

VIRTUAL WORKSHOP SERIES / SÉRIE D'ATELIERS VIRTUELS

Développer un programme de recherche et de politique pour répondre aux déplacements et aux migrations dans le contexte des catastrophes et du changement climatique en Afrique

Virtual Workshop Series

Developing a Research and Policy Agenda for Addressing Displacement and Migration in the Context of Disasters and Climate Change in Africa

BACKGROUND PAPER¹

This Background Paper has been prepared for participants in the Virtual Workshop Series on 'Developing a Research and Policy Agenda for Addressing Displacement and Migration in the Context of Disasters and Climate Change in Africa', April-July 2021. It is not for circulation or citation without the permission of the author(s).

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¹ This Background Paper has been prepared by Tamara Wood, Edwin Abuya, Christina Dasziewicz and Romola Adeola.



1. INTRODUCTION

1.1. Background

Displacement and migration in the context of disasters and climate change² is not just a future phenomenon – it is happening already. In 2019, nearly 25 million people worldwide were displaced by disasters.³ Many more people moved to avoid *future* impacts of disasters and climate change or to access to natural resources and more sustainable livelihoods. Globally, most human mobility in the context of disasters and climate change is internal, meaning those who move stay within their own country. However, if people cannot access adequate assistance, opportunities or protection at home, they may move further away, including crossing international borders.

As a continent, Africa experiences some of the highest rates of displacement and migration associated with disasters and climate change worldwide.⁴ In 2019, Cyclone Idai displaced around 617,000 people in several southern African countries.⁵ In the Lake Chad region, shrinking of the lake over recent decades and the ongoing impacts of climate change, combined with poverty, conflict and insurgency, has forced huge numbers of people to leave their homes in search of safety, security and better opportunities.⁶ Across much of Africa, changing weather patterns and drought are altering traditional patterns of movement among pastoralists and farmers moving in search of land, water and sustainable livelihoods.⁷

There is no single comprehensive framework under international law for ensuring the safety and dignity of those who move in the context of disasters and climate change. This is sometimes described as a **protection gap** in international law.

Persons who have moved across international borders in disaster contexts are protected by human rights law, and where applicable, refugee law. However, international law does not address critical issues such as admission, access to basic services during temporary or permanent stay, and conditions for return.⁸

In 2015, in response to growing concerns about disaster and climate change-related human mobility, a group of 109 countries – including 32 from Africa – endorsed the Nansen Initiative

² For pragmatic reasons, the Virtual Workshop Series and this Background Paper use the phrase 'displacement and migration in the context of disasters and climate change' to capture all forms of human mobility occurring in the context of natural hazards, disasters, environmental degradation and climate change. See further, section 2.1 below.

³ Internal Displacement Monitoring Centre (IDMC), 'Global Report on Internal Displacement 2020' (Geneva, 2020).

⁴ See generally IOM, 'Climate Change and Migration in Vulnerable Countries' (Geneva, 2019), p 41. 33 of the 45 least developed countries identified in this report are in Africa.

⁵ Mainly Mozambique, Malawi, Zimbabwe and Madagascar. IDMC, 'Internal Displacement from January to June 2019' (12 September 2019).

⁶ A. Tower, 'Shrinking Options: The Nexus Between Climate Change, Displacement and Security in the Lake Chad Basin' (New York, 2017).

⁷ Ibid n3. See also V. Kolmannskog and T. Afifi, 'Disaster-related displacement from the Horn of Africa' (Bonn, 2014).

⁸ Nansen Initiative, "Agenda for the Protection of Cross -Border Displaced Persons in the Context of Disasters and Climate Change: Volume I" (Geneva, 2015), p 18.

‘Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change’ (Protection Agenda). Rather than proposing a new, binding international agreement (such as a treaty), the Protection Agenda calls on States to adopt a **toolbox** approach – that is, to use a range of laws, policies and programmes at the international, regional and sub-regional levels in order to: help avert displacement by minimising the impacts of disasters and climate change; allow those who move to do so safely and with dignity; and ensure that all those affected can access protection, sustainable livelihoods and lasting solutions.

Since the adoption of the Nansen Initiative’s Protection Agenda, a **range of law and policy mechanisms** – at the international, regional and national levels – have been developed or proposed to address this issue.⁹ At its 21st session in Paris, the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) established a Task Force on Displacement to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.¹⁰ In 2018, governments worldwide committed to expanding regular migration pathways for people compelled to move in disaster and climate change contexts by adopting the Global Compact for Safe, Orderly and Regular Migration (Migration Compact).¹¹ In 2019, the United Nations Office for Disaster Risk Reduction published ‘Words in Action – Disaster Displacement: How to reduce risk, address impacts and strengthen resilience’, providing guidance to governments on the integration of human mobility into disaster risk reduction policies and strategies.¹² Also in 2019, the UN Secretary-General established a High-Level Panel on internal displacement, focusing on (among other things) durable solutions for those displaced in the context of disasters and the adverse effects of climate change.¹³ In 2020, UNHCR’s ‘Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters’ (Legal Considerations) set out key principles for applying refugee law – including Africa’s regional 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention) – in the context of disasters and climate change.¹⁴

At the regional level, the African Union’s 2018 ‘Revised Migration Policy Framework for Africa and Plan of Action (2018-2030)’ acknowledges the role of environmental factors in causing population movements and call on states to better address environmental causes of movement in their national and regional migration policies.¹⁵ At the sub-regional level, within

⁹ See e.g. PDD, ‘Resources’ (2021) <https://disasterdisplacement.org/resources>; IOM, ‘Environmental Migration Portal’ (2021) <https://environmentalmigration.iom.int/>; UN 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); UNHCR, ‘In Harm’s Way: International Protection in the Context of Nexus Dynamics Between Conflict or Violence and Disaster or Climate Change’ (2019).

¹⁰ Decision 1/CP.21 Adoption of the Paris Agreement, Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015 (29 January 2016) para 49.

¹¹ United Nations General Assembly (UNGA) ‘Global Compact for Safe, Orderly and Regular Migration.’ (2018), paras 21(g) and (h).

¹² United Nations Office for Disaster Risk Reduction (UNDRR) ‘Words into Action Guidelines on Disaster Displacement’ (2019).

¹³ United Nations, ‘Terms of Reference: High-Level Panel on Internal Displacement’ (2019).

¹⁴ UNHCR, ‘Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters’ (2020).

¹⁵ African Union, ‘Revised Migration Policy Framework for Africa and Plan of Action (2018 – 2030)’. (Addis Ababa, 2018), section 9.7; see also IGAD Regional Migration Policy Framework (Addis Ababa, 2012), section 3.3.5 - ‘Migration, Climate change, Environment and Adaptation’.

IGAD, the recently endorsed 'Protocol for the Free Movement of Person in the IGAD Region' (2020) includes specific provisions and guarantees for people moving across borders in the context of a disaster.¹⁶

These various developments at the international, regional and sub-regional levels provide opportunities for further development and implementation of laws and policies that protect and support those who move in the context of disasters and climate change. However, the need for further knowledge and evidence to advance these opportunities is widely recognised,¹⁷ including in Africa.¹⁸

1.2. Virtual Workshop Series

The Virtual Workshop Series on '**Developing a Research and Policy Agenda for Addressing Displacement and Migration in the Context of Disasters and Climate Change in Africa**' brings together researchers and practitioners working across Africa and beyond to plan future research that will advance regional and sub-regional law and policy responses to displacement and migration in the context of disasters and climate change.

The workshop series focuses on sub-Saharan Africa, and in particular, on three focal Regional Economic Communities (RECs) – the Economic Community of West African States (ECOWAS); Intergovernmental Authority on Development (IGAD); and Southern African Development Community (SADC). These three RECs were chosen to provide a shared focus for the workshop series while maintaining substantial geographical coverage of the continent. Law and policy frameworks in other sub-regions may be considered as they arise during discussions in the workshop series.

The Virtual Workshop Series consists of **Opening and Closing Plenary** sessions, and smaller **Thematic Working Groups** for each of the following fields of law and policy:

- i. Climate change and disaster risk reduction;
- ii. Migration and free movement;
- iii. Refugee and human rights law;
- iv. Protection of internally displaced persons (IDPs) and planned relocation.

