



Insights



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Climate Mobility and the Protection of Vulnerable Groups under African Human Rights Law

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About Climate Mobility Africa Insights

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Climate Mobility and the Protection of Vulnerable Groups under African Human Rights Law

BACKGROUND

Climate mobility – the movement of people driven by the detrimental effects of sudden- or slow-onset climate impacts¹ – is set to increase with heavy precipitation and associated flooding, tropical cyclones, drought and sea level rise, around the world.² The World Bank estimates that, unless urgent actions are taken, 140 million people will be internally displaced by slow-onset climate change impacts by 2050.³ The United Nations High Commissioner for Refugees (UNHCR) notes that climate change is increasing the vulnerability of forcibly displaced persons and their communities, and that populations in Africa are implicated in the global trajectory of increasing displacement.⁴

While climate mobility may occur as an adaptation mechanism, which in itself may be lifesaving and rights enhancing, the focus of this paper is on the adverse impacts of climate mobility, which may exacerbate the vulnerability of certain groups, including women, children, persons with disabilities, older persons and youth. Against the backdrop of adverse climate mobility impacts, this paper analyses linkages to key provisions of African Human Rights Law (AHRL). It then explores the ways in which African human rights instruments may be engaged to promote the human rights of specific vulnerable groups in the context of climate mobility.

African human rights law embodies a set of rights-focused instruments that are binding among African states parties.⁵ Of these instruments, the 1982 African Charter on Human and Peoples' Rights (African Charter), 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), and the 1999 African Charter on the Rights and Welfare of the Child (ACRWC), are the most important to the discussion on climate mobility. For example, Article 5(4) of the Kampala Convention requires states to take measures to protect and assist persons who have been internally displaced due to natural or human-made disasters, including climate change. Article 25(2)(b) of the ACRWC, dealing with children separated from their parents, does not reference climate change specifically but requires states to 'take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters'.

In addition to these core instruments, the recognition that some groups are vulnerable and deserve a specific regime of rights protection has led to the emergence of a number of protocols to the African Charter for the protection of specific vulnerable groups. Some of these protocols contain provisions that may be relevant to climate mobility in Africa. They include: 2005 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2016 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (Older Persons

¹ I Boas et al, 'Climate mobilities: migration, im/mobilities and mobility regimes in a changing climate' (2022) 48(14) *Journal of Ethnic and Migration Studies* 3365-3379; Global Report on Internal Displacement (GRID, 2020).

² See generally IPCC: *Climate Change 2022: Impacts, Adaptation, and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2022).

³ World Bank 'Groundswell: Preparing for Internal Climate Migration' (The World Bank 2018).

⁴ UNHCR 'Conflict, violence, climate change drove displacement higher in first half of 2021' (November 2021) <<https://www.unhcr.org/news/press/2021/11/618bec6e4/unhcr-conflict-violence-climate-change-drove-displacement-higher-first.html>>.

⁵ See further CMARN, 'Key Laws and Policies: Human Rights' Fact Sheet 3/2023.

Protocol), 2018 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Persons with Disabilities Protocol), the African Youth Charter (2006).and the recent 2022 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security (Social Protection Protocol). Article 3 of the Social Protection Protocol guarantees to everyone in the member state the right to social protection, while Article 4 deals with social insurance. The instrument has provisions on social protection for specific groups such as Article 7 (migrants, refugees, displaced persons and stateless persons), Article 8 (women and girls), Article 10 (older persons), Article 11 (children, adolescents and youth) and Article 12 (persons with disabilities).

While there has been considerable discussion of the implications of slow-onset climate events on human rights generally, the more specific challenges that climate *mobility* may pose to the protection of vulnerable groups has not been well developed. Hence, this policy brief describes the challenge that climate mobility may pose to vulnerable groups and explores potential linkage to selected human rights provisions of key instruments for the protection of vulnerable groups, such as women, children, older persons, persons living with disabilities and youth in Africa. This brief also makes suggestions for how those provisions may be deployed to advance the rights of these vulnerable groups.

