



RESEARCH AGENDA

FOR ADVANCING LAW AND POLICY RESPONSES TO DISPLACEMENT AND MIGRATION IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE IN AFRICA

Outcome of 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)

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The Virtual Workshop Series was jointly organised by:

- Andrew & Renata Kaldor Centre for International Refugee Law, University of New South Wales
- Platform on Disaster Displacement (PDD)
- International Organization for Migration (IOM)
- UN High Commissioner for Refugees (UNHCR)
- Intergovernmental Authority on Development (IGAD)
- Centre for Human Rights, University of Pretoria
- University of Nairobi.

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The organisers are pleased to have been able to support this broad consultation between researchers, practitioners, policymakers and judicial officers in the generation of recommendations for future research to support evidence-based law and policy responses to these critical issues.

To support the implementation of this Research Agenda, the Climate Mobility Africa Research Network (CMARN) was launched, in November 2021, with the generous support of IOM and PDD. The objectives of the new Research Network are:

- To promote and facilitate critical and independent research on law and policy responses to disaster and climate change-related human mobility in Africa;
- To foster collaboration between researchers and policy experts with the goal of supporting evidence-based law and policy development on displacement and migration in the context of disasters and climate change and their implementation; and
- To develop the knowledge and capacity of researchers in and from Africa on these issues, including early career researchers.³

¹ For information on the Virtual Workshop Series, see 'Concept Note: Developing a Research and Policy Agenda for Addressing Displacement and Migration in the Context of Disasters and Climate Change in Africa, Virtual Workshop Series, April-July 2021' (Virtual Workshop Series Concept Note) available at: <https://bit.ly/3xd9SvH>.

² See 'Background Paper: 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' available at: <https://bit.ly/3xd9SvH>.

³ To learn more about the Research Network, or to enquire about joining, contact Dr Nicodemus Nyandiko (nnyandiko@mmust.ac.ke) or Dr Tamara Wood (tamara.wood@unsw.edu.au).

LIST OF ACRONYMS

| | |
|---------------|--|
| AU | African Union |
| CAR | Central African Republic |
| CIT | International Transhumance Certificate |
| DRC | Democratic Republic of Congo |
| DRR | Disaster Risk Reduction |
| GIZ | Deutsche Gesellschaft für Internationale Zusammenarbeit |
| GRID | Global Report on Internal Displacement |
| ECOWAS | Economic Community of West African States |
| ICPAC | IGAD Climate Prediction and Application Centre |
| ICRC | International Committee of the Red Cross |
| IDDRSI | IGAD Drought Disaster Resilience and Sustainability Initiative |
| IDMC | Internal Displacement Monitoring Centre |
| IDP | Internally Displaced Person |
| IGAD | Intergovernmental Authority on Development |
| IOM | International Organization for Migration |
| IRCCS | IGAD Regional Climate Change Strategy |
| NAP | National Adaptation Plan |
| NRC | Norwegian Refugee Council |
| OAU | Organisation of African Unity |
| OHCHR | Office of the High Commissioner for Human Rights |
| PDD | Platform on Disaster Displacement |
| REC | Regional Economic Community |
| SADC | Southern African Development Community |
| UNDRR | United Nations Office for Disaster Risk Reduction |
| UNFCCC | United Nations Framework Convention on Climate Change |
| UNHCR | United Nations High Commissioner for Refugees |

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INTRODUCTION

1

Displacement and migration in the context of disasters and climate change⁴ is not just a future phenomenon – it is happening already. In 2020, more than 30 million new displacements occurred in the context of disasters.⁵ In addition, many more people moved to avoid future impacts of disasters and climate change. Human mobility in the context of disasters and climate change is most commonly 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 abroad.

In Africa, regional laws and policies in a range of fields, including (but not limited to) climate change, disaster risk reduction, migration and free movement of persons, transhumance, refugee protection, human rights, protection of internally displaced persons (IDPs) and planned relocation have an important role to play in ensuring that those who choose to move, or are compelled to do so, can access safety, protection and lasting solutions. Yet, existing knowledge gaps regarding the scope and application of these laws and policies at the intersections of climate change, disasters and human mobility impede the realisation of the opportunities they present.⁶

To address these knowledge gaps, between April and July 2021, more than 200 researchers, practitioners and policy experts working in Africa and beyond came together as part of a **Virtual Workshop Series** to develop a *Research Agenda for Advancing Law and Policy Responses to Displacement and Migration in the Context of Disasters and Climate Change in Africa*.⁷ Across a series of plenary workshops and smaller working groups,

⁴ For pragmatic reasons, the Research Agenda uses 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.

⁵ Internal Displacement Monitoring Centre (IDMC), 'Global Report on Internal Displacement 2021' (Geneva, 2021) (GRID).

⁶ Other factors that impede the effective application of regional law and policy frameworks include funding gaps, limited capacity and lack of political will. However, these are not the focus of this Research Agenda.

⁷ For further information about the Virtual Workshop Series within which this Research Agenda was developed, see Virtual Workshop Series Concept Note (n 1).

participants identified salient knowledge gaps under relevant regional laws and policies, and formulated proposals for future research to address them.

This Research Agenda brings together the outcomes of the Virtual Workshop Series to provide 15 proposals for future research that could:

- a) Address existing knowledge gaps relating to regional law and policy responses to displacement and migration in the context of disasters and climate change in Africa; and
- b) Provide a guide for researchers, research institutions and funding bodies wishing to support the future development and implementation of evidence-based law and policy responses to these issues.

The research proposals in this Research Agenda relate to laws and policies at the continental, regional and national levels in Africa. In many cases, these laws and policies apply alongside, or as part of, important international frameworks, including the United Nations Framework Convention on Climate Change (UNFCCC), the Sendai Framework for Disaster Risk Reduction 2015–2030 (Sendai Framework) and the Global Compact for Safe, Orderly and Regular Migration. These international frameworks are not the focus of this Research Agenda, but are discussed as they relate to relevant continental, regional or national frameworks.⁸

In addition, this Research Agenda focuses on laws and policies relating to: climate change, disaster risk reduction, migration and free movement of persons, transhumance, refugee protection, human rights, IDP protection and planned relocation. Other relevant fields of law and policy – including planning law, labour law, property rights, urban planning, food security, sustainable development and humanitarian law and policy – are considered only in relation to the main focus areas and as they arose during the Virtual Workshop Series.

This Research Agenda begins with an overview of how disasters and climate change are impacting human mobility in Africa, and the different types of human mobility that take place in the context of disasters and climate change. Following this, Part 2 explains the role of law and policy in addressing this issue. It describes a ‘toolbox’ approach to law and policy responses, some of the key objectives that relevant law and policy frameworks aim to achieve, and the role of research in supporting the development and implementation of evidence-based laws and policies.

Part 3 then addresses, in turn, each of the main relevant fields of law and policy identified above. It provides an overview of key regional law and policy frameworks in each field, articulates the key knowledge gaps identified by participants in the Virtual Workshop Series, and recommends the key priority (or priorities) for future research to address these gaps. Following consideration of each of the main fields of law and policy, this Research Agenda provides a number of ‘cross-cutting’ research proposals – that is, recommendations for future research that are not specific to a particular field of law and policy, but could inform the development and implementation of regional frameworks across a range of fields.

⁸ For further information on relevant international frameworks see PDD, ‘Resources’ at: <https://disasterdisplacement.org/resources>; IOM, ‘Environmental Migration Portal’ at: <https://environmentalmigration.iom.int/>.

1.1

DISPLACEMENT AND MIGRATION IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE IN AFRICA

As a continent, Africa experiences some of the highest rates worldwide of displacement and migration in the context of disasters and climate change.⁹ In 2020, flooding caused by an unusually intense and prolonged rainy season led to new and secondary displacements in countries already impacted by conflict and violence, including South Sudan, Burkina Faso, Cameroon, Mali, Nigeria and the Democratic Republic of Congo (DRC).¹⁰ In the Lake Chad Basin, the shrinking of Lake Chad has combined with poverty, conflict and insurgency to force huge numbers of people to leave their homes in search of safety, security and better opportunities.¹¹ Across much of Africa, changing weather patterns and drought are altering traditional patterns of movement among transhumant pastoralists and farmers moving in search of land, water and sustainable livelihoods.¹²

Broadly speaking, human mobility in the context of disasters and climate change falls into two main categories. These are:

- **Displacement** – which refers to predominantly *forced* movement. The Platform on Disaster Displacement (PDD) defines disaster displacement as ‘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’.¹³ Displacement may be internal (when people are displaced within the borders of one country) or cross-border.

