of burden sharing, climate displacement and humanitarian responses, a significant gap remains in the absence of a binding framework on burden-sharing, particularly in relation to climate-displaced persons. As climate-related disasters continue to displace millions globally, there is no clear, enforceable mechanism that ensures equitable responsibility-sharing among states. This lack of coordination places a disproportionate burden on certain regions, particularly developing countries that may lack the resources and infrastructure to support displaced populations effectively. One of the most pressing issues within this framework is the absence of a structured humanitarian visa system for climate-displaced persons. Unlike refugees who may seek asylum under existing international conventions, those displaced due to climate-related disasters often fall into a legal grey area, with no specific protections guaranteeing their right to cross borders or resettle in safer regions. As a result, responses to their plight remain largely discretionary, driven by ad hoc national policies rather than a coordinated international approach.

Further, without a standardized system for evaluating and implementing burden-sharing mechanisms, assistance remains inconsistent and reactive rather than proactive. While some countries have taken steps to address climate displacement through temporary protections or regional agreements, these efforts lack a comprehensive global framework that mandates equitable intervention from both developed and developing nations. There is an urgent need

⁵³⁴CNN 'Dadaab Refugees' available at <http://edition.cnn.com/interactive/2015/10/world/dadaab-refugees/>, accessed 28 June 2025.

⁵³⁵Kayongo-Male D 'African Refugee Migration: A Model and Research Agenda' (1988) 15 *Humboldt Journal of Social Relations* 133–156 available at www.jstor.org/stable/23262541, accessed 28 June 2025.

for international cooperation to establish clear policies that facilitate safe, legal pathways for climate-displaced persons, ensuring they receive adequate support and protection.

Addressing these challenges requires a shift from voluntary and fragmented responses to legally binding commitments that hold states accountable for supporting climate-displaced populations. A robust burden-sharing mechanism, coupled with a structured humanitarian visa system, would help create a fairer and more effective approach to managing climate-induced displacement, ensuring that vulnerable populations are not left without recourse in the face of environmental crises. Even as this lacuna persists, it is important to acknowledge the positive steps that have been taken towards burden sharing for displaced persons such as the 2 Global Compacts on Refugees made in 2016 and 2018 despite them not being binding. The contribution of external support and international aid is also recognised in the efforts to address the resultant consequences of these disasters.

These Global compacts (already mentioned in the previous chapters) are discussed below in detail.

6.3. Global Compacts on refugees and migrants, complementary pathways, and their relevance to climate displaced persons.

6.3.1. New York Declaration for Refugees and Migrants 2016.

The New York Resolution is a declaration that was adopted on 19th September 2016 by 193 members of the United Nations General Assembly.⁵³⁶ It was also made in reaffirmation of the 1948 Universal Declaration on Human Rights. According to former UN High Commissioner for Refugees, Filippo Grandi, it represents political commitment that seeks to fill in a gap in the

⁵³⁶Türk V & Garlick M 'From Burden and Responsibility Sharing to Opportunities for International Cooperation: The 2016 New York Declaration on Refugees and Migrants' (2016) 28(4) *International Journal of Refugee Law* 656–678.

international protection of refugees, that of effectively sharing responsibility of refugees.⁵³⁷

The New York declaration paved the way for states to pay close consideration to the human rights of refugees and immigrants.⁵³⁸ It is further agreed, according to the Declaration that protecting refugees and supporting countries that shelter them are shared international responsibilities. This humanitarian task must be borne equitably and predictably. In expressing their commitment, countries pledged robust support to those states which are affected by large movements of refugees across their borders.⁵³⁹

This non-binding declaration contains four key objectives of a Comprehensive Refugee Response Framework which are: to ease the pressure of host countries and communities so as to reduce conflict between the refugees and locals over scarcely available resources, enhance refugee self-reliance by absorbing them into the country's economy, expanding 3rd country solutions by adopting different approaches in tackling influxes of refugees into developing countries and supporting conditions in countries of origin for return in safety and dignity in order to deal with the root cause of displacement and seeks to also facilitate smooth and voluntary refugee repatriation.⁵⁴⁰

The New York Declaration for Refugees and Migrants (2016) indirectly addresses climate-induced displacement by acknowledging the broader drivers of migration, which include environmental degradation and climate change. While the Declaration does not explicitly create a framework for climate-displaced persons, it represents a significant step in recognising the complex and multifaceted causes of displacement, including those linked to environmental

⁵³⁷Grandi F 'Statement by the United Nations High Commissioner for Refugees on the Adoption of the New York Declaration' (UNHCR, 19 September 2016) available at <https://www.unhcr.org/news/press/2016/9/57df7c1f4/statement-united-nations-high-commissioner-refugees-filippo-grandi-adoption.html> (accessed 28 June 2025).

⁵³⁸*New York Declaration for Refugees and Migrants* (adopted 19 September 2016) UNGA Res 71/1 para 68.

⁵³⁹ Chiara Denaro & Mariagiulia Giuffr  'UN Sustainable Development Goals and the "Refugee Gap": Leaving Refugees Behind?' (2022) 41 *Refugee Survey Quarterly* 79–107 available at <https://doi.org/10.1093/rsq/hdab017> (accessed 28 June 2025).

⁵⁴⁰V T rk & M Garlick 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees' (2016) 28 *International Journal of Refugee Law* 656.

factors. In paragraph 24, the Declaration explicitly recognises the role of climate change, environmental degradation, and natural disasters in driving migration. This acknowledgment stresses the need for international cooperation to mitigate the impacts of environmental displacement and underscores the importance of addressing the root causes of migration, including the vulnerabilities created by climate change. Additionally, paragraph 55 calls for the protection and assistance of people displaced due to disasters and climate-related impacts, urging countries to provide appropriate humanitarian aid, legal protection, and support to those fleeing environmental factors. While this section does not specifically identify climate-displaced persons as a distinct category, it highlights the urgent need for governments to adopt policies that integrate environmental drivers into their refugee and migration frameworks.

The Declaration further emphasises the need for international cooperation to address the full range of displacement factors, including environmental changes, and encourages member states to adopt a rights-based approach in protecting those affected by these factors. The overall commitment is to enhance global coordination, strengthen humanitarian efforts, and ensure that the rights of all displaced persons whether due to conflict, persecution, or environmental changes are upheld. By framing climate change as a key driver of migration and displacement, the New York Declaration lays the groundwork for future legal and policy discussions that could lead to more specific provisions for climate-displaced persons, including legal recognition and tailored protection mechanisms. In summary, while the Declaration does not provide a detailed legal framework for climate-displaced persons, it contributes significantly to the global dialogue on how to address climate-related displacement, calling for a more comprehensive and cooperative approach to migration and refugee protection.

Although the New York Declaration is not binding and obligatory, it bears the aspirations and commitments of countries to enhance the rights of refugees and immigrants through international cooperation and relevant stakeholder engagement. It thus requires states to be

deliberate about ensuring that the needs of refugees, and more so refugee children, are provided for adequately including access to education. It is considered the most progressive global instrument on state's commitment to the plight of refugees. Nevertheless, its implementation is still highly dependent on state's good will as well as its socio cultural, economic and political context.

