

Research Paper

Climate Refugees: A Major Challenge of International Community and Africa

By Abdessalam Jaldi and Amal El Ouassif

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From socio-economic crises to the scourges of war, through natural disasters and environmental degradation, the world's history is marked by events leading to mass migration, exacerbating the phenomenon of climate refugees. Today, environmental phenomena prompt many inhabitants to choose exile in search of more stable horizons. It is essential to note that no legal text, either global or regional, considers the case of climate refugees. Given the lack of a specific legal regime for climate refugees, global and regional organizations have no de-facto mandate to assist these individuals, increasing their vulnerability and further complicating the evolution of international law. Experts stress the need to define a legal status for climate refugees to create a protection mechanism for people displaced by climate-related disasters. In this regard, the African continent provides a promising perspective.

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Policy Center for the New South

Building C, Suncity Complex, Al Bortokal Street, Hay Riad 10100 - Rabat

Email : contact@policycenter.ma

Phone : +212 5 37 54 04 04 / Fax : +212 5 37 71 31 54

Website : www.policycenter.ma

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RESEARCH PAPER

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THINK • STIMULATE • BRIDGE

INTRODUCTION

The concept of climate refugees represents a considerable challenge for the international community. Nearly absent within the mainstream public discourse is recognition and coverage of the role of the climate crisis in driving and exacerbating mass movements of people via short-term and long-term natural disasters. Estimates of the extent of climate-induced global migration vary significantly, but the numbers remain alarming. According to the United Nations High Commissioner for Refugees (UNHCR), an annual average of 21.5 million people have been forcibly displaced by weather-related events, such as floods, storms, wildfires, and extreme temperatures since 2008. These numbers are expected to surge in the coming decades, with forecasts from the international think tank the Institute of Economics and Peace (IEP) predicting that 1.2 billion people could be displaced globally by 2050 due to climate change and natural disasters. In the same vein, according to the Internal Displacement Monitoring Centre (IDMC), over 253.7 million people have been displaced by natural disasters from 2008 to 2018, with such disasters displacing three to 10 times more people than conflict and war worldwide¹.

The Climate Vulnerability Index rated 193 countries on their perceived risk from climate change by assessing the physical impacts of climate change, the vulnerability of citizens, and the level of adaptability of the countries. While twenty-seven European countries are classified as low-risk, the Sub-Saharan Africa region is home to ten of the most vulnerable countries². The most vulnerable countries have not been among the countries that created the challenges caused by climate change as the average metric tons of CO₂ produced in 2014 both by European (6.4) and Sub-Saharan African (0.8) countries show³, but the industrial countries, which breach the no-harm principle of international environmental law, since climate change-induced effects have been aggravated mainly by their actions, as being countries of the North, are the most responsible for the global warming and climate change⁴. However, the national and international response to this challenge has been limited, and protection for the people affected remains inadequate. What adds further to the gap in the protection of such people, who are often described as climate refugees, is that there is no clear definition for this category of people, nor are they covered by the 1951 Refugee Convention. While the international community has so far not recognized climate refugees formally, it has expressed growing concern and tried to take action to support and develop resilience in the countries potentially affected by climate-related stress.

The Research paper recounts the efforts to develop an international refugee protection regime that includes protections for climate refugees, be it a new convention or a revision to the existing 1951 Refugee Convention, this Research Paper recounts the proximate causes of climate-induced displacement and the added population pressures that follow such displacement. This report also elaborates on gaps in the current protection regime for climate-induced cross-border migration. It discusses legal and geopolitical debates around the term "*climate refugee*" considering such gaps. Toward such ends, the article advances some recommendations under the climate crisis, which accounts for the ability of one to survive and avail themselves of a sufficient degree of protection in international law as a climate refugee.

1. Internal Displacement Monitoring Centre, Global Report on Internal Displacement 2019.

2. Ciara Nugent, "The 10 Countries Most Vulnerable to Climate Change Will Experience Population Booms in the Coming Decades", Erişim Tarihi: Mart 25, 2020, <https://time.com/5621885/climatechange-population-growth/>.

3. "CO₂ emissions (metric tons per capita)", The World Bank, Erişim Tarihi: Nisan 21, 2020, <https://data.worldbank.org/indicator/EN.ATM.CO2E.PC>.

4. United Nations General Assembly, Human Rights of Migrants: Note by the Secretary-General, A/67/299, 2012, 19-20, para. 80; Benjamin J. Richardson; Heather McLeod-Kilmurray; Yves Le Bouthillier and Stepan Wood, (Eds), Climate Law and Developing Countries: Legal and Policy Challenges for the World Economy, (Cheltenham UK, Northampton MA: Edward Elgar Publishing, 2009), 8; Rina Kuusipalo, "Exiled by Emissions Climate Change Related Displacement and Migration in International Law: Gaps in Global Governance and the Role of the UN Climate Convention", Vermont Journal of Environmental Law, Vol. 18, 4 (2017): 614-647.

I. THE CONCEPT OF CLIMATE REFUGEES: THEORETICAL BACKGROUNDS

The link between climate change and migration did not emerge on the international scene until the late 1970s, marked by the growing interest in environmental issues and the creation of the United Nations Environment Programme (UNEP) in 1972. However, as early as 1889, Ravenstein attributed migration movements to the "unattractive climate". Churchill Semple, an American geographer, linked the movement of populations to the search for better land and a milder climate in 1911. However, despite these early reflections, the weight of environmental factors in the study of the systemic reasons for migration was quickly discarded in favor of a growing focus on economic and social factors. Work as fundamental as the one of (Stouffer, 1940) or W. Zelenisky make no reference to environmental factors. The first scientific writings on the subject were only published in the 1980s, following the report "*Environmental refugees*" submitted to the United Nations Environment Program in 1985. Thus, the terms "*environmental migrants*" and "*climate refugees*" began to occupy an increasing place in the debates on migration. It is also because of the alarming figures on the effects of climate change on the survival of vulnerable populations that the interest in climate migration has been heightened. The Intergovernmental Panel on Climate Change (IPCC) indicated that the most serious effects of climate change will be felt in human migration. (N. Myers, 1993-2002) predicted 150 million climate refugees by the end of the 21st century. The latest report "*Acting on Internal Climate Migration*", published by the World Bank in September 2021, states that 260 million people will be forced to leave their home countries because of the effects of climate change. The central regions concerned would be South Asia, Latin America, and Africa.

The scientific community faces several challenges in studying climate migration. First, there is no consensus on the definition of the term "*climate migrant/refugee*", which makes it difficult to agree on the contours and influence of environmental factors in migration. Secondly, it is the very nature of the migration phenomenon that is problematic. Often the result of a multitude of causes, the decision to migrate remains a subjective choice, in which it isn't easy to clearly distinguish the weight of one specific factor about the other factors. This observation also applies to the study of the importance of the environmental factor. This is due to the difficulty of predicting the reaction of the populations concerned, and the lack of qualitative and quantitative data on the issue.

The studies published on climate migration can be classified into two distinct categories, both by their rhetoric and their methodology and the policies, they advocate (Suhrke & Visentin, 1991), (Morissey, 2012). The "*maximalist/alarmist*" approach advocates a direct causal relationship between global warming and forced displacement. The proponents of this school of thought are at the origin of the term "*climate refugee*" which, it should be remembered, is not officially recognized and is not one of the categories listed by the Geneva Convention relating to the Status of Refugees. One of the main criticisms of this approach is the fact that it is based on a linear and deterministic vision, which does not consider the psychological aspect, a determining factor in the study of migration issues. The second approach is called minimalist. Its proponents are "*skeptical*" of the term "*climate migration*". Without denying the weight of environmental factors in migration decisions, this analytical framework considers that the links between migration and climate are indirect. The analysis must then be extended to social, economic, and cultural relationships. For example, in a region vulnerable to climate change, people wishing to flee may not be able to do so because their social and economic capacities do not allow mobility (Diallo & Renou, 2015).

A. Disciplinary division

In the migration, literature attempts were made to differentiate between the types of human movements according to the duration: permanent/temporary, the scope: national/international, and the causes of the moves: voluntary/involuntary. To study migration in link with climate change, the voluntary vs. involuntary distinction seems crucial. Fairchild (1925) first established the difference between voluntary migration and invasion, colonization and dispossession forcing people to move, in the context of World War I. Then following, scholars such as Peterson (1958) further considered the degree of which a movement is forced as a determining criterion of distinction. Gradually, in addition to political tensions and conflicts, social and human considerations along with environmental factors started to gain ground in the literature on forced migration, Hansen and Oliver-Smith (1982)⁵. Yet, despite the attempts to establish a clear typology, the lines between voluntary and involuntary migration seem to be blurry. *"In the strictest sense migration can be considered to be involuntary only when a person is physically transported from a country and has no opportunity to escape from those transporting him. Movement under threat, even the immediate threat to life, count a voluntary element, as long as there is an option to escape to another part of the country, go into hiding or to remain and hope to avoid"*⁶. Speare (1974:89). While this citation narrows involuntary migration to extreme situations almost like the ones of human trafficking in our days, other researchers are on the other end of the spectrum, considering that almost all migration is involuntary. Amin (1974:100) points out: *"A comparative costs and benefits analysis, conducted at the individual level of migrant, has no significance. In fact, it only gives the appearance of objective rational to a 'choice' (that of the migrant) which in reality does not exist because, in a given system, he (sic) has no alternatives"*.