- **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’.¹⁴ Migration may also be internal or cross-border.

Within these two main categories, the **characteristics** of human mobility can vary greatly. Displacement and migration may be short-term or long-term, and once-off or repeated, to name just a few characteristics. Some people flee during an emergency, returning home when the emergency passes. Others move for longer periods, or permanently, in search of more sustainable livelihoods and solutions. 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.

Human mobility in the context of disasters and climate change is **multi-causal**, meaning that displacement and migration rarely result from disasters or climate change alone, but rather from a combination of factors that also include individuals’ aspirations, capacities, vulnerabilities, as well as other political, demographic, economic and social factors.¹⁵ In practice, it can be difficult, if not impossible, to establish a direct causal link between disasters or climate change and human mobility in any given situation, or even to distinguish between

⁹ 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.

¹⁰ IDMC, GRID (n 5) p 28.

¹¹ Amali Tower, ‘Shrinking Options: The Nexus Between Climate Change, Displacement and Security in the Lake Chad Basin’ (New York, 2017).

¹² Vikram Kolmannskog and Tamer Afifi, ‘Disaster-related displacement from the Horn of Africa’ (Bonn, 2014).

¹³ PDD, ‘Key Definitions’ at: <https://disasterdisplacement.org/the-platform/key-definitions>.

¹⁴ Nansen Initiative on Disaster-Induced Cross-Border Displacement, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change: Volume I* (Geneva, 2015) (Protection Agenda) para 20, drawing on terminology suggested by United Nations Framework Convention on Climate Change (UNFCCC), ‘Cancun Climate Change Adaptation Framework Decision’ (2010) para 14(f).

¹⁵ See ‘Foresight: Migration and Global Environmental Change’ (UK, 2011) section 2.2.1.

(predominantly forced) displacement and (predominantly voluntary) migration.

Lastly, there are some more specific types of human mobility that occur in the context of disasters and climate change. **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'.¹⁶ Planned relocations may take place in anticipation of, or in response to, particular hazards or events.¹⁷ **Evacuation** refers to an emergency measure involving '[f]acilitation or organization of transfer of individuals or groups from one area/locality to another in order to ensure their security, safety and well-being'.¹⁸ Whereas planned relocations are generally permanent, evacuations are life-saving measures that are intended to be temporary.¹⁹

¹⁶ Georgetown University, UNHCR and Brookings Institution, 'Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation' (2015) p 5.

¹⁷ See Erica Bower and Sanjula Weerasinghe, 'Leaving place, Restoring Home' Platform on Disaster Displacement (2021) p 9. According to Weerasinghe and Bower, 'most planned relocation cases fall within a proactive to reactive continuum.'

¹⁸ Global Protection Cluster Working Group, 'Handbook for the Protection of Internally Displaced Persons' (2010) p 503.

¹⁹ See Bower and Weerasinghe (n 17) p 21, though the authors note that temporary evacuation can become protracted and may lead to planned relocation becoming necessary. Evacuations may also constitute a form of displacement. See also Jane McAdam, 'Displacing Evacuations: A Blind Spot in Disaster Displacement Research' (2020) 39(4) *Refugee Survey Quarterly* 583.

ADDRESSING DISPLACEMENT AND MIGRATION IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE

2

There is **no single comprehensive framework** for ensuring the safety, protection and dignity of those who move in the context of disasters and climate change.²⁰ Nevertheless, existing law and policy frameworks across a broad range of fields address at least some of the issues and needs that arise. For example, some of those who move may qualify for specific protection under refugee or human rights law. Migration pathways, or agreements for the free movement of persons between states, may facilitate movement for those with specific skills or in specific regions. In all cases, those who move are entitled to have their fundamental rights respected and protected under human rights law.

2.1

A 'TOOLBOX' APPROACH TO LAW AND POLICY RESPONSES

In recognition of the important role that existing law and policy frameworks can play in addressing human mobility in the context of disasters and climate change, in 2015, 109 countries – including 32 from Africa²¹ – endorsed the Nansen Initiative's *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (Protection Agenda). Rather than calling for a new legal framework for protecting those who move, the Protection Agenda calls on governments to adopt a **'toolbox' approach** – that is, to draw on, and further develop, a range of law and policy frameworks to help avert and mitigate displacement, allow those who move to do so safely and with dignity, and ensure that everyone affected can access protection, sustainable livelihoods and lasting solutions.

Within Africa, the range of law and policy 'tools' available to address displacement and migration in the context of disasters and climate change is broad. It includes laws,

²⁰ This is sometimes referred to as a 'protection gap' in international law. See generally Nansen Initiative, *Protection Agenda* (n 14) esp p 18.

²¹ See *The Nansen Initiative: Global Consultation Conference Report* (Geneva, 12-13 October 2015) for a full list of countries.

policies and regional agreements that address different types of human mobility, different stages of movement, and different needs of those affected. This Research Agenda focuses on the specific fields of law and policy listed below, as they most directly address displacement and migration in the context of disasters and climate change. As noted at the outset, it also focuses on law and policy frameworks at the continental, regional and national (rather than international) levels.

Law and policy frameworks for addressing displacement and migration in the context of disasters and climate change in Africa include those relating to:

- Climate change
- Disaster risk reduction
- Migration and free movement of persons
- Transhumance
- Refugee protection
- Human rights law
- IDP protection
- Planned relocation

Each of these fields of law and policy is discussed in more detail in Section 3.

2.2

OVERARCHING OBJECTIVES OF LAW AND POLICY RESPONSES

Addressing displacement and migration in the context of disasters and climate change requires a holistic approach that takes into account all stages and types of human mobility, as well as the differing needs of those affected. Laws and policies addressing this issue therefore pursue a range of different (though often overlapping) objectives, including:

- (i). Helping people to stay safely where they live;
- (ii). Facilitating safe and dignified mobility for those who move;

- (iii). Protecting people displaced, both internally and across borders; and
- (iv). Promoting sustainable, lasting solutions for all those affected.

All of these objectives are critical to a holistic and effective response to displacement and migration in the context of disasters and climate change. This Research Agenda, and the Virtual Workshop Series within which it was developed, focuses primarily on objectives (ii) and (iii) above, namely: facilitating safe and dignified human mobility for those who move, and protecting people displaced, both internally and across borders. Objectives (i) and (iv) are also addressed in some of the research proposals set out below. However, these were not discussed in the same level of detail in the Virtual Workshop Series.

When remaining *in situ* is no longer perceived as the best option by individuals, families or communities affected by disasters and climate change, enabling people to move out of harm's way before disaster strikes or before an area becomes uninhabitable can reduce the risk of forced displacement and the need for more substantial humanitarian intervention later.

Facilitating safe and dignified mobility for those who move – whether on a permanent, temporary or circular basis – can allow affected communities to adapt to climate change by accessing more sustainable livelihoods and/or re-establishing themselves in a safe location. Although considered a measure of last resort, planned relocation can be used to move (or support the movement of) individuals and 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 with full respect and protection of their rights.

Law and policy frameworks that are relevant to facilitating safe and dignified movement include those relating to:

- Migration and free movement of persons
- Transhumance
- Planned relocation
- Human rights
- Climate change
- Disaster risk reduction

People who are displaced in the context of disasters and climate change require access to safety and protection until a more lasting solution can be found. **Protecting people displaced** includes protecting those displaced within their own countries (IDPs), as well as those displaced across international borders. For IDPs, the primary responsibility to ensure respect of people's rights rests with the government of the affected country. For those displaced across borders, protection obligations are less clear-cut. While some people may be entitled to international protection as refugees, many will not qualify for such protection. For those who do not qualify as refugees, international protection based on human rights standards (complementary protection) and migration frameworks – including free movement of persons agreements – may provide access to lawful admission and stay in another country.