ISSUES

CLIMATE MOBILITY IMPACT ON SPECIFIC VULNERABLE GROUPS IN AFRICA

Human mobility linked to climate change may increase the vulnerability of specific populations, such as women, children, older persons, persons living with disabilities and youth. Slow-onset events and extreme events linked to climate change may result to displacement, with impacts on the lives and livelihoods of these groups.

For instance, extreme weather conditions – particularly droughts and drying river basins in southern and eastern Africa, and flooding and rising sea levels in West Africa – have forced many women to move, according to the Centre for International Disaster Information.⁶ Women on the move are more likely to suffer from sexual and gender-based violence.⁷ Also, when climate change affects whole communities, existing gender norms can influence critical decisions, such as who moves and who stays, as well as the outcomes of movement.⁸ When sudden or slow-onset disasters lead to displacement, children may be separated from their cultural heritage and face barriers in access to schools, adequate health-care facilities and other necessary goods and services. Overcrowded shelters for displaced people with inadequate sanitation and access to clean water can increase the transmission of diarrhoea and rates of malnutrition, both of which are leading causes of child mortality.⁹ Inadequate security and protection in some shelters can expose children to trafficking, starvation, abuse and violence.¹⁰ In climate-related emergencies, older people with limited mobility

⁶ See 'Women grapple with harsh weather' Africa Renewal (August-November 2016) <<https://www.un.org/africarenewal/magazine/august-2016/women-grapple-harsh-weather>>.

⁷ See further Oluwatoyin Adejonwo, 'Addressing Sexual and Gender-Based Violence against Women and Girls in the Context of Climate Mobility in Africa' CMARN Policy Brief 3/2023 (2023).

⁸ UN WomenWatch, 'Fact Sheet: Women, Gender Equality and Climate Change' (2009) paras 23-24.

⁹ OHCHR, 'Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child' Report to the Human Rights Council (4 May 2017) UN Doc. A/HRC/35/13, para 27.

¹⁰ Ibid.

may have difficulty reaching safety.¹¹ Infrastructure and policies to ensure that older people are aware of evacuation warnings, orders or services may be lacking, particularly if new technologies are relied on to spread information and to account for older people's travel needs, adequate food, shelter, health care and services.¹² Also, physical challenges that have only minor effects on day-to-day life may seriously restrict person living with disabilities in an emergency, limiting their mobility and ability to adapt.¹³ Evidence shows that adolescents and young adults are particularly vulnerable to climate change as both their present and future life dimensions may be adversely affected, including their socioeconomic conditions, security, wellbeing, physical and mental health, personal and interpersonal development, and sense of the future.¹⁴

The adverse effects of climate mobility on vulnerable groups could be addressed by drawing on selected rights in key African human rights instruments for the protection of vulnerable groups, including several of the protocols mentioned above.

The adverse impacts of climate mobility may exacerbate the vulnerability of certain groups, including women, children, persons with disabilities, older persons and youth. African human rights law embodies a set of rights-focused that provide opportunities for stakeholders, including NGOs, lawyers and human rights institutions, to advance the rights of vulnerable groups facing the adverse consequences of climate mobility.

IMPACTS OF CLIMATE MOBILITY ON KEY CIVIL AND POLITICAL RIGHTS

Climate mobility can have adverse impacts on key civil and political rights of vulnerable groups, such as: the right to life; protection against and prevention from torture and other forms of cruel, inhuman or degrading treatment or punishment; freedom of movement; and access to information.

Loss of lives associated with climate mobility is a threat to the enjoyment of the right to life. The possibility that lives may be lost in the context of displacement, including climate-induced displacement, is acknowledged in Article 9(2)(e) of the Kampala Convention which calls for respect for the right to life during resettlement. The right to life is also protected under Article 4 of the African Charter, and under other human rights instruments for specific groups, including: women (Article 4(1) of the Maputo Protocol), children (Article 5(1) of the ACRWC), older persons (Article 8(2) of the Older Persons Protocol), persons living with disability (Article 8(1) of the Persons with Disabilities Protocol), and youth (Article 7 of the African Youth Charter on 'protection of private life').