6.3.2. UN Global Compact on Refugees (New York Declaration) 2018 and complementary pathways

The genesis of complementary pathways is etched in the objectives of the Global Compact on Refugees (New York Declaration)⁵⁴¹ and include enhancing refugee self-reliance, expanding access to third world countries and easing pressure on host countries⁵⁴². The Global Compact on Refugees⁵⁴³ establishes that the concerns of refugees need to be revisited with the aim of easing pressure on host states through sharing of responsibility by the international community. It also highlights that access should be granted to refugees into third countries and management of the situation in the country of origin to prevent future displacement and migrations. The declaration paved the way for states to fully respect the human rights of refugees and immigrants.⁵⁴⁴ In the celebrated document, it is further agreed that protecting refugees and supporting countries that shelter them are shared international responsibilities and must be borne equitably and predictably.⁵⁴⁵

The UN Global Compact on Refugees (2018), which builds on the New York Declaration for Refugees and Migrants (2016), does not explicitly mention climate-displaced persons or

⁵⁴¹UN General Assembly *Global Compact on Refugees* (2018) para 7, available at <https://www.refworld.org/legal/agreements/unga/2018/en/124198> (accessed 8 March 2024).

⁵⁴² Ibid.

⁵⁴³ The United Nations General Assembly in 2018 established the *Global Compact on Refugees* after consultations with member states, refugees, international organizations, civil society, experts, and the private sector. The consultations were steered by the UNHCR.

⁵⁴⁴ Ibid

⁵⁴⁵McAdam J 'The Global Compacts on Refugees and Migration: A New Era for International Protection?' (2018) *International Journal of Refugee Law* 572.

humanitarian visas, but its focus on enhancing international cooperation and providing safe, legal pathways for refugees aligns with the principles behind these tools. The Compact emphasises improving access to protection, responsibility-sharing, and creating sustainable solutions for refugees, including those displaced by environmental factors like climate change. Although it does not specifically address climate-induced displacement, the Compact's call for safer, legal pathways for refugees could extend to climate-displaced persons, ensuring that those fleeing environmental disasters or slow-onset environmental changes have access to protection. Humanitarian visas, which allow vulnerable individuals, including climate-displaced persons, to enter a country legally and seek asylum or temporary protection, are consistent with the Compact's broader objectives. By promoting such mechanisms, the Compact supports the legal entry of displaced persons, including those affected by climate change, and provides them a structured route to safety and protection, helping them rebuild their lives in host countries.⁵⁴⁶ Many refugees are unable to go back to their destroyed ecosystems or fit into local integrated systems. Therefore, resettlement schemes via humanitarian visas in third countries remains a critical aspect to enable them to relocate⁵⁴⁷ and live dignified lives safe from the ensuing humanitarian crisis after climate related disasters. It also secures their legal status and enables them access fundamental human rights in the third country.⁵⁴⁸

According to the 2019 UNHCR Three-Year Strategy on Resettlement and Contemporary Pathways, complementary pathways are defined as, “safe and regulated avenues that complement refugee resettlement and by which refugees may be admitted in a country and

⁵⁴⁶Solomon MK & Sheldon S ‘The Global Compact for Migration: From the Sustainable Development Goals to a Comprehensive Agreement on Safe, Orderly and Regular Migration’ (2018) *International Journal of Refugee Law* 588–589.

⁵⁴⁷Song YH ‘International Humanitarian Response and Militarization of Refugee and IDP Camps in Kenya and Sudan’ (2012) 19(1) *Journal of International and Area Studies* 115–136, available at <https://www.jstor.org/stable/43111509> (accessed 25 August 2024).

⁵⁴⁸Fratzke S, Zanzuchi MB, Hooper K, Beirens H, Kainz L, Benson N, Bateman E & Bolter J *Refugee Resettlement and Complementary Pathways: Opportunities for Growth* (2021) Geneva and Brussels: UNHCR and MPI Europe.

have their international protection needs met while they are able to support themselves to potentially reach a sustainable and lasting solution.⁵⁴⁹ Some of the humanitarian based complementary pathways include; humanitarian admission programs, family reunification programs and humanitarian visas.⁵⁵⁰

Complementary pathways such as the use of humanitarian visas to vulnerable categories of displaced persons, are avenues which refugees can use to migrate.⁵⁵¹ It also provides a practical strategy to enable third countries to take in climate displaced persons from developing countries affected by the ravaging impacts of climate change. As a fundamental underpinning of this thesis, complementary pathways steer away from the literary debate on climate displaced persons and instead lends itself to a more practical view of ameliorating the humanitarian crises often witnessed during climate related disasters in developing countries.

6.4. Humanitarian visas as a complementary pathway in the broader context of International Humanitarian Law.

Humanitarian visas are documents specifically used in granting persons seeking asylum entry into third countries legally and safely.⁵⁵² Traditionally, they are a short-term visa that have a limited territorial validity which can be issued on humanitarian grounds at the discretion of

⁵⁴⁹UNHCR *Three-Year Strategy on Resettlement and Complementary Pathways* (June 2019) available at <https://www.refworld.org/policy/strategy/unhcr/2019/en/147462> (accessed 25 August 2024); UNHCR *UNHCR Resettlement Needs, Complementary Pathways and Key Priorities for 2023: Summary of UNHCR Recommendations to the European Union* (June 2022) available at <https://www.refworld.org/policy/polrec/unhcr/2022/en/67034> (accessed 25 August 2024);

⁵⁵⁰Van Selm J & IOM *Humanitarian Admission Programmes: Expanding and Increasing Pathways to Protection* (European Resettlement Network 2018).

⁵⁵¹ERN+ *Humanitarian Admission Programmes in Europe: Expanding Complementary Pathways of Admission for Persons in Need of International Protection: Scoping Paper* (2018) available at <http://www.resettlement.eu/sites/icmc/files/ERN%2B%20Humanitarian%20Admission%20Programmes%20in%20Europe%20-%20Expanding%20complementary%20pathways%20of%20admission%20for%20persons%20in%20need%20of%20international%20protection.pdf>

⁵⁵²Radjenovic, A. *Humanitarian Visas at a Glance* (European Parliamentary Research Service, June 2018) 6–8, 11–12, available at [https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628308/EPRS_ATA\(2018\)628308_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628308/EPRS_ATA(2018)628308_EN.pdf) (accessed 28 June 2025).

individual states.⁵⁵³ Across various regions, humanitarian visas have been used as pragmatic tools to offer temporary legal entry and protection to persons fleeing crises, including conflict, natural disasters, and human rights violations. Although the issuance of such visas remains discretionary and context-specific, several countries have implemented notable programmes that provide insight into their potential scope and limitations.

In Latin America, Brazil's response to the 2010 Haiti earthquake stands out as a landmark example. Through Normative Resolution No. 97/2012, Brazil created a special visa programme that allowed Haitian nationals to enter the country legally for humanitarian reasons. Between 2012 and 2017, Brazil issued over 43,000 humanitarian visas to Haitians. These visas were subsequently converted into opportunities for permanent residency, offering displaced individuals a pathway to legal integration and protection. This model has often been cited as a pioneering example of solidarity-based regional response to disaster displacement in the Global South.

In Europe, countries such as Switzerland and Germany introduced humanitarian admission programmes in response to the Syrian civil war. Switzerland's programme, initiated in 2013, allowed for the issuance of 1,500 humanitarian visas, mainly targeting Syrians with family members already residing in the country. These visas enabled safe entry and provided a temporary legal status, along with access to support services upon arrival.

Germany adopted a more expansive approach through its Humanitarian Admission Programmes (HAPs), implemented both at the federal and state levels between 2013 and 2016. Under these initiatives, over 20,000 Syrian nationals were admitted through federal schemes, while more than 25,000 additional individuals benefited from state-level efforts. Beneficiaries were granted temporary protection, limited residency, and access to integration services. These

⁵⁵³ Red Cross EU Office, *Humanitarian Visas in Practice* (2018), esp. section on Switzerland (Sept. 2013 case study) and the CJEU decision in *X and X v Belgium* (March 2017), available at <https://redcross.eu/projects/humanitarian-visas-in-practice> (accessed 28 June 2025).

programmes demonstrated how humanitarian visas could be scaled up in response to displacement caused by conflict, though not specifically linked to climate-related events.