Law and policy frameworks that are relevant to protecting people displaced include those relating to:

- Refugee protection
- IDP protection
- Migration and free movement of persons
- Planned relocation
- Human rights
- Climate change
- Disaster risk reduction

2.3

THE ROLE OF RESEARCH

While regional law and policy frameworks in Africa present a range of opportunities for addressing displacement and migration in the context of disasters and climate change, in many cases, the realisation of these opportunities in practice is impeded by gaps in knowledge and understanding of the scope of relevant law and policy frameworks, their application at the intersection of disasters, climate change and human mobility, and what is required for their effective implementation. This, in turn, prevents an accurate assessment of what additional laws or policies need to be developed to ensure a comprehensive overall response.

Research can help to support law and policy responses to displacement and migration in the context of disasters and climate change by addressing:

- **Conceptual or theoretical knowledge gaps** – including gaps in understandings of the relationship between disasters, climate change and human mobility; of different types of human mobility; and of the different legal categories that pertain to human mobility.
- **Empirical knowledge gaps** – including gaps in data and evidence relating to the characteristics of displacement and migration in the context of disasters and climate change; in the needs and wishes of affected communities; and in existing state practice in addressing the issue.
- **Doctrinal knowledge gaps** – including gaps in understandings of the scope and application of law and policy frameworks at the intersection of disasters, climate change and human mobility.
- **Technical or operational knowledge gaps** – including gaps in technical knowledge and capacity (in particular, at the national level) required to implement law and policy frameworks effectively.

RESEARCH AGENDA FOR ADVANCING LAW AND POLICY RESPONSES TO DISPLACEMENT AND MIGRATION IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE

3

This section constitutes the core of the Research Agenda. It articulates the key knowledge gaps identified by participants in the Virtual Workshop Series and sets out future research proposals to address those knowledge gaps that were identified as priorities for advancing law and responses to displacement and migration in the context of disasters and climate change in Africa. This section begins by setting out some general principles that should guide all future research relating to these issues, before turning to address each of the main relevant fields of law and policy in turn.

3.1

GENERAL PRINCIPLES

In addition to the specific knowledge gaps and research proposals identified in this Research Agenda, participants in the Virtual Workshop Series identified the following, general considerations that should be taken into account in all future research relating to this issue.

First, research on law and policy responses to displacement and migration in the context of disasters and climate change should take into account the fact that displacement and migration can occur in the context of both **sudden- and slow-onset** disasters and climate change impacts. People may move following sudden-onset events, such as earthquakes, volcanic eruptions and floods, or in the context of slow-onset events and impacts, such as drought, desertification or sea-level rise.²² Different types of events and impacts can lead to different types of movement and generate different protection needs for those who move. For example, those who move in the context of slow-onset events and impacts may face special challenges in having their protection needs recognised and met due to the difficulty of isolating slow-onset events from other

²² UNDRR, 'Terminology: Disaster'
<https://www.undrr.org/terminology/disaster>.

drivers of displacement and migration.²³ Future research on relevant law and policy responses to this issue should therefore be alert to the differing needs and challenges that may arise in the context of different types of disasters and climate change impacts, as well as the potential overlap between them.

Second, research should take into account the **nexus** between disasters and climate change on the one hand, and conflict and violence on the other. In many parts of Africa, the impacts of disasters and climate change interact with the impacts of conflict and violence to compel people to move. In some situations, conflict exacerbates the impacts of disasters and climate change, while in others, disasters and climate change exacerbate pre-existing tensions or state fragility.²⁴ Future research should remain cognisant of the complex role that these ‘nexus dynamics’ can play in driving human mobility and in generating particular protection needs among those who move.

Third, research should be **people-centred**, ensuring that the needs and perspectives of affected communities remain at the core of understandings of, and responses to, displacement and migration in the context of disasters and climate change. A people-centred approach is important to all aspects of research – including research design, methodology and implementation – and can be achieved in a number of ways. For example, the protection of fundamental human rights is a central concern of all law and policy responses to displacement and migration in the context of disasters and climate change. Research should therefore take into account the rights of affected populations, including women, children, disabled persons, indigenous persons and other marginalised groups. The perspectives of communities affected by disasters, climate change and mobility are also critical to the effective development and implementation of evidence-based law and policy responses to this issue. Research should therefore incorporate such perspectives wherever possible.

Finally, research on this issue should uphold established principles of **research integrity**. Researchers should gather and use concrete data on the occurrence and characteristics of displacement and migration in the context of disasters and climate change to inform the development of relevant law and policy responses. They should promote collaboration between researchers and policymakers in order to facilitate policy-relevant research and the development of evidence-based laws and policies. Future research on displacement and migration in the context of disasters and climate change should advance the diversification of knowledge production, by prioritising opportunities for researchers with lived experience of displacement and migration in the context of disasters and climate change and/or from traditionally marginalised groups or backgrounds that are currently underrepresented within existing research and literature.

3.2

RESEARCH AGENDA

The knowledge gaps and research proposals set out here are organised primarily according to the main fields of law and policy identified at the outset. For each field, this section provides an overview of key regional law and policy instruments and agreements, articulates the knowledge gaps identified by participants in the Virtual Workshop Series as impeding the realisation of the opportunities they present, and sets out specific proposals for future research to address those knowledge gaps identified as priorities. Research proposals (i)-(x) relate to a single law and policy field – eg refugee protection – while research proposals (xi)-(xv) are ‘cross-cutting’ and relate to multiple fields of law and policy.

²³ See OHCHR, ‘The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants’ (2019) esp p 5.

²⁴ See generally Sanjula Weerasinghe ‘In Harm’s Way: International protection in the context of nexus dynamics between conflict or violence and disaster or climate change’ (UNHCR, 2018).

SUMMARY OF RESEARCH PROPOSALS

| Research proposals | Relevant fields of law and policy |
|--|--|
| i. Conceptualise displacement in the context of disasters and climate change in Africa as loss and damage | Climate change |
| ii. Develop key metrics and indicators for monitoring and reporting disaster displacement against disaster risk reduction objectives | Disaster risk reduction |
| iii. Assess implementation of free movement of persons agreements at the national and bilateral levels in the context of disasters and climate change | Migration and free movement of persons |
| iv. Analyse the protection needs of agricultural labour migrants utilising free movement of persons arrangements | |
| v. Analyse stakeholders, strategies, laws and regulatory mechanisms for the sustainable development of transhumance in the context of climate change | Transhumance |
| vi. Analyse the application of regional refugee law in the context of disasters and climate change | Refugee protection |
| vii. Map regional human rights frameworks and their applicability to people displaced in the context of disasters and climate change | Human rights |
| viii. Analyse climate change and disaster displacement in national IDP laws and policies | IDP protection |
| ix. Map norms and provisions on planned relocation in Africa | Planned relocation |
| x. Analyse national case studies of planned relocation | |
| xi. Map integration of disaster displacement and human mobility in African states' climate change and disaster risk reduction laws and policies | Cross-cutting (multiple fields) |
| xii. Analyse how disaster displacement is addressed in African states' institutional structures | |
| xiii. Compare the benefits of refugee protection and free movement of persons arrangements for protecting people displaced across borders in the context of disasters and climate change | |
| xiv. Analyse the impacts of displacement and migration in the context of disasters and climate change on urban communities | |
| xv. Analyse the dynamics of immobility in the context of disasters and climate change | |

3.2.1 Climate change

Climate change laws and policies can help mitigate or address the adverse effects of climate change that compel people to leave their homes by supporting adaptation to climate change, providing access to financing and helping communities prepare for loss and damage that occurs as a result of climate change. Across Africa, there has been some progress in establishing an integrated approach to climate change and human mobility, but the explicit incorporation of human mobility considerations into climate

change laws, policies and planning has so far lacked coherence and consistency.