Concerns about torture and other forms of cruel, inhuman or degrading treatment or punishment may also arise in the context of climate mobility, including where affected groups lack access to means of subsistence or face tough asylum procedures in destination countries. In addition to the prohibition on torture under Article 5 of the African Charter, Article 9(1)(c) of the Kampala Convention requires states to protect the rights of internally displaced persons by preventing acts including

¹¹ See generally OHCHR 'Analytical study on the promotion and protection of the rights of older persons in the context of climate change' Report to the Human Rights Council (20 April 2021) A/HRC/47/46.

¹² I Boas 'Environmental change and human mobility in the digital age' (2017) 85 *Geoforum* 153.

¹³ OHCHR, 'Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change' Report to the Human Rights Council (22 April 2022) UN Doc. A/HRC/44/30.

¹⁴ H Han and SW Ahn 'Youth mobilization to stop global climate change: narratives and impact' (2020) 12(4) *Sustainability* 127.

torture and other forms of cruel, inhuman or degrading treatment or punishment. Such practices are specifically prohibited with respect to women (Article 4(1) of the Maputo Protocol), children (Article 16(1) of the ACRWC), older persons (Article 8 of Older Persons Protocol), persons with disabilities (Article 10 of the Persons with Disabilities Protocol) and youth (Article 18(2)(a) of the African Youth Charter). Also of relevance to populations displaced across national borders is Article 2(3) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which provides that ‘no person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened’. This provision raises the further issue as to whether populations displaced across national borders can be recognised as refugees for the purpose of international protection. While arguments have been made both ways,¹⁵ refugees may not be returned to their own country if doing so may threaten their right to life (principle of *non-refoulement*).¹⁶

Displacement linked to the impacts of climate change may also affect the right of vulnerable groups to freedom of movement. By its very nature, displacement connotes an involuntary or forced movement, which restricts the concept of free movement. However, this may be worsened where additional restrictions are placed on the movement of displaced people either within or outside their areas of residence. When this happens, states risk breaching their obligations under Article 9(2)(f) of the Kampala Convention, which guarantees ‘the freedom of movement and choice of residence of internally displaced persons’. Restrictions on movement may undermine the access of women to services under Article 14 (reproductive health) Article 15 (food security) and Article 16 (adequate housing) of the Maputo Protocol. It may also impact Article 12 (leisure, recreation and cultural activities) of the ACRWC, Article 13(3) (access to assistive devices and specialised care) of the Older Persons Protocol, Article 14 (right to live in the community) of the Persons with Disabilities Protocol, and Article 3 (freedom of movement) of the African Youth Charter.

Persons displaced due to climate change impacts may struggle with access to information which can impact their ability to make ‘a free and informed choice on whether to return, integrate locally or relocate’, as protected by Article 11(2) of the Kampala Convention. Access to information is critical for people to cope with mobility, build adaptive capacity, and access food aid distributions, shelter, emergency guidelines, financial support and medical assistance. Without access to information, the knowledge and choices of vulnerable groups will be limited, and the interventions necessary to protect their human rights might be difficult to achieve. These realities may in turn impact their ‘right to receive information and express opinion’ as guaranteed under Article 9 of the African Charter, which provides that ‘every individual shall have the right to receive information’ and the right to ‘express and disseminate’ their opinion. Such rights are also safeguarded for children (Article 7 of the ACRWC), women (Article 9 of the Maputo Protocol), persons with disabilities (Articles 23 on freedom of expression of opinion and 24 on access to information of the Persons with Disabilities Protocol), youth (Article 4 of the African Youth Charter on freedom of expression), and older persons (impliedly as an element of realising the protection of older persons in disaster situations under Article 17 of the Older Persons Protocol).