While these fields of law and policy are the focus of this workshop series, they are not the only relevant fields for addressing displacement and migration in the context of disasters and climate change. Other relevant fields – including planning law, labour law, property rights, urban planning, food security, sustainable development and humanitarian law and policy – will also be considered as they arise during the workshop series.

The specific **objectives** of the Virtual Workshop Series are:

¹⁶ Communique of the Sectoral Ministerial Meeting on the Protocol on Free Movement of Persons in the IGAD Region, 26th February 2020, Khartoum, Republic of Sudan. See T. Wood, 'Opinion: New pact paves way for innovative solutions to disaster and climate change displacement in Africa' (Thomson Reuters Foundation News, 2020). The IGAD Protocol on Transhumance was adopted at the same time.

¹⁷ See e.g. PDD 'We Aim to Fill Gaps' <https://disasterdisplacement.org/we-aim-to-fill-gaps> accessed 12 April 2021; see also the work of the Global Knowledge Partnership on Migration and Development (KNOMAD), KNOMAD, 'Environmental change and migration' <https://www.knomad.org/thematic-working-group-single/9> accessed 12 April 2021.

¹⁸ See e.g. Aimée-Noël Mbiyozo, 'African cities must prepare for climate migration' (ISS Africa, 15 January 2021); see also World Bank, 'Feature Story: Stepping up Climate Adaptation and Resilience in Africa' (11 March 2019).

1. To identify **opportunities** for addressing displacement and migration in the context of disasters and climate change within regional and sub-regional law and policy frameworks in Africa;
2. To identify **knowledge gaps** that need to be addressed in order to maximize these opportunities; and
3. To develop **research proposals** to address the identified knowledge gaps and enhance future law and policy development and implementation.

The **outcomes** of the Virtual Workshop Series will be:

1. Publication of a **Research and Policy Agenda for Addressing Displacement and Migration in the Context of Disasters and Climate Change in Africa**, outlining existing knowledge gaps and making specific recommendations for future, collaborative research; and
2. Establishment of a **network of researchers and policy experts** across Africa to implement the Research and Policy Agenda via future research and publications.

2. CONCEPTUAL FRAMEWORK

2.1. Human Mobility in the Context of Disasters and Climate Change

The Virtual Workshop Series is intended to be comprehensive in scope and to explore all forms of human mobility occurring in the context of natural hazards, disasters, environmental degradation and climate change.¹⁹ Within this broad field, there are various ways in which different types of human mobility can be understood and categorised. How the issue is framed is important, as ‘it determines how [it] is understood and responded to – both normatively and pragmatically’.²⁰

This section sets out some of the key conceptual frameworks and distinctions that have been used to explore and address this issue so far. While it does not capture all possible framings or understandings, it is intended to provide a general introduction for those who are new to the field and a starting point for deeper discussions within the workshop series itself.

Broadly speaking, there are two main types of human mobility. These are:

1. **Displacement** – which refers to predominantly *forced* movement. The Platform on Disaster Displacement (PDD) defines disaster displacement ‘situations where people are forced to leave their homes or places of habitual residence as a result of a disaster or in order to avoid the impact of an immediate and foreseeable natural hazard’.²¹ Displacement may be internal – ie when people are displaced within the borders of one country – or cross-border.

¹⁹ The more limited description of ‘displacement and migration in the context of disasters and climate change’ in the workshop title, and throughout the Background Paper, is for pragmatic reasons.

²⁰ See, eg, Jane McAdam, ‘The Problem of “Crisis Migration”’ (2013) 19(3) Australian Journal of Human Rights 7, 8.

²¹ PDD, ‘Key Definitions’ <https://disasterdisplacement.org/the-platform/key-definitions> accessed 12 April 2021.

2. **Migration** – which refers here to predominantly *voluntary* movement, in which ‘people, while not necessarily having the ability to decide in complete freedom, still possess the ability to choose between different realistic options’.²² Migration may also be internal or cross-border.

In addition, there are more specific types of human mobility that occur in the context of disasters and climate change. For example, **planned relocation** refers to a ‘planned process in which persons or groups of persons move or are assisted to move away from their homes or places of temporary residence, are settled in a new location, and provided with the conditions for rebuilding their lives’.²³

Within and between these broad categories of human mobility, there may be significant variation in **the form and duration** of movement. Movement may be short- or long-term. It may also be repeated or ‘circular’. For example, some people flee during an emergency but return home when the emergency passes. Some move permanently, or for the longer-term, in search of safety and more sustainable livelihoods. Some are stuck in protracted displacement, while others are displaced repeatedly. Some move *pre-emptively* – in order to avoid the future effects of disasters and climate change. Yet others may be in situations of forced *immobility*, without the resources to move even if they want or need to.

The almost infinite variety of situations and scenarios that can arise mean that, in reality, it is often difficult to distinguish between (predominantly voluntary) migration and (predominantly forced) displacement.

Finally, the Virtual Workshop Series will explore human mobility **in the context of** disasters and climate change. This reflects the fact that human mobility is **multi-causal**. Establishing a causal link between disasters or climate change and human mobility in a given situation may be difficult, if not impossible, as human mobility is generally the result of a combination of factors, including disaster and climate change impacts, individuals’ aspirations, capacities and/or vulnerabilities, and other contextual factors or drivers, including political, demographic, economic and social factors.²⁴

2.2. Guiding Questions – Identifying Opportunities

There is no ‘one size fits all’ response to displacement and migration in the context of disasters and climate change. Instead, what is needed is a range of law and policy tools tailored to addressing the different types of movement, the different stages of human mobility, and the different needs of those affected. The Virtual Workshop Series will explore

²² Nansen Initiative, ‘Protection Agenda’ para 20, drawing on paragraph 14(f) of the Cancun Agreements. United Nations Framework Convention on Climate Change (UNFCCC), ‘Cancun Climate Change Adaptation Framework Decision’ (2010), para 14(f).

²³ Georgetown University, UNHCR and Brookings Institution, ‘Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation’ (2015), p 5. On the meaning of ‘planned relocation’, see further Erica Bower and Sanjula Weerasinghe, ‘Leaving place, Restoring Home’ Platform on Disaster Displacement (2021) section 2.1.

²⁴ See Foresight, ‘Migration and Global Environmental Change’ (2011). Cited Sanjula Weerasinghe, ‘What We Know About Climate Change and Migration’ Centre for Migration Studies (2021). In the field of disaster risk reduction, disaster risk itself is characterised as the result of the interplay of “hazard, exposure, vulnerability and capacity.” UNDRR, ‘Terminology: Disaster Risk’ <https://www.undrr.org/terminology/disaster-risk> accessed 12 April 2021.

the contribution that existing regional and sub-regional law and policy frameworks in Africa can play in addressing these phenomena.

The following **Guiding Questions** have been developed to assist with **identifying opportunities** for addressing displacement and migration in the context of disasters and climate change within existing law and policy frameworks. The relevance of these questions will differ between the respective Thematic Working Groups – not all questions are equally relevant to all fields of law and policy. However, these questions provide an overarching framework for identifying the **opportunities** presented within, and across, the relevant fields of law and policy.

What opportunities exist within law and policy frameworks in Africa to...

...help people to stay safely at home?

Helping people to stay safely in their homes and maintain their livelihoods when faced with the risks of disasters, environmental degradation or the adverse impacts of climate change involves adapting to climate change, building resilience to disasters and reducing vulnerabilities. This includes measures relating to disaster risk reduction and climate change adaptation, among others.²⁵ At present, policies and programming in these fields contain only limited (if any) consideration of issues relating to human mobility. Better integration between these various fields and integration of human mobility challenges are key to averting and minimizing displacement in the context of disasters and the adverse effects of climate change.

Examples:

- *Disaster risk reduction measures*
- *Climate change adaptation strategies*

...facilitate safe and dignified migration?

When staying at home is no longer perceived as the best option by families and communities, enabling people to move out of harm's way before disaster strikes or before an area becomes uninhabitable can reduce the risk of displacement and the need for more substantial humanitarian intervention. Pre-emptive migration – whether permanent, temporary or circular – can allow affected communities to adapt to climate change by accessing more sustainable livelihoods and/or re-establishing themselves in a safe location. Although it should be considered a last resort measure, planned relocation can be used to move whole communities away from high risk areas. In all cases, measures that assist people to move out of harm's way must ensure that those who move can do so safely, with dignity and while having their rights protected.

