

## Fact Sheet 2/2023

### KEY LAWS AND POLICIES: HUMAN RIGHTS

*Securing people's fundamental human rights is a cross-cutting issue and key priority in all measures taken to address climate mobility.*

#### What are human rights?

Human rights are [fundamental rights or entitlements](#) that all people have simply because we are human, and irrespective of race, nationality, gender, religion, language, disability or any other status. Human rights are:

- Universal – all human beings are equal and are entitled to their human rights without distinction; and
- Inalienable – human rights should not be taken away, except in specific limited circumstances and according to due process.

Human rights are often divided into two main categories. These are:

- [Civil and political rights](#) – these include the right to vote, the right to privacy, freedom of speech and freedom from torture.
- [Economic, social and cultural rights](#) – these include rights to food, housing, education, health, social security, water and sanitation, and the right to take part in cultural life.

#### What is human rights law?

Human rights law establishes [obligations on states](#) to ensure minimum standards of treatment that respect, protect and fulfil people's human rights. States have a duty to respect the human rights of all those within their territory or jurisdiction without discrimination, including non-citizens.

Human rights law applies to all people who move in the context of climate change, irrespective of their legal status or reasons for movement. It also applies to others affected by climate mobility – for example, host communities or those stay behind. States must ensure they do not take action that violates human rights. In addition, states must take positive steps to fulfil the rights of individuals and communities, including steps to reduce [future risks associated with climate change](#).

Human rights law treaties have been adopted by states at the international and regional levels. In addition, many African states have incorporated human rights guarantees into their Constitutions or national legislation.

The main regional human rights instruments in Africa include:

- [1981 African Charter on Human and Peoples' Rights \(Banjul Charter\)](#)
- [1990 African Charter on the Rights and Welfare of the Child](#)
- [2003 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa \(Maputo Protocol\)](#)
- [2006 African Youth Charter](#)
- [2016 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons](#)
- [2018 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa](#)
- [2022 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security](#)

## Why are human rights important in the context of climate mobility?

Human rights are a 'cross-cutting' issue in climate mobility, meaning that *all* measures to address climate mobility should take into account the [impacts on the human rights](#) of those who move, as well as the communities to which they move, and those who stay behind.

In addition to fundamental rights such as the right to life, and right to be free from discrimination, there are a number of specific rights that are especially important, or may be negatively impacted, by climate mobility. These include: freedom of movement, freedom to choose one's place of residence, the right to leave and return to one's own country, and rights to cultural heritage, identity and land. Other socio-economic rights that may be particularly important in the context of climate mobility include rights to food, housing, health and education.

Also important in the context of climate mobility is the expanded concept of *non-refoulement* under human rights law – sometimes referred to as 'complementary protection' – which prohibits states from forcibly returning any person to a place where they would face a real risk to life or cruel, inhuman, or degrading treatment. In 2019, the [UN Human Rights Committee](#) held that, in future, the impacts of climate change could threaten people's right to life and/or amount to cruel, inhuman or degrading treatment, 'thereby triggering the non-refoulement obligations of sending states'.<sup>i</sup>

### About Climate Mobility Africa Insights

Climate Mobility Africa *Insights* is a publication of the Climate Mobility Africa Research Network (CMARN) – a multidisciplinary, bi-lingual (EN+FR) network of researchers and policy makers that aims to advance evidence-based law and policy responses to climate mobility in Africa. Climate Mobility Africa *Insights* is generously supported by the Robert Bosch Foundation. To find out more, visit: [www.cmarnetwork.com](http://www.cmarnetwork.com).

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<sup>i</sup> *Teitiota v New Zealand*, HRC Comm No 2728/2016 (24 October 2019) para 9.4