In the literature other scholars reject this bipolar and simplistic interpretation of population flow⁷ (Van Hear 1998a, 42) states: *"few migrants are wholly voluntary or wholly involuntary. Almost all migration involves compulsion; at the same time, almost, all migration involves choices"*.

B. Migration as an adaptation strategy to the adverse effects of climate change

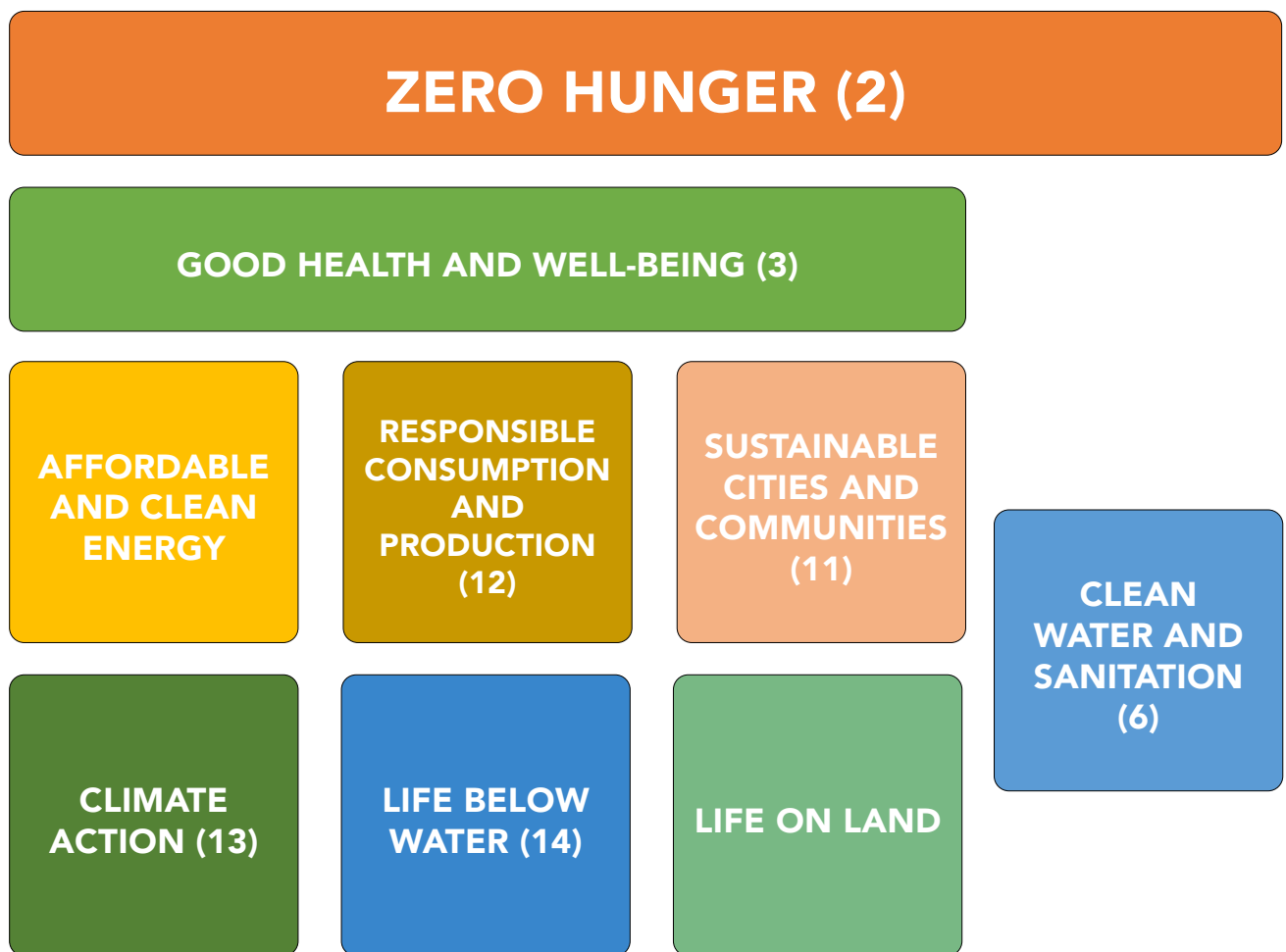
Economic, social, and security reasons are widely considered to be the main drivers of human mobility and forced displacement. However, other deeper reasons such as the link between climate change and forced migration remain little explored.

Below is a reminder of some of the leading sustainable development goals, as cited in the United Nations Development Program (UNDP) 2030 Agenda.

5. Hansen, A., & Oliver-Smith, A. (Eds.). (1982). *Involuntary Migration and Resettlement: The Problems and Responses of Dislocated People* (1st ed.). Routledge. <https://doi.org/10.4324/9780429052293>

6. The International Migration, Review, Spring, 1996, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship (Spring, 1996), pp. 105-131

7. MASON, E. (2000). Forced Migration Studies: Surveying the Reference Landscape. PP. 241-251



For each of the objectives listed in the chart, The International Organization of Migration identifies potential interactions with forced displacement. Migration is seen as a possible adaptation strategy to the adverse effects of climate change. Thus, it is essential to look at the mechanisms by which climate change impacts people's lives, causing them to involuntarily leave their home territories.

For objectives 2, 3, 6, and 7. There would be a direct link between food security, equitable and affordable access to energy and forced displacement. Deteriorating climate conditions are potentially behind the decline in productivity and livelihoods that leads to forced displacement.

Failure to meet goals 11 and 12, which are sustainable infrastructure development and sustainable consumption patterns, could be an aggravating factor in forced displacement. The same scheme applies to objectives 13, 14, and 15, without which the survival patterns of vulnerable populations will be destabilized, making them potential climate migrants.

This observation made by the IOM is an interesting starting point for exploring the mechanisms by which climate change impacts on the migration decision.

C. Africa exposition to climate migration

Africa is among the regions of the world exposed to the harmful effects of climate change. This is a significant paradox. The continent produces less than 4% of carbon emissions. Given its demographic evolution - the second most populated region in the world - if Africans were to adopt a mode of development that of developed countries, the gas emissions of the continent would be between 4 and 7 gigatons by 2050, equivalent to the total emissions of China, the United States, and Europe combined (Mortier, 2021).

Generally, Generally, Climate refugee displacement in Africa can manifest in three scenarios:

- 1. Deforestation and land degradation:** The destruction of arable lands and agriculture in underdeveloped countries⁸, which mainly affect sub-Saharan African nations and the West African Sahel⁹, is leading to conflict, which in turn is generating displacement¹⁰. West Africa has become a hotspot of climate change and insecurity, as symbolized by the proliferation of the Farmer-herder violence in Nigeria, central Mali, and northern Burkina Faso¹¹. Furthermore, research realized by Stockholm International Peace Research Institute finds that worsening livelihood security and related responses to environmental degradation, changing migration patterns, predatory armed groups, and elite behavior all play a role in how the physical effects of climate change increase the risk of violent conflict in West Africa and displacement¹². On the other hand, while the greater Horn of Africa shifted from arid conditions in 2018 and most of 2019 to floods and landslides associated with heavy rainfall in late 2019, Mozambique and other southern African countries have been repeatedly struck by severe storms and cyclones in recent years that have destroyed infrastructure and displaced large numbers of people¹³.
- 2. Rising sea levels and coastal erosion:** There is significant regional variability in sea-level trends around Africa. Sea-level increase reached 5 mm per year in several oceanic areas surrounding the continent. It exceeded 5 mm per year in the south-western Indian Ocean from Madagascar eastward towards and beyond Mauritius. This is more than the average global sea-level rise of 3–4 mm per year. Coastal degradation and erosion significant are also significant challenges, especially in West Africa. About 56% of the coastlines in Benin, Ivory Coast, Senegal, and Togo are, which is expected to worsen in the future. Sea level rise is currently not the dominant contributor but is likely to combine with other factors in the future to exacerbate the negative consequences of environmental changes¹⁴.
- 3. Submergence of low-lying islands:** research has shown that many African islands are the most endangered and most likely to be impacted to the extent of disappearing in the next half-century due to climate-intensified storms, and floods, sea-level rise, and desertification. Tropical Cyclone Idai was among the most destructive tropical cyclones ever recorded in

8. B Benoit Mayer, 'The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework' (2011) 22(3) Colorado Journal of International Environmental Law and Policy 361 <[https://www.colorado.edu/law/sites/default/files/Mayer%20\(Corrected\)-S.pdf](https://www.colorado.edu/law/sites/default/files/Mayer%20(Corrected)-S.pdf)>.