In Australia, the Special Humanitarian Programme (SHP) has long served as a pathway for individuals facing substantial discrimination or threats to life. In the fiscal year 2021–2022, the Australian government allocated 13,750 humanitarian visas, with 4,947 granted under the SHP category, including to Afghan nationals after the Taliban’s return to power. While offering legal protection and access to basic rights such as work and education, Australia's programme has been critiqued for limited accessibility and inconsistent policy direction, particularly in high-pressure migration contexts.

France has also piloted smaller-scale humanitarian visa programmes. Beginning in 2017, the French humanitarian corridor initiative, conducted in collaboration with religious and civil society organisations like the Sant’Egidio Community, enabled the issuance of over 1,000 humanitarian visas to refugees from Lebanon, Iraq, and Syria by 2023. These initiatives underscore how states can work alongside civil society to operationalise safe legal entry channels for vulnerable populations.

At the broader European Union level, however, efforts to institutionalise humanitarian visas remain limited. While Article 25 of the EU Visa Code permits Member States to issue such visas on humanitarian grounds, the Court of Justice of the European Union (CJEU) ruled in *X and X v. Belgium* (2017) that there is no binding obligation on states to do so. This legal position has reinforced the fragmented and discretionary nature of humanitarian visa issuance within the EU.

These case studies collectively demonstrate the practical viability of humanitarian visas as a form of complementary protection. However, they also expose key challenges: most programmes are limited in scope, time-bound, and often restricted to particular crises. Access tends to depend on proximity to consulates, political will, and existing family ties—criteria that

many climate-displaced persons in Africa may not meet. Moreover, few if any of these visa schemes have been explicitly applied to address displacement caused by climate-related events, despite growing calls to adapt such tools to the emerging realities of environmental migration. Nonetheless, the documented use of humanitarian visas in diverse geopolitical contexts shows that states do possess the capacity and legal discretion to implement protection-oriented visa frameworks, offering lessons that could inform more tailored approaches in Eastern Africa. The next section explores the concept of humanitarian visas as would be ambitiously applicable to climate displaced persons.

6.5. Humanitarian visas as a complementary pathway for climate displaced persons

Recent legal scholarship and UNHCR guidance have begun to explore the viability of humanitarian visas for persons displaced by climate change. While such displacement is often characterised by the absence of individualised persecution (thus falling outside the 1951 Refugee Convention), humanitarian visas may fill this gap by offering temporary or transitional protection in the face of sudden-onset disasters (e.g., floods, cyclones) or slow-onset degradation (e.g., drought, sea-level rise). Legal scholars such as McAdam and Kälin have advocated for pragmatic pathways including humanitarian visas as part of a broader toolkit of “complementary protection” mechanisms. However, humanitarian visas are not a panacea. First, they do not provide long-term protection unless accompanied by a clear pathway to residency or asylum. Second, they do not currently operate within a binding legal framework, leaving access subject to the political discretion of individual states. Third, most visa regimes are geared toward sudden-onset emergencies rather than the slow, cumulative impacts of climate change, which are more difficult to classify as urgent humanitarian crises.

There is limited literature on the history, quality, and effectiveness of complementary pathways for refugee resettlement discourses.⁵⁵⁴ Nevertheless, these concepts are not new and have been extensively explored by scholars such as Dr. Tamara Wood. In particular, individuals who are unable to secure refugee status and protection in host countries often seek alternative or complementary pathways to safety, such as applying for humanitarian visas. According to Dr. Tamara Wood, humanitarian visas serve as a crucial mechanism for facilitating the migration of refugees to third countries, especially in cases of urgent need and extreme vulnerability. This process allows for the transfer of a specified number of refugees from a country of asylum to a third country where they can be granted adequate protection and legal recognition.⁵⁵⁵

While existing refugee frameworks do not explicitly recognise climate displacement as a basis for refugee status, humanitarian visas offer a potential legal pathway for those fleeing environmental disasters and seeking refuge in safer regions.⁵⁵⁶ As climate change intensifies, the need for such legal mechanisms becomes increasingly urgent, highlighting the importance of expanding humanitarian approaches to accommodate those displaced by environmental factors.⁵⁵⁷

Humanitarian visas can play a significant role in addressing the needs of climate-displaced persons by offering several key benefits. First, they provide legal protection and security,

⁵⁵⁴UNHCR, *Resettlement Handbook* (2011) ch 1–3, available at <https://www.unhcr.org/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-complete-publication.html> (accessed 28 June 2025); UNHCR, *Projected Global Resettlement Needs 2016* (2015) 6–9, 21–23, available at <https://www.unhcr.org/protection/resettlement/5594a72b9/unhcr-projected-global-resettlement-needs-2016.html> (accessed 28 June 2025); UNHCR, *Evaluation of UNHCR's Resettlement Programme* (1994), esp. 13–18 (complementary pathways not discussed).

⁵⁵⁵Wood, T., 'Exploring Legal Pathways to Protection for People Displaced by Disasters and Climate Change: A Role for Humanitarian Visas?' (2019) 8 *Laws* 32, 1–19, <https://doi.org/10.3390/laws8040032>; Wood, T., 'Humanitarian Visas and Refugee Protection: Bridging Gaps in International Law' (2017) 32(2) *International Journal of Refugee Law* 226–248; Wood, T. & Byrne, R., 'The Protection of Forced Migrants in Africa: Reflections on Humanitarian Visa Mechanisms' (2018) 36(1) *Refugee Survey Quarterly* 65–83.

⁵⁵⁶Leighton, M., 'Humanitarian Visas: Key Tools for Protecting Climate-Displaced Persons' in Scott M & Simon T (eds), *Climate Change, Disasters and the Refugee Convention* (CUP, 2023) 155–175.

⁵⁵⁷Wood, T., 'The Role of "Complementary Pathways" in Refugee Protection' (November 2020) *Andrew & Renata Kaldor Centre for International Refugee Law, UNSW Sydney*, 1–8, available at <https://www.kaldorcentre.unsw.edu.au/publication/role-complementary-pathways-refugee-protection> (accessed 28 June 2025).

allowing displaced individuals to enter and reside in a host country without the fear of deportation or being treated as undocumented migrants. This legal status ensures they are protected from exploitation and abuse. This results in the transfer of a specified number of refugees from a country of asylum to a third country where they would be accorded proper protection. With a humanitarian visa, climate-displaced persons would also gain access to essential services such as healthcare, education, and employment services which they may be denied as undocumented migrants elsewhere.⁵⁵⁸

Further, humanitarian visas offer increased mobility and flexibility, allowing displaced persons to move between countries that provide these pathways, enabling them to settle in regions that offer better prospects for rebuilding their lives, rather than being confined to unsafe or unsustainable environments. By providing this legal pathway, humanitarian visas help relieve the pressure on countries already burdened with climate displacement, redistributing the responsibility more equitably. This reduces the strain on neighboring states and international aid systems, which may be insufficient on their own. Offering humanitarian visas would demonstrate global solidarity in response to the climate crisis, acknowledging the need for countries to act as responsible stewards and provide refuge to those affected by climate change. This approach promotes a sense of shared responsibility in tackling the global challenge of climate displacement.