Examples:

- Regular migration pathways (temporary, circular, permanent)
- Regional free movement agreements
- Planned relocation

²⁵ For example, development, natural resource management, environmental action, land use and urban planning.

...protect people displaced internally and across borders?

People who are forced to move in the context of disasters and climate change require access to safety and protection of their rights until a more lasting solution can be found. For internally displaced persons (IDPs), these protections are the responsibility of their own government. For those displaced across borders, protection is less certain. Some may be entitled to international protection as refugees, but many will not have access to such protection. For the latter, protection based on humanitarian considerations and human rights standards and other regular migration schemes and pathways – including temporary protection arrangements, humanitarian visas and free movement arrangements – may provide access to lawful admission and stay.

Examples:

- Refugee protection
- Protection of internally displaced persons (IDPs)
- Planned relocation
- Evacuation
- Human Rights protection
- Regular migration pathways
- Regional free movement agreements
- Humanitarian visas and other forms of temporary protection

...promote longer-term solutions for those affected?

Beyond access to safety and lawful stay, longer-term solutions are needed for all those who move in the context of disasters and climate change in order to avoid protracted, or repeated, displacement. Safe return remains a priority where it is possible and where it is desired by those who have moved. Where return is not possible or desired, other alternatives include local integration, planned relocation or permanent settlement elsewhere. The protection of rights, access to sustainable livelihoods, and longer term sustainable development remain ongoing needs for both those who move and for host communities.

Examples:

- Safe and supported return
- Settlement elsewhere
- Local integration
- Planned relocation
- Access to sustainable livelihoods

2.3. Guiding Questions – Identifying Knowledge Gaps

While there are many opportunities within African regional and sub-regional law and policy frameworks for addressing displacement and migration in the context of disasters and climate change, in many cases, the realisation of these opportunities in practice is hampered

by knowledge gaps. These knowledge gaps relate to: the existence of relevant law and policy frameworks; their scope and application in the context of disasters, climate change and human mobility; and what is required for their implementation. These knowledge gaps are distinct from, but may be related to, other types of gaps, including implementation gaps, funding gaps and gaps in political will to address this issue.

Knowledge gaps not only impede the implementation of existing laws and policies – they also prevent an accurate assessment of the existing ‘protection gap’ in Africa, and what additional law or policy responses might be required.

The following **Guiding Questions** will assist in identifying the **knowledge gaps** that need to be addressed in order to advance or realise opportunities within existing law and policy frameworks.

(How) is the realisation of the above opportunities impacted by:

...conceptual knowledge gaps?

Are there gaps in conceptual understandings of displacement and migration in the context of disasters and climate change within the relevant field of law and policy? How do variations in terminology impact on the advancement of opportunities within and across different fields of law and policy?

...empirical knowledge gaps?

What are the gaps in data or evidence relating to the nature and extent of displacement and migration in the context of disasters and climate change and how do they impact implementation? How could further information about existing state practice advance opportunities within law and policy frameworks? (How) are the needs and wishes of affected communities reflected within existing law and policy frameworks? How are indigenous and community-based knowledges incorporated into law and policy making and implementation?

...doctrinal knowledge gaps?

Are there gaps in understanding or guidance relating to the actual or potential scope of relevant law and policy frameworks?

...technical or operational knowledge gaps?

Are there gaps in technical knowledge and capacity (especially at the national level) required to effectively implement law and policy frameworks?

3. THEMATIC WORKING GROUPS

The exploration of opportunities and knowledge gaps within African regional and sub-regional law and policy frameworks will take place in the Virtual Workshop Series within four **Thematic Working Groups (TWGs)**, each of which addresses specific **fields of law and policy**, as follows:

- TWGI. Climate change and disaster risk reduction;
- TWGII. Migration and free movement;
- TWGIII. Refugee and human rights law;
- TWGIIV. Protection of internally displaced persons (IDPs) and planned relocation.

A brief introduction to each TWG and the relevant fields of law and policy is provided below, including an overview of key regional and sub-regional law and policy frameworks, and some preliminary suggestions regarding existing opportunities and knowledge gaps. The outlines below are not exhaustive – they are intended to provide an introduction to the relevant fields for those not already familiar with them, and a starting point to build open within the workshop series itself.

3.1. TWG1: Climate Change and Disaster Risk Reduction

Law and Policy Frameworks

Climate change

Climate change adaptation has been framed as an urgent priority in Africa within multiple regional policy agendas and positions, including: the 2007 AU Declaration on Climate Change and Development in Africa; the 2014 Draft AU Strategy on Climate Change (AU Draft Climate Change Strategy); the Common African Position (CAP) on the Post-2015 Development Agenda; and the AU's Agenda 2063. Climate change adaptation is addressed at the sub-regional level as well. In 2010, ECOWAS adopted a Regional Action Program to Reduce Vulnerability to Climate Change in West Africa (ECOWAS Regional Action Plan).²⁶ In 2012, the Southern African Development Community (SADC) published a 'Policy Paper on Climate Change: Assessing the Policy Options for SADC Member States'.²⁷ IGAD's Regional Climate Change Strategy (IRCCS) was developed and validated in 2016.

At the national level, a number of African states have adopted national climate change laws and policies and/or developed National Adaptation Plans (NAPs), as required under relevant regional and international climate change policy processes. For example, six African countries – Burkina Faso, Cameroon, Ethiopia, Kenya, Sudan, and Togo – have submitted NAPs under the international Cancun Adaptation Framework. A number of other States have launched NAP processes.

²⁶ The East African Community (EAC) adopted a Climate Change Policy the same year. EAC, 'EAC Climate Change Policy' (2010).

²⁷ David Lesolle, 'Policy Paper on Climate Change: Assessing the Policy Options for SADC Member States' (2012) https://www.sadc.int/files/9113/6724/7724/SADC_Policy_Paper_Climate_Change_EN_1.pdf.

Disaster risk reduction

All 55 African states joined representatives of 187 other countries to adopt the Sendai Framework for Disaster Risk Reduction 2015–2030²⁸ – the key international policy framework in this field. Under the leadership of the AU, African states have expanded on the Sendai Framework by identifying five additional targets needed for implementation of the Sendai Framework within the region.²⁹ The UNDRR’s 2019 ‘Words into Action – Disaster Displacement: How to reduce risk, address impacts and strengthen resilience’ provides guidance to governments on the integration of human mobility into disaster risk reduction policies and strategies in accordance with the Sendai Framework.³⁰

Prior to the adoption of the Sendai Framework, the African Union Member States had already adopted in 2004 the Africa Regional Strategy for Disaster Risk Reduction (ARSDRR). In 2017, AU Member States adopted the AU Programme of Action for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 in Africa (AU Programme of Action), in line with the ARSDRR. The AU Programme of Action references human mobility only briefly, noting conflict-related human mobility as a disaster risk³¹ and calling for national and local DRR agencies to support evacuations.³²

Africa’s Regional Economic Communities (RECs) have been designated by the AU as the main implementation mechanism for the Sendai Framework³³ and several RECs have developed sub-regional DRR strategies for this purpose – including the IGAD Drought Disaster Resilience and Sustainability Initiative (IDDRSI) Strategy (2013 – 2027) and the ECOWAS Policy for Disaster Risk Reduction (2006).

At the national level, a 2018 study published by the Platform on Disaster Displacement identified a total of 21 African countries with specific national DRR strategies or plans,³⁴ though the study also notes that ‘different elements of DRR strategy are often addressed

²⁸ Bernard Manyena, ‘After Sendai: Is Africa Bouncing Back or Bouncing Forward from Disasters?’ (2016) *Int J Disaster Risk Sci* 7, 41–53.

²⁹ See Dewald van Niekerk, Christo Coetzee and Livhuwani NemaKonde, ‘Implementing the Sendai Framework in Africa: Progress Against the Targets (2015–2018)’ (2020) *Int J Disaster Risk Sci* 11, 179–189. These additional targets are: 1) Substantially increase the number of countries with DRR in their educational systems at all levels, as both stand-alone curriculum and integrated into different curricula; 2) Increase integration of DRR in regional and national sustainable development, and climate change adaptation frameworks, mechanisms, and processes; 3) Substantially expand the scope and increase the number of sources for domestic financing in DRR; 4) Increase the number of countries with, and periodically testing, risk-informed preparedness plans, and, response, and post-disaster recovery and reconstruction mechanisms; and 5) Substantially increase the number of regional networks or partnerships for knowledge management and capacity development, including specialized regional centers and networks.