9. Ibid

10. Johan Schaar, 'The Relationship Between Climate Change and Violent Conflict' (Green Toolbox/Peace and Security Tool Box Working Paper, Sida, 2018) 7–11 <<https://publikationer.sida.se/contentassets/c571800e01e448ac9dce2d097ba125a1/working-paper---climate-change-and-conflict.pdf>>.

11. Leif Brottem. The Growing Complexity of Farmer-Herder Conflict in West and Central Africa. Africa Center for Strategic studies. Brief number 9. 2021. <https://africacenter.org/publication/growing-complexity-farmer-herder-conflict-west-central-africa/>

12. Kheira Tarif. Climate change and violent conflict in West Africa: Assessing the evidence. SIPRI. Number 2022/3. February 2022.

13. Mareike van Nieuwkoop. "Climate Refugees" – We need protection for victims of Climate Change. 27 January 2022. <https://naturaljustice.org/protection-for-victims-of-climate-change/>

14. Climate change is an increasing threat to Africa. United Nations Climate Change. 27 October 2020. <https://unfccc.int/news/climate-change-is-an-increasing-threat-to-africa?fbclid=IwAR2yUGzuleOH0FCZowX5vu-YGa8yakQFmBleU78ObVVNSqHZgU4HZ59kneE>

the southern hemisphere, resulting in hundreds of casualties and hundreds of thousands of displaced. These island nations risk becoming economically non-viable and uninhabited in the next generation due to fear of being submerged. The archipelago of Seychelles, populated by 90,000 inhabitants, is the first country to suffer from rising sea levels, risking disappearing within 100 years. About 80% of the infrastructure and population of Seychelles is concentrated along the coast of a few islands. In 2003, breaking waves off the coast of this archipelago caused flooding in the capital Victoria.

There are many examples of the negative impact of climate change on African countries. One of the most illustrative cases is that of the Zambezi River, which has been hit hard by the effects of global warming. In 2008, more than 80,000 people were displaced along the river. Mozambique is one of the countries where weather fluctuations are felt the most. Extreme weather events (floods, droughts, and tropical storms) have been occurring regularly for two decades. The Global Climate Risk Index ranks this country as one of the Five Countries Most Affected by Natural Disasters over the decade 2000 to 2019. (Stal, 2013). The impact of climate fluctuations is felt across all traditional sectors, such as agriculture, and transportation. Hence, resettlement has become a policy of last resort for a government faced with the need to provide security in a densely populated area. In 2007, the floods caused the displacement of more than 100,000 people forced to leave their houses and means of livelihood, being forced to settle in ad-hoc reception centers.¹⁵ These situations of climate vulnerability often leave the government with pressures about the provision of public goods and necessary health care services in a country that faces several political and security challenges.

Furthermore, because of its geographic position in a tropical zone, Mozambique is not only subject to sudden-onset natural hazards such as tropical storms and coastal floods but also to slow-onset natural disasters (Droughts, coastal soil erosion, and expected sea-level rise). Specific parts of Mozambique are more vulnerable to the effects of climate change, such as the delta region and the coastline at high risk of flooding and erosion. Rising sea levels and heavy flooding affect large parts of the regions. Additionally, global warming contributes to drought and increases Mozambique's environmental vulnerability and the risk of flooding. Deteriorating soil due to heat becomes impermeable, preventing water penetration. This high exposure to risk leads to the loss of livelihoods, thus increasing social and economic vulnerability. In the Sahel region, the effects of climate change on the survival of populations are tremendous. Slow onset climate events such as desertification, droughts, and rising temperatures, is recognized as one of the world's most severe humanitarian crises¹⁶, and have a profound impact on the region: the 90% reduction in the surface area of Lake Chad in less than half a century is particularly striking. Since the 1960s, the surface of lake Chad is witnessing significant variations from 25 000 km² in 1964 to currently less than 2 500 km²¹⁷, with half of the reduction a result of the climate crisis¹⁸. The population living on the coasts of the lake found themselves exposed to deteriorating living conditions and loss in the means of production.¹⁹ The lake is the principal source of water for the population living around its coastline, relying on the lake for the activities of fishing, breeding and agriculture. The continuous warming of temperatures has caused long periods of drought, with adverse effects on water. Adaptation to climatic events and environmental transformations is a crucial issue for the populations, already weakened by the region's socio-economic context.

15. OMS, "Mozambique Flood Preliminary Report", World Health Organization, 21 February 2007

16. Lake Chad Basin Crisis: Response Strategy (2017– 2019), Food and Agriculture Organization of the United Nations, Rome (2017), accessed April 21, 2019, <https://www.fao.org/3/bs126e/bs126e.pdf>

17. BAGADOMA, Mahamadou Ibrahim, La Commission du bassin du lac Tchad : structure probante ou coquille vide ? Mémoire de géopolitique, Collège interarmées de défense, Niger, 2007, 28 p.

18. Africa Supraregional: Adaptation to Climate Change in the Lake Chad Basin (Germany: GIZ, 2015), 7, accessed Apr. 21, 2019, <https://www.giz.de/en/downloads/giz2015-en-climate-change-study-africa-supraregional.pdf>

19. Ombionio Kitoto, P. (2016). Réchauffement climatique et migration vers les rives du lac Tchad. Migrations Société, 163, 149-166. <https://doi.org/10.3917/migra.163.0149>

The consequences of climate change on the region are resulting in the drying up of Lake Chad. The latter is considered one of the most threatened natural assets. Indeed, its shrinkage rate has increased considerably over the past five decades, displacing roughly 4.5 million people, including IDPs, refugees, and returnees²⁰. Although some scientists dispute the role of climate change in the shrinking of Lake Chad (An estimated 94 percent of those forced to leave their homes were displaced by conflict, while communal clashes displaced 6 percent, and 1 natural disasters displaced 1 percent²¹), the impact of global warming has undoubtedly contributed to the degradation of the situation in the region. Indeed, By the end of the 1990s, the region had been devastated by continuous drought and famine; the cattle became diseased, the rivers that used to feed into the lake dried up, and people started to die of hunger²². Recurrent and prolonged droughts in the Lake Chad Basin region significantly decreased the amount of water and arable land available for fishing, farming, and pastoral livelihoods, which translated to food, water, and job insecurity, elevating the level of extreme poverty, and subsequently driving people out of the area²³. Furthermore, A study conducted by the International Organization for Migration found that residents of the Lake Chad Basin noted, over the last decade, an increase in temperature and decrease in rainfall, which greatly impacted their local and traditional knowledge of the climate²⁴. People also observed the disappearance of indigenous plants, animals, and other species from the region²⁵. Governments inability to adequately address issues related to resource scarcity has exacerbated tensions in the area between pastoralists and farmers to a level of desperation, leading to community clashes and violence for access to water and arable land for farming and cattle grazing²⁶. A balanced approach would also consider the impact of low rainfalls and the inadequate responses of both populations and governments to the rapid changes in the environment of the lake.

Ironically, the shrinking of the Lake freed up spaces for new islands that represent opportunities for agricultural workers. Often flat, these new lands have fertile soils and are easily accessible. They rapidly became a refuge to climate migrants for local populations facing deteriorating conditions. Highly coveted, they are becoming host to intense agricultural and fishing activities that contribute to the further degradation, of Lake Chad.

On the other hand, across the Horn of Africa, drought, desertification, flooding, and other changes in rainfall patterns and rainfall distribution have led to devastating effects on the land, resources, animals, and people. These effects have been exacerbated by poor agricultural and pastoral practices²⁷. Practices such as overgrazing, or the clearing of land near a riverbank for livestock and agricultural use, cause rivers to change course and erodes nutrient-rich soil. Deforestation, by way of the acacia bussei forests being cut down to accommodate the booming charcoal industry and the clearing of mangrove trees, is accelerating sand dune encroachment and further contributing to desertification²⁸. In Somalia, the climate impacts force many Somalis into new and prolonged, internal as well as external, forms of displacement, including forcing people to leave their homes and land as climate refugees. In 2017, 892,000 people were displaced by slow-onset disasters including drought, which inflicted the highest number of forced relocations totaling

20. Regional Displacement and Human Mobility Analysis Displacement Tracking Matrix, (Dakar: International Organization for Migration, 2019), 3, accessed April 21, 2019, <https://displacement.iom.int/reports/lake-chadbasin-crisis---within-and-beyond-borders-trackingdisplacement-and-human-mobility>.