Even though climate displaced persons are not legally recognised as a category of people who need a legally recognised status, the humanitarian visas may be used to enable them to settle to

⁵⁵⁸ United Nations Human Rights Council, *Safe Pathways for Refugees: Providing Legal Mobility Options* A/HRC/44/42/Add.2 (2020) para 31, available at <https://undocs.org/A/HRC/44/42/Add.2> (accessed 28 June 2025); International Organization for Migration (IOM), *Humanitarian Visas: A Tool to Address Climate-Induced Displacement?* (2022) 4–6, available at <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/Humanitarian-Visas-IOM-Policy-Brief.pdf> (accessed 28 June 2025); McAdam, J., 'From the Nansen Initiative to the Global Compact on Migration: Legal Protection of Climate-Displaced Persons under International Law' (2018) 20(3) *International Journal of Refugee Law* 561–591.

other safer jurisdictions. As is evidently well-documented, these developed countries largely contribute to the climate change disasters often witnessed in developing countries resulting into huge population displacements and utter destruction of livelihoods and ecosystems.⁵⁵⁹ Climate justice denotes that none should bear ‘disproportionate environmental burdens’⁵⁶⁰ connoting an equitable distribution of benefits and burdens⁵⁶¹ on States even within the context of Climatic Change. This notion is depicted through various principles under International Environmental Law such as the principle of common but differentiated responsibilities⁵⁶² which considers the respective capacities of states in mitigating the effects of climatic change. The critical relevance of humanitarian visas to climate displaced persons is that they get expedited international migration/protection as they seek refuge and flee from harsh climatic or environmental conditions.⁵⁶³ Harsh climatic conditions and ensuing disasters call for urgent response, which can be achieved through humanitarian pathways.⁵⁶⁴ The humanitarian visas equip vulnerable individuals with the ability to enter third countries, be admitted and have staying rights.⁵⁶⁵ Further, it confers protection on refugees especially a huge number of refugees fleeing a disaster that requires rapid response.⁵⁶⁶ Based on the efficacy of the humanitarian

⁵⁵⁹Angela Williams ‘Promoting justice within the international legal system: Prospects for climate refugees’ in Benjamin J Richardson, Yves Le Bouthillier, Heather McLeod-Kilmurray & Stepan Wood (eds) *Climate Law and Developing Countries: Legal and Policy Challenges for the World Economy* (2009) 98.

⁵⁶⁰Kariuki Muigua, Didi Wamukoya & Francis Kariuki *Natural Resources and Environmental Justice in Kenya* (2015) 56.

⁵⁶¹Ibid.

⁵⁶²Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997, Art 10, ILM 37, 22; United Nations Framework Convention on Climate Change, Art 3(1).

⁵⁶³ Ibid

⁵⁶⁴Tamara Wood ‘The role of “complementary pathways” in refugee protection’ Andrew & Renata Kaldor Centre for International Refugee Law, UNSW Sydney (November 2020).

⁵⁶⁵UNHCR, *Key Considerations* (global complement), para 15 (see also Global Compact on Refugees para 95).

⁵⁶⁶UNHCR, *Guidelines on Temporary Protection or Stay Arrangements* (February 2014) 5–12. Notably, the UNHCR’s Resettlement Service was recently renamed the “UNHCR Resettlement and Complementary Pathways Service,” informed by the Global Compact on Refugees, which calls for systematic and sustainable complementary pathways.

visas as a complementary pathway for refugees, this thesis proposes its use for people fleeing the harsh climatic conditions to seek asylum and legally and safely enter third countries.⁵⁶⁷ Notably, some countries which allow for refugee entry in their legislation provide for these types of visas. These countries include Italy, France, Switzerland, Argentina, and Brazil.⁵⁶⁸ These visas afford the migration of many refugees requiring a swift response as often is the case with climate displaced persons. In some countries, humanitarian visas are used together with “protected entry schemes “which allow persons to apply for visas beforehand.⁵⁶⁹ This type of humanitarian visa will provide protection to the climate displaced whether in the case of sudden disasters or where the effects of climate change are gradual such as drought.⁵⁷⁰ Climate-displaced persons require safe and legal admission into third countries as they flee from the impact climate change disasters. The lack of legal protection poses a risk of violence, abuse, criminality, and death.⁵⁷¹

By way of proposal, humanitarian visas would enhance the plight of climate displaced persons by granting them access to territory, status and rights during stay and opportunities for lasting solutions.⁵⁷² These are the main protection schemes stated in the Nansen Initiative Protection Agenda’s statement on the lack of protection for persons displaced due to disaster.⁵⁷³ Ensuring that displaced individuals are granted legal status, access to social services, and opportunities for economic participation is essential in fostering long-term resilience and integration within host communities. Moreover, implementing comprehensive protection mechanisms for

⁵⁶⁷Rehberg K, ‘The Future of Refugee Resettlement and Complementary Pathways: Strengthening Sustainable and Strategic Humanitarian Solutions for Refugees’ (2020) 3–8, available at <https://cwsglobal.org/reports/the-future-of-resettlement-and-complementary-pathways> (accessed 26 January 2025).

⁵⁶⁸Andrew & Renata Kaldor Centre for International Refugee Law, ‘Alternative Refugee Pathways: Protected Entry Schemes’ factsheet (8 October 2018) 1–4.

⁵⁶⁹ Ibid

⁵⁷⁰Higgins C, ‘Humanitarian Corridors: Safe Passage but Only for a Few’ *Lowy Interpreter* (4 August 2017) 1–3.

⁵⁷¹Nansen Initiative Secretariat, ‘Natural Hazards, Climate Change, and Cross-Border Displacement in the Greater Horn of Africa: Protecting People on the Move’ (Background Paper, Greater Horn Regional Consultation, Nairobi 2013) 8–15.

⁵⁷² Tamara Wood ‘The role of free movement of persons agreements in addressing disaster displacement: A study of Africa’ Platform on Disaster Displacement (May 2019).

⁵⁷³ Ibid p16

climate-displaced persons is not only a humanitarian necessity but also a critical component of global efforts to address climate change-induced migration.⁵⁷⁴ In so doing, climate displaced persons are given an opportunity to rebuild their lives with their families.⁵⁷⁵

6.6. Benefits and Limitations of Humanitarian Visas in Addressing Climate Displacement

The use of humanitarian visas to address climate-related displacement presents a compelling, yet complex, legal and policy response. While they offer clear advantages, their current deployment also reveals critical gaps in legal coherence, accessibility, and implementation.

6.6.1. Legal and Safe Access to Protection

Perhaps the most immediate benefit of humanitarian visas is that they allow legal entry into a third country, avoiding dangerous and irregular migration routes. In situations of sudden-onset disasters such as floods, cyclones, or earthquakes where affected individuals require urgent evacuation or protection, a humanitarian visa can provide a rapid and regulated response that respects both state sovereignty and human dignity. For instance, Brazil's issuance of humanitarian visas to Haitians after the 2010 earthquake offered a structured, rights-based migration channel that enabled thousands to regularize their status and rebuild their lives in safety.

6.6.2. Flexibility and Speed

Since humanitarian visas are often grounded in domestic administrative law, they can be designed and activated quickly in response to emergent crises. States retain discretion over eligibility criteria and duration, allowing for tailored responses to specific humanitarian scenarios. This flexibility is crucial in contexts where international refugee law does not apply such as environmental displacement, which generally lacks the element of persecution required under the 1951 Refugee Convention.

⁵⁷⁴ Ibid 17 para 1.

⁵⁷⁵ Ibid 17 para 2.

