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## THE CLIMATE CHANGE AND HUMAN RIGHTS NEXUS IN AFRICA

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### ABSTRACT

People in Sub-Saharan Africa are particularly vulnerable to the consequences of climate change because of a variety of factors, including poverty and the intensity of the effects of climate change on people whose livelihoods still largely depend on the land. The outcome is gross violations of human rights among the people of Africa. This study examines the link between climate change and human rights from an African perspective. It explores the international framework protecting the human rights of people severely affected by climate change in order to determine to what extent it adequately protects these rights. Drawing on examples from Zimbabwe, Nigeria and countries involved in armed conflict, the authors argue that African governments have responsibilities to protect fundamental human rights in the context of climate change. Recommendations are offered on how human rights can be more effectively protected in the era of climate change.

Keywords: Adaptation and Mitigation; Climate Change; Displacement; Human Rights; Sub-Saharan Africa.

### Introduction

Climate change is one of the major threats of the 21st century and poses a global challenge, not only to the environment, but also to social conditions and human lives.<sup>1</sup>

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<sup>1</sup> M. Wallstrom, 'Meeting the Long-Term Challenge of Global Warming: A European Perspective,' in D. Michel, (ed.) *Climate Policy for the 21st Century: Meeting the Long-term Challenge of*

It is in this context that climate change cannot merely be understood as an environmental or even economic problem,<sup>2</sup> but also as a problem of human rights.<sup>3</sup> The consequences of a changing climate include transformation of weather patterns, with more intense droughts and rainy spells, tropical storms, rising sea levels, biodiversity destruction and wider occurrence of vector borne diseases. These occurrences in turn lead to human migration and displacement, food insecurity, water shortages and greater risk of certain illnesses. Many of these consequences are interrelated and the consequences are often compounded for those who are most vulnerable. The worst effects of climate change are often experienced by marginalised and vulnerable people. Marginalised people often live in greater poverty resulting in less monetary capacity to deal with challenges posed by changing environments.<sup>4</sup> For this reason, underdeveloped countries are often faced with the most dramatic effects of climate change.<sup>5</sup>

Africa is geographically vulnerable to a multitude of adverse effects of climate change because of its location in the tropics, low-lying topography and susceptible geographical locations, extreme poverty and low adaptive capacity.<sup>6</sup> People in Africa are largely at the mercy of the weather and other natural resources, with this region being vulnerable to frequent storms, cyclones, tidal surges and sea-level rises.<sup>7</sup> It is projected that up to 150 million people could be permanently displaced in Africa due to climate change by the middle of this century.<sup>8</sup> The projected sea-level rise and increased droughts would make large parts of the African continent uninhabitable, including through desertification of inland areas and the submersion of coastal cities,<sup>9</sup> resulting in huge

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*Global Warming*, Washington D.C.: Centre for Transatlantic Relations 2003, p. 17; S.C. Aminzadeh, 'A Moral Imperative: The Human Rights Implications of Climate Change', *Hastings International and Comparative Law Review* 2007-30, pp. 231-265; L. Horn and S. Freeland, 'More than Hot Air: Reflections on the Relationship between Climate Change and Human Rights', *13 University of Western Sydney Law Review* 2009-13, pp. 101-135.

<sup>2</sup> See N. Stern, 'Report on Economic Impacts on climate change', at: [http://www.hm-treasury.gov.uk/stern\\_review\\_report.htm](http://www.hm-treasury.gov.uk/stern_review_report.htm) (accessed on 25 March 2017).

<sup>3</sup> See International Council on Human Rights Policy, 'Climate Change and Human Rights: A Rough Guide', Versoix 2008, pp. 12-14. at:

[http://www2.ohchr.org/english/issues/climatechange/docs/submissions/136\\_report.pdf](http://www2.ohchr.org/english/issues/climatechange/docs/submissions/136_report.pdf) (accessed on 25 March 2017).

<sup>4</sup> S. Humphreys (Ed.), *Human Rights and Climate Change*, Cambridge: Cambridge University Press 2011, p. 1.

<sup>5</sup> *Ibid.*

<sup>6</sup> A.O. Jegede, *The climate change regulatory framework and indigenous peoples' lands in Africa: Human rights implications*, Pretoria: Pretoria University Law Press 2016, p. 3.

<sup>7</sup> D. Hodgkinson, et al, 'The Hour when the Ship Comes in: A Convention for Persons Displaced by Climate Change' *Monash University Law Review* 2010-36, pp. 5-69.

<sup>8</sup> G. Black, 'The Gathering Storm: What Happened When Global Warming Turns Millions of Destitute Muslims into Environmental Refugees?' at: <http://www.onearth.org/article/the-gathering-storm> (accessed 10 March 2017).

<sup>9</sup> R. Fujikura and M. Kawanishi (Eds), *Climate Change Adaptation and International Development* London: Earthscan 2011, p. 25. See also, C. Boano, R. Zetter and T. Morris, 'Environmentally displaced people: Understanding the linkages between environmental change, livelihoods and

loss of life and damage to property, amongst other consequences.<sup>10</sup> These consequences are the result of a systematic warming of the atmosphere because of the burning of greenhouse gasses (GHG), which leads to more volatile weather patterns, warming oceans and melting ice-caps. Ironically, Africa's GHG emissions as a whole is among the lowest in the world, both aggregated and per capita, and is almost negligible when compared to that of developed and large developing countries.<sup>11</sup>

Therefore, the international community is currently confronted with the question of how to deal with the consequences of climate change, as well as with the question of how to limit further impact. As part of this process, it is critical to recognise and understand the various threats posed by climate change, our collective vulnerability to them, as well as assess which adaptive responses could be implemented.<sup>12</sup> One way of making sense of these consequences on vulnerable people and formulating a strategy to address these challenges is through a human rights approach. For African governments, their main concern when it comes to policy is the protection of their people against the effects of climate change and, thus, the focus is on adaptation, rather than on mitigation of the effects of climate change. One of the most pertinent areas of concern is climate-induced displacement.<sup>13</sup> The movement of people in response to climate-induced events may cause significant human rights concerns if the governments of Africa cannot resettle this growing population through effective disaster response strategies and climate adaptation.