The African Union's (AU) Draft Climate Change Strategy acknowledges climate change as a driver of displacement and migration on the continent and urges the development of a mechanism to address loss and damage resulting from the adverse effects of climate change.²⁵ At the regional level, incorporation of human mobility into climate change frameworks varies between Africa's Regional Economic Communities (RECs). In West Africa, the Economic Community of West African

²⁵ African Union, Draft Africa Climate Change Strategy (2020–2030) pp 27, 61.

States' (ECOWAS) *Regional Action Program to Reduce Vulnerability to Climate Change in West Africa* (2010) does not mention human mobility at all, though a key objective of the program 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.²⁶ The Southern African Development Community (SADC) has not yet adopted a climate change policy, but a 2012 Policy Paper acknowledges environment-induced migration as a key human security challenge of climate change, as well as the need for states to identify appropriate policy options.²⁷ In the Intergovernmental Authority on Development (IGAD) region, the *IGAD Regional Climate Change Strategy* (IRCCS) identifies 'migration, internally displaced populations (IDPs), refugees and climate change' as a key cross-cutting priority and calls on Member States of the IGAD region to discourage illegal migration, promote migration for development, and address root cause of migration such as 'vulnerability to climate change'.²⁸

At the national level, incorporation of human mobility within African states' National Adaptation Plans (NAPs) is mixed. A 2020 review of national adaptation planning and policies in the IGAD region noted some (albeit limited) recognition of human mobility within most countries' NAPs.²⁹ Six African countries – Burkina Faso, Cameroon, Ethiopia, Kenya, Sudan, and Togo – have submitted NAPs under the international Cancun Adaptation Framework of the UNFCCC, all of which refer to human mobility in the context of disasters and climate change.³⁰ Other national climate change policies and frameworks may include human mobility as well. For example, addressing climate change and migration is one of the key objectives of Ghana's *National Climate Change Master Plan Action*

Programmes for Implementation: 2015–2020, including via migration as an adaptation strategy, relocation of at-risk communities to non-flood areas and evacuation in the context of disasters.³¹

Knowledge gaps

Some of the knowledge gaps that need to be addressed in order to realise the opportunities that climate change law and policy frameworks present for addressing displacement and migration in the context of disasters and climate change include:

1. How should displacement and migration be integrated into and addressed within climate change laws, policies and planning in Africa? Are there examples of effective practices, including specific provisions on displacement in the context of the adverse effects of climate change, that could inform developments elsewhere and harmonisation across the region?
2. How should climate change laws and policies be institutionalised within African states to ensure an integrated approach to addressing displacement and migration in the context of disasters and climate change? Are there examples of effective practices regarding integrated planning, or institutional set-ups that have worked in some countries and could be replicated elsewhere?
3. How could displacement be better recognised and addressed as an issue of loss and damage in the context of climate change within existing policy frameworks?

²⁶ See Christina Daszkiewicz, 'Environmental Migration, Disaster Displacement and Planned Relocation in West Africa (IOM, 2021) p 22.

²⁷ David Lesolle, 'Policy Paper on Climate Change: Assessing the Policy Options for SADC Member States' (2012) <https://bit.ly/3wWMK4g>.

²⁸ ICPAC, 'IGAD's Regional Climate Change Strategy' (2016) 58-9.

²⁹ 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' (NRC & IGAD, 2021).

³⁰ See UNFCCC, 'NAPs from Developing Countries' (2021) at: <https://bit.ly/3FrcxEW> accessed 12 April 2021.

³¹ Ghana Ministry of Environment, Science, Technology and Innovation, *Ghana National Climate Change Master Plan Action Programmes for Implementation: 2015–2020*.

RESEARCH PROPOSAL**i. Conceptualise displacement in the context of disasters and climate change in Africa as loss and damage**

Research is needed to develop and strengthen understanding of displacement in the context of disasters and climate change within Africa as loss and damage. This research should explore opportunities to operationalise and scale up action and support on averting, minimising and addressing disaster displacement, with a focus on identifying existing or potential opportunities for the provision of direct technical support and expertise to develop country capacity.

Research should explore the following research questions:

- To what extent are examples of loss and damage related to the adverse effects of climate change in Africa documented, analysed and available?
- To what degree is disaster displacement understood as loss and damage in Africa, and how is this integrated into existing research, studies, policies, frameworks or guidance within Africa?
- What is the potential role of the Santiago Network for Loss and Damage for African countries?

3.2.2 Disaster risk reduction

Disaster risk reduction laws and policies can help to avert or minimise disaster-related displacement by reducing the risks and impacts of disasters and strengthening resilience among affected communities. However,

to date, the integration of human mobility considerations into disaster risk reduction laws and policies in Africa has been rather sporadic.

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).³² At the regional level, several RECs have developed regional disaster risk reduction strategies aimed at implementing the Sendai Framework. The *IGAD Drought Disaster Resilience and Sustainability Initiative (IDDRSI) Strategy (2013–2027)* highlights the displacement of communities as a key challenge in disaster contexts, and even refers to ‘climate refugees’.³³ *ECOWAS’ Policy for Disaster Risk Reduction (2006)* refers to human mobility as part of early warning and evacuation measures.³⁴

At the national level, a 2018 study published by the PDD identifies a total of 21 African countries with specific national disaster risk reduction strategies or plans, including several which explicitly incorporate displacement concerns.³⁵ In the IGAD region, a 2020 review of national policies, covering both disaster risk reduction 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.³⁶ In the SADC region, the governments of South Africa and Mozambique are currently rolling out the United Nations Office for Disaster Risk Reduction’s 2019 guidelines, *Words in Action – Disaster Displacement: How to reduce risk, address impacts and strengthen resilience*, on integrating disaster displacement into disaster risk reduction policies and strategies in accordance with the Sendai Framework.³⁷

³² African Union, *Programme of Action for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030 in Africa* (November 2016).

³³ IGAD, ‘IGAD Drought Disaster Resilience and Sustainability Initiative (IDDRSI) Strategy’ (January 2013) p 11.

³⁴ ECOWAS, *ECOWAS Policy for Disaster Risk Reduction (2006)* p 7.

³⁵ 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?’ (Platform on Disaster Displacement, 2019) esp pp 29–36.

³⁶ Nyandiko and Freeman (n 29).

³⁷ UNDRR, ‘Words into Action Guidelines: Disaster Displacement – How to Reduce Risk, Address Impacts and Strengthen Resilience’ (2019).

Knowledge gaps

Specific knowledge gaps that need to be addressed in order to maximise the role of disaster risk reduction laws and policies in addressing disaster displacement include:

1. How should displacement and migration be integrated into and addressed within disaster risk reduction laws, policies and planning in Africa? Are there examples of effective practices, including specific provisions on displacement in the context of the adverse effects of climate change, that could inform developments elsewhere and harmonisation across the region?
2. To what extent are existing disaster risk reduction strategies in African states aligned with the Sendai Framework and the guidance provided by the Words into Action Guidelines on disaster displacement? Are there examples of effective practice that could inform further development of disaster risk reduction strategies in other states and harmonisation across the region?
3. How should disaster risk reduction laws and policies be institutionalised within African states to ensure an integrated approach to addressing displacement and migration in the context of disasters and climate change? Are there examples of effective practices regarding integrated planning, or institutional set-ups that have worked in some countries and could be replicated elsewhere?
4. What kind of displacement-related indicators for the local and national levels might help countries monitor progress against disaster risk reduction objectives, as laid out in the global targets in the Sendai Framework?

RESEARCH PROPOSAL

ii. Develop key metrics and indicators for monitoring and reporting disaster displacement against disaster risk reduction objectives

Research is needed to identify key metrics for the monitoring of disaster displacement, and its impacts and related risks, to be recommended for inclusion in disaster risk assessment and disaster loss data collection efforts at national level. Developing a set of displacement-related indicators for the local and national levels could help countries monitor progress against disaster risk reduction objectives, as laid out in the Sendai Framework's global targets, and detailed in existing indicator frameworks.

Research questions include:

- What steps have African governments already taken to develop displacement-related metrics and indicators in line with Target B of the Sendai Framework?
- What support or guidance is needed to further develop such indicators?
- What metrics and indicators have been developed and are already in use by national statistics offices and other actors in Africa collecting data on displacement, in particular in contexts of disasters and climate change?
- What support or guidance is needed to further develop such metrics and indicators?