6.6.3. Complementarity to Refugee Law

Humanitarian visas function as a gap-filling mechanism, particularly when individuals do not qualify for refugee status but still face serious threats to life, security, or dignity. The UNHCR recognises them as part of a broader toolbox of complementary protection measures, including temporary protection and discretionary admissions, that can enhance international responses to mixed migration flows. Their use is especially pertinent for climate-displaced persons, who are often excluded from formal refugee frameworks despite facing existential risks.

6.6.4. Family Reunification and Durable Solutions

In several jurisdictions, humanitarian visas have also served as a vehicle for family reunification and, in some cases, a pathway to longer-term residency or citizenship. The humanitarian admission programmes implemented in Switzerland and Germany for Syrians displaced by war, for example, allowed relatives to sponsor family members for legal entry and potential integration. If designed with sufficient foresight, humanitarian visa regimes can support durable solutions, including local integration and social inclusion.

6.7. Limitations of humanitarian visas

6.7.1. Discretionary and Non-Binding Nature

The most significant limitation of humanitarian visas is their discretionary character. There is no binding international legal obligation requiring states to offer humanitarian visas, and most national policies are implemented on a case-by-case basis. As seen in *X and X v. Belgium*, the Court of Justice of the European Union confirmed that EU states are not legally required to issue visas even in cases of apparent humanitarian need. This lack of obligation results in uneven access and fragmented protection landscapes, particularly harmful to individuals from Global South regions facing climate crises.

6.7.2. Limited Duration and Scope of Rights

Humanitarian visas are often short-term and come with restricted rights. In many cases, visa holders have no right to work, limited access to public services, and are not automatically

eligible for refugee status or long-term protection. This raises concerns about precarity and marginalisation, particularly where return to the country of origin is not feasible due to ongoing environmental degradation. In Australia, for example, Afghan nationals granted temporary protection visas faced uncertainty over future status and limited access to social entitlements.

6.7.3. Inaccessibility for the Most Vulnerable

Paradoxically, those most in need of humanitarian protection are often the least able to access visa procedures. Application processes typically require access to consulates or embassies, legal documentation, and travel to safe location conditions that may be unavailable during disasters or in conflict-affected areas. Moreover, the digital divide, financial constraints, and language barriers can further hinder access for the poor and marginalised, including rural climate-affected communities.

6.7.4. Absence of a Dedicated Climate Lens

While humanitarian visas have been used in response to armed conflict and natural disasters, they are rarely designed with climate displacement in mind. Existing schemes tend to respond to discrete emergencies, whereas climate displacement is often slow-onset, cumulative, and transboundary, requiring long-term planning and regional coordination. This limits the applicability of current humanitarian visa models to the realities of climate mobility, which challenge traditional legal categories of protection.

6.7.5. Political Resistance and Institutional Capacity

Finally, the implementation of humanitarian visas is subject to domestic political climates. In periods of anti-immigration sentiment or austerity, governments may scale back or withdraw visa schemes. This instability undermines the long-term sustainability and reliability of humanitarian visas as a protection tool. Moreover, in many African states, limited institutional capacity and resource constraints make it difficult to administer complex visa regimes, particularly in the absence of external support or regional frameworks.

Humanitarian visas represent a promising but underutilised mechanism for addressing climate-related displacement. Their benefits such as legal access, flexibility, and complementary protection are significant, especially in contexts where refugee law falls short. Yet their limitations particularly legal uncertainty, restricted rights, and lack of climate-specific design must be addressed through legal reform, political will, and regional cooperation. For African states grappling with climate mobility, embedding humanitarian visas within existing regional migration frameworks such as those under IGAD or the African Union may offer a pathway toward more robust and equitable protection.

6.8. A Critique of the humanitarian visa as a complementary pathway

Although humanitarian visas have been praised to be efficient in the movement of refugees in the traditional sense, the same has been critiqued by some authors. This is mainly because its implementation lacks a proper guiding framework and is only curated in the face of disasters and urgent humanitarian crises.⁵⁷⁶ Building on the limitations of this special type of visa, there is no prior deliberation on their issuance is in the case of ordinary visas which exist in a framework where there has been proper deliberation bearing in mind all factors and addressing any inconsistencies on the same.⁵⁷⁷ However, for the case of humanitarian visas, there is little to no considerations of other factors except for eligibility as a refugee and the imminent danger they face in their country of origin.

Firstly, and as in the case of Brazil, most humanitarian visas exist in the context of executive declarations which can be revoked, amended or expire at any time.⁵⁷⁸ In 2015, in the face of the Syrian war, the expiration of the resolution to grant humanitarian visas caused havoc and

⁵⁷⁶ OECD *Are there alternative pathways for refugees?* Migration Policy Debates (2016) available at <https://www.oecd.org/els/mig/migration-policy-debates-12.pdf> (accessed 30 June 2025).

⁵⁷⁷ European Parliament *Towards an EU Humanitarian Visa Scheme?* (2016), cited in Durable Solutions Platform *Access to Resettlement and Complementary Pathways for Syrian Refugees* (2018) s 4.2.

⁵⁷⁸ Lyra Jubilut, Marselha Gonçalves Marguti & João Carlos Jarochinski Silva 'Humanitarian visas: Building on Brazil's experience' (2016) 51 *Forced Migration Review* 78–79.

fear that they were not going to be renewed.⁵⁷⁹ This may lead to uncertainty among the refugees who had been hoping to rebuild their lives in their countries of admission.

Further, the issuance humanitarian visas are mostly implemented in ad hoc situations on nationality and specific contexts and specific groups of people.⁵⁸⁰ This leads to discrimination and lack of equality, especially where one must prove in the context of their situation that they are eligible for a humanitarian visa. Basically, one cannot rely on a previous case scenario in another country and for a specific group of people, to apply for a humanitarian visa. This is because there is no umbrella legal framework that could provide the climate displaced legal protection that would apply in all cases of persons seeking protection in a third country. This kind of method of granting humanitarian visas, may be effective if other countries borrow from the nations implementing it but tweaking it to match their situation. However, this kind of humanitarian visa implementation, that is group specific or nation specific, may lead to uncertainties in the Laws of the countries that seek to apply it.

These criticisms and limitations pinpoint to the fact that there is more than meets the eye in issuance of humanitarian visas. Overall, there should be a call to wholly review the issue of application and issuance of humanitarian visas regionally and globally to block any cracks that render it deficient or ineffective. This is given the fact that it has proven to be a viable solution to refugees in their migration.

⁵⁷⁹ Ibid

⁵⁸⁰ Ibid

6.9. Conclusion

This chapter has addressed the place of humanitarian visas, its definition, instances of application, pros and cons and its criticism as well. It also demonstrated that humanitarian visas are part of complementary pathways for refugees which prove to be safe and legal. Most importantly, it has established that the issuance of humanitarian visas is essential to address the statement that is the non-recognition of climate displaced persons. Notably, there have been instances where humanitarian visas have been issued to people seeking asylum in cases of war or natural disasters such as earthquakes. This has been mostly done at a national level and in a discretionary manner. Humanitarian visas would ensure that displaced persons enjoy fundamental human rights such as the right to health and education by virtue of their legal recognition in a host state. Be that as it may, there are two sides to a coin.

The humanitarian visa has garnered both praise and criticism. While it offers a potential pathway for climate-displaced persons to find refuge, it remains subject to limitations due to the absence of a comprehensive international legal framework governing its existence and issuance. As it currently stands, the humanitarian visa system is often limited to specific groups or nations, lacking a unified global approach.