This study considered the extent of the impact of climate change on people in Africa from a human rights perspective, placing specific emphasis on climate-induced migration and displacement. Its aim is to determine the extent to which the existing legal framework provides protection for people suffering human rights violations as a result of climate change, and to make recommendations on how this can be improved. After the Introduction, section one sets out the human rights approach to climate change from an African perspective. The second section explores the effects of climate change on human rights in Africa with insights from Zimbabwe, Nigeria and South

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forced migration', Forced Migration Policy Briefing 1, Refugee Studies Centre: Oxford Department of International Development, at:

<https://www.rsc.ox.ac.uk/files/publications/policy-briefing-series/pb1-environmentally-displaced-people-2008.pdf>(accessed on 25 March 2017).

<sup>10</sup> R. Shaw, J.M. Pulhin and J.J. Pereira (Eds), *Climate Change Adaptation and Disaster Risk Reduction: Issues and Challenges*, Bingley: Emerald 2010, p. 336.

<sup>11</sup> Jegede, 2016 *supra* note 7, p. 3.

<sup>12</sup> J. McCarthy et al, *Climate Change 2001: Impacts, Adaptation and Vulnerability—Contribution of Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge: Cambridge University Press 2001, p. 77.

<sup>13</sup> E.M. Njoroge, 'Africa's humanitarian action in migration policy: adjusting to environment and climate change', Institute of Resource Assessment/African Climate Change Fellowship Program, University of Dar es Salaam 2016, at:

[https://unfccc.int/files/adaptation/groups\\_committees/loss\\_and\\_damage\\_executive\\_committee/application/pdf/africa-focused\\_environmental\\_pillar\\_research\\_summary\\_final.pdf](https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/africa-focused_environmental_pillar_research_summary_final.pdf) (accessed on 25 March 2017).

Sudan. These countries were selected because they represent the broader geopolitical zones of Sub-Saharan Africa.

Nigeria, a West African country, is the largest economy of Africa, as well as the most populated country on the continent. However, the ongoing Boko Haram insurgency, which has displaced millions of people, has added to woes of the country's response to climate change. South Sudan, an arid country located in Northern Africa, is a member of the Eastern African Community. The country is the newest country in Africa. The impact from the ongoing political conflict, and the country's vulnerability to climate change, make the country a suitable choice for exploring the effects of climate change on human rights of people in displaced contexts in Africa. The Southern African geopolitical bloc is represented by Zimbabwe, a country which has been experiencing a political crisis over the last decade. This selection presents a perspective of analysis for climate change effects in such contexts. The third and final section offers recommendations for legal and policy interventions.

## **I. Human Rights Approach to Climate Change Mitigation and Adaptation**

There are three attributes that are central to understanding human rights, namely that all human rights are indivisible, interdependent and inter-related. This means that rights cannot be considered in isolation, but rather their relationship to other rights must also be taken into account. This is also relevant in the context of human rights affected by climate change and can be useful in assessing the climate change regulatory framework in relation to human rights in Africa. In the continuing legal debate about accountability and the allocation of responsibility for climate change, a human rights approach may at least to some extent provide a certain structure to this discussion. In order for us to impose a duty on states to protect people against the effects of climate change, it is necessary to determine whether the distress caused by the impacts of climate change violate human rights as recognised under existing international and regional human rights legislation.<sup>14</sup>

The primary sources of human rights at an international level are human rights instruments such as covenants, conventions and declarations adopted under the auspices of the United Nations (UN) and regional bodies—in the case of Africa, the African Union (AU). At the international and regional levels, the primary sources of human rights are the Universal Declaration of Human Rights (UDHR),<sup>15</sup> the International Covenant on Civil and Political Rights (ICCPR)<sup>16</sup> and the International Covenant on Economic and Social Cultural Rights (ICESCR), which together form

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<sup>14</sup> J.P. Louviere and D.A. Brown, 'The Significance of Understanding Inadequate National Climate Change Programs as Human Rights Violation', *Climate Ethics* 2008, at: <http://climateethics.org/?p=39>(accessed on 25 March 2017).

<sup>15</sup> 1948 Universal Declaration of Human Rights (UDHR), General Assembly Resolution 217 A (III) (1948).

<sup>16</sup> 1966 International Covenant on Civil and Political Rights (ICCPR), 9 UNTS 1 (1966).

the International Bill of Rights.<sup>17</sup> At the regional level, instruments relevant to a human rights approach to climate change are principally the African Charter on Human and Peoples' Rights (African Charter),<sup>18</sup> the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),<sup>19</sup> and the African Convention on the Conservation of Nature and Natural Resources.<sup>20</sup> The African Charter is a particularly useful tool in this regard since it contains extensive protection of civil and political rights, as well as social, cultural and economic rights of individuals and peoples. Furthermore, it has universal ratification, with the exception of South Sudan.<sup>21</sup>

Climate change has an impact on various rights as protected by the international human rights framework. Firstly, climate change has a direct effect on the interrelated rights to life, health and security of the person. The rights to life and security are enshrined in Article 3 of the UDHR<sup>22</sup> and Article 6(1)<sup>23</sup> of the ICCPR respectively. With regards to how the right to life should be understood, the UN Human Rights Committee in its General Comment 6<sup>24</sup> warned against interpreting the right to life in a narrow or restrictive manner. It also insists that protection of this right requires the state to take positive measures.<sup>25</sup> This means that where a government fails to take reasonable measures to prevent and adapt to climate change, and preventable harm results from it, those who are harmed may seek redress for violations of their right to life.<sup>26</sup> On the right to health, Article 25 of the UDHR and Article 12(1) of the ICESCR provide that 'everyone has the right to a standard of living adequate for the health and well-being of himself and his family.'