21. Climate Refugees - Spotlight: Lake Chad Basin: Belonging Institute. https://belonging.berkeley.edu/climate-refugees-14#footnote304_68hlyxc

22. Ibid.

23. Alexander Carius, "Lake Chad Basin: One long climate catastrophe," AlJazeera, (September 23, 2017), <https://www.aljazeera.com/opinions/2017/9/23/lake-chad-basin-one-long-climate-catastrophe>

24. Climate Refugees - Spotlight: Lake Chad Basin: Belonging Institute. https://belonging.berkeley.edu/climate-refugees-14#footnote304_68hlyxc

25. Ibid.

26. Ibid.

27. Climate Refugees - Spotlight: Somalia. Belonging Institute. https://belonging.berkeley.edu/climate-refugees-11#footnoteref242_dc5p1jz

28. Ibid.

858,000 people, and 34,000 people displaced due to lack of livelihoods²⁹. Additionally, in 2018, 547,000 people were displaced because of drought and flooding³⁰. Researchers meanwhile believe that due to ongoing conflicts in the Horn of Africa, and the lack of accurate data and systems to track displacement, the number of the reported number for displaced persons is likely an underestimate³¹. Furthermore, recurrent flooding and heavy storms impact Somalia almost every year, increasing the threat and reality of displacement for already powerless populations³². In April 2018, over 830,000 people were impacted by flash and river flooding that forced 300,000 people to temporarily flee their homes and seek shelter elsewhere³³. Many Somalis who return home after being displaced, either those identified as refugees or internally displaced persons (IDPs), find themselves experiencing displacement yet again following their return home³⁴. In Ethiopia, accounting for less than 1 percent of the world's total CO2 emissions³⁵, is facing especially intense effects of the climate crisis, including ever-rising temperatures, erratic rainfall distribution, recurrent droughts, floods, and desertification. There is a high degree of uncertainty over rainfall, with projections ranging from a decrease of 25 percent to an increase of 30 percent in the 2050s³⁶. For example, the climate crisis will most likely contribute to severe droughts in the desert-like conditions of the northeast, east, and southeast lowlands, and will intensify heavy rainfall events during the two rainy seasons of the humid rainforest in the south and southwest³⁷. Those factors fuel local struggles and drive displacement within the country, including resource-based conflict around land ownership and access, political exploitation along ethnic and cultural differences, the proliferation of arms, and border disputes.

29. Bina Desai et al., *Global Report on Internal Displacement 2018*, (Geneva: The Internal Displacement Monitoring Centre, 2018), 18, accessed March 31, 2019.

30. Climate Refugees - Spotlight: Somalia. Belonging Institute. https://belonging.berkeley.edu/climate-refugees-11#footnoteref242_dc5p1jz

31. Ibid.

32. Ibid.

33. Ibid.

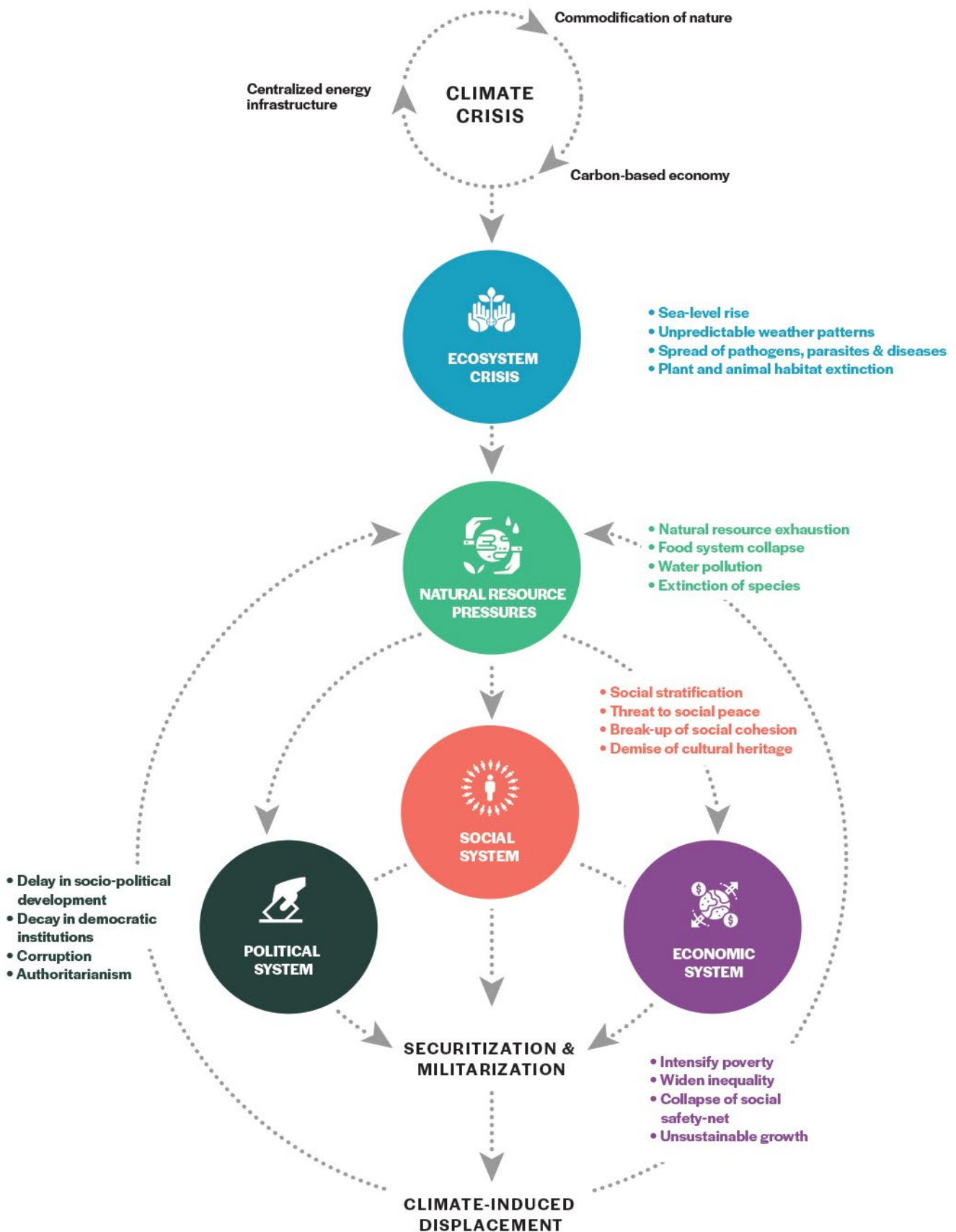
34. Ibid.

35. CO2 Emissions (Metric Tons per Capita), Data." World Bank accessed June 25, 2019, <https://data.worldbank.org/indicator/EN.ATM.CO2E.PC?locations=ET&view=map>.

36. Ibid.

37. Nikolas Scherer and Dennis Tänzler, *The Vulnerable Twenty—From Climate Risks to Adaptation*, (Berlin, Germany: adelphi, October 1, 2018), <https://www.adelphi.de/en/system/files/mediathek/bilder/The%20Vulnerable%20Twenty%20-%20From%20Climate%20Risks%20to%20Adaptation%20-%20adelphi.pdf>.

Multicausality of Climate-Induced Displacement



II. THE CLIMATE REFUGEES IN INTERNATIONAL LAW: THE LEGAL GAPS /PROTECTION CHALLENGES

International attention concerning the climate crisis emerged as early as the late-1980s when the Intergovernmental Panel on Climate Change (IPCC) was established to collect and assess evidence on the phenomenon. However, has been an impact of the climate crisis on communities that can no longer remain in place due to short-term and long-term natural disasters. This elision extends to international protections for the climate-induced displaced person. This section recounts debates surrounding the term and the normative gaps in legal protections vis-à-vis international and intranational climate-induced displacement.

A-. The mechanism of the legal protection dilemma

The term climate refugees has been coined to describe the increasing large-scale migration and cross-border movements of people because of weather-related disasters. However, the legal rights and status of those who move in the context of disasters, climate change, and environmental degradation remain unclear and insufficient. Under international law, refugees are people outside their countries of origin who have fled because of a well-founded fear of persecution. Since most people remain within their countries or are people whose cross-border movements are taken solely because of environmental harm and not persecution, they fall short of the international legal definition of a refugee³⁸. Thus, they are not afforded any special protections under the 1951 Refugee Convention and its Protocol. This leaves a gap in the protection of such people, as there is neither a clear or agreed-upon definition for persons who move for environmental or climate-related reasons, nor an international treaty protecting them – leaving them in legal limbo. The lack of lawful migration opportunities forces many of those moving for climate-related reasons to do so without authorization and at risk of exploitation or abuse. And their precarious legal status makes it difficult for people to re-establish and support themselves once they have fled.