¹⁵ For some of the debates, see M Addaney, AO Jegede and MZ Matinda ‘The protection of climate refugees under the African human rights system: proposing a value-driven approach’ (2019) 3 *African Human Rights Yearbook* 242-259.

¹⁶ See CMARN, ‘Key Laws and Policies: Refugee Law’ CMARN Fact Sheet 5/2023 (2023).

IMPACTS OF CLIMATE MOBILITY ON KEY SOCIO-ECONOMIC RIGHTS

Vulnerable groups on the move due to climate change may have limited access to sufficient and safe food. The impact of displacement on access to food is recognised under Article 9(2)(b) of the Kampala Convention. This right to food is impliedly guaranteed by the combined readings of Articles 4 (right to life), 16 (right to health) and 22 (right to economic, social and cultural development) of the African Charter.¹⁷ The right to food is also expressly guaranteed to women (Article 15 of the Maputo Protocol), children (Article 14(2)(c) of the ACRWC), older persons (preamble of the Older Persons Protocol), persons with disabilities (Article 20(1) of the Persons with Disabilities Protocol) and youth (Article 14(2) of African Youth Charter).

The adverse impacts of climate change may also affect the supply and distribution of water infrastructure and lead to shortages of water, which in turn may have disproportionate impacts on vulnerable groups on the move. Generally, this may be addressed by the right to water as impliedly guaranteed in Article 16(1) of the African Charter. The right to water is also specific protected for vulnerable groups, including women (Article 15 of the Maputo Protocol), older persons (preamble of the Older Persons Protocol), persons with disabilities (Article 20(1) of Persons with Disabilities Protocol), and youth (inherent in Article 14(3)(b) of the African Youth Charter, which calls upon states to take measures to meet basic needs of youth).

Displaced persons often suffer from lack of access to adequate shelter due to removal from their familiar abode.¹⁸ This is well acknowledged in Article 9(2)(b) of the Kampala Convention, and implied through the combined effect of Articles 14, 16 and 18(1) of the African Charter, which has been adjudged as constituting the right to shelter or housing.¹⁹ The right to shelter or housing is protected for specific groups such as children (Article 20(2)(a) of the ACRWC, requiring that states parties take 'appropriate measures' towards the provision of housing for children), women (Article 16 of the Maputo Protocol), persons with disabilities (Article 20(1) of the Persons with Disabilities Protocol), older persons (the preambular provision of the Older Persons Protocol) and youth (Article 14(3) of the Youth Charter).

The lack of access to adequate shelter, food and water associated with displacement including in climate change context may in turn negatively impact on the health of displaced people. This is well acknowledged under Article 9(2)(b) of the Kampala Convention. The right to health is protected under Article 16 of the African Charter, which guarantees the right to enjoy the best attainable state of physical and mental health and calls upon states to ensure that everyone has access to medical care. It is also protected specific for women (Article 14 (1) of the Maputo Protocol), children (Article 14(1) of the ACRWC), older persons (Article 15 of the Older Persons Protocol), persons with disabilities (Article 20(1) of Persons with Disabilities Protocol) and youth (Article 16 of the African Youth Charter).

¹⁷ *Communication 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (Ogoniland case)* African Commission on Human and People's Rights (27 May 2022).

¹⁸ Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Person* (March 2010).

¹⁹ *Communication 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (Ogoniland case)* African Commission on Human and People's Rights (27 May 2022) para 60.