Climate change directly and indirectly affects the enjoyment of the right to life and health of people and communities in a number of ways. The standard and quality of life of people and communities may be degraded because of harsh storms, flooding,

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<sup>17</sup> 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), 2200A (XXI) (1966).

<sup>18</sup> 1981 African Charter on Human and Peoples' Rights, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982).

<sup>19</sup> 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), (2009).

<sup>20</sup> 2003 The African Convention on the Conservation of Nature and Natural Resources (Revised version) (Conservation Convention 2003).

<sup>21</sup> 'Ratification table: African Charter on Human and Peoples' Rights' at:

<http://www.achpr.org/instruments/achpr/ratification/> (accessed on 2 April 2017).

<sup>22</sup> UDHR 1948 *supra* note 16, Article 3 provides 'everyone has the right to life, liberty and security of person'.

<sup>23</sup> ICCPR 1966 *supra* note 17, Article 6(1) provides 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'

<sup>24</sup> UN Human Rights Committee, General comment No. 6 - the Right to Life (1982). Paras. 1 and 5, at: <http://www.unhchr.ch/tbs/doc.nsf/0/84ab9690ccd81fc7c12563ed0046fae3> (accessed on 2 April 2017).

<sup>25</sup> J.V. Doussa, A. Corkery, and R. Chartres, 'Human Rights and Climate Change', *Australian International Law Journal* 2007-14, pp. 161-180.

<sup>26</sup> Aminzadeh 2007 *supra* note 2, p. 251.

rising sea levels, expanding deserts and heat waves caused by climate change. Those who live in areas affected by climate change also have higher exposure to disease through lack of nutrition and a lack of access to clean water for drinking and hygiene, directly impacting on their quality of life.<sup>27</sup> Climate change also affects the intensity of a wide range of diseases such as vector-borne, water-borne and respiratory diseases. In this regard, the World Health Organization has estimated that since the 1970s, at least 150,000 deaths every year are caused by the impacts of climate change.<sup>28</sup> The risk of dengue fever is projected to affect 3.5 billion people by 2085 due to climate change, since changes in temperature and rainfall will make it harder to control the disease.<sup>29</sup>

Secondly, climate change can lead to infringements of the right to food. Article 11(1) and (2) of the ICESCR<sup>30</sup> recognises the right to food explicitly. It states that everyone has a right to adequate food and to be free from hunger. The right to food includes availability, accessibility and stability of supply, as well as the utilisation of food.<sup>31</sup> It has been observed that the availability of food will be reduced by a drop in food production, caused by extreme weather events, and changes in the suitability or availability of arable land and water.<sup>32</sup> Currently, about 800 million people are suffering from malnutrition or are at risk of hunger. Climate change is expected to increase this risk by an estimated 50 million people by 2020.<sup>33</sup> In Africa, shrinking arable land (because

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<sup>27</sup> Human Rights Committee of New South Wales Young Lawyers, *Human Rights and Climate Change Study: A Submission to the OHCHR*, 2008, p. 11. at:

[http://www2.ohchr.org/english/issues/climatechange/docs/submissions/NSW\\_Young\\_Lawyers\\_HR\\_ClimateChange.pdf](http://www2.ohchr.org/english/issues/climatechange/docs/submissions/NSW_Young_Lawyers_HR_ClimateChange.pdf) (accessed on 2 April 2017).

<sup>28</sup> N. Stern, 'Report on Climate Change', at:

[http://www.hm-treasury.gov.uk/stern\\_review\\_report.htm](http://www.hm-treasury.gov.uk/stern_review_report.htm) (accessed on 2 April 2017).

<sup>29</sup> Human Rights Committee of New South Wales Young Lawyers 2008 *supra* note 28, p. 11.

<sup>30</sup> ICESCR 1966 *supra* note 18, article 11(1) states that 'the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.' Article 11(2) of the ICESCR states that 'The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.'

<sup>31</sup> FAO, 'the High Level Conference on Food Security: The Challenges of Climate Change and Bioenergy', 2008, p. 2-3, at: <ftp://ftp.fao.org/docrep/fao/meeting/013/ai782e.pdf> (accessed on 2 April 2017).

<sup>32</sup> FAO, 2008 *supra* note 33, p. 2.

<sup>33</sup> Greenpeace, 'Human Rights and the Climate Crisis: Acting Today to Prevent Tragedy Tomorrow', A Briefing Paper, 2008, p. 4 at:

[http://www2.ohchr.org/english/issues/climatechange/docs/submissions/Greenpeace\\_HR\\_ClimateCrisis.pdf](http://www2.ohchr.org/english/issues/climatechange/docs/submissions/Greenpeace_HR_ClimateCrisis.pdf) (accessed on 2 April 2017).

of sea level rise and desertification), shorter growing seasons (because of lower and less predictable rainfall) and lower crop yields will exacerbate malnutrition, hunger and greater reliance on food imports by already poor countries.

Third, while the right to water is not expressly mentioned in the UN Bill of Rights, the Economic and Social Council (ESC) of the UN in General Comment 15 on the Right to Water asserts that the right to water is inherent in many other explicitly mentioned rights, such as the right to health (Article 12 of the ICESCR)<sup>34</sup>, and to adequate food (Article 11 of the ICESCR).<sup>35</sup> The ESC concludes that that ‘the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.’<sup>36</sup> The most pertinent impact of climate change on the right to water is the lack of access of fresh water as a result of changing rainfall patterns and higher condensation. This may further trigger the violation of protected human rights to health, food and quality of life, as discussed above. Changes in water quantity and quality due to climate change are expected to increase vulnerability of poor rural farmers, especially in the arid and semi-arid tropics and African mega-deltas.<sup>37</sup> The ‘adverse effects of climate change on freshwater systems aggravate the impact of other stresses, such as population growth, changing economic activity, land-use change and urbanization.’<sup>38</sup>

Finally, one of the major human rights issues resulting from climate change is forced migration and displacement. The large influx of refugees into shrinking areas with better access to water and other resources is a crucial human rights issue in the context of climate change.<sup>39</sup> Although the current definition of refugees<sup>40</sup> does not include

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<sup>34</sup> ICESCR 1966 *supra* note 18, Article 12(1) states that ‘the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’

<sup>35</sup> ICESCR 1966 *supra* note 18, Article 11(1) provides that ‘the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent; UDHR 1948 *supra* note 16, Article 25 guarantees all people the ‘right to a standard of living adequate for the health and well-being of himself and of his family.’