³⁰ UNDRR, ‘Words into Action Guidelines on Disaster Displacement’ (2019) https://disasterdisplacement.org/wp-content/uploads/2020/06/WiA_report_English-Web.pdf.

³¹ AU, ‘Programme of Action for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 in Africa’ (2017), p 7.

³² *Ibid* n31, p 26.

³³ See Orago, Nicholas Wasonga. ‘Africa and mena Region (2018).’ *Yearbook of International Disaster Law Online* 1, no. 1 (2019): 326-335.

³⁴ Michelle Yonetani, ‘Mapping the Baseline – To What Extent Are Displacement and Other Forms of Human Mobility Integrated in National and Regional Disaster Risk Reduction Strategies?’ (2019) *Platform on Disaster Displacement*, p 23. The study identified: Angola, Botswana, Burkina Faso, Côte d’Ivoire, Ethiopia, The Gambia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Mali, Mozambique, Namibia, Niger, Rwanda, South Africa, Togo and Uganda. Cabo Verde also has a DRR strategy.

across a variety of policies, strategies and mechanisms rather than contained and restricted to one overarching framework or document.³⁵

Opportunities

Climate change

The AU's Draft Climate Change Strategy acknowledges climate change as a driver of displacement and migration on the continent³⁶, and more specifically, the risks of forced migration in the context of climate-related resource-based conflicts³⁷. The Draft Strategy also urges the development of a mechanism to address loss and damage resulting from the adverse effects of climate change.³⁸

At the sub-regional and national levels, recognition of the links between climate change and human mobility, and the need to address displacement and migration within climate change adaptation plans, is rather sporadic and inconsistent. The ECOWAS Regional Action Plan on climate change does not mention human mobility, though a key objective of the Plan is to 'develop and strengthen the resilience and adaptability of the sub-region to climate change and extreme weather events', providing a basis for further, more targeted measures. SADC's 2012 policy paper on climate change acknowledges environment-induced migration as a key human security challenge of climate change and the need for States to identify appropriate policy options, though it does not make any specific recommendations in this regard.³⁹

Within national adaptation planning processes, progress has been more consistent. All of the six African countries to have submitted NAPs through the UNFCCC NAP Central refer to human mobility in the context of disasters and climate change.⁴⁰ Some of the NAPs also integrate disaster risk reduction measures when addressing displacement in the context of disasters and climate change. A 2020 review of national adaptation planning and policies in the IGAD region noted some (albeit limited) recognition of human mobility within most states' NAPs. Sudan's 2016 NAP is one of the more advanced, including 'detailed, region-by-region recommendations for adaptation to the effects of climate change, including by promoting migration, and preparing to host those displaced from other districts'.⁴¹

At the national level, human mobility considerations have also been included in climate change relevant frameworks other than NAPs. For instance, in 2015, Ghana adopted a National Climate Change Master Plan, Action Programmes for Implementation: 2015–2020.

³⁵ Ibid n34, p 49.

³⁶ African Union, 'Draft Climate Change Strategy' (2014) p 10, p 44, p 46, p 54.

³⁷ Ibid n36, p 55.

³⁸ Ibid n36, p 28; Mechler R. et al., Science for Loss and Damage. Findings and Propositions. In: Mechler R., Bouwer L., Schinko T., Surminski S., Linnerooth-Bayer J. (eds) Loss and Damage from Climate Change. Climate Risk Management, Policy and Governance (2019) p 29.

³⁹ Ibid n27.

⁴⁰ See UNFCCC, 'NAPs from developing countries' (2021)

https://www4.unfccc.int/sites/NAPC/News/Pages/national_adaptation_plans.aspx accessed 12 April 2021.

⁴¹ Nicodemus Nyandiko and Robert Freeman, 'Disaster Risk Reduction, Climate Change Adaptation and Development Policies and their Consideration of Disaster Displacement and Human Mobility in the IGAD Region' (forthcoming 2021).

One of the key objectives was to 'Address Climate Change and Migration',⁴² including via migration as an adaptation strategy,⁴³ relocation of at-risk communities to non-flood areas⁴⁴ and evacuation in the context of disasters.⁴⁵ A 2020 review of national policies in the IGAD region found that most IGAD states had some mention of mobility in their policies and strategies, but that more is required for these to fully address the protection of disaster displaced people.⁴⁶

Disaster Risk Reduction

The incorporation of human mobility considerations into disaster risk reduction (DRR) policies and strategies in Africa has been fairly limited so far. In the ARSDRR, States address human mobility only in the context of conflict and frame it as a contributing factor to disaster risk.⁴⁷ However, there are considerable opportunities within existing frameworks for further development. For example, IGAD's DRR strategy highlights the displacement of communities as a key challenge in the disaster context, and even refers to 'climate refugees',⁴⁸ while ECOWAS' policy refers to human mobility as part of early warning and evacuation measures.⁴⁹ DRR strategies dealing with 'evacuations' may also provide opportunities for addressing disasters and human mobility more broadly.

At the national level, the integration of human mobility into DRR strategies varies. PDD's 2018 review highlighted specific incorporation of displacement into the DRR strategies in a number of countries, including Côte d'Ivoire, Liberia, Uganda, Malawi, South Africa, Namibia Rwanda⁵⁰ and Cabo Verde,⁵¹ noting that the nature of incorporation differs between the respective strategies and many were due for revision or updating. A 2020 review of national policies in the IGAD region, covering both DRR and climate change, found that most IGAD states had some mention of mobility in their policies and strategies, but that more is required for these to fully address the protection of disaster displaced people.⁵² In the SADC region, the governments of South Africa and Mozambique are currently rolling out the 'Words into Action' on Disaster Displacement guidelines to integrate disaster displacement in their DRR strategies.

Knowledge gaps

There are opportunities within African regional law and policy frameworks for integrating human mobility considerations into climate change laws, policies and adaptation planning as well as DRR strategies and policies. However, the integration of these considerations within sub-regional and national policies, programmes and activities is so far not very systematic or strategic. An overarching recognition that DRR and CCA strategies have a role to play in averting or addressing displacement in the context of disasters and climate does not seem

⁴² Ghana, Ministry of Environment, Science, Technology and Innovation, 'Ghana National Climate Change Master Plan Action Programmes for Implementation: 2015–2020' p 234.

⁴³ Ibid. n42.

⁴⁴ Ibid n42, p 39.

⁴⁵ Ibid n42, p 84.

⁴⁶ Ibid n41.

⁴⁷ Ibid n34, p 39; African Union, 'Africa Regional Strategy for Disaster Risk Reduction' (2004) p 4.

⁴⁸ The EAC strategy also does this.

⁴⁹ ECOWAS, 'ECOWAS Policy for Disaster Risk Reduction' (2006) p 7.

⁵⁰ Ibid n34, pp 29-36.

⁵¹ IOM, 'Environmental migration and disaster displacement in West Africa' (forthcoming 2021) p 27.

⁵² Ibid n41.

to be widely established. A better understanding of existing good practice examples, and remaining law and policy gaps, could support further inclusion of necessary provisions in law and policy and harmonisation among African States.

Some of the existing knowledge gaps include:

Climate change and disaster risk reduction

1. How many people are affected, each year, in each country by displacement in the context of disasters and the adverse effects of climate change? How much of this displacement can be averted, accompanied, or led to durable solutions due to the intervention by governments at the national or subnational level, based on integrated measures on displacement, in climate change and DRR plans, policies and strategies?
2. What are the specific risk profiles and groups of persons who are displaced in the context of disasters and the adverse effects of climate change? How many are women, have disabilities, are young, or elderly? Which specific protection needs may they have? What is within the scope of the mandate of DRR and climate change actors, at the national and subnational level, in terms of immediate, life-saving assistance, such as evacuations and humanitarian interventions? Where is cooperation with actors from other sectors needed, both domestic and international? What needs to be still included in climate change and DRR law and policy to ensure greater protection to the displaced?
3. How many persons move each year, or are displaced in the context of slow-onset processes and events, such as salinization of soil, rising sea levels, drought, desertification, etc.? What are the specific characteristics of these situations and needs of those affected?
4. How is risk data (climate data, meteorological data and disaster risk data) being used to inform national planning as well as early warning, early action?
5. How have climate change and DRR policies and strategies been integrated or how could this be done? How could both be linked up with overarching sustainable development goals and objectives, to facilitate the gathering of data, measuring the phenomenon and developing targeted and integrated responses, at the national and subnational levels?