In more formal terms, humanitarian visas are better positioned to facilitate the migration of climate-displaced persons to countries of safety, providing a critical means for individuals displaced by environmental factors to access protection and necessary services. However, for these visas to be more effective and equitable, there needs to be a more standardized, internationally recognised system that ensures consistent support for climate-displaced populations across different regions.

CHAPTER SEVEN

Summary and Recommendations

7. Introduction

This study has thoroughly examined the complex challenges faced by climate-displaced persons in East Africa, focusing on the profound vulnerabilities they encounter because of climate-induced displacement. It has explored the multifaceted nature of climate change as a driver of displacement, ranging from devastating droughts and floods to the loss of agricultural livelihoods caused by environmental degradation. The research also highlighted the significant tension between states' responses to climate migration and the absence of formal, comprehensive legal frameworks to safeguard the rights and well-being of climate-displaced individuals. Despite growing recognition of climate change as a driver of displacement, there is still no clear, established mechanism to protect climate displaced persons under existing international laws, which leaves them highly vulnerable.

The study emphasises the critical gap in legal protection for climate-displaced persons, who often do not meet the traditional refugee criteria defined by international law. This gap creates a limbo for those displaced by climate factors, who remain without clear pathways to legal recognition or adequate humanitarian assistance. Furthermore, the study underlines the challenges faced by both the countries of origin and the host nations in Eastern Africa (IGAD region), which, despite their geographic proximity and shared concerns, have not developed coordinated strategies to address the increasing numbers of climate-displaced persons.

In light of these findings, this final chapter synthesises the key insights from the research and revisits the initial questions surrounding the protection of climate-displaced persons. The study proposes that a primary recommendation to address these challenges is the establishment of humanitarian visas as a central mechanism for protecting climate-displaced individuals. Humanitarian visas could serve as a legal pathway for individuals fleeing climate-induced disasters, offering them a formal route to seek refuge and protection in host countries. By providing a legal framework for safe migration, humanitarian visas could help mitigate the

risks associated with irregular migration, reduce vulnerability, and allow displaced individuals to access essential services such as healthcare, housing, and education.

The adoption of humanitarian visas as a central element of the international response would be a significant step toward addressing the gaps in current protection mechanisms for climate-displaced populations. In addition to humanitarian visas, the study calls for increased international cooperation and the development of regional frameworks to coordinate the management of climate displacement, ensuring that displaced persons are supported in a rights-based, sustainable, and effective manner. This study argues that the establishment of humanitarian visas, as part of a broader legal and policy reform, would promote a more just, equitable, and rights-based approach to addressing climate displacement in Eastern Africa and beyond, fostering a model of protection that is both humane and adaptable to the realities of climate change.

7.1. Research question and findings

The main research question explored in this study was: *Despite the ravaging impact of climate change in Africa, why (and perhaps why not) has the humanitarian visa not yet been adopted as a flexible means of creating durable solutions for climate-displaced persons?* This question arose from growing concerns that climate-induced displacement in Africa has not been adequately addressed by existing international legal frameworks, leaving affected populations without clear protections or pathways for relocation. Given the increasing frequency and intensity of climate-related disasters such as droughts, floods, and other extreme weather events, it became crucial to explore why the humanitarian visa, an instrument designed to offer temporary protection to those fleeing environmental crises, had not yet been implemented or universally accepted as part of a comprehensive solution for climate-displaced individuals.

To answer the main research question, the following sub-questions were proposed to guide the study's objectives and provide an enhanced understanding of the issue at hand:

- i. What was the context within which climate-displaced persons existed in Eastern Africa?
The objective of this research question has been met through a detailed exploration of the socio-political and environmental landscape of Eastern Africa. The research has effectively examined the drivers and impacts of climate displacement in countries such as Somalia, Ethiopia, Kenya, and Sudan. The analysis illuminated how environmental stressors such as droughts, floods, and land degradation intersect with political instability, poverty, and conflict to exacerbate displacement. It also highlighted the lived experiences and vulnerabilities of displaced communities, providing a nuanced understanding of their needs in terms of protection, shelter, and sustainable livelihoods. This contextual understanding has laid a solid foundation for evaluating the adequacy of current legal and policy responses.
- ii. What were the existing normative frameworks on climate-displaced persons in Eastern Africa, regionally and sub-regionally? The objective of this sub-question has been met as the research successfully explored climate justice as a guiding conceptual framework for understanding the need for alternative protection mechanisms like humanitarian visas. It demonstrated how humanitarian visas, though traditionally applied in conflict or disaster contexts, can serve as a complementary pathway for individuals displaced by climate-related events who fall outside the scope of the 1951 Refugee Convention. The analysis clarified the normative rationale for expanding protection through such visas, highlighting their role in addressing both legal and ethical gaps in current international frameworks. This conceptual foundation strengthens the case for integrating humanitarian visas into broader responses to climate-induced mobility.
- iii. Who were 'environmental refugees' in the context of this discourse, i.e., their international and regional status of recognition? A critical component of this study was understanding the term "environmental refugees" a concept that remained controversial

and largely unrecognised in international law. The objective of this sub-question has been met. The study critically examined the contested notion of "environmental refugees," clarifying that while the term is frequently used in advocacy and academic discourse, it lacks formal recognition under international refugee law particularly within the 1951 Refugee Convention. The research analysed how displacement caused by environmental and climate-related factors does not meet the threshold of persecution or membership in a protected category, explaining why such individuals fall outside existing legal definitions. It further explored regional perspectives, notably the broader scope of the 1969 OAU Refugee Convention, and highlighted the inconsistent recognition and protection across institutions such as the UNHCR, African Union, and national governments. This analysis illuminated the legal and practical consequences of this definitional gap and underscored the urgent need for adaptive legal responses.

- iv. What was the relevance of the humanitarian visa in enhancing the plight of climate-displaced persons in Eastern Africa? Accordingly, the study provided a critical and balanced analysis of the potential of humanitarian visas to respond to the needs of climate-displaced persons in Eastern Africa, assessing both their promise and their limitations. It demonstrated that humanitarian visas offer a flexible and lawful mobility pathway, granting temporary protection and legal recognition to individuals affected by climate disasters. The analysis went further to consider their potential evolution into longer-term or durable solutions, particularly when coupled with integration support, regional frameworks, and international cooperation. At the same time, the study addressed the practical and political challenges to implementation, such as state discretion, capacity limitations, and the lack of binding regional commitments. This nuanced assessment showed that while humanitarian visas are not a complete solution, they represent an important step toward addressing protection gaps for climate-

displaced populations in the region. Through answering these sub-questions, the study offered a comprehensive examination of the adoption of humanitarian visas for climate-displaced persons in Eastern Africa, the theoretical and practical implications of such a move, and the potential for humanitarian visas to serve as a key component of a broader solution to climate migration. The findings and recommendations informed future policy discussions and guided the development of more effective and rights-based solutions for climate-displaced populations.

7.2. Key study findings

It is undisputed that environmental factors fuelled by climatic change disasters contribute to the displacement of many already vulnerable persons in Africa. Further, it is evident that there is no appropriate binding legal framework in place to secure their recognition and protection. The prevailing periods of drought in the horn of Africa and flash floods in South Sudan attest to the gravity of the situation; that as livelihoods are swept away, there needs to be a practical pathway to assist climate displaced persons.