<sup>36</sup> Economic and Social Council, General Comment 15 (2002), The right to water (arts 11 and 12 of the ICESCR), para. 3, at: <http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94?Opendocument> (accessed on 2 April 2017).

<sup>37</sup> B.C., Bates, Z.W. Kundzewicz, S. Wu and J.P. Palutikof (Eds), *Climate Change and Water*, Geneva: the Intergovernmental Panel on Climate Change (IPCC) 2008, p. 3, at: <http://www.ipcc.ch/pdf/technical-papers/climate-change-water-en.pdf> (accessed 2 April 2017).

<sup>38</sup> Bates et al., *supra* note 40, p. 3.

<sup>39</sup> Aminzadeh 2007 *supra* note 2, p. 257.

<sup>40</sup> 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention) UNTC 2545 (1950), Article 1(A)(2) of defines a refugee as any person who ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

climate change refugees, environmentalists and international human rights scholars have noted the existence of the phenomenon of climate and environmentally-induced refugees, and have started to agitate for the definition to be expanded.<sup>41</sup> Migration in response to environmental degradation is fast becoming the most pervasive form of forced migration to occur in the 21st century. By 2025, up to 150 million people may be forced to migrate because of the impacts of global warming.<sup>42</sup>

Clearly, the duties placed on states in terms of international law to respect, protect, promote and fulfil human rights are equally as relevant in the context of climate change. While the direct causes of climate change may be hard to pinpoint, states have the duty to protect their citizens against the consequences, to the extent that this is reasonable. There is, thus, a duty on African states to take preventative measures to protect people from the impacts of climate change and to promote mitigation and adaptation measures in order to minimise the impact of a changing climate.

## **II. Effect of Climate Change on Human Rights in Africa**

This section examines the link between climate change and human rights in Africa. It scrutinises the consequences of climate change on human rights in Africa. It also analyses security issues related to climate change, because in the absence of security, the adoption of measures to protect human rights cannot always be effective. This section focuses specifically on Zimbabwe, Nigeria and South Sudan. Analytical references are also made to similar cases from other African countries, in order to enrich the analysis.

### **II.1 Climate Change and the Right to Water and Sanitation in Zimbabwe**

Zimbabwe is a semi-arid country with 'limited water resources'.<sup>43</sup> Even without the added stress of climate change, current projections based on population growth estimate that, by 2025, water availability in Zimbabwe will be limited to 1000-1700m<sup>3</sup>

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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'.

'A climate refugee is one who leaves his or her home and seeks refuge elsewhere, and does so for reasons relating the environment. In the face of environmental problems such as drought, desertification, and floods, affected people feel that they have no alternative but to leave their homes in order to survive'. See, Aminzadeh, 2007 *supra* note 2, p. 256.

<sup>42</sup> J.B. Cooper, 'Environmental Refugees: Meeting the Requirements of the Refugee Definition', *New York University Environmental Law Journal* 1988-6, pp. 484-485; N. Myers, 'Environmental Refugees in a Globally Warmed World' *BioScience* 1993-43, pp. 752-761; IPCC 'Climate Change and Water: IPCC Technical Paper VI', IPCC Working Group II 2008 p. 85.

<sup>43</sup> World Bank, 'Addressing Climate Change Threats to Zimbabwe's Water Resources', at: <http://www.worldbank.org/en/news/feature/2015/02/19/addressing-climate-change-threats-zimbabwe-water-resources> (accessed on 25 March 2017).



per person per year.<sup>44</sup> By 2050, ‘per capita water availability is forecast to fall by as much as 38 percent’ in the best case scenario.<sup>45</sup> Yet, it is not an easy task to track the water-related consequences of climate change because of significant existing cyclical variation, such as drought caused by an El Nino phenomenon.

Despite uncertainty about the exact extent of the impact of climate change in the region, water scarcity is one of the foreseen consequences of climate change in Africa, particularly in Southern Africa, where higher evaporation and lower precipitation levels are projected to result in severe droughts.<sup>46</sup> Other water related risks posed by climate change include flooding, rising sea levels and changes in snow coverage.<sup>47</sup> Particularly in a continent where a large part of the population is still dependent on small scale farming for survival, the stress that climate change places on the water systems could mean the difference between life and death. For example, in Zimbabwe 66 percent of the labour force is employed in agriculture. More significantly, according to 2009 estimates, about 95 percent of the population is either unemployed or underemployed and, thus, largely depends on food grown at household level for consumption.<sup>48</sup>

Where there is water scarcity, there is often also a higher risk that people may turn to untreated or unsafe water sources.<sup>49</sup> Moreover, even where water is available, it may be contaminated or of poor quality —a risk that is greater in flood-prone areas.<sup>50</sup> In sub-Saharan Africa, for example, ‘42% of the population is without access to improved water’, which leads to poor sanitation, resulting in diseases that account for 1.7 million deaths every year from hepatitis E, cholera, diarrhoea and parasitic diseases.<sup>51</sup> In Zimbabwe, 68 percent of the population live in rural areas, and of this population, 32 percent do not have access to improved water sources. More worryingly, almost 70 percent do not have access to adequate sanitation facilities.<sup>52</sup> This led to mass cholera

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<sup>44</sup> IPCC 2008 *supra* note 46, p. 79.