Climate change

6. To what extent are displacement and migration integrated into and addressed within climate change laws, policies and planning in Africa? Are there examples of effective practice in inclusion of displacement in the context of the adverse effects of climate change that could inform developments elsewhere and harmonisation across the region?
7. How could issues relating to loss and damage in the context of climate change be integrated into existing law and policy frameworks?
8. Are there examples of effective practices, regarding integrated planning, or institutional set-ups that have worked in some countries and could be replicated?

9. To what extent are existing DRR strategies in African states aligned with the Sendai Framework and the guidance provided by the Words into Action guidance on disaster displacement? Are there examples of effective practice that could inform further development of DRR strategies in other States and/or harmonisation across the region?
10. How are displacement risks managed across a range of national law and policy frameworks as part of overall DRR strategies in African states?
11. How are evacuation strategies and programs conceived and addressed within national DRR strategies? Do they promote protection and inclusiveness, or could they create further risks and exclusion of vulnerable populations? What is the nature of the distinction between 'evacuations' and other forms of disaster-related human mobility within DRR strategies?
12. What role do/could bilateral agreements and transboundary risk management and cooperation between States relating to DRR play in addressing displacement and migration in the context of disaster and climate change? What can be learned from examples or models exist in other regions?

3.2. TWG2: Migration and Free Movement of Persons

Law and Policy Frameworks

In the absence of formal migration pathways, cross-border movement within Africa is often irregular,⁵⁴ meaning that people move without the authorisation of the destination state and often undertake dangerous journeys.⁵⁵ Against this background, a number of regional and sub-regional policy processes are currently working to promote better managed and more regular migration within Africa. The African Union's Migration Policy Framework for Africa – most recently revised in 2018⁵⁶ – calls for migration on the continent to be 'better governed in an integrated manner through comprehensive, human-rights based and gender-responsive national migration strategies and policies'.⁵⁷ Also in 2018, the African Union adopted the 'Common African Position on the Global Compact for Safe, Orderly and Regular Migration', recognising that well-managed, fair and effective migration bring 'benefits and opportunities for migrant workers and their families, and host communities' and calling for more regular migration pathways that ensure the protection of migrants' rights.⁵⁸

At both the regional and sub-regional levels, Africa is advancing the objective of establishing free movement of persons between African states – part of broader moves towards regional

⁵³ The knowledge gaps identified here are drawn particularly from the recommendations in *ibid* n34, pp 47-49.

⁵⁴ IOM defines irregular migration as 'Movement that takes place outside the regulatory norms of the sending, transit and receiving countries.' See IOM, 'Key Migration Terms' <https://www.iom.int/key-migration-terms>. This report uses the term 'host country' or 'host State' as short hand for the country of destination as this is the term generally used in the text of Africa's free movement agreements.

⁵⁵ IOM, 'World Migration Report 2020' (2019) p 62.

⁵⁶ African Union, 'Revised Migration Policy Framework for Africa and Plan of Action (2018-2030)' (2018).

⁵⁷ *Ibid* n56, p 11.

⁵⁸ See esp Thematic areas four (International cooperation and governance in migration) and five (Irregular migration and regular pathways).

integration and economic development. The continent-wide Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (AU Free Movement Protocol),⁵⁹ adopted in 2018, builds on the success so far of some of Africa's 'Regional Economic Communities' (RECs) in establishing free movement arrangements at the sub-regional level.

Even at the sub-regional level, however, implementation of free movement is limited. To date, ECOWAS is the most advanced in its implementation of free movement.⁶⁰ In some places, a lack of political will and the security and economic concerns of some states have hampered progress.⁶¹ Elsewhere, the relatively recent adoption of free movement agreements means that implementation is only just beginning. Even in the absence of formal sub-regional free movement agreements, however, many African states have entered into bilateral agreements with neighbouring states to allow visa-free entry for their citizens.⁶²

Within the broad field of migration and free movement, there are a number of specific frameworks at the regional, sub-regional and national levels addressing the cross-border movement of pastoralists. The AU Policy Framework for Pastoralism (2013) advocates for the regulation of pastoral movement within regional economic communities.⁶³

At the sub-regional level, the ECOWAS Protocol on Transhumance (2018) and Regulation relating to its implementation (2003) recognise the economic value of transhumance and authorizes cross-border transhumance in respect of certain conditions. ECOWAS' International Transhumance Certificate (CIT), which facilitates cross-border transhumance for pastoralists and their livestock in search of water and pasture, provides a potential example that could be drawn on in other RECs.

The IGAD Protocol on Transhumance was endorsed in February 2020 and the Implementation Road Map 2021-2030 was endorsed by Sectoral Ministers in November 2020. The Road Map sets out provisions for Transhumance Corridors to facilitate free movement across borders, registration of livestock to protect pastoralists from cattle rustling and robust instructions for promoting investment in pastoral areas and complementary livelihood resources for pastoralists as well as those who have fallen out of production.

⁵⁹ African Union, 'Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment' (AEC Free Movement Protocol) (2018).

⁶⁰ In the East African Community (EAC), for example, the governments of Kenya, Uganda and Rwanda have signed an [agreement](#) allowing citizens to travel between the three countries using national identity cards, making travel more accessible to those without passports.

⁶¹ A 2013 report coordinated by ICMPD notes some African states' 'fear that immigrants will flock to the wealthier countries, drain their public purse and take jobs away from local communities'. ICMPD, 'MME on the Move A Stocktaking of Migration, Mobility, Employment and Higher Education in Six African Regional Economic Communities' p 121.

⁶² African Union and IOM, 'Study on the Benefits and Challenges of Free Movement of Persons in Africa' (2018), pp 30-31.

⁶³ African Union, 'AU Policy Framework for Pastoralism' (2013) section 4.1.5.

Opportunities

Regional and sub-regional migration policy frameworks in Africa recognise the need to address climate change and disasters as drivers of human mobility. The Common African Position (CAP) on the Global Compact for Safe, Orderly and Regular Migration identifies ‘adverse impacts of climate change, natural disasters and human-made crises’ among the key drivers of movement on the continent.⁶⁴ The Migration Policy Framework for Africa recognises the role of environmental factors in human mobility and calls on states to ‘[i]ncorporate environmental considerations in the formulation of national and regional migration management policies to better address environment related causes of migratory movements’.⁶⁵

At the sub-regional level, the IGAD Regional Migration Policy Framework includes a dedicated section on ‘Migration, Climate Change, Environment and Adaptation’ and urges states to incorporate environmental considerations into their migration management policies.⁶⁶ In early 2020, the Protocol on Free Movement of Persons in the IGAD Region paved the way for a more specific focus on the predicament and needs of climate change and disaster affected communities within free movement arrangements, by incorporating specific provisions ensuring entry and stay for people moving in the context of disasters and climate change.⁶⁷

ECOWAS’ Common Approach on Migration has no specific mention of disasters or climate change; however, its strong emphasis on humanitarian assistance and rights protection could advance protection for those who move.⁶⁸ Free movement has been relatively well implemented in the ECOWAS region, where seasonal movement of workers and pastoralists using free movement arrangements is common, though the impacts of climate change are changing the scale and frequency of more traditional patterns movement.⁶⁹ The national migration policies of Ghana⁷⁰ and Nigeria⁷¹ provide good practice examples with dedicated sections on the nexus between migration and environment, focusing on pastoralism, forced movement, and diasporas.⁷²

⁶⁴ African Union, ‘Common African Position (CAP) on the Global Compact for Safe, Orderly and Regular Migration’ (2017), thematic area one.

⁶⁵ Ibid n15, section 9.7.

⁶⁶ IGAD Regional Migration Policy Framework (Addis Ababa, 2012) – section 3.3.5.