Analysis of the Convention Relating to the Status of Refugees ('Refugee Convention') which codifies the customary international law principle of non-refoulement by placing an obligation on state parties to not return refugees to a territory where there is a risk of persecution, demonstrated its limits in the context of climate change displacement. Indeed, while the causes of displacement have varied significantly over the years, governments still rely on the definition outlined in art 1A(2) of the Refugee's Status Convention which defines a refugee as a person who: *"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, unwilling to return to it"*³⁹. Under the UN Convention, States committed themselves to the obligation of non-refoulement, or non-returning of persons with well-founded fear of persecution on the grounds of their race, religion, nationality, membership of a particular social group, or political opinion⁴⁰. The protection of non-discrimination, under article 3, states that the provisions guaranteed under the Convention should be applied by states *"without discrimination as to race, religion or country of origin"*⁴¹. Non-penalization, under article 31, ensures that states do not penalize refugees *"on account of their illegal entry or presence, on refugees who, coming directly from a territory where*

38. Jane McAdam. Managing Displacement in the era of Climate change. Georgetown Journal of International Law. 2019. <https://www.georgetownjournalofinternationalaffairs.org/online-edition/2019/11/6/managing-displacement-in-the-era-of-climate-change>

39. Refugee Convention 1951 (n 1) art 1A(2).

40. E Lauterpacht and D Bethlehem 'The scope and content of the principle of nonrefoulement opinion' in E Feller, V Turk and F Nicholson (eds) Refugee protection in international law: UNHCR's Global Consultation On international protection (2003) 87, 142.

41. 1951 Convention, art 3.

*their life or freedom was threatened ... enter or are present in their territory without authorization*⁴²". The principle of non-refoulment, under article 33 entails that no state "*shall expel or return a refugee in an manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*"⁴³". However, Persons or groups fleeing their habitual country of residence on the grounds of climate-related events such as famine, drought, or flooding may not meet the requirements stipulated in the 1951 Convention's definition of a refugee under Article 1 since it is impossible for such a person or group to articulate a well-founded fear of persecution. For example, during the famous case *Ioane Teitiota v. New Zealand*, the court of Wellington has demonstrated the difficulties of applying the current refugee definitions to climate migrants. Indeed, and during this affair, the New Zealand court specifically rejected the claim that through emitting climate change-causing greenhouse gases, the international community was a persecutor, holding that the international community did not do so with any motivation to harm climate-vulnerable states. Additionally, the alleged persecution of climate migrants would not fit into one of the five protected grounds⁴⁴.

Consequently, not surprising that UNHCR, considered the custodian of the Refugee Convention and the 1967 Protocol, does not endorse the term climate refugees. Instead, it refers to "*persons displaced in the context of disasters and climate change*"⁴⁵". To merit 1951 Refugee Convention protection, the harm an individual is fleeing must constitute persecution. Under this obligation, such persons, individually or in groups, were not to be returned to the frontiers of territories where their lives or human rights would be undermined. On the other hand, as the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status ("*UNHCR Handbook*") notes, "*there is no universally accepted definition of 'persecution'*"⁴⁶". Persecution encompasses threats to life or freedom, and has been found in such harms as rape, beatings, attempted murder, and threats of these things, among many other serious harms. Highly relevant to climate-change refugees is whether and when discrimination fits under the umbrella of persecution. The UNHCR Handbook states, "*where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence*"⁴⁷". Government actions and inactions on climate often affect different sub-groups of the country differently and are classic examples of discrimination; such discrimination might rise to the level of persecution if it means members of those groups or sub-groups are reasonably fearful for their future existence⁴⁸. The critical piece for whether such fears constitute persecution is whether there is an intentionality to the government's actions or inactions. As Professor Gaim Kibraeb states, "*the only time environmentally induced displacees may be regarded as 'refugees' is when the state uses environment as an instrument of political oppression. This requirement exists because at the heart of the notion of persecution lies state failure to provide protection*"⁴⁹".

42. 1951 Convention, art 31.

43. 1951 Convention, art 33.

44. *Teitiota v. Chief Exec. of the Ministry of Bus. Innovation and Emp't* [2013] NZHC 3125 at [¶ 63], per J. Priestley (N.Z.)

45. Walter Kälin, 'Displacement Caused by the Effects of Climate Change: Who Will be Affected and What Are the Gaps in the Normative Framework for Their Protection?' Brookings (Web Page, 10 October 2008) <<https://www.brookings.edu/research/displacement-caused-by-the-effects-of-climate-change-who-will-be-affected-and-what-are-the-gaps-in-the-normative-framework-for-their-protection/>>.

46. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. February 2019. <https://www.unhcr.org/publications/legal/5ddfc4dc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>

47. Ibid

48. Ibid

49. Gaim Kibraeb, *Climate Change and Human Migration: A Tenuous Relationship?*, 20 FORDHAM ENVTL. L. REV. 357, 393 (2009).

In the same vein, we can imagine a country where the government forces certain sub-groups to bear the brunt of the environmental harm, by leaving them in low-lying, flood-prone areas while other groups are moved to higher ground⁵⁰. As William Wood has written: "Forced ecomigration may be defined as a type of migration that is propelled by economic decline and environmental degradation. Groups unable to sustain themselves at a minimal level face a crisis that is both ecological and economic. Forced ecomigrations result when those conditions become immediately life-threatening...inequitable access to arable land is as much a social problem as an environmental one"⁵¹. For example, from the Congo Basin to the Guinean Forests of West Africa to the Coastal Forests of East Africa, deforestation has made much of the land unlivable, but the government's failure to offer protection against these environmental harms appears not to be linked to ethnic or political animus and extends generally across the population. Extreme environmental harms that threaten the existence of groups or subgroups of a nation could constitute persecution when the government's policies are explicitly directed at and against those subgroups. As Professor Kibraeb writes: "This sub-category climate refugees includes people who are victimized by an explicit 'ecocidal' policies or activities of regimes"⁵². The question to ask however is why many rural communities, forced to migrate, cannot be considered political refugees rather than climate refugees. In these scenarios, the persecution is not directly related to climate change itself, but climate change creates the migrations which lead to new vulnerabilities to persecution.

Consequently, and as legal scholars and migration experts argue, the definition of "persecution" itself conflicts with the nature of climate-induced displacement, thus hindering the possibility of expanding the 1951 Refugee Convention or creating a new convention, the Convention Relating to the Status of Climate Refugees. There are three reasons for this conflict in particular⁵³:

- Scholars argue that qualifying main polluters or even the international community as a persecutor would create substantial difficulties because one would have to establish the causality between their action/inaction and the respective climate crisis impact in each individual case—something that is virtually impossible at the present stage of scientific knowledge⁵⁴.
- A person fleeing the effects of the climate crisis is not escaping their government or other public and private entities specific to their home state. Rather, they are seeking refuge from a phenomenon born of the actions of entities across a few states. Thus, scholars argue that qualifying the main contributors to the climate crisis—from methane released from landfills to natural gas and petroleum industries, to agriculture and livestock, to the destruction of carbon sinks like forests and marine flora—would also "reverse the refugee paradigm" by delinking the actor of persecution from the territory from which flight occurs. This move would be entirely unknown to refugee law⁵⁵.
- A person fleeing the effects of the climate crisis might be fleeing a nation and government that has not turned against its citizens but rather wants to protect them. Some of the people experiencing the most disastrous effects of the climate crisis are living in nations that have long recognized the issue and that have appealed to the international community for support. Thus, the narrow legal notion of refugees in the 1951 Refugee Convention cannot generally guarantee protection to persons displaced across borders due to the impacts of the climate crisis⁵⁶.

50. Elizabeth Keyes. Environmental Refugees? Rethinking What's in a Name. N.C. J. INT'L L. Vol. XLIV. 2019. Page 9.

51. Ibid. page 10.

52. Ibid.

53. Climate Refugees. Othering and Belonging Institute. <https://belonging.berkeley.edu/climate-refugees>

54. Ibid.

55. Climate Refugees. Othering and Belonging Institute. <https://belonging.berkeley.edu/climate-refugees>

56. Ibid.

Failure to find a durable solution to the climate refugees may lead to the greatest humanitarian crises in the 21st century. For instance, the First Assessment Report of the IPCC observes that the highest single impact of climate change will be on human migration⁵⁷. The report recognizes that while people moving across international borders due to climate-related events are entitled to general human rights guarantees in the receiving states, they may not have a legitimate right of entry⁵⁸. International law instruments on climate change, the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the 2015 Paris Agreement do not offer any protection to climate refugees. However, and has been declared by the United Nations Refugee Agency (UNHCR), at COP26 in Glasgow: “The climate crisis is becoming a human crisis⁵⁹”. Forced displacement is among the most devastating human consequences of climate change and shows the deep inequalities in our world. Countries and communities with fewer resources and less capacity to build climate resilience are currently facing the worst impacts.