<sup>45</sup> World Bank *supra* note 444.

<sup>46</sup> B.E. Jiménez Cisneros, T. Oki, N.W. Arnell, G. Benito, J.G. Cogley, P. Döll, T. Jiang & S.S. Mwakalila ‘Freshwater resources’ In *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, United Kingdom and New York, NY, USA: Cambridge University Press 2014, pp. 232, 236, 240; United Nations Environmental Programme (UNEP) *Guidebook on national legislation for adaptation to climate change*, 2011 p. 4.

<sup>47</sup> K.C. Urama & N. Ozor, ‘Impacts of Climate Change on Water Resources in Africa: The Role of Adaptation’, *African Technology Policy Studies Network* 2010, p. 1.

<sup>48</sup> CIA ‘World Factbook: Zimbabwe’, at <https://www.cia.gov/library/publications/the-world-factbook/geos/zi.html> (accessed on 23 March 2017); World Bank, ‘Addressing Climate Change Threats to Zimbabwe’s Water Resources’, at <http://www.worldbank.org/en/news/feature/2015/02/19/addressing-climate-change-threats-zimbabwe-water-resources> (accessed on 25 March 2017).

<sup>49</sup> IPCC 2008, *supra* note 46 p. 70.

<sup>50</sup> UNICEF, *Strategic Framework on Environmental Sustainability for Children 2016-2017*, p. 7; African Union 2014, *supra* note 1, p. 41; UNEP 2011 *supra* note 51, p. 6.

<sup>51</sup> IPCC 2008, *supra* note 46, p. 67.

<sup>52</sup> CIA, *supra* note 53.

outbreaks in Zimbabwe between 2008 and 2009.<sup>53</sup> These existing circumstances are magnified by the increased drought and uncertain weather patterns from the changing climate in the region.

When it comes to migration, there has often been a relationship between access to water and migration in Zimbabwe, although the role of climate change in this context is less determinant. Migration in Zimbabwe has had many causes. During the droughts between 1997 and 2010, apart from the environmental stressors, the political and economic situation in the country also influenced the migration of 'hundreds of thousands' of people, many to neighbouring South Africa.<sup>54</sup> Children are particularly affected by migration, since the preservation of the family can be affected. A child's safety can be compromised by the lack of access to food and by having to collect water from far away. Education is also often interrupted.<sup>55</sup> However, adults and particularly older persons may also experience violations of their socio-economic rights to shelter, food and health care, and may be subjected to violence, xenophobia and sexual abuse when they are displaced. A lack of access to water is a strong incentive to migrate, with people often having no choice but to leave behind their livelihoods in search of alternatives in another location.

The Zimbabwean Constitution protects several human rights, which are relevant to the context of water and climate change. The Constitution explicitly provides for the right to safe, clean and potable water.<sup>56</sup> This is a very strong protection and 'the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.'<sup>57</sup> Therefore, within their policies, the government of Zimbabwe must put in place measures to ensure access to water and sanitation in the face of changing availability of this resource, and must ensure the safety of persons who are forced to leave their normal place of residence when water is no longer of sufficient quality or quantity to sustain them. In this regard, existing water management laws and policies are insufficient, since they are premised on the idea that the water resource base will remain relatively constant, while due to climate change this is no longer the case.<sup>58</sup> Existing water management systems may also 'not be robust enough to cope with the impacts of climate change on water supply reliability, flood risk, health, agriculture, energy and aquatic ecosystems.'<sup>59</sup>

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<sup>53</sup> Davis & Hirji 2014, *supra* note 50, p. ix.

<sup>54</sup> UK Government Office for Science *Migration and Global Environmental Change Future Challenges and Opportunities*, Final Project Report, 2011, p. 73.

<sup>55</sup> O.C. Ruppel 'Climate change and human vulnerability in Africa' in O.C. Ruppel & K. Ruppel-Schlichting (Eds) *Environmental law and policy in Namibia*, Windhoek: John Meinert Printing 2013, p. 284.

<sup>56</sup> Zimbabwe Constitution, Art. 77.

<sup>57</sup> *Ibid.*

<sup>58</sup> IPCC 2008, *supra* note 46 p. 48.

<sup>59</sup> *Idem*, p. xvi.

Other relevant rights protected under the Constitution include the right to dignity,<sup>60</sup> personal security,<sup>61</sup> an environment that is not harmful to health or well-being, and to have the environment protected for the benefit of present and future generations.<sup>62</sup> However, unlike the Kenyan and South African Constitutions among others, the Zimbabwean Constitution does not protect the right to ‘accessible and adequate housing, and to reasonable standards of sanitation.’<sup>63</sup> The right to dignity is a fundamental right, which is often violated in conjunction with other rights. One way in which climate change could impact on the right to dignity of people who are affected by it is if, for example, a subsistence farmer loses his livelihood through a harsh drought which wipes out all their crops and livestock, and with no insurance or support from the government, he is reduced to begging to provide for his family.

In order to address the issues posed by climate change, in 2014 Zimbabwe adopted a National Climate Change Response Strategy (NCCRS). The NCCRS identifies three areas related to water rights/resources impacted by climate change, namely water resource availability, water development and water management. It identifies specific strategies for each area, such as promoting more efficient water use practices under water management.<sup>64</sup> When it comes to the projected budget to implement this action plan, the budget allocated to water resources is by far the biggest, with a budget of 3,158 million USD. The next biggest is agriculture at 2,386 million USD, clearly emphasising the government’s commitment and recognition of the potential impact of climate change on water resources.