3.2.3 Migration and free movement of persons

Regional developments towards establishing free movement of persons between African states – part of broader moves towards regional integration and economic development – provide opportunities for facilitating cross-border movement in the context of disasters and climate change. However, limited implementation and/or restrictive migration policies at the national level can impede access to free movement

arrangements for disaster and climate change-affected communities in practice.³⁸

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) was adopted in 2018,³⁹ though implementation faces significant challenges due to a lack of political will and the security and economic concerns of some states.⁴⁰ Implementation of free movement agreements is further advanced at the regional level, especially within ECOWAS – where seasonal movements of workers and pastoralists using free movement arrangements is common.⁴¹ In the SADC region, although a regional agreement has not yet been adopted, bilateral arrangements between states for the relaxation of visa requirements are assisting populations to access entry and assistance across borders following disasters.⁴² In the IGAD region, the *2020 Protocol on Free Movement of Persons in the IGAD Region* paved the way for a more innovative role for free movement agreements in this context, by incorporating specific provisions ensuring entry and stay for people moving in the context of disasters and climate change.⁴³

While regional free movement agreements provide a promising mechanism for addressing displacement and migration in the context of disasters and climate change, their success depends largely on how they are implemented in practice at the national level. There are some examples of effective practice in this regard – national migration policies in Ghana⁴⁴ and Nigeria,⁴⁵ for example, have dedicated sections on the nexus between migration and the environment, focusing on pastoralism,

forced movement, and diasporas.⁴⁶ In other states, however, restrictive national migration policies pose significant barriers to access to free movement in practice. In addition, specific groups or populations may face specific risks or challenges when utilising free movement arrangements.

Knowledge gaps

Some of the questions that need to be addressed in order to further advance opportunities for disaster and climate change-affected communities within migration and free movement of persons agreements include:

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,

³⁸ See Tamara Wood, 'The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement – A Study of Africa' (PDD, 2019).

³⁹ African Union, *Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment* (2018).

⁴⁰ ICMPD, 'MME on the Move: A Stocktaking of Migration, Mobility, Employment and Higher Education in Six African Regional Economic Communities' (2013) p 121.

⁴¹ See PDD, '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).

⁴² AU and IOM, 'Study on the Benefits and Challenges of Free Movement of Persons in Africa' (2018) pp 30-31.

⁴³ *Protocol on Free Movement of Persons in the IGAD Region* (2020) Article 16.

⁴⁴ Ghana Ministry of the Interior, *National Migration Policy for Ghana* (2016).

⁴⁵ Federal Republic of Nigeria, *National Migration Policy 2015* (2015).

⁴⁶ IOM, 'Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks' (2018) p 8.

protection and assistance for displaced people?

4. What are the specific needs of disaster or climate change-affected communities when accessing free movement arrangements? How could these be addressed to ensure sustainable outcomes for affected communities?
5. How do existing migration and free movement frameworks address the protection of migrant workers in the context of disasters and climate change? To what extent can labour migration be understood and addressed as a form of adaptation to climate change?

RESEARCH PROPOSALS

iii. Assess implementation of free movement of persons agreements at the national and bilateral levels in the context of disasters and climate change

Free movement agreements in Africa could facilitate cross-border movement in the context of disasters and climate change by providing lawful access to entry, status and rights during stay, and opportunities for lasting solutions. Yet, even where robust regional frameworks exist, they can be undermined in practice by states' unilateral border closures, restrictive national migration laws and policies, and onerous bureaucratic requirements. Further research is needed to investigate how implementation of regional free movement agreements within national migration laws and policies, as well as bilateral arrangements between states, supports or undermines cross-border movement in the context of disasters and climate change.

This research should build on the 2019 study and stakeholder workshop by PDD exploring the role of free movement agreements in addressing disaster displacement in Africa.⁴⁷ Research questions include:

- How do national migration laws or policies support, or undermine, the opportunities within free movement agreements for addressing disaster and climate change-related human mobility?
- What types of bilateral arrangements exist to facilitate cross-border movement between states in Africa? How do/have bilateral arrangements between states facilitate/d the movement of people impacted by disasters and the adverse effects of climate change?
- What barriers exist within national laws, policies and practices that prevent disaster and climate change-affected populations from accessing free movement in practice? (e.g. restrictive migration criteria, onerous bureaucratic requirement, suspension/ border closures)
- Are there examples of effective practices in the national implementation of free movement agreements that could inform the use of free movement in other states?
- How could the implementation of free movement be improved to better facilitate cross-border movement in the context of disasters and climate change (e.g. national migration law and policy reform, operational guidance, additional protocols to regional agreements)?

iv. Analyse the protection needs of agricultural labour migrants utilising free movement of persons arrangements

In many African states, migrant workers enjoy equal treatment with nationals of the host Member State. However, as in other parts of the world, migrant workers in agriculture, and seasonal workers in particular, experience specific vulnerabilities. These vulnerabilities are not only climatic, but also economic and social.

⁴⁷ Wood (n 38); PDD (n 41).

A better understanding of the vulnerabilities that arise for migrant workers in agriculture, and of the relationship between agricultural labour migration and climate change adaptation, could help to identify the protection issues that arise for particular groups of agricultural labour migrants. In turn, this could inform future assessment and development of laws and policies that ensure respect for migrant workers and natural resources.

Research questions include:

- What are the different types and locations of employment for migrant agricultural workers?
- What is the importance of climate change and/or environmental degradation in the individual and collective migration dynamics of migrant workers, and to what extent can this labour migration be understood as a form of adaptation to climate change?
- How do environmental issues and impacts differ between different types of migrant agricultural workers?
- How can public policies, including agricultural, environmental, migration, trade, employment and labour market policies, ensure decent employment conditions for seasonal migrant workers?
- How could alternative agricultural production models (eg fair trade, sustainable agriculture, agroecology) respect both migrant workers and natural resources?

3.2.4 Transhumance

Across Africa, there are a number of specific law and policy frameworks in place to facilitate the cross-border movement of pastoralists. The *AU Policy Framework for Pastoralism* was adopted in 2013 with two main objectives: to 'secure and protect the lives, livelihoods and rights of pastoral peoples' and to 'reinforce the contribution of pastoral livestock to national, regional and continent-wide economies'. The framework notes the threats posed to pastoralist communities by climate change and other factors, including population growth and conflict, while recognising the inherent adaptability of pastoralism 'if pastoralists are enabled to practice mobile livestock production [and have] security of access to sufficient rangelands'.⁴⁸

The AU Policy Framework advocates for the regulation of pastoral movement within Africa's RECs, particularly given the cross-border nature of many pastoralist communities.⁴⁹ In the ECOWAS region, the *ECOWAS Protocol on Transhumance* (2018) and supporting Regulation (2003) provide a regional regulatory framework for cross-border transhumance based on the ECOWAS principles of free movement of persons, services and goods. This is supported by the ECOWAS International Transhumance Certificate (CIT), which facilitates cross-border transhumance for pastoralists and their livestock along pre-defined routes and at certain times during the year.

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.

⁴⁸ *AU Policy Framework for Pastoralism* (2013) sections 1.2, 3.3.3.

⁴⁹ *Ibid*, section 4.1.5.

Despite existing regional frameworks, little is known about laws and regulations governing transhumance in practice at the national and local levels. In the context of climate change, changes in seasonal rainfall patterns lead to changes in the mobility patterns of pastoralists. If laws and policies are not able to effectively adapt to these changes, previously stable livelihoods are disrupted and the risks of conflicts between herders and local communities increase.⁵⁰

Knowledge gaps

The regulation of transhumance in practice is constrained by a number of knowledge gaps, including:

1. What are the relevant laws and policies governing transhumance at the national and local levels and are these consistent with each other, with regional frameworks and with state and local practices?
2. How do national and local policies facilitate or compromise access to resources and mobility for herders and their livestock? How have these been impacted by COVID-19 related restrictions?
3. How could the potential of livestock production within the regions be optimised via improved regulations, particularly taking into account climate change?