B. The evolving interpretation of climate refugees in international law

Efforts to develop such terminology regarding the climate refugee began early on, prior to widespread recognition of climate change itself. In the 1970s, Lester Brown, an environmental activist and founder of the Worldwatch Institute, coined the term “environmental migrant” to describe a broad category of people choosing or forced to migrate due to environmental factors. The first such recognition of the category of migrants, the term was modified and popularized by Essam El-Hinnawi of the UN Environmental Programme, who in 1985 defined “environmental refugees” as: “those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affect the quality of their life. By ‘environmental disruption’ in this definition is meant any physical, chemical, and/or biological changes in the ecosystem (or the resource base) that render it temporarily or permanently, unsuitable to support human life⁶⁰”. This terminology has been contested by the UN High Commissioner for Refugees, which expressed reservations because of its lack of basis in international refugee law and the risk of undermining this legal regime⁶¹.

The attention that coalesced around migration due to climate factors allowed for literature and public debates to flourish once climate change was named. In 1990, the IPCC published its First Assessment Report with scientific reports on the causes and effects of climate change, warning the international community of potential environmental and social impacts. In that report, the IPCC warned that “the greatest single impact of climate change could be on human migration⁶²” due to displacement caused by environmental catastrophes, such as severe droughts and shoreline erosion. Soon Lack of Agreed Terminology after, in 1992, the International Organization for Migration and the Refugee Policy Group published a report titled “Migration and Environment” warning that the number of global migrants “could rise substantially as larger areas of the earth become uninhabitable as a result of climate change⁶³”. Since

57. UN Human Rights Council, Report of the Office of the U.N. High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, 20-41, UN Doc A/HRC/10/61 (15 January 2009).

58. Ibid.

59. UNHCR: World must turn COP26 words into action for forcibly displaced and stateless people. 12 november 2021. <https://www.unhcr.org/news/briefing/2021/11/618e36334/unhcr-world-must-turn-cop26-words-action-forcibly-displaced-stateless-people.html>

60. Essam El-Hinnawi, “Environmental Refugees” (Geneva, Switzerland: UN Environment Programme, 1985).

61. Walter Kälin and Nina Schrepfer, “Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches” (Geneva, Switzerland: UN High Commissioner for Refugees, Division of International Protection, February 2012); Antonio Guterres, “Climate Change, Natural Disasters, and Human Displacement: A UNHCR Perspective” (Geneva, Switzerland: UN High Commissioner for Refugees, October 23, 2009), <https://www.unhcr.org/protection/environment/4901e81a4/unhcr-policy-paper-climate-change-natural-disasters-human-displacement.html>.

62. Frank Laczko and Christine Aghazarm, “Migration, Environment and Climate Change: Assessing the Evidence” (Geneva, Switzerland: International Organization for Migration, n.d.), http://publications.iom.int/system/files/pdf/migration_and_environment.pdf.

63. Ibid. page 13

the international conference on population and development in 1994, the issue of international migration about development has risen steadily up the international community's agenda. The 1998 UN Guiding Principles on Internal Displacement provide a framework for protecting victims of natural disasters who do not cross an international border. They offer a valuable set of legal standards for protection and have the advantage of leaving governments a wide margin of discretion regarding their implementation and defining IDPs as: "Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border⁶⁴", the international text of 1998 restate and compile existing international human rights and humanitarian law germane to the internally displaced and also attempt to clarify gray areas and gaps in the various instruments with regard to situations of particular interest to the internally displaced. Yet, despite addressing "natural or human made disasters" and other such causes of internal displacement, the primary limit to the potential of the UN Guiding Principles is that it is not legally binding. Instead, it leaves it to national governments to adopt strategies and policies. Finally, the United Nations (UN) 2030 Sustainable Development Agenda includes several migration-related targets and calls for regular reviews of progress towards their achievement, using data that is, in some cases, disaggregated by migratory status.

The concept of climate refugees has had a significant breakthrough since 2010. The governments that met in Cancún at the 16th Session of the Conference of the Parties ('COP16') to the United Nations Framework Convention on Climate Change ('UNFCCC') agreed to take initial steps to strengthen climate change mitigation efforts and help developing nations protect themselves from climate change impacts⁶⁵. Furthermore, under s 14(f) of the Cancún Agreements, COP16's outcome document, parties agreed to undertake 'measures to enhance understanding, coordination and cooperation with regard to climate change-induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels⁶⁶'. Although not legally binding, this provision was a state-determined point of agreement on which to base future action. In 2011, following the Cancún Agreements, the United Nations High Commissioner for Refugees ('UNHCR') unsuccessfully attempted to persuade states to agree to the creation of a global guiding framework to address climate change displacement but highlighted gaps in the current international protection regime and the need for a new response⁶⁷.

In June 2011, the Norwegian government convened the Nansen Conference on Climate Change and Displacement ('Nansen Conference'). This initiative was held to facilitate multidisciplinary dialogue and improve global understanding of environmental disasters and climate change displacement in the 21st century⁶⁸. Following the Nansen Conference, Norway and Switzerland pledged to address the legal protection gaps regarding the cross-border movement in the context of disasters and the effects of climate change, establishing the Nansen Initiative in 2012⁶⁹. This initiative was a bottom-up, state-led consultative process that conducted extensive regional intergovernmental consultations and civil society meetings. Notably, the Nansen Initiative did not seek to develop new legal standards, such as a convention or protocol, from the outset. Instead, it focused on building consensus among states on the principles

64. Guiding Principles on Internal Displacement (Geneva, Switzerland: UN High Commissioner for Refugees, September 2004), 1.

65. Conference of the Parties, United Nations Framework Convention on Climate Change, Report of the Conference of the Parties on its Sixteenth Session, Held in Cancún from 29 November to 10 December 2010, Decision 1/CP.16, UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011) 4 [11].

66. Ibid 5 [1](f).

67. Jane McAdam, 'Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–2013' (2014) 29(2) *Refugee* 11, 12.

68. Norwegian Refugee Council, 'The Nansen Conference: Climate Change and Displacement in the 21st Century' (Conference Report, 5–7 June 2011) 20 ('The Nansen Conference: Climate Change and Displacement').

69. The Nansen Initiative, About Us: Towards a Protection Agenda for People Displaced across Borders in the Context of Disasters and the Effects of Climate Change <<https://www.nanseninitiative.org/secretariat/>> archived at <<https://perma.cc/3STB-KS56>>.

that would underlie a protection agenda⁷⁰. On the other hand, building on the Cancún Agreements, the Warsaw International Mechanism for Loss and Damage ('Warsaw International Mechanism') was established at the 19th session of the Conference of the Parties to the UNFCCC ('COP19') in Warsaw, Poland in November 2013⁷¹. The Warsaw International Mechanism seeks to address loss and damage associated with the impacts of climate change in developing countries that are particularly at risk of its adverse effects⁷². Four thematic expert groups have been established to carry out the activities of the Executive Committee's work plan, one of which focuses specifically on migration, displacement, and human mobility⁷³. The expert group has established a Task Force on Displacement to develop recommendations for integrated approaches to avert, minimize and address climate change displacement⁷⁴. Finally, during a Global Consultation in October 2015, 109 governmental delegations endorsed the Agenda for the Protection of Cross-Border Displaced Persons ('Protection Agenda'), which supports the integration of policies and practices by states and regional organizations into their normative frameworks, considering their circumstances⁷⁵. This led to the launch of the Platform on Disaster Displacement at the May 2016 World Humanitarian Summit to assist in implementing the Protection Agenda. Importantly, Three African Countries are among the Platform's members: Kenya, Senegal, and Morocco⁷⁶.

This shift in focus prompted the question of whether addressing climate change displacement and migration is a matter of international law, regional development policy, or a combination of both. In this context, The Paris COP21 Agreement, though it did not explicitly mention the term climate refugees, called for a task force to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change (Article 50). Such recommendations, made by the Ad hoc working group on the Durban Platform for enhanced action, did touch upon previous calls by various organizations, including the UN in its 1992 Framework Convention on Climate Change (UNFCCC), for the establishment of a climate change displacement coordination facility solely devoted to climate-induced displacement, to help coordinate the provision of emergency relief and provide relocation support. In 2018, two major international mechanisms moved to recognize the plight of climate displacement. In March 2018, the UN Human Rights Council adopted an outcome document that discussed the cross-border movement of people brought about by climate crises from the perspective of human rights protection. The document pointed out that many people do not fit the definition of "refugees" among those who are forced to migrate long distances and cross borders due to climate impacts, and that the legal system to protect their human rights is inadequate, as the "non-refoulment principle", which states that people who have crossed borders should not be deported or repatriated to their original countries against their will, is not applied. It then urged governments to "incorporate the concept of human rights protection into the planning and implementation of climate change measures," including preventing large-scale displacement by allowing people to live in conditions that protect their human rights and promoting human rights-conscious planned relocation as a means of adapting to climate change. On the other hands, the Global Compact on Safe, Orderly, and Regular Migration, adopted by the UN in 2018, clearly states that one of the factors causing large-scale movements of people is "the adverse impacts of climate change and environmental degradation," which includes natural disasters, desertification, land

70. Ibid.

71. Conference of the Parties, United Nations Framework Convention on Climate Change, Report of the Conference of the Parties on its Nineteenth Session, held in Warsaw from 11 to 23 November 2013, Decision 2/CP.19, UN Doc FCCC/CP/2013/10/Add.1 (31 January 2014) ('Warsaw International Mechanism').