⁶⁷ Article 16 provides: 1) Member States shall allow citizens of another Member State who are moving in anticipation of, during or in the aftermath of disaster to enter into their territory provided that upon arrival they shall be registered in accordance with national law. 2) Member States shall take measures to facilitate the extension of stay or the exercise of other rights by citizens of other Member States who are affected by disaster in accordance with the provisions of this Protocol when return to their state of origin is not possible or reasonable.

⁶⁸ ECOWAS is also currently revising the Common Approach, including discussions to include a focus on migration and climate change in a new ECOWAS Regional Migration Policy. ECOWAS, ‘Regional Migration Policy June 2018 – June 2028, Consolidated Version VII: 16/06/2018’ (2018). Courtesy of IOM.

⁶⁹ See Platform on Disaster Displacement, ‘Stakeholder Workshop Report: The role of free movement of persons agreements in addressing disaster displacement in Africa with focus on ECOWAS, IGAD and SADC regions’ (2020).

⁷⁰ Ghana, Ministry of the Interior, ‘National Migration Policy for Ghana’ (2016).

⁷¹ Federal Republic of Nigeria, ‘National Migration Policy 2015’ (2015).

⁷² IOM, ‘Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks’ (2018) p 8.

In the SADC region, though the sub-regional free movement Protocol has not yet been adopted, bilateral arrangements between states for the relaxation of visa requirements are assisting populations to access territory and assistance across borders following disaster.⁷³

In principle, regional, sub-regional and bi-lateral arrangements for the free movement of persons between states could allow populations impacted by disasters and climate change to access more sustainable livelihoods and/or move out of harm's way before disaster strikes. They could also address the needs of those who have been displaced following a disaster, by facilitating lawful access to territory and assistance by governments and other agencies (see further section 3.3. below). The role of free movement arrangements was noted in the Nansen Initiative Protection Agenda, and in 2019, the Platform on Disaster Displacement published a report on 'The Role of Free Movement Agreements in Addressing Disaster Displacement: A Study of Africa'.⁷⁴

The broad eligibility under free movement agreements provide a considerable advantage over other migration categories and schemes, where restrictive eligibility criteria may preclude most disaster-affected people. Access to free movement is neither universal nor automatic, however, and in practice, there may be significant barriers to access, including citizenship requirements, exclusionary domestic policies in host states, onerous bureaucratic requirements, and limited access to employment and livelihoods.

Also at the sub-regional level, state-led Regional Consultative Processes (RCPs) on Migration provide a forum for policy dialogue and information sharing on specific migration issues.⁷⁵ IGAD's 2017 RCP was focused on 'Climate Change and Human Mobility',⁷⁶ and ECOWAS' Migration Dialogue for West Africa (MIDWA) has a dedicated Thematic Working Group on 'Climate change, land degradation, desertification, environment and migration'.⁷⁷

Knowledge gaps

IGAD's recently endorsed Free Movement Protocol provides an innovative example of how free movement agreements can be used to address displacement and migration in the context of disasters and climate change, and a potential example to be drawn on by other RECs. Elsewhere, the role of free movement in facilitating human mobility in this context depends largely on how it is implemented in practice, and the extent to which domestic implementation of regional and sub-regional agreements reinforces, or mitigates, potential barriers to free movement for disaster and climate change-affected people.

⁷³ Ibid.

⁷⁴ Tamara Wood, 'The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement – A Study of Africa' (2019) Platform on Disaster Displacement.

⁷⁵ See generally IOM, 'Regional Consultative Processes on Migration' <https://www.iom.int/regional-consultative-processes-migration> .

⁷⁶ See 'IGAD Addresses Links Between Migration And Climate Change' 27 July 2017) < <https://igad.int/divisions/economic-cooperation-and-social-development/2016-05-24-03-16-37/1603-igad-addresses-links-between-migration-and-climate-change>>

⁷⁷ See 'Meeting of the Thematic Working Group of the Migration Dialogue for West Africa on Climate change, land degradation, desertification, environment and migration' (24 March 2021) < <https://environmentalmigration.iom.int/MIDWA-MECC-Meeting-March2021>>.

Some of the current knowledge gaps that need to be addressed in order to further advance opportunities for addressing displacement and migration in the context of disasters and climate change include:⁷⁸

1. To what extent have free movement agreements already been used to facilitate cross-border mobility in the context of disasters and climate change? What have been the short- and medium-term outcomes for those who move, as well as for host communities? What factors have led to the successful use of free movement agreements in this context?
2. How does the implementation of free movement agreements at the national level support or undermine opportunities for addressing disaster and climate change-related human mobility in Africa? Could potential barriers to accessing free movement be addressed by supplementary agreements or measures at the national level?
3. What role have bilateral arrangements between states played in addressing disaster displacement on the continent, and could the expansion of these arrangements be a way of advancing lawful movement, protection and assistance for displaced people?
4. How should different types of mobility be conceptualised and understood in the context of free movement arrangements? What is the significance of the traditional (albeit blurry) distinction between forced displacement and voluntary migration in regions where free movement has been implemented?
5. What could be learned from other regions (eg Latin America)⁷⁹ about the role of free movement arrangements in addressing displacement and migration in the context of disasters and climate change?

3.3. TWG3: Refugee and human rights law

Law and Policy Frameworks

Refugee law provides the main exception to the general right of states to decide who may enter and stay within their territory. Under international and regional refugee law instruments, refugees are entitled not to be returned (*refouled*) to a place where they are a risk of persecution or other serious harm, and to have their fundamental human rights respected in the place where they reside.

In Africa, the international 1951 Convention relating to the Status of Refugees (1951 Convention) has been supplemented by the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 Convention).⁸⁰ Most African states have ratified both the 1951 and 1969 Conventions,⁸¹ and many have incorporated at least some of

⁷⁸ Many of these gaps are drawn from *ibid* n72 and n77.

⁷⁹ Ama Francis, 'Francis, Ama, Free Movement Agreements & Climate-Induced Migration: A Caribbean Case Study' (2019).

⁸⁰ Organisation of African Unity (OAU), 'Convention Governing the Specific Aspects of Refugee Problems in Africa' (1969).

⁸¹ Of the 55 Member States of the African union, 48 have ratified the 1969 Convention. A further seven states (Eritrea, Madagascar, Mauritius, Namibia, Sahrawi Arab Democratic Republic, Sao Tome and Principe, and Somalia) have signed, but not ratified the Convention. All African states except for the Comoros, Eritrea, Libya and Mauritius have signed or ratified the 1951 Convention or its 1967 Protocol. Madagascar is a party to the 1951 Convention but not to the 1967 Protocol. Madagascar and the Republic of Congo continue to recognise the

their obligations – including the instruments’ respective refugee definitions – into their domestic legislation.⁸² The implementation of these obligations in practice (in particular within states’ refugee status determination procedures) is not well understood, however, owing to limited empirical research and lack of available case law.⁸³

In addition to refugee law, the principle of non-refoulement under human rights law also prohibits states from returning a person to place where they are at risk of certain serious human rights abuses, including arbitrary deprivation of life, torture or other cruel, inhuman or degrading treatment.⁸⁴

Often referred to as ‘complementary’ or ‘subsidiary’ protection, human rights-based non-refoulement has been little explored in Africa. However, a handful of decisions by the African Commission on Human and Peoples’ Rights’ (under its individual communications procedure) have endorsed the application of the principle of non-refoulement under Africa’s regional human rights instruments, including under Article 5 (prohibitions on slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment)⁸⁵ and Article 18 (??) of the African Charter; and similar provision of the African Children’s Charter (protection of the family unit).⁸⁶

Beyond the principle of non-refoulement, protecting the human rights of those who move in the context of disasters and climate change is important in other ways as well. As a 2018 report of the UN High Commissioner for Human Rights explains:

First, risks to human rights *in situ* contribute to vulnerability, which in turn can act as a driver of migration or displacement. Second, there are specific impacts to the human rights of migrants and displaced persons that need to be addressed. This includes a lack of protection of their human rights at all stages in their journey, in particular in countries of transit and destination and in the context of access to entry and protection from return to harmful situations.⁸⁷

1951 Convention’s geographical limitation. Cabo Verde is party to the 1967 Protocol but not the 1951 Convention.

⁸² See generally David James Cantor and Farai Chikwanha, ‘Reconsidering African Refugee Law’ (2019) 31(2/3) *International Journal of Refugee Law* 182. Cantor and Chikwanha note, for example, that 37 of the 46 states parties to the 1969 Convention have incorporated its Article I(2) definition of a refugee into their domestic legislation.