In terms of the action plan, water resource availability will be dealt mainly through the recycling of waste water, ensuring that there is proper monitoring of ‘hydro-meteorological parameters’ and the promotion of more sustainable water use. Water development will be done through rehabilitation and maintenance of surface and ground water sources and management of extreme weather events. Water management will include the promotion of catchment protection and the adoption of data analysis and prediction tools that incorporate climate change.<sup>65</sup> The NCCRS sets out a number of practical steps to be taken, including promoting harvesting of rainwater, discouraging uncontrolled alluvial mining along rivers and constructing flood control structures.<sup>66</sup> The strategy recognises that infrastructure improvement is required in order to address ‘poor delivery of services such as sanitation and drainage systems; adequate clean and safe water.’<sup>67</sup> Sadly, while acknowledging that climate change may result in displacement and migration, there is no section in the strategy addressing how to deal with this issue.

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<sup>60</sup> Zimbabwe Constitution, Art. 51.

<sup>61</sup> Zimbabwe Constitution, Art. 52.

<sup>62</sup> Zimbabwe Constitution, Art. 73.

<sup>63</sup> Kenyan Constitution, Art. 43(1)(b).

<sup>64</sup> Ministry of Environment, Water and Climate. *Zimbabwe National Climate Change Response Strategy* 2014, p. iv.

<sup>65</sup> *Idem*, pp. 20-22.

<sup>66</sup> *Idem*, pp. 78-81.

<sup>67</sup> *Idem*, p. 63.

While trans-boundary water is of specific importance in Zimbabwe, given that the country relies on the Zambezi and Limpopo rivers for water access and energy generation, there is surprisingly no explicit reference in the NCCRS to guarantee the proper management of these resources. However, the World Bank Report on Water and Climate Change in Zimbabwe identifies the fact that Zimbabwe hosts the Zambezi Watercourse Commission as being an important factor in engaging with this issue.<sup>68</sup> As such, it would have made sense to also include it in the NCCRS. The Kenyan National Climate Change Action Plan (NCCAP), like the Zimbabwean NCCRS, identifies the improvement of water management as one of the ‘priority adaptation actions’. The actions of ‘enhanced irrigation and drainage [...], effective trans-boundary water resources management, and flood mitigation schemes’ are aimed at reducing the impacts of droughts and floods as well as reducing reliance on rainfall for agriculture.<sup>69</sup> Furthermore, it recognises that water resource management is ‘directly linked to food security, health and GDP growth: as well as enabling irrigated agriculture.’<sup>70</sup> Finally, it recognises that ‘research is needed to assess migration as an adjustment or coping mechanism for climate variability’ and recognises the problem of over-populated slums and settlements that lack basic services when people migrate to the cities from the arid, rural areas.<sup>71</sup> It recognises drought specifically as one of the major causes of refugees being displaced to Kenya.<sup>72</sup>

Some of the proposals for addressing the problem of drought and migration include ‘seasonal forecast provision to vulnerable communities, support for community-based adaptation strategies, conservation agriculture [...], promoting heat tolerant and adaptive livestock breeds, establishment of fodder banks for dry season feeding, and institutionalising early warning systems.’<sup>73</sup> The Zimbabwean government would do well to also take some of these measures on board in order to address climate induced migration. The IPCC Report on Climate Change and Water also emphasises the importance of traditional knowledge of water harvesting and states that this should be included in climate change adaptive strategies.<sup>74</sup>

Given the discussion above, it is now necessary to determine what the government’s responsibilities are in such circumstances where drought resulting from climate change impacts human rights. Our approach is to start from the premise that all governments have responsibilities to respect, protect, promote and fulfil human rights. The duty to respect human rights is straight-forward. Clearly the state cannot take any steps that will put at risk the ability of a household to access clean and safe water for drinking, cooking and cleaning. States also cannot be actively implicated in the unlawful displacement of people. Where it is necessary to relocate people because of climate

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<sup>68</sup> Davis & Hirji 2014, *supra* note 850, p. xv.

<sup>69</sup> Government of Kenya, *National Climate Change Action Plan 2013-2017*(NCCAP) 2013, p.39.

<sup>70</sup> *Idem*, p. 33.

<sup>71</sup> *Idem*, pp. 38, 53.

<sup>72</sup> *Idem*, p. 52.

<sup>73</sup> *Idem*, p. 56.

<sup>74</sup> IPCC 2008, *supra* note 46, p. 85.

change impacts, such as drought, this must be done in a way that is sensitive to the specific needs of the people. The duty to protect is more difficult to implement in a climate change context, particularly because the industrialised countries contributing more to climate change are not under the control of the national government of Zimbabwe. Knox and Pejan attempt to solve this dilemma by stating that states also have a responsibility to protect people against 'environmental threats'.<sup>75</sup> This would mean that where drought threatens people's livelihoods and the state did not take sufficient precautionary measures to protect people, they would also be responsible. Finally, there is the positive duty of the state imposed by the responsibility to promote and fulfil. This would mean that if the state does not maintain infrastructure and there is waste water resulting from climate change induced flooding that contaminates drinking water, this would also result in state liability.

## **II.2 Climate Change and the Human Rights to Housing and Security in Nigeria**

The negative impacts of climate change across the world have not left Nigeria untouched, and it is a concern that is paramount to the Nigerian people.<sup>76</sup> Given the reality of the effects of climate change on Nigerians in relation to their rights to water, food, housing and the environment, the government has taken various steps to combat climate change. National legislation forms the main source of environmental law in Nigeria.<sup>77</sup>

The foundation of all other laws in any country is usually the Constitution. The 1999 Constitution of the Federal Republic of Nigeria (CFRN) is not silent on the protection of the environment. Section 20 of the CFRN provides that '[t]he state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.'<sup>78</sup> The section is so expansive that it covers all aspects of the environment and undoubtedly may be a strong tool in the attempt to address climate change from a human rights perspective.