72. Ibid 6 [1].

73. United Nations Framework Convention on Climate Change, Executive Committee of the Warsaw International Mechanism for Loss, and Damage (2018) <<https://unfccc.int/7543>> archived at <<https://perma.cc/KV75-FUEF>>.

74. United Nations Framework Convention on Climate Change, Task Force on Displacement (2018) <<https://unfccc.int/node/285>> archived at <<https://perma.cc/WJK2-5T8B>>.

75. The Nansen Initiative, 'Global Consultation' (Conference Report, 12–13 October 2015) 8, 16.

76. Platform on Disaster Displacement: <https://disasterdisplacement.org/about-us/the-steering-group#:~:text=Members%20of%20the%20Steering%20Group,%2C%20Philippines%2C%20Senegal%2C%20Switzerland.>

degradation, drought, and rising sea levels. For migrants who are forced to leave their countries of origin due to environmental degradation, the compact clearly states that governments should work to protect climate refugees in the countries of their arrival by devising planned relocation and visa options if adaptation and return is not possible in their countries of origin. Yet the compact avoided naming such peoples (whether migrants or refugees), thus avoiding the question of legal protections altogether.

Finally, in 2020, The historic ruling of the Human Rights Committee ('HRCtee') in *Ioane Teitiota v. New Zealand* further increased academic interest in the matter. Indeed, and in this affair, Ioane Teitiota's asylum application in New Zealand was denied in 2015, and he was deported with his wife and children to his home country of Kiribati. He filed a complaint to the UN Human Rights Committee, arguing that by deporting him, New Zealand had violated his right to life. Mr. Teitiota argued that the rise in sea level and other effects of climate change had rendered Kiribati uninhabitable for all its residents. Violent land disputes occurred because habitable land was becoming increasingly scarce. Environmental degradation made subsistence farming difficult, and the fresh water supply was contaminated by salt water. In its first ruling on a complaint by an individual seeking asylum from the effects of climate change, the UN Human Rights Committee has stated that countries may not deport individuals who face climate change-induced conditions that violate the right to life. Furthermore, the Committee determined that in Mr. Teitiota's specific case, New Zealand's courts did not violate his right to life at the time of the facts, because the thorough and careful evaluation of his testimony and other available information led to the determination that, despite the serious situation in Kiribati, sufficient protection measures were put in place. Nevertheless, said Committee expert Yuval Shany, "this ruling sets forth new standards that could facilitate the success of future climate change-related asylum claim"⁷⁷.

C. The African approach to Climate Refugees

Over the past several decades, displacements have reached daunting proportions in Africa, particularly sub-Saharan Africa. According to Francis Deng, the first representative of the UN Secretary-General on IDPs, between 1969 and 1994, the number of IDPs in Africa soared to between 10 million and 15 million. In 1994, the long-standing and alarming increase in IDPs prompted the Organization of African Unity to state that internal displacement is "one of the most tragic humanitarian and human rights crises in Africa today"⁷⁸. These trends continue today, with the climate crisis increasingly recognized as a determining factor in such displacement and migration. Of the total number of IDPs, 30 percent originate from African nations (12.4 million), and of the total 3.5 million new internal displacements in Africa in 2015, 1.1 million were triggered by rapid-onset natural disasters (principally floods)⁷⁹.

Africa is already one step ahead at the regional level, and the continent has had some recognizable legal developments in terms of the protection of climate refugees. The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa is the most promising of the regional accords. Binding upon all member states of the OAU, it is founded upon the idea that "all the problems of [Africa] must be solved in the spirit of the Charter of the Organization of African Unity and in the African context"⁸⁰. It contains the definition of a refugee found in the Convention of 1951, but also includes a broader secondary definition that would encompass climate refugees. It states: "The term refugee shall also apply to every person who, owing to external aggression, occupation, foreign

77. Historic UN Human Rights case opens door to climate change asylum claims. United Nations Human Rights: Office of the High Commissioner. 21 January 2020. <https://www.ohchr.org/en/press-releases/2020/01/historic-un-human-rights-case-opens-door-climate-change-asylum-claims?LangID=E&NewsID=25482>

78. Andre-Michel Essoungou, "Africa's Displaced People: Out of the Shadows," UN Africa Renewal, accessed September 11, 2019, <https://www.un.org/africarenewal/magazine/april-2010/africa%E2%80%99s-displaced-people-out-shadows>.

79. Climate Refugees. Othring and Belonging Institute. <https://belonging.berkeley.edu/climate-refugees>

80. Union (AU), Convention Governing the Specific Aspects of Refugee Problems in Africa, art 1(2) (10 September 1969)

domination, or events seriously disturbing public order in either part or the whole of his country or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside of his country of origin or nationality⁸¹". This definition can be understood to cover persons fleeing climate-induced disasters and extreme weather events but requires further clarification by the treaty monitoring body. It has since been argued that "events seriously disturbing public order" may apply to persons fleeing sudden-onset disasters, including climate refugees. These definitions were applied by some states in the Horn of Africa during the 2011-12 droughts in admitting displaced persons from Somalia⁸². However, the OAU Convention presents several challenges for climate refugees. First, qualifying under this definition, would not necessarily guarantee that they would receive asylum, nor would it entitle them to the provision of social services. The treaty states that "Member States of the OAU shall use their best endeavors consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality⁸³". The provision of asylum is therefore subject to the political attitudes of the respective African nations⁸⁴. Additionally, the treaty lacks any provision relating to medical treatment, food, education, housing, or any other social service that a refugee would need to adapt to life in a host state. Thus, although climate refugees would meet the definition of refugees under the OAU Convention, the benefits accorded to them under the treaty would be entirely dependent upon the domestic politics of the nation they sought refuge in. Furthermore, although the OAU Refugee Convention is obligatory in Africa, it has no monitoring mechanism and has hardly been applied to respond to the situations of climate refugees.

In addition, while the African Charter on Human and Peoples Rights (1981) does not specifically refer to climate refugees, it gives special consideration to the right to development and to the recognition that civil and political rights cannot be detached from economic, social, and cultural rights. This is enough ground for the AU to encourage regional efforts that are cost-effective to host refugees and specifically climate refugees. Moreover, the African Union's targeted response to the international IDP crisis has illustrated the capacity for such frameworks to be configured in ways that ameliorate climate-induced displacement. In the context of such historic and ongoing displacement across the continent, in 2009 African leaders within the African Union adopted the Convention for the Protection and Assistance of Internally Displaced Persons of Africa, conventionally known as the Kampala Convention, the first legally binding international instrument on IDPs. The Kampala Convention designates the state as the primary actor in addressing and mitigating internal displacement in collaboration with civil society and humanitarian organizations. The convention creates a legally binding definition for IDPs that is identical to the guiding principle's definition and requires that states provide IDPs with legal documentation. Furthermore, the convention includes state obligations for the prevention of internal displacement, for protection and assistance during displacement, and for the creation of durable solutions and compensation. The agency of IDPs is emphasized throughout the Kampala Convention's obligations, stating that IDPs must be consulted and allowed to participate in decisions about protection and assistance during displacement and be involved in the decision-making of whether they will be returned, locally integrated, or relocated.

While the provisions of the Kampala Convention are extensive, implementation remains uneven, 30 states have ratified the convention while 18 have signed but not ratified it. Including 23 provisions, Article 2 of the Kampala Convention provides an indication of its objectives as follows: (1) Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions; (2) Establish a legal framework for

81. Ibid.

82. E Ferris & J Bergmann 'Soft law, migration and climate change governance' (2017) 8 *Journal of Human Rights and the Environment* 6-29.

83. Ibid. art 2(1)

84. Nathan Stopper. *Adrift From Home and Neglected by International Law: Searching for Obligations to Provide Climate Refugees with Social Services*. *Columbia Journal of Transnational Law*. Page 21.

preventing internal displacement, and protecting and assisting internally displaced persons in Africa; (3) Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences; (4) Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons; (5) Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons. Kampala Convention (n 2) art 2. Notably, it requires states to protect the rights of all persons against being arbitrarily displaced and, in so doing, to respect provisions of international law that are relevant for the protection of IDPs. Moreover, article 1 of the Kampala Convention further accentuates the general obligation of states to prevent conditions that result in displacement such as “political, social, cultural, environmental and economic exclusion and marginalization”. The Kampala Convention further emphasizes obligations relating to protection and assistance, including cooperation among states in the protection of these persons and the facilitation of access to humanitarian assistance.