This thesis has steered away the reader from the literary arguments on the status of climate-displaced persons owing to the mere fact that they already exist as a vulnerable group facing layers of challenges socioeconomically and politically. It ambitiously proposes the use of complementary pathways, i.e. the issuing of humanitarian visas to enable this category of vulnerabilities to rebuild their lives in better and more sustainable environments. This will also avert the humanitarian crises often witnessed during climate change disasters. More significantly, this thesis provides recommendations from the systematic reviews undertaken and the critical examination of the use of the humanitarian visa. It focused on legitimizing the lived realities of climate-displaced persons, providing valuable insights into approaches for addressing their plight. Further, it primarily examined Eastern Africa as a geographical reference but also drew lessons from various other contexts where similar challenges had been

encountered. The research explored the contextual vulnerabilities faced by Eastern African countries in relation to climate change, emphasising its cross-border impacts that increasingly drive human migration across the region.

Key findings of the study highlighted the disproportionate effects of climate change on regions in the Global South including Eastern Africa, which, despite being the least contributors to greenhouse gas emissions, are bearing the brunt of climate disasters. These disasters are forcing many individuals and communities in Eastern Africa to migrate, further intensifying cross-border human movement. The study argued that the communities most vulnerable to climate change are at the heart of an escalating crisis, which includes an unprecedented rise in migration due to environmental factors. The thesis also addressed the debates surrounding the term “environmental refugees,” analysing the controversies and implications of the language used in relation to climate-induced vulnerabilities. The term, as the study revealed, often oversimplifies the complexities of the migration process and the diverse factors contributing to displacement, leading to a gap in appropriate recognition and protection for climate-displaced persons.

Further, the thesis critically examined existing normative frameworks and the ongoing efforts within soft law to address the issue of climate displacement. It evaluated various policy approaches and international agreements that have attempted to address the legal status of climate-displaced persons but found that these frameworks often fall short in providing the necessary protection and support. This limitation, the thesis argued, requires a more robust and inclusive legal response that recognises the unique challenges of climate-induced displacement.

As one of the most significant findings, this study hailed the humanitarian visas as a complementary pathway to providing safe passage for climate-displaced individuals. It found

that humanitarian visas would play a crucial role in ensuring that people forced to flee due to climate disasters have access to protection and safety. The research argued that expanding the use of such visas would provide an effective mechanism to address the needs of vulnerable populations, ensuring that they are not left without recourse in the face of climate-induced crises.

The thesis hereby concludes with a set of recommendations, advocating for the enhancement of complementary pathways such as humanitarian visas, and calling for broader international collaboration to develop frameworks that offer adequate protection for climate-displaced persons. It emphasised the need for a global approach to climate migration that addresses both the immediate humanitarian needs and the long-term resilience of affected communities. By improving legal frameworks and diplomatic cooperation, the study argues, the international community could help mitigate the suffering of those displaced by climate change and reduce the risks associated with climate-induced migration.

This notwithstanding, the study is not naïve to the nuances and complexities of urging countries to accommodate displaced populations in countries or regions facing the vagaries of climate change. It is also not naïve that climate change displacements interact with other facts that exacerbates the plight of affected persons. These factors include political conflict, poverty, and civil strife. It, however, emphasises that the sooner countries adopt practical ways to enable climate displaced persons pick up their lives the more we shall avert an even bigger humanitarian crisis.

7.3. Which way forward: Recommendations to the study

Short term recommendations

7.3.1. Recommendation 1: Use of the humanitarian visa as a complementary pathway for climate displaced persons

After critically examining the plight of persons displaced by the effects of climate change and the gap in the law regarding their recognition and protection, it is evident that there needs to be in place a comprehensive and appropriate practical means to ameliorate their plight. It is obvious that lack of a solid regime on state responsibility concerning these refugees is missing within the international framework and that this has brought about immense confusion on how to handle refugees.

Humanitarian visas provide an opportunity for countries to equitably share in the burdens carried by developing countries and regions during climate change disasters. Burden sharing is an integral part of comprehensive solutions towards aiding refugees and improving the plight of overwhelmed host countries. In application of this concept, the burden of hosting refugees may be equitably distributed amongst states and thus relieving developing nations of the difficulties faced in providing adequately for refugees. Critical approaches to its implementation should include political processes, environmental programs, and peacebuilding activities such as: reconciliation, rehabilitation, reconstruction, and reintegration initiatives. Regional and international understanding will make this seemingly uphill task, an achievable means of tackling the refugee crisis. Clearly, this will take a considerable period given that global consensus and cooperation is required for such a process. In the meantime, much can be done both by the state and at the regional level to alleviate the situation.

As a short-term solution, this work proposes that humanitarian visas be issued to climate displaced persons as part of a fast-tracked resettlement program for them in developed

countries. The visas can operate within 5-10 year periods as countries put in place policies for long term protection and integration for climate displaced persons. This gives them the opportunity to rebuild their lives in more secure environments. The humanitarian visas should also enable them to access basic rights like other citizens including the right to education, housing, health and freedom from non-discrimination. Given that they will be in unfamiliar environments, the state should make efforts to accord psychosocial assistance to them as they settle in.

This would also mean that countries should tackle existing legal and regulatory barriers that would prevent climate-displaced persons from accessing humanitarian visas and other opportunities for resettlement in their countries. Third countries should provide flexible refugee application pathways for climate-displaced persons to enable them to qualify for such status within their national regulatory frameworks. This includes a waiver on some of the traditional requirements for proving refugee status that this thesis reveals do not include the plight of climate-displaced persons. Through special humanitarian programs, countries can ensure that climate-displaced persons receive humanitarian assistance across borders. By creating dedicated pathways for those displaced by climate change, these programs can facilitate legal entry, provide access to essential services, and offer opportunities for integration. Such measures not only address immediate needs but also support long-term resilience and stability for displaced populations.

Given the absence of dedicated legal tools for climate-displaced persons in Africa, a regional or sub-regional humanitarian visa framework could help fill the protection gap. This would require significant legal and institutional design but could draw from existing African legal instruments, particularly the 1969 OAU Refugee Convention and the Kampala Convention on Internally Displaced Persons, both of which adopt broader definitions of displacement drivers.

A possible humanitarian visa model for Africa could include:

- i. A binding regional legal instrument recognizing climate-induced displacement as a basis for humanitarian protection.
- ii. Provisions allowing individuals displaced by sudden-onset climate disasters (e.g., floods, cyclones) to apply for short-term humanitarian visas to neighbouring or stable third countries.
- iii. Procedural safeguards to ensure applications are assessed fairly and swiftly, potentially with regional coordination through IGAD or the African Union.
- iv. A pathway from temporary protection to residency or integration, especially where return is not possible due to ongoing environmental degradation.
- v. Recognition of state responsibility-sharing, including international support from Global North countries through funding to facilitate humanitarian visas or resettlement quotas.

Such a framework would need to be embedded in regional solidarity principles, supported by data-sharing, capacity-building, and cross-border coordination mechanisms. Most importantly, it would need to respect human rights obligations, including non-refoulement and the right to life, dignity, and freedom of movement.

Long term recommendations

The longer-term recommendations herein are presented as part of a broader policy conversation around climate displacement. This acknowledges that while humanitarian visas offer a promising complementary pathway, they do not constitute a standalone solution. Rather, these recommendations gesture toward larger systemic reforms that may be considered in future work.