⁸³ See generally Tamara Wood, ‘Expanding Protection in Africa? Case Studies of the Implementation of the 1969 African Refugee Convention’s Expanded Refugee Definition’ (2014) 26(4) *International Journal of Refugee Law* 555.

⁸⁴ See generally Jane McAdam, *Complementary Protection in International Refugee Law* (OUP, 2007).

⁸⁵ African Charter Art 5. *John K Modise v Botswana*, Comm. No. 97/93, African Commission on Human and Peoples’ Rights, 6 November 2000; *Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) v. Angola*, 292/04, African Commission on Human and Peoples’ Rights, May 2008. See generally Marina Sharpe, ‘The Regional Law of Refugee Protection in Africa’ (2018) p 131.

⁸⁶ See African Commission on Human and Peoples’ Rights, *Communication No. 279/03-296/05 : Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan* (2009), para 214; *Union inter africaine des droits de l’Homme, Fédération internationale des ligues des droits de l’Homme and others v. Angola*, African Commission on Human and Peoples’ Rights, May 2009, 38.

⁸⁷ ‘The Slow onset effects of climate change and human rights protection for cross-border migrants’ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General’ (2018) para 5.

Opportunities

Despite the occasional catchcry of ‘climate refugees’, refugee law has often been thought ill-fitting for protecting those displaced by ‘natural’ causes, such as disasters and climate change. However, increasing awareness of the ‘multi-causality’ of disaster and climate change-related displacement (see section 2.1 above) has opened the way for a more nuanced understanding of the potential application of refugee law in this context.⁸⁸ Particularly in situations where the impacts of disasters and climate change interact with conflict, violence, weak governance and/or discriminatory practices, the cumulative risks to affected populations could bring them within the scope of both the international and regional definitions of a refugee.⁸⁹

In 2020, UNHCR published ‘Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters’. (UNHCR Legal Considerations), in which it emphasises the ‘social and political characteristics of the effects of climate change or the impacts of disasters or their interaction with other drivers of displacement’,⁹⁰ noting in particular that ‘people displaced by the adverse effects of climate change and disasters can be refugees under regional refugee criteria’.⁹¹

Africa’s regional refugee definition – Article I(2) of the 1969 Convention – provides a particular opportunity for addressing displacement related to disasters and climate change extending refugee protection to those who are ‘compelled to leave’ their homes owing to ‘events seriously disturbing public order’.⁹² At least some African states have demonstrated their willingness to apply the regional refugee definition in the context of disasters and climate change.⁹³ However, there is still significant debate regarding what constitutes ‘events seriously disturbing public order’ and when the impacts of disasters and climate change will be sufficiently serious to qualify.⁹⁴

⁸⁸ See generally, Michelle Foster, H el ene Lambert and Jane McAdam, ‘Refugee Protection in the COVID-19 Crisis and Beyond: The Capacity and Limits of International Law’ (2021) 44(1) *UNSW Law Journal* 104.

⁸⁹ See, eg, UNHCR, ‘Legal considerations on refugee protection for people fleeing conflict and famine affected countries’ (2017); Sanjula Weerasinghe, ‘In Harm’s Way: International protection in the context of nexus dynamics between conflict or violence and disaster or climate change’ UNHCR Legal and Protection Policy Research Series (December 2018); Nansen Initiative, ‘Protection Agenda’ paras 55-56; Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (CUP, 2020).

⁹⁰ UNHCR, ‘Legal considerations on refugee protection for people fleeing conflict and famine affected countries’ (2017), para 5.

⁹¹ *Ibid*, para 14.

⁹² *Ibid* n89, art I(2). See, eg, Tamara Wood, ‘Protection and Disasters in the Horn of Africa: Norms and Practice for Addressing Cross-Border Displacement in Disaster Contexts’, Technical Paper for the Nansen Initiative Greater Horn of Africa Regional Consultation, Nairobi, Kenya, 21-23 May 2014 (January 2015) 23-29.

⁹³ For example, Kenya applied the definition to award prima facie refugee status to Somalis fleeing drought and famine between 2011 and 2012. Ethiopia has expressed support for including disaster displaced persons as refugees. See ‘Statement by H E Mr Negash Kebret Batora, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of the Federal Democratic Republic of Ethiopia to the United Nations Office in Geneva and to other International Organizations in Switzerland at the Nansen Initiative Global Consultation (12 October 2015)’ 3, cited in The Nansen Initiative, Global Consultation Conference Report (12–13 October 2015) 107.

⁹⁴ See Tamara Wood, ‘Who is a Refugee in Africa? A Principled Framework for Interpreting and Applying Africa’s Expanded Refugee Definition’ (2019) 31(2-3) *International Journal of Refugee Law* 290.

Under human rights law, complementary protection claims based on the effects of disasters and climate change have been almost universally unsuccessful.⁹⁵ In 2020, however, the UN Human Rights Committee held that the negative impacts of climate change *could* lead to risks to life or amount to cruel, inhuman or degrading treatment, thereby triggering states' non-refoulement obligations under human rights law.⁹⁶

Though the question of 'complementary protection' for those displaced in the context of disasters and climate change has not been addressed under African regional human rights law, limited existing jurisprudence from the African Commission suggests an expansive approach to non-refoulement at the regional level⁹⁷ and potential future opportunities as the impacts of climate change increase in scale and severity.

Knowledge gaps

Claims for refugee or complementary forms of international protection by those who move in the context of disasters and climate change must be rigorously scrutinised to determine whether they fall within the relevant definition or criteria for protection. To assist with this, further guidance is necessary on the multi-causality of displacement in the context of disasters and climate change, the scope and application of criteria for protection, and on how states can implement their obligations within national migration management and status determination procedures.

Some of the key questions to be further addressed include:

1. What are the interacting drivers of displacement in Africa in the context of climate change and disasters? How are these 'drivers' to be assessed to determine whether there is a risk of persecution for one or more 1951 Convention grounds?
2. What is the meaning of 'events seriously disturbing public order' under the 1969 Convention? How should events be assessed to determine whether they seriously disturb public order and compel people to leave and seek refuge abroad? What types of considerations will be relevant in the context of disasters and climate change?
3. What scope is there under African regional human rights frameworks for establishing 'complementary protection' for persons displaced in the context of disasters and climate change?
4. (How) could African states be supported to implement their refugee and human rights non-refoulement obligations within national laws, policies and practices (including, for example, national refugee or complementary protection status determination procedures)?
5. What opportunities do African (regional and national) courts and human rights bodies – including the African Human Rights Commission – provide for developing

⁹⁵ See McAdam, CP, Ch 3, esp 54-5; McAdam recent article.

⁹⁶ UN Human Rights Committee, *Teitiota v New Zealand*, UN Doc CCPR/C/127/D/2728/2016 (24 Oct 2019). See further, Jane McAdam, 'Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement' *American Journal of International Law* (2020).

⁹⁷ Marina Sharpe, 'The Regional Law of Refugee Protection in Africa' (2018) p 132.

jurisprudence regarding the application of states' refugee and human rights obligations in the context of disasters and climate change?

3.4. TWG4: Protecting Internally Displaced Persons (IDPs) and Planned Relocation

Law and Policy Frameworks

Protecting IDPs

The key regional framework for protecting internally displaced persons (IDPs) in Africa is the 2009 AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).⁹⁸ The Kampala Convention is significant as the first binding continental framework for the protection of IDPs, providing an exemplar for enhancing IDP protection elsewhere.⁹⁹ Within Africa, it imposes obligations on states parties relating to all phase of internal displacement, including the prevention of displacement, protection for those displaced, conditions for safe return and other long-term solutions.¹⁰⁰ The Kampala Convention follows the earlier sub-regional Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons, developed in 2006.¹⁰¹

A total of 31 African states have signed and ratified the Kampala Convention.¹⁰² In 2018, the AU adopted a 'Model Law' for the Convention's implementation, providing guidance to states on the development of their own national laws and policies. A number of states parties *have* developed, or are in the process of developing, national laws or policies to give effect to the Kampala Convention. Niger, for example, has dedicated national legislation on IDP protection; South Sudan, Mali and CAR have draft legislation currently under discussion; and Nigeria, Somalia and Sudan all have policy processes for IDP protection currently underway.¹⁰³ Somalia has even included IDPs within its National Development Planning, providing a good example of a coordinated approach to address internal displacement.¹⁰⁴

Planned Relocation

While there is no accepted legal definition of planned relocation, it may be generally described as:

⁹⁸ African Union, 'African Union Convention for the Protection and Assistance of Internally Displaced Persons' (2009) (Kampala Convention).