RESEARCH PROPOSAL

v. Analyse stakeholders, strategies, laws and regulatory mechanisms for the sustainable development of transhumance in the context of climate change

Pastoral livestock farming is threatened by environmental changes and land clearing, as well as laws and policies that compromise access to resources and hinder the mobility of pastoralists and their livestock. Differences in national and local laws and regulations governing transhumance, and practical challenges that include a lack of awareness of relevant law and policy frameworks, impede the sustainable development of transhumance in the context of climate change.

A better understanding of the laws and regulations that govern transhumance, and assessment of these against the needs of pastoralists, could help to identify gaps in the existing governance regime and generate future recommendations to better contribute to the adaptation and resilience of pastoralist communities in the face of climate change and demographic and geopolitical challenges.

Research questions include:

- What are the existing laws, policies and practices governing transhumance at the regional, national and local levels (eg ECOWAS, Member States, livestock zones such as the Ferlo in Senegal, cross-border areas)? Are existing laws, policies and practice consistent with each other?
- How well do existing laws and policies meet the specific needs and challenges of pastoralist communities in the context of disasters and climate change?
- Who are the different categories of stakeholders in transhumance regulation and how can they be engaged in the implementation and future development of relevant laws and policies?

⁵⁰ See generally Manuela Leonhardt, 'Regional Policies and Response to Manage Pastoral Movements within the ECOWAS Region' (IOM, 2019).

3.2.5 Refugee protection

Refugee law provides the main legal framework for protecting people displaced across international borders by limiting the general right of states to decide who may enter and stay within their territory. However, refugee law only protects those who meet specific eligibility criteria as set out in the applicable legal definition of a 'refugee'. Historically, these criteria have been thought to be ill-fitting for protecting those displaced by 'natural' causes, such as disasters and climate change, and better suited to protecting those fleeing 'human' causes, such as persecution and conflict. However, increasing awareness of the multi-causality of displacement and the complex nature of disasters and climate change impacts – which are not 'natural' but rather the combined effect of natural hazards and human factors⁵¹ – has opened the way for a more nuanced understanding of the potential application of refugee law in this context.⁵² To date, however, recognition of those displaced in the context of disasters and climate change as refugees has been limited in practice.

While there is no specific legal category for 'climate refugees', where individuals affected by disasters or climate change meet the relevant legal criteria, they are entitled to protection as refugees. Under Article I(2) of Africa's regional refugee protection instrument, the 1969 Organisation of African Unity (OAU) *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969 OAU Refugee Convention), these criteria include people who are 'compelled to leave' their homes owing to 'events seriously disturbing public order'.⁵³ In 2020, UNHCR published *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, in which it emphasises the 'social

and political characteristics of the effects of climate change or the impacts of disasters' and the special opportunity that Africa's regional refugee definition presents for protecting people displaced in this context.⁵⁴

Some African states have demonstrated their willingness to apply the regional refugee definition in the context of disasters and climate change.⁵⁵ In general, however the implementation of African regional refugee law in practice is not well understood, owing to limited empirical research and lack of available case law. Moreover, 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.⁵⁶ In addition, questions remain about whether refugee protection is the most desirable solution for those displaced in the context of disasters and climate change, particularly in regions where other mechanisms, such as free movement agreements (see section 3.2.3 above), might provide greater benefits and flexibility to those who move.

Knowledge gaps

A number of knowledge gaps need to be addressed in order to better assess and realise the opportunities that refugee law presents in Africa. These include:

1. What is the meaning of 'events seriously disturbing public order' under the 1969 OAU Refugee Convention? What are the intersecting drivers of displacement in Africa in the context of climate change and disasters and how do these combine to affect public order?
2. What is required to better support states in implementing their refugee protection

⁵¹ For example, UNDRR defines a disaster as occurring due to 'hazardous events interacting with conditions of exposure, vulnerability and capacity'.

⁵² See generally Sanjula Weerasinghe, 'Refugee Law in a Time of Climate Change, Disaster and Conflict' UNHCR Legal and Protection Policy Research Series (January 2020).

⁵³ OAU *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969) Article I(2).

⁵⁴ UNHCR, 'Legal considerations on refugee protection for people fleeing conflict and famine affected countries' (2017) paras 5, 14.

⁵⁵ For example, Kenya applied the regional refugee definition to award *prima facie* refugee status to Somalis fleeing drought and famine between 2011 and 2012.

⁵⁶ 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.

obligations in the context of disasters and climate change, including within refugee status determination procedures? How could refugee status decision-makers in African states be supported to undertake principled assessments of refugee claims arising in the context of disasters and climate change?

3. What are the advantages and disadvantages of refugee law in protecting people displaced in the context of disasters and climate change, and how do these compare to other mechanisms for cross-border human mobility, such as free movement arrangements?

RESEARCH PROPOSAL

vi. Analyse the application of regional refugee law in the context of disasters and climate change

UNHCR's 2020 *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* recognise that people fleeing disasters and the effects of climate change may be refugees under regional refugee definitions given the capacity of these events to qualify as 'events seriously disturbing public order' (Article I(2) of the 1969 OAU Refugee Convention). However, more work needs to be done to identify the particular impacts that disasters and climate change have on 'public order' and the circumstances in which cross-border displacement associated with disasters and climate change will give rise to refugee protection.

Potential case study situations include: flooding in the Horn of Africa, crises in the Lake Chad Basin, Goma volcano eruption,

and cyclones Idai and Kenneth. Research questions include:

- What indicators or evidence can be used to demonstrate a disturbance to public order in African states?
- How have disasters and the effects of climate change impacted public order in specific case study situations?
- Can public order be said to have been 'seriously disturbed' in each of the case studies where public order was impacted?
- Can a typology of situations and impacts be identified from the case studies that illustrate when disasters and/or the effects of climate change (seriously) disturb public order?

3.2.6 Human rights

Africa's regional human rights framework comprises the 1981 *African Charter on Human and Peoples' Rights* (Banjul Charter),⁵⁷ as well as associated instruments for the protection of women and children.⁵⁸ In addition, national or constitutional bills of rights are in place in most African countries. States owe their human rights obligations not only to their citizens, but to all persons within their territory or control, including migrants and displaced persons.⁵⁹

Human rights law protects a range of fundamental rights that may be negatively affected by disasters and climate change. For people impacted by disasters and climate change, measures taken to uphold their rights to life, adequate food, health and adequate housing can contribute significantly to safety and well-being.⁶⁰ Under Africa's human rights frameworks, the specific rights of peoples – including the 'unquestionable and inalienable right to self-determination' and rights to

⁵⁷ *African Charter on Human and Peoples' Rights* (1981) (Banjul Charter).

⁵⁸ *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2003); *African Charter on the Rights and Welfare of the Child* (1990).

⁵⁹ African Commission on Human and Peoples' Rights, *Communication No. 71/92: Rencontre Africaine pour la Défense des Droits de l'Homme* (RADDHO) / Zambia (1996).

⁶⁰ See OHCHR (n 23).

‘economic, social and cultural development’⁶¹ – may be especially important in the context of disasters and climate change, in particular where these threaten the habitability of specific areas and/or where planned relocation is being contemplated.

For those displaced across international borders in the context of disasters and climate change, the principle of non-refoulement under human rights law extends beyond those qualifying for refugee protection to prohibit forced return of those at risk of certain serious human rights abuses, including arbitrary deprivation of life, torture or cruel, inhuman and degrading treatment, or disruption to the family unit. This is often referred to as ‘complementary’ or ‘subsidiary’ protection. To date, complementary protection has been little explored in Africa, though limited jurisprudence from the African Commission on Human and Peoples’ Rights (African Commission) suggests an expansive approach to human rights-based *non-refoulement*.⁶²

Knowledge gaps

Considerable work is required to assess, and ensure, the role of regional human rights frameworks in addressing displacement and migration in the context of disasters and climate change in Africa, including as a basis for complementary protection in situations of cross-border displacement. Some of the key knowledge gaps include:

1. How do, or could, African regional human rights frameworks help to address displacement and migration in the context of disasters and climate change, including preventing displacement, protecting those who are displaced and ensuring lasting solutions for affected communities?
2. 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? How could African states be supported to implement their human

rights-based *non-refoulement* obligations within national laws, policies and practices – for example, by establishing national complementary protection procedures?