7.3.2. Recommendation 2: Enhancing the mandate of UNHCR

Strategic institutions such as the UNHCR are better poised to provide peer support to countries issuing humanitarian visas to climate displaced persons. It also acts as a supervening body to urge more states to undertake this form of burden sharing in the spirit of common but differentiated responsibilities. It can also provide avenues for countries to share best practices and opportunities for collaboration in integrating climate displaced persons as refugees into their host communities. For instance, having local language classes for the beneficiaries of the humanitarian visas would be useful in enabling them to integrate into newer environments. There could also be training programs to enable these refugees enhance their practical skills and increase their employability in a new environment. This would be a great source of encouragement and self-agency to these vulnerable persons and their families. Refugees have a high potential of bringing in both skilled and unskilled labour and if this is well tapped, then there would be a new appreciation of their presence. They also enrich the cultural environment which they are in. The fashion and food industry would grow immensely from the presence of people from diverse backgrounds. This can be realized when refugees are well-distributed or financially supported. They would be able to focus on rebuilding their lives rather than living from hand to mouth or turning into beggars.

7.3.3. Recommendation 3: Strengthened partnerships and international cooperation for climate-displaced persons in the Global South

Inevitably, partnerships across the public and private sectors, international NGOs, migration institutions, and the United Nations High Commissioner for Refugees (UNHCR) are essential in ensuring that humanitarian visa models are innovatively and successfully funded for implementation. To support this, a global fund governed by the UNHCR should be established to provide financial assistance to developing states, recognising their economic struggles in addressing the impacts of climate change. Critical issues, such as determining who bears

responsibility and establishing an effective redress mechanism, must be addressed at the international level in a spirit of good faith.

This thesis argues that the UNHCR is well-positioned to raise awareness and foster stakeholder goodwill, urging governments to actively take responsibility for ameliorating the plight of those displaced by climate change disasters in developing countries. This involves engaging state departments and civil society organisations to highlight the vital role of humanitarian visas in helping families who have lost their livelihoods regain the opportunity to live dignified lives.

The concept of ‘humanitarian visas’ as a complementary pathway is not entirely new. Similar models have been used to admit individuals into developed countries for employment and education opportunities. Therefore, countries that already use this model should scale up their resettlement arrangements to include quotas for climate-displaced persons. In the absence of a solid legal framework, developed countries have the discretion to expand these programs and should be encouraged to do so. The duty to protect and assist this vulnerable group should be a collective responsibility of the international community, including the UNHCR and other relevant agencies, with a particular emphasis on developed states to take a leading role. These entities must advocate for the development of sustainable humanitarian visa models that will benefit those displaced by climate change disasters, ensuring a coordinated and effective global response.

7.3.4. Recommendation 4: Recognition of climate displaced persons through a binding instrument

This thesis ambitiously envisions a long-term solution where a new treaty is negotiated and established, serving as a comprehensive legal framework for the recognition and protection of individuals displaced by the effects of climate change. This initiative should be spearheaded by the Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC), which has already recognised the vulnerability of low-lying island states and other

regions severely impacted by climate change. The UNFCCC's existing efforts and its awareness of the gravity of these issues position it as a natural leader in the development of a treaty dedicated to climate-induced displacement.

In addition, the United Nations High Commissioner for Refugees (UNHCR) and the Parties to the Refugee Convention must be integral to the treaty's creation. The UNHCR, with its mandate to protect refugees and stateless persons, has long acknowledged the growing link between climate change and forced migration. Including these institutions will bring vital expertise and support to the treaty framework, ensuring that it aligns with existing legal structures designed to protect displaced populations. One of the central features of this proposed treaty should be the clear definition and scope of the individuals it seeks to protect. Currently, there is considerable ambiguity around how persons displaced or seeking refuge due to environmental causes are classified, especially in terms of their legal status. This lack of clarity poses significant challenges in providing effective protection and assistance. Therefore, the treaty should define "climate displaced persons" as individuals who have been forced to leave their home country or region due to sudden or gradual environmental changes directly attributable to climate change. These changes may include but are not limited to, rising sea levels, extreme weather events such as floods, hurricanes, and droughts, as well as desertification and land degradation. The definition should be broad enough to accommodate individuals displaced by various environmental disasters, while ensuring that those who face long-term environmental degradation are also recognised.

Further, the treaty should ensure that those displaced by environmental factors are not solely defined by acute, one-time events, but also by gradual and chronic environmental changes that make their homes uninhabitable. This broad and inclusive definition is crucial for encompassing the full spectrum of individuals affected by climate change and ensuring that those facing displacement from various environmental causes receive the protection and

assistance they deserve. The treaty should also explicitly outline the rights and protections afforded to climate-displaced persons. This would include access to healthcare, education, housing, and employment, as well as legal rights and opportunities for resettlement. Particular attention should be paid to regions such as Eastern Africa, where climate change has had disproportionate effects on communities, exacerbating poverty and displacement. These regions are among the most vulnerable, and the treaty should ensure they are provided with the necessary international support to address the challenges of climate-induced displacement.

To adequately address the complexities of climate-induced displacement, the treaty must adopt a multidisciplinary approach, drawing on principles from International Environmental Law, Refugee Law, and Human Rights Law. International Environmental Law can offer insights into how environmental degradation and its consequences are recognised and addressed on the global stage. Refugee Law, meanwhile, provides a well-established framework for addressing the needs of displaced persons, and Human Rights Law ensures that the fundamental rights of all individuals are upheld. By integrating these frameworks, the treaty will be more robust, ensuring that it can address the unique challenges posed by the phenomenon of climate displacement in a manner that is comprehensive and effective.

In summary, this proposed treaty, led by the UNFCCC and supported by the UNHCR and other international bodies, represents a crucial step in addressing the global challenge of climate-induced displacement. By clearly defining “climate displaced persons” and establishing their rights and protections under international law, the treaty would provide much-needed clarity and a framework for action. This treaty would not only ensure the recognition of climate-displaced persons but also provide a sustainable, legally binding solution to one of the most pressing humanitarian issues of our time.

7.4. Conclusion

Regardless of the definition and legal status of climate-displaced persons, their predicament, and the struggles faced by their countries, remain a stark reality. The urgency of addressing this issue is undeniable, and practical solutions to this pressing challenge are non-negotiable. In the spirit of climate justice, respect for human rights, and the fundamental principles underpinning refugee law such as non-refoulement states must explore complementary pathways like humanitarian visas to create a clear, equitable roadmap for the resettlement of climate-displaced persons.

However, the implementation of such pathways, particularly the use of humanitarian visas for climate-displaced persons, faces significant obstacles. The issue of burden-sharing remains highly politicized within the international regime governing refugee protection. Even in the context of traditionally recognised refugees, burden-sharing is a difficult issue, fraught with complex political, economic, and social dynamics. For many developed countries, the challenge is even more pronounced due to concerns about state sovereignty, national security, and a growing social phobia towards migration, especially in conservative environments. The idea of extending responsibility for climate-induced migrants across borders, though necessary, is viewed with scepticism and resistance by some.

Despite these challenges, the adoption and implementation of humanitarian visas for climate-displaced persons cannot be dismissed. It is an imperative that must be pursued if we are to meet the evolving global challenges brought on by climate change. Political goodwill, combined with a genuine commitment to addressing the human rights of displaced populations, will be crucial in advancing this discourse. The willingness of states to engage in this conversation and act in good faith will determine the success of any efforts to create sustainable, fair solutions for climate-displaced persons. This thesis strongly posits that, while changing the trajectory of climate displacement and strengthening alternative solutions is

undoubtedly challenging, it is not beyond reach. Efforts to push for new legal pathways, such as the use of humanitarian visas, represent an important step forward. It is a step that reflects the growing recognition of climate change as a human rights issue, and an acknowledgment that climate-displaced persons deserve protection and dignified solutions. Hopefully, this is one of many steps in the right direction; a step towards a world where displacement is no longer solely an economic or political burden but a shared global responsibility that is met with empathy, justice, and cooperation.

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