DEPLOYING AFRICAN HUMAN RIGHTS LAW TO ADVANCE THE RIGHTS OF VULNERABLE GROUPS

African human rights law provides possibilities for stakeholders, including NGOs, lawyers and human rights institutions, to advance the rights of vulnerable groups facing the adverse consequences of climate-related displacement through the mandates of existing and operational quasi-judicial and judicial bodies. These bodies are: the African Commission on Human and Peoples' Rights (the African Commission), the African Court on Human and Peoples' Rights (African Court) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). Advancements can be achieved through the promotional, protective and interpretive mandates of these bodies.²⁰

The promotional functions of African human rights bodies entail a range of activities, including state reporting mechanisms, publications and other forms of dissemination of information. The African Court's promotional activities include its publications and media-related activities. State reporting processes before the African Commission and ACERWC aim to review the extent to which African states have complied with their obligations under relevant human rights instruments. In the context of climate mobility and its impacts on human rights, these bodies could amend their reporting guidelines to specifically require reporting on trends of climate mobility impacts and their interaction with key human rights provisions. Other stakeholders in the process, such as NGOs and national human rights commissions, could submit shadow or alternative reports that focus on key rights of vulnerable groups, with a focus on climate mobility impacts. In addition, publication and information dissemination on climate mobility impacts and provisions of human rights instruments could serve as a promotional activity to ensure greater awareness of the protection of vulnerable groups in the context of climate mobility in Africa.

The protective mandate of the African Commission under Article 60 of the African Charter is exercisable through the consideration of inter-state and individual complaints. The legal bases for the latter is Article 55 of the African Charter, and Article 5(3) which allows for NGOs with observer status to bring matters before the African Court, if they relate to a state party that has accepted the competence of the court to receive such complaints in accordance with Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and People's Rights. Also, Article 44(1) of the ACRWC allows the ACERWC to receive communications from NGOs recognised by the 'Organization of African Unity, by a Member State, or the United Nations'. Hence, complaints regarding the interface of climate mobility with human rights of vulnerable groups could be brought before quasi-judicial and judicial bodies by NGOs or individuals.

The African Commission, the African Court and the ACERWC perform interpretive functions, which may be fulfilled during the consideration of communications. Article 45(3) of the African Charter deals with the interpretive functions of the Commission, which may also be aided by submissions of third parties under Articles 46 and 52 of the African Charter, which allow the Commission to receive information from different sources, including states and any person it deems necessary to resolve a pending matter. In specific terms, rule 104(2) of the 2020 Rules of Procedure of the African Commission allows for the submission of amicus briefs. A similar inference can be made from Articles 4(1) and (2) of the Protocol establishing the African Court, which permits entities, including recognised African organisations, to offer 'an opinion on any legal matter relating to the Charter or

²⁰ Articles 45(1)(a), (b) and (c) of the African Charter reflect the promotional functions of the African Commission, while Articles 42(a)(i) and 43(1) speak to the promotional mandate of the ACERWC.

any other relevant human rights instruments. Rule 72(1) of the ACERWC 2018 Rules of Procedure equally permits NGOs, if invited, to provide it with expert advice in areas falling within the scope of their activities.

The foregoing rules offer different stakeholders, including NGOs, the opportunity to contribute significantly to the protective mandate of the quasi-judicial and judicial bodies. They could be invited to give expert opinions on climate mobility impacts, their nature and dynamics, and the relevant obligations of states and non-state actors. They could also provide further clarity on the normative content of other rights within African human rights law that may be applied in the context of climate mobility.

RECOMMENDATIONS

1. African states should recognise that the actual and foreseeable adverse impacts of climate mobility on the human rights of vulnerable groups protected under African human rights law trigger obligations to take action, as duty bearers, to protect rights of vulnerable groups. African states should take measures to respect, protect and promote the rights of vulnerable groups in the context of climate mobility.
2. African human rights monitoring bodies under – in particular, the African Commission and the ACERWC – should apply international law and jurisprudence based on Article 61 of the African Charter and Article 46 of the ACRWC in response to human rights issues raised by climate mobility in their consideration of individual communications.
3. African human rights monitoring bodies should integrate climate mobility in their work through state reporting, monitoring, statements, seminars and advisory opinions on the nexus between climate mobility and human rights.
4. States should consider the ratification and implementation of the Social Protection Protocol
5. Where necessary, states should solicit resources at the regional and international levels to implement the provisions in key human rights instruments for protecting vulnerable groups negatively affected by climate mobility.