3. What opportunities do African (regional and national) courts and human rights bodies – including the African Commission – provide for developing jurisprudence regarding the application of states’ refugee and human rights obligations in the context of disasters, climate change and human mobility?

RESEARCH PROPOSAL

vii. Map African regional human rights frameworks and their applicability to people displaced in the context of disasters and climate change

The African human rights system can be used in addressing the challenges of people displaced across borders in the context of disasters and climate change in Africa. Specific rights relating to social security and a healthy environment could play a special role in this regard, given their novel place within Africa regional human rights law and their relationship with other fundamental rights, including rights to life, health, food, water, housing, culture, development, property and home and private life. However, there are identifiable knowledge gaps that hamper this potential, including: gaps in relation to the link between the right to social security and climate change and disaster-related human mobility; gaps in terms of progressive application and interpretation of regional instruments to reflect the thinking that the drivers for human displacement are changing to include forces such as environmental degradation, climate change and unsustainable development; and gaps in relation to extraterritorial application of existing human rights instruments in situations of displacement in the context of disasters and climate change.

⁶¹ Banjul Charter, Art 20(1), 22(1).

⁶² Marina Sharpe, *The Regional Law of Refugee Protection in Africa* (OUP, 2018) p 132.

Research questions include:

- What are the key regional human rights frameworks in Africa, and what are the key rights that apply to people displaced across borders in the context of disasters and climate change? What obligations do rights relating to social security and a healthy environment entail, particularly in relation to preventing displacement?
- Which of the rights under Africa's regional human rights frameworks entail a prohibition against return (non-refoulement) and how does this compare with the international level?
- What additional information/research is needed to support a progressive interpretation of human rights law in Africa to advance the protection of people displaced across borders in the context of disasters and climate change?
- What are the potential pathways and partnerships within the African human rights system necessary for addressing the challenges of people displaced across borders in the context of disasters and climate change?

3.2.7 IDP protection

The 2009 *AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention)⁶³ is Africa's key regional framework for protecting IDPs and the only binding regional framework for IDP protection in the world. Despite this robust basis for protecting people displaced internally in the context of disasters and climate change, further work is needed to ensure full and effective implementation at the national level.⁶⁴

The Kampala Convention protects all persons forced to move within their own country due to 'natural or human made disasters, including climate change'.⁶⁵ It imposes obligations on African states to prevent displacement, protect those displaced, and promote conditions for safe return and other lasting solutions.

In practice, 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. Niger, for example, has developed dedicated national legislation on IDP protection; South Sudan, Mali and the Central African Republic (CAR) have draft legislation currently under discussion; and Nigeria, Somalia and Sudan all have policy processes for IDP protection currently underway.⁶⁶ Somalia has even included IDPs within its national development planning, providing a good example of a coordinated approach to address internal displacement.⁶⁷ In 2018, the AU adopted a 'Model Law' for the Convention's implementation. Effective protection of IDPs in practice also depends on effective coordination of protection measures by national government agencies and other actors.

Knowledge gaps

Some of the key knowledge gaps to be addressed include:

1. How should African States Parties to the Kampala Convention incorporate their obligations into domestic law and policy to ensure effective protection for those displaced in the context of disasters and climate change? Are there examples of effective practice in national protection and assistance of IDPs that could support developments in other African states?

⁶³ *African Union Convention for the Protection and Assistance of Internally Displaced Persons* (2009) (Kampala Convention). The Kampala Convention applies in addition to the earlier Great Lakes Protocol on the *Protection and Assistance of Internally Displaced Persons* (2006).

⁶⁴ See ICRC, 'The Kampala Convention: Key Recommendations Ten Years On' (2019) pp 32-33.

⁶⁵ Article 5(4); 1(k).

⁶⁶ ICRC (n 64) pp 19, 63-4. See generally Global Protection Cluster Global Database on IDP Laws and Policies at: <https://bit.ly/3oLlpNU>.

⁶⁷ *Ibid*, p 21.

2. 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?
3. How can lasting 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 address current displacement, but also avert future displacement?
4. 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’?
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?

RESEARCH PROPOSAL

viii. Analyse climate change and disaster displacement in national IDP laws and policies

A number of African countries have developed national instruments (whether laws or policies) to prevent and address internal displacement in the context of disaster and climate change that are specifically dedicated to protection and assistance for internally displaced persons (IDPs) in line with the *Guiding Principles on Internal Displacement and the AU Convention for the Protection and Assistance to IDPs in Africa* (‘Kampala Convention’). Further research is needed to better understand to what extent existing IDP-specific laws and policies in Africa can be or have been (in theory and in practice) useful to adequately and effectively prevent and address internal displacement in the context of disaster and climate change,

including displacement associated with slow-onset disasters, particularly drought.

Research questions include:

- How do national laws and policies on internal displacement address the following aspects of internal displacement associated with disasters and climate change: prevention, protection and assistance, and durable solutions?
- Are these laws and policies in line with the 1998 Guiding Principles on Internal Displacement and the Kampala Convention?
- Are these provisions in line with disaster risk reduction standards and guidance?
- Do they have any limitations in addressing disaster displacement? Should they be complemented by other instruments (especially in the context of slow-onset disasters, particularly drought)?
- How effective is the implementation of national instruments on internal displacement in the context of disasters and climate change, including in the context of slow-onset disasters?

3.2.8 Planned relocation

There is no specific legal framework governing planned relocation at the international or regional levels.⁶⁸ While the importance of planned relocation in the context of disasters and climate change is recognised in a number of key international frameworks – including the Global Compact for Safe Orderly and Regular Migration, the Cancun Adaptation Framework of the UNFCCC and the Sendai Framework – these frameworks do not provide any normative guidance on when or how planned relocation should take place.

At the national level, planned relocation has already occurred in several African states, including: Botswana, Cameroon, Ethiopia, Ghana, Malawi, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Somalia, Uganda, Zimbabwe.⁶⁹ There is little available information, however, about the normative

⁶⁸ Erica Bower and Sanjula Weerasinghe, ‘Leaving Place, Restoring Home’ (PDD, 2021) p 14.

⁶⁹ *Ibid*, p 72.

guidance that exists on planned relocation within national law and policy frameworks, including those relating to climate change, disaster risk reduction and IDP protection.

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, including those relating to climate change and disaster risk reduction. For example, Burkina Faso's NAP establishes the relocation of populations from low-lying or flood zones to suitable areas as an adaptation measure.⁷⁰ Ghana's *National Climate Change Master Plan* plans to 'support relocation of settlements and economic activities to nonflood areas'.⁷¹ Côte d'Ivoire's *National Disaster Risk Reduction Strategy* mentions the preparation of a 'Displacement and Relocation Plan' specific to certain areas of Abidjan at risk of floods.⁷²

Knowledge gaps

Further knowledge is needed regarding existing national practices in relation to planned relocation, and how these could be developed and/or harmonised to promote effective practices and/or the establishment of certain minimum standards. In this context, specific knowledge gaps include:

1. What kinds of law and policy frameworks are required within African states to ensure effective protection for communities in need of, or subject to, planned relocation? How do existing frameworks govern planned relocation in African states and how could this be improved? How is planned relocation managed within applicable administrative law/governance frameworks?
2. What opportunities exist within regional and sub-regional law and policy frameworks – including those relating to climate change, disaster risk reduction, the environment,

IDP protection, migration and human rights – for better supporting communities in need of, or subject to, planned relocation?

RESEARCH PROPOSALS

ix. Map norms and provisions on planned relocation in Africa

Planned relocation is gaining traction in policy and operational discourse on human mobility associated with disasters and adverse effects of climate change. Recent research has identified planned relocation cases across the globe, including at least 40 cases of planned relocation in Africa, spanning at least 20 countries. Further research is needed to build knowledge on the types of domestic legal and policy frameworks that underpin planned relocation cases identified in Africa. Building knowledge of normative frameworks and relevant provisions is an important step for understanding approaches to planned relocation on the continent, evaluating the fitness for purpose of existing norms and approaches, and assessing their implementation in practice.