⁹⁹ See Allehone Abebe, 'Inter-State Dialogue on Internal Displacement: Lessons from Regional Platforms in Africa' (August 2020)

¹⁰⁰ Many of these obligations were drawn from existing principles of international human rights, humanitarian and criminal law.

¹⁰¹ International Conference on the Great Lakes Region, 'Protection and Assistance to Internally Displaced Persons' (2006) (Great Lakes Protocol).

¹⁰² African Union, 'List of countries which have signed, ratified/acceded to the African Union convention for the protection and assistance of internally displaced persons in Africa (Kampala convention)' (2019).

¹⁰³ See ICRC, 'The Kampala Convention: Key Recommendations Ten Years On' (2019) pp 19; 63-4. See also the Global Protection Cluster Global Database on IDP Laws and Policies

<https://www.globalprotectioncluster.org/global-database-on-idp-laws-and-policies/>

¹⁰⁴ Ibid n106 p 21.

a solutions-oriented measure, involving the State, in which a community (as distinct from an individual/household) is physically moved to another location and resettled there.¹⁰⁵

Within Africa, planned relocation has already taken place in several African states, including: Botswana, Cameroon, Ethiopia, Ghana, Malawi, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Somalia, Uganda, Zimbabwe.¹⁰⁶

In addition to the lack of accepted definition, there is also no specific legal framework governing planned relocation at either the regional or international levels.¹⁰⁷ A number of international frameworks relating to disasters, climate change and human mobility recognise planned relocation as an important mechanism in this context. These include: the Global Compact for Safe Orderly and Regular Migration, the Cancun Agreement and the Sendai Framework. However, they do not provide normative guidance on when or how planned relocation should take place.

Within Africa, there are few references to planned relocation within regional or sub-regional law and policy and frameworks. A number of states refer to planned relocation within their national DRR policies and strategies and National Adaptation Plans.

To address the law and policy gap relating to planned relocation, institutions including UNHCR, IOM and Georgetown University have developed important guidance on the use of planned relocation in the context of disasters and climate change. This includes 'Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation',¹⁰⁸ and 'Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change'.¹⁰⁹

Opportunities

Internally Displaced Persons

The Kampala Convention presents a significant opportunity for addressing disaster and climate change-related displacement in Africa. The Convention's definition of 'internally displaced persons' includes those forced to flee 'as a result of or in order to avoid the effects of ... natural or human-made disasters'.¹¹⁰ The Convention also obliges states parties to 'take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change'.¹¹¹ States' obligations under the Kampala Convention extend to the prevention of arbitrary displacement, which in the context of natural disasters and climate change, could occur where states do not undertake

¹⁰⁵ Sanjula Weerasinghe, 'Planned Relocation, Disasters and Climate Change: Consolidating Good Practices and Preparing for the Future' (2014) p10.

¹⁰⁶ Erica Bower and Sanjula Weerasinghe, 'Leaving place, Restoring Home' Platform on Disaster Displacement (2021) p 72.

¹⁰⁷ Ibid n114 p 14.

¹⁰⁸ Brookings Institution, Georgetown University, UNHCR 'Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation' (2015).

¹⁰⁹ IOM, Georgetown University, UNHCR, 'Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change' (2017).

¹¹⁰ Art I(k)

¹¹¹ Art V(4).

adequate measures to protect the safety and health of populations at risk of disasters and climate change.¹¹²

Opportunities for addressing internal displacement in the context of disasters and climate change are strongest in those states that have incorporated their Kampala Convention obligations into domestic law and policy (see above). Though even in these states, the effective protection of IDPs in practice will also depend on effective coordination of protection measures by national government agencies and other actors. Indeed, a recent review by ICRC notes the need for further support to African states regarding the range of domestic implementation measures required and to facilitate peer exchange of examples of effective practice.¹¹³

Planned Relocation

With no overarching international or regional framework governing planned relocation, the most immediate opportunities for addressing planned relocation in the context of disasters and climate change are found within national law and policy frameworks. For example, Burkina Faso's NAP established the relocation of populations from low-lying or flood zones to suitable areas as an adaptation measure.¹¹⁴ Ghana's National Climate Change Master Plan Action Programmes for Implementation: 2015–2020 plans to 'support relocation of settlements and economic activities to nonflood areas'.¹¹⁵ The Côte d'Ivoire's National DRR Strategy includes a mention to the preparation of a Displacement and Relocation Plan specific to certain areas of Abidjan at risk of floods.¹¹⁶

Knowledge gaps

Given Africa's robust regional framework for IDP protection, knowledge gaps relating to IDP protection in the context of disasters and climate change relate primarily to the implementation of the Kampala Convention at the domestic level by African states. In contrast, knowledge gaps relating to planned relocation relate more to developing a better understanding of existing national practices, and how these could be developed and/or harmonised to promote effective practices and/or the establishment of certain minimum standards.

¹¹² For example, the Kampala Convention provides for evacuation in disaster situations for the safety and health of affected populations. Kampala Convention (n 1), art 4(4)(f).

¹¹³ ICRC, 'The Kampala Convention: Key Recommendations Ten Years On' (2019) p 32-33.

¹¹⁴ Burkina Faso, Ministry of Environment and Fishery Resources, 'Burkina Faso National Climate Change Adaptation Plan (NAP)' (2015), p 15, p 64 and p 66.

¹¹⁵ Ibid n42, p 39.

¹¹⁶ Côte d'Ivoire, '*Stratégie nationale de gestion des risques de catastrophes et plan d'action*' (2011) p 22, as identified by ibid n34.

Some of the key questions to be further addressed include:¹¹⁷

Protecting IDPs

1. To what extent have African states parties to the Kampala Convention incorporated their obligations into domestic law and policy? Are there examples of effective practice in national protection and assistance of IDPs that could support developments elsewhere within the Africa?
2. Do existing IDP frameworks sufficiently recognise and address the needs of those displaced in the context of *slow*-onset disasters, such as drought, who may not be readily recognised as ‘displaced’?
3. In addition to IDP law and policy frameworks, what other measures at the national, sub-regional or regional levels (eg institutional arrangements, policy dialogue) could help to enhance IDP protection for those displaced in the context of disasters and climate change?
4. How can durable solutions to internal displacement be conceived and implemented for those displaced in the context of disasters and climate change? What measures can be incorporated to not only resolve current displacement, but also avert future displacement?
5. Could the Kampala Convention provide a normative basis for enhancing protection for those displaced across borders in the context of disasters and climate change?

Planned Relocation

6. What kinds of national law and policy frameworks govern planned relocation in African states? Do existing laws and policies ensure protection for those who move? How is planned relocation managed within applicable administrative law/governance frameworks?
7. What opportunities exist within regional and sub-regional law and policy frameworks, including those relating to climate change, DRR, environment and migration, for better supporting communities in need of, or subject to, planned relocation?

4. CONCLUSION

The number of people who move in the context of disasters and climate change in Africa is only likely to increase. Appropriate law and policy frameworks across a range of fields could help more people to stay safely at home; facilitate safe and dignified migration for those who move; protect people who are displaced; and promote long-term solutions for all those affected. Further research now could help to realise opportunities for addressing this issue within existing law and policy frameworks. It could also help to clarify what additional frameworks or solutions are required for the future.

¹¹⁷ Many of these knowledge gaps have been drawn from: Jane McAdam, Erica Bower, Sanjula Weerasinghe and Tamara Wood, ‘Submission to the UN Secretary-General’s High-Level Panel on Internal Displacement on Internal Displacement in the context of Disasters and Climate Change’ Kaldor Centre for International Refugee Law (6 May 2020); Romola Adeola, ‘Internal displacement as a research agenda in Africa’ GENIDA (9 March 2021); Erica Bower and Sanjula Weerasinghe, ‘Leaving place, Restoring Home’ Platform on Disaster Displacement (2021).