However, Section 20 falls under Chapter 2 of the CFRN, labelled as Fundamental Objectives and Directive Principles of State Policy (FODPSP), which in terms of Section 6(6)(c) is non-justiciable and does not have force of law in court. The courts, however, have declared that Section 20 can become justiciable once the National

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<sup>75</sup> J.H. Knox and R. Pejan 'Human rights principles, climate change and the rights of the child', in UNICEF *The challenge of climate change: Children on the front line* 2014, p.54.

<sup>76</sup> N.M Idris, 'The effects of climate change in Nigeria' at: <https://environmentalsynergy.wordpress.com/2011/04/18/the-effects-of-climate-change-in-nigeria/> (accessed on 16 March 2017).

<sup>77</sup> A.K. Usman, *Environmental Protection Law and Practice* 2012, p. 3; O.G. Amokaye, *Environmental Law and Practice in Nigeria*, 2<sup>nd</sup> Edition 2014, p. 127.

<sup>78</sup> The Constitution came into force on 29 May 1999.

Assembly makes laws in relation to such matters.<sup>79</sup> Thus the CFRN does not protect the environment or guarantee environmental rights to the extent that a first reading may suggest. Chapter 4, which provides for fundamental, justiciable human rights, has no provision that guarantees environmental rights. The right to housing is not at all protected in the Constitution. The closest it comes to this is in article 17(3)(a), which requires the state to direct its policy to ensure that all citizens have the opportunity for securing adequate means of livelihood. The Constitution does, however, protect the rights to life as a justiciable right. Clearly, the Constitutional framework provides slim protection of the rights of those displaced by climate change.

In order to make up for the deficiency in the Constitution, and based on the inescapable need to protect the environment and people from the severe effects of climate change, the government has enacted several pieces of legislation and established a number of institutions.<sup>80</sup> These laws include the Endanger Species (Control of International Trade and Traffic) Act,<sup>81</sup> which is targeted at the conservation of wildlife and bio-diversity. Similarly, there is the Harmful Waste (Special Criminal Provision) Act, which forbids anyone or any entity to carry, deposit or dump harmful waste in Nigerian's territorial water, considering the act a crime.<sup>82</sup> There is also the Environmental Impact Assessment Act of 1992, which mandates environmental impact assessments to be carried out on projects that fall under the mandatory list, in order to determine their impact on the environment before the project starts.<sup>83</sup>

With regard to institutions, the National Environmental Standard and Regulations Enforcement Agency (Establishment) Act (NESREA) provides extensive enforcement and regulation powers to the NESRAE on environmental issues.<sup>84</sup> The National Council on Environment, composed by the Minister of Environment, the Minister of State for Environment, Commissioners of Environment (from states) and the Chief Executive of the various states' Environmental Protection Agencies without a Ministry of Environment, meet regularly and perform both consultative and advisory roles on national environmental issues.<sup>85</sup>

On the issue of climate change specifically, the National Climate Change Committee (NCCC) was established in April 2013. The NCCC is an inter-ministerial body comprising of the Ministers of National Planning Commission, Aviation, Agriculture and Rural Development and Environment, Works, Science and Technology, Water Resources, Health and Transport.<sup>86</sup> The NCCC has as its chairperson the Minister of

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<sup>79</sup> *Attorney-General Ondo State v Attorney-General Federation* (2002), 9 Nigerian Weekly Law Reports (NWLR) (PT. 772) 2222 NgSC.

<sup>80</sup> Amokaye 2014, *supra* note 78, p. 127.

<sup>81</sup> 1985 No. 11 (Cap. E9, Law of the Federation of Nigeria, 2010).

<sup>82</sup> Cap. H1 Laws of the Federation of Nigeria 2010; for further discussion on it, see Amokaye 2014, *supra* note 78, p. 128.

<sup>83</sup> Usman 2012, *supra* note 78, p. 5.

<sup>84</sup> Amokaye 2014, *supra* note 78, p. 130.

<sup>85</sup> *Idem*, p. 134.

<sup>86</sup> Jegede 2016, *supra* note 7, p. 191.

National Planning and its core mandate is developing a national framework for 'application of climate services which will promote, among others, national food security and lead to reduction in severe weather events, health hazards and vulnerability.'<sup>87</sup> The NCCC is also tasked with cross-sectoral harmonisation of climate change policies nationally.<sup>88</sup>

Apart from the NCCC, another important body set up to combat the effects of climate change in Nigeria is the Special Climate Change Unit (SCCU), which was established by the Federal Ministry of the Environment for the purpose of negotiating, educating, policy formulation, planning and establishing structures for carbon finance.<sup>89</sup> An important part of the mandate of the NCCC is the assessment of the impacts of climate change on those who are most vulnerable to the effects of climate change. Similarly, the NCCC has the mandate to represent Nigeria at international climate change negotiations and also to educate, inform and promote public awareness of climate change.<sup>90</sup>

Despite the many laws and agencies discussed above, climate change continues to be a threat to human rights and security in Nigeria.<sup>91</sup> The effect of climate change has not exempted any part of the country and 'Nigeria on the whole, has suffered from the climatic change.'<sup>92</sup> Climate change has contributed to increases in flooding and drought across the country; lakes are drying up because of increased condensation and erratic rainfall patterns, among other reasons, and there is a reduction in river flow.<sup>93</sup> The uncontrolled effects of climate change in Nigeria are also being felt by the Nigerian economy, through its impact on biodiversity, agriculture production, health, manufacturing and the energy sector.<sup>94</sup> The federal government has spent a lot of money trying to improve adaptation to climate change, for example, through disbursing two billion Naira from the ecological fund in the last two years, aimed at combating numerous ecological problems including soil erosion, desertification, flooding, drought and general environmental hazards.<sup>95</sup>

We now turn to consider the specific plight of displaced persons and the extent to which their human rights are protected and respected by the government. Nigeria is currently the country with the highest number of internally displaced persons (IDPs) in Africa, after Sudan. Out of about 36 million people displaced worldwide, 1.6 million are in

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<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> *Idem*, p. 191.