Research should map how laws and policies in a number of specific fields regulate planned relocation in African states, focusing on the following fields of law and policy:

- Disaster risk reduction and disaster risk management instruments
- Internal displacement instruments
- Project-specific instruments on planned relocation
- Planned relocation, development or resettlement instruments
- Zoning and planning instruments

⁷⁰ Burkina Faso Ministry of Environment and Fishery Resources, *Burkina Faso National Climate Change Adaptation Plan (NAP)* (2015) pp 15, 64 and 66.

⁷¹ *Ghana National Climate Change Master Plan* (n 31).

⁷² Côte d'Ivoire, *Stratégie nationale de gestion des risques de catastrophes et plan d'action* (2011) p 22.

x. Analyse national case studies of planned relocation

In Mozambique, São Tomé and Príncipe, the DRC, Senegal and Ethiopia, planned relocation has already occurred. Further research on the specific dynamics of these examples – including relevant legal, policy and operational frameworks, characteristics and implementation processes – would enhance understanding of planned relocation and may offer insights on limitations in existing norms, approaches and implementation processes, including as they relate to fulfilling the rights and needs of affected populations. Developing detailed case studies of planned relocation processes in Africa could also offer opportunities to gain insights into the institutional and other actors engaged in such processes, as well as coordination arrangements and any technical or capacity building needs.

Detailed analyses of planned relocation case studies in African countries, representing a variety of geographical contexts, hazard types and affected populations, could develop a detailed picture of:

- Applicable legal, policy and operational frameworks that underpin the planned relocation cases.
- How the relevant frameworks relate to a given case and the manner in which they have been applicable for the implementation process.

3.2.9 Cross-cutting

Addressing displacement and migration in the context of disasters and climate change requires an integrated approach across multiple fields of law and policy. Integration of disaster risk reduction, climate change and human mobility considerations across a range of laws and policies, and coordination between different institutional frameworks, are essential to ensuring a coherent approach to this issue.

Participants in the Virtual Workshop Series within which this Research Agenda was developed identified a number of key issues and knowledge gaps that were not specific

to one particular field of law and policy, but that ought to be addressed across multiple (or even all) relevant law and policy frameworks. Research proposals aimed at addressing them are set out here.

RESEARCH PROPOSALS

xi. Map integration of disaster displacement and human mobility in African states' climate change and disaster risk reduction laws and policies

While many African States have taken concerted steps to create and revise their disaster risk reduction policies in accordance with Target (E) of the Sendai Framework, there is currently no up-to-date overview of if, and how, displacement and other forms of human mobility are addressed within relevant policy documents across the regions. Further research is needed to assess the extent to which the Secretariats and Member States of Africa's RECs incorporate disaster displacement and other forms of human mobility into their development, disaster risk reduction and climate change adaptation policies. This research could identify key opportunities for integrating disaster displacement-related concerns into existing policy, and gaps where new policy development is required. It could generate recommendations for areas where policy support would be most effective within each country and region.

This research should build on a recent similar study focused on the IGAD region.⁷³ Research questions include:

- Where and how is human mobility incorporated into the development, disaster risk reduction and climate change adaptation policies of ECOWAS and SADC Secretariats and Member States?
- What are the key points of entry for future policy development to address the protection needs of those displaced, or at risk of displacement?

⁷³ Nyandiko and Freeman (n 29).

xii. Analyse how disaster displacement is addressed in African states' national institutional structures

Across Africa, national governments have different institutional arrangements in place for dealing with disaster displacement. These different arrangements have not yet been explored in depth. Furthermore, the appropriate approach to coordination, cooperation and cross-fertilisation of such measures remains contested. For example, should disaster displacement fall under a dedicated ministry or agency, or should measures to address and respond to disaster displacement be split across multiple ministerial units and agencies? Further research is needed to analyse and compare how roles, responsibilities and cooperative responses to disaster displacement are situated within institutional structures in national governments in Africa via case study analyses in a number of case study countries with recent experience of disaster displacement. Potential case studies include: Senegal, Benin and South Africa.

Research questions include:

- What kinds of institutional arrangements (including allocation of responsibilities and cooperative arrangements) do African countries currently use to address and respond to disaster displacement?
- How effective are existing institutional arrangements in averting, minimising and addressing disaster displacement? What are the common and specific challenges across existing institutional arrangements?
- What examples of lessons learned and effective practices could be shared within and across regions?

xiii. Compare the benefits of refugee protection and free movement of persons arrangements for protecting people displaced across borders in the context of disasters and climate change

Refugee law and regional free movement agreements both provide opportunities for people displaced in the context of disasters

and climate change to lawfully enter and stay in a country other than their country of origin. While it is increasingly recognised that at least some of those displaced in this context will qualify for refugee protection, what is less clear is whether, or when, refugee protection will provide the best solution for those displaced. Refugee status generally limits the extent to which an individual can move freely between the country of asylum and their home country, as voluntary return to one's country of origin is a basis for the cessation of refugee protection. A number of practical challenges face refugees in many African countries, including limitations on rights, such as the right to freedom of movement within a host country or access to work or livelihood opportunities. This means that, in such situations, other cross-border mobility frameworks, such as free movement agreements, may provide better outcomes in practice for those displaced in the context of disasters and climate change.

Research is needed to further explore the relative benefits and disadvantages for people displaced across borders by disasters and climate change under refugee law and free movement agreements as a matter of law and in practice. Research questions include:

- What are the benefits and disadvantages to refugee protection for disaster displaced people? How do these compare with the benefits and disadvantages of other cross-border mobility mechanisms, in particular, free movement agreements?
- In what kind of situations or scenarios is refugee protection the best outcome for displaced persons? In what kind of situations or scenarios is it not?
- How should the relationship between refugee protection and other cross-border mobility mechanisms be managed in practice?

xiv. Analyse impacts of displacement and migration in the context of disasters and climate change on urban communities

Urbanisation in developing countries is frequently accompanied by rapid growth of highly vulnerable urban communities living in informal settlements, many of which are in places exposed to extreme weather events and environmental degradation. In this context, there is an increasing need for urban actors to respond to these vulnerabilities and to develop innovative solutions. This research aims to strengthen understandings of the particularities of displacement in the context of disasters and climate change in urban settings and to build evidence to better inform local responses. Further research is required to understand the urban impacts of human mobility in the context of disasters and climate change. Case study analyses of local responses to disaster displacement in urban settings could identify specific actions and strategies with the potential to reduce vulnerabilities and enhance resilience in urban areas related to mobility in the context of disaster and climate change.

Research questions include:

- How do disasters and the adverse effects of climate change impact the movement of people towards, through and from urban areas?
- What role can local/urban actors play in better preparing for and responding to human mobility in the context of disasters and climate change (e.g. through urban planning, land use planning, local disaster risk reduction and climate change adaptation strategies)?

xv. Analyse the dynamics of immobility in the context of disasters and climate change

Existing law and policy frameworks addressing displacement and migration in the context of disasters and climate change focus on people on the move, whether that movement is seen as a last resort or as an adaptive strategy. In comparison, relatively little is known about the specific predicament, needs or outcomes of those who remain *in situ* even in the face of risks relating to disasters, environmental degradation and climate change.

A better understanding of the dynamics of immobility in the context of disasters and climate change, including factors that influence or impact upon people's aspirations and abilities to stay, could help to identify the specific vulnerabilities and agency of immobile populations, as well as the structural barriers to mobility. This, in turn, could inform future strategies and measures to maximise the adaptive and inclusive potential of existing mobility arrangements.

Research questions include:

- How do immobile populations affected by environmental change perceive:
 - a) environmental changes;
 - b) the causal links between environmental change and migration; and
 - c) the role and value of migration as an adaptation strategy?
- What are the structural barriers to engaging in existing mobility arrangements, including free movement of persons arrangements?



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