Moreover, the Convention underscores the duty of international organizations and humanitarian agencies and emphasizes protection for IDP. The obligations of the AU, notably within the context of the responsibility of states to protect and support, are emphasized. Further, the obligation of states during internal displacement, including positive steps that must be undertaken by states with the assistance of international organizations and agencies, is underscored. The Kampala Convention provides for protection in the context of development projects. Moreover, it advances durable solutions and underscores the relevance of compensation, the registration of IDPs and institutional protection through the machinery of a Conference of State Parties (COSP) to the Kampala Convention, the African Peer Review Mechanism (APRM) and the African Commission on Human and Peoples Rights (African Commission). Specifically, art 14 provides: (1) States Parties agree to establish a Conference of States Parties to this Convention to monitor and review the implementation of the objectives of this Convention. (2) States Parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the States Parties. (3) States Parties agree that the Conference of the States Parties shall be convened regularly and facilitated by the African Union. (4) States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples’ Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.

Furthermore, since the adoption of the Kampala Convention in 2009, norms have emerged at the national level as a direct substantive effect of the treaty⁸⁵. At least seven countries have developed laws and policies (including draft laws and policies) leveraging on the Kampala Convention: Liberia, Malawi, Niger, Nigeria, South Sudan, Somalia, and Zambia⁸⁶. While reflecting the Kampala Convention as an important source, these frameworks also draw on key provisions of the Kampala Convention. For instance, the Liberia IDP law and the Malawi IDP Framework draw their definition of IDPs from the Kampala Convention⁸⁷. In addition to the definition of IDPs in the Kampala Convention, the Niger IDP law draws on the provisions of the

85. The Kampala Convention requires states to ‘incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law’. Art 3(2)(a) Kampala Convention.

86. Federal Republic of Nigeria National Policy on Internally Displaced Persons in Nigeria (2012) (Draft) (Nigeria IDP Policy); Guidelines for the Compensation and Resettlement of Internally Displaced Persons (2013) (Zambian Policy); Policy Framework on Displacement within Somalia (2014) (Somalia IDP Policy); Puntland Policy Guidelines on Displacement (2014) (Puntland IDP Policy); Malawi Durable Solutions Framework for Internally Displaced Persons and Flood affected Populations (2015) (Malawi IDP Framework); Niger Law Relating to the Protection and Assistance of Internally Displaced Persons (2018) (Niger IDP Law); Liberia: Act for the implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2018) (Draft) (Liberia IDP Law); South Sudan: Protection and Assistance of Internally Displaced Persons Act, 2019 (Draft) (South Sudan IDP Law).

87. Liberia IDP Law (n 23); Malawi IDP Framework (n 23).

Kampala Convention regarding IDP registration and the responsibility of humanitarian actors. Moreover, an emphasis on coordination notably is emphasized in the treaty⁸⁸. The South Sudan IDP Law also draws heavily on the Kampala Convention. The South Sudan framework leverages on the Kampala Convention in recognizing climate change as a root cause of internal displacement, requiring that measures be established to address its effects⁸⁹. As with the South Sudan framework, the Somalia IDP Policy recognizes climate change as a root cause of internal displacement⁹⁰.

Most recently, the African Unions' Migration Policy Framework for Africa (2018 – 2030) and subsequent development Protocol to the Treaty Establishing Free Movement of Persons, Right of Residence and Right of Establishment in 2018 set the ground for easing the challenges of cross border migration, including for those that migrate because of gradual environmental changes. During the tenth birthday of the Kampala Convention, a regional focus on forced migrants, including IDPs, was adopted through the designation by the AU Assembly of the year 2019 as the Year of Refugees, Returnees, and Internally Displaced Persons in Africa⁹¹. The policy framework recognizes that migration is a multi-faceted phenomenon that demands the action of different stakeholders at national and regional levels. Finally, free movement within regional economic communities (RECs) has been encouraged as a way of sorting out the challenges brought about by cross-border movements caused by climate changes. The East and Horn of African states have recently taken steps in this direction. On 26 February 2020, sectoral ministers approved the IGAD Protocol on Free Movement, setting a roadmap for its final adoption and implementation by regional states. Freedom of movement would curtail many of the violations and risks that border controls imposed on climate refugees. It would facilitate entry and lawful stay in the region for those who are displaced.

88. Niger IDP Law (n 23).

89. South Sudan IDP Law (n 23).

90. Somalia IDP Policy (n 23).

91. See African Union Theme: Year of Refugees, Returnees, and Internally Displaced Persons in Africa: Towards durable solutions for forcibly displaced persons in Africa (2019).

CONCLUSION

The multiple causes of displacement and migration are often difficult to disentangle. Increasingly, climate change and environmental degradation directly cause or compound with other factors to create or exacerbate conditions that cause people to flee their homelands. Despite having cumulatively emitted the least carbon emissions, those being hit first and the worst by anthropogenic climate change are largely concentrated in the Third world, like Africa. The detrimental changes to our environments and the social or political factors which contribute to human displacement within and across borders only increase in importance with time. Against this backdrop, deciphering the notion of the climate refugee is no easy task. Indeed, the idea of the refugee normally requires national and international legal obligations towards vulnerable groups seeking refuge away from their homes. However, as emphasized earlier, there is currently no such legal category as a climate refugee. To aid efforts to contain this new form of refugee, we propose four recommendations:

- **Rethinking the status of refugees:** Either creating a new refugee convention, the Convention Relating to the Status of Climate Refugees, or amending the 1951 Refugee Convention. Regardless of the pathway forward, the agreement must satisfy a major requirement: it must qualify individuals and communities that cannot avail themselves of government relief from the effects of the climate crisis as those who are “persecuted” and thus allowed to formally make a claim for asylum in a country of their choosing. The refugee paradigm hinges on the actor of persecution originating from the territory where the displacement is occurring. As the climate crisis intensifies, however, the paradigm gets complicated, as the drivers of the climate crisis, including methane released from landfills, natural gas and petroleum industries, agriculture and livestock, and deforestation are not necessarily where one’s safety or well-being are most threatened because of the climate crisis. Thus, required is a new understanding of “persecution” that could account for the severe nature of the climate crisis and climate-induced displacement, and serve as the basis for a normative framing of climate refugee protection.
- **Strengthening the links between the Warsaw International Mechanism and the Task Force on Displacement:** This approach is supposed to identify climate-induced displacement as loss and damages and thus serve as a basis for liability and/or compensation. In the same vein, establishing two international insurance pools: (a) one to compensate nations for damages from climate crisis-induced short- and long-term natural disasters (including climate-induced displacement); and (b) one to compensate host nations that resettle climate refugees, with higher premiums for nations with greater historical responsibility for emissions and the destruction of carbon sinks.
- **Strengthening resilience of African countries to climate change:** The governments in Africa are aware of the impact of climate change and different actions are done to mitigate the consequences on the survival of the affected population. However, more resources need to developing of participative and preventive actions to counter the effects of climate change at the local level.
- **Development of a regional framework of dialogue and collaboration on climate change and displacement:** With the existing Kampala Convention on Internally Displaced Persons and a common culture of welcoming refugees in different parts of Africa, the latter can be prone to the creation of dedicated regional platforms on the mitigation of the effects of climate change. The existing Regional Economic Communities should host The Dialogue Platforms.

About the authors,

Abdessalam Jaldi

Abdessalam Jaldi is an International Relations Specialist, with a focus on International Law and International Relations. He is currently working in the Policy Center for the New South as a core member of an analytical study examining the Maghreb mutations, the Euro-African relations, the new tendencies of international law and the influence of India and Africa. Ph.D Doctor in Law from France in 2018, he has four years of experience working in non-profit, social research and electoral observations.

Amal El Ouassif

Amal El Ouassif is an International Relations Specialist at the Policy Center for the New South. Prior to this, she worked as a program coordinator at the Westminster Foundation for Democracy and served as a consultant in development policies with the office of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) in Morocco. She is also a former bluebook trainee in the Directorate General of Employment Social Affairs and Inclusion in the European Commission in Brussels. Amal has a Master of Art in EU's International Relations and Diplomacy Studies, from the College of Europe in Bruges and a Master in Development Studies from UPMF-Grenoble. Her area of interest include Africa- Europe cooperation and migration.

Policy Center for the New South

Building C, Suncity Complex, Al Bortokal Street, Hay Riad 10100 - Rabat.

Email : contact@policycenter.ma

Phone : +212 (0) 537 54 04 04 / Fax : +212 (0) 537 71 31 54

Website : www.policycenter.ma