<sup>90</sup> Jegede 2016, *supra* note 7, p. 191.

<sup>91</sup> A.A. Afolabi & T.O. Adeyele, 'Social and Economic Impact of Climate Change in Nigeria', *International Journal of Advanced Studies in Ecology, Development and Sustainability* 2016-4, pp. 59.

<sup>92</sup> *Idem*, p. 63.

<sup>93</sup> O.A. Olaniyi, Z. Ojekunle and B.T. Amujo, 'Review of Climate Change and Its Effect on Nigeria Ecosystem', *International Journal of African and Asian Studies* 2013-1, pp. 57.

<sup>94</sup> N.E. Ebele & N.V. Emodi, 'Climate Change and Its Impact in Nigerian Economy', *Journal of Scientific Research and Reports* 2016-10, pp. 1-13.

<sup>95</sup> *Ibid*, p. 9.

Nigeria.<sup>96</sup> It is pertinent to state here that most cases of displacement of Nigeria are as result of issues other than climate change. Among the causes of displacement in Nigeria are Boko Haram, flooding, forced eviction, competition for resources and cattle rustling.<sup>97</sup> The various percentages of those who have been displaced in Nigeria recently shows that 91.98 percent were displaced due to insurgency, 0.96 percent were displaced due to natural disaster, while 7.96 percent due to community clashes.<sup>98</sup> However, the relationship between resource scarcity, particularly water and armed conflict, cannot be ignored here, and one must consider the extent to which climate change indirectly contributes to displacement.

While the issue of Boko Haram is the major cause of displacement in the north-eastern part of Nigeria in recent times, the impact of climate change as one of the factors rendering people homeless in the area is also clear. In this region desertification is one of the common causes of displacement and a noted effect of climate change.<sup>99</sup> Similarly, in its October 2014 report, the Nigerian Emergency Management Authority (NEMA) stated that about 66,000 people had been rendered homeless in 2014 due to flooding.<sup>100</sup> This exposes IDPs to various human rights crises, namely, the violation of the right to housing. Nigerian IDPs arguably ‘suffer the worst violations of their fundamental human rights,’ in comparison with IDPs elsewhere in the world.<sup>101</sup> For instance, during 2012, NEMA reported that about 25,000 persons were left homeless by flooding in Benue State, a state in the northern part of Nigeria.<sup>102</sup> The resources required to resettle and take care of persons displaced by such a natural disaster clearly places a major strain on the government.<sup>103</sup>

However, climate-induced displacement is set to increase over the coming years. For example, ‘[i]t is estimated that a metre rise in sea level will displace about 14 million people from the coastal areas of Nigeria’, leaving them without housing, community support structures and income.<sup>104</sup> Thus, unless drastic measures are adopted by the Nigerian government, homelessness as a result of climate change, together with the threat to security that results from mass displacements, will have monumental impacts on human rights in the not too distant future.

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<sup>96</sup> L. Olofinji, ‘IDPs: Another case of homelessness’, Global Real Estate, at: <http://nigeriarealestatehub.com/internally-displaced-persons-another-case-of-homelessness.html/> (accessed on 16 March 2017).

<sup>97</sup> *Ibid.*

<sup>98</sup> E. Aloba & S. Obaji, ‘Internal Displacement in Nigeria and the Case for Human Rights Protection of Displaced Persons’, *Journal of Law, Policy and Globalization* 2016-51, pp. 30.

<sup>99</sup> Olofinji, *supra* note 97.

<sup>100</sup> *Ibid.*

<sup>101</sup> Aloba & Obaji 2016, *supra* note 99, p. 30.

<sup>102</sup> Premium Times, ‘Flood renders 25,000 people homeless in Benue - NEMA’, available at <http://www.premiumtimesng.com/news/100165-flood-renders-25000-people-homeless-in-benue-nema.html> (accessed on 16 March 2017).

<sup>103</sup> *Idem*, p. 9.

<sup>104</sup> Peter Akpodiogaga & O. Odjugo, ‘General Overview of Climate Change Impacts in Nigeria’, *Journal Human Ecological*, 2010-29(1), pp. 47-55, at p. 50.



The devastating effects of climate change are better understood in the context of the existing housing deficit in Nigeria. This deficit has grown exponentially, and currently stands at between 17-20 million homes in deficit.<sup>105</sup> As a result of this deficit, many people, especially in coastal areas, have resorted to building informal settlements, often near the edge or even on the water. Increasingly, these informal houses are being threatened by rising sea levels because of climate change. This is a common problem in the Niger Delta. The International Federation of the Red Cross (IFRC) in an early report from 1999 stated that sea level rise resulted in approximately ten million people worldwide being affected by general and coastal flooding. In 1999, this rendered three million people homeless, and this number is increasing annually.<sup>106</sup>

Most IDPs in Nigeria, especially those who are victims of climate-induced displacement, do not receive the necessary support from the government in protecting and fulfilling their basic human rights. In the first place, this is due to a lack of understanding or concern by the government for the UN guiding principles on the rights of IDPs and of the obligations of states under the Kampala Convention.<sup>107</sup> The government of Nigeria pays little or no attention to the housing challenges of IDPs. Most IDPs in Nigeria live in schools, churches or mosques, and where the government does provide accommodation this is often destroyed as a result of the changing weather. The quest to survive has often forced IDPs to make emergency camps, which are not only inadequate due to their large number, but also fall short of standards for places where humans should live.<sup>108</sup> IDPs in Nigeria suffer from a dual-carriage challenge. The first is that they have been displaced either by climate change or insurgency, thereby losing their home, dignity and in most cases their means of sustenance and livelihood. At the same time, they do not have guarantees that the Nigerian government will fulfil its international obligations to respect, protect and fulfil their basic rights.

A second major obstacle to the realisation of the right to housing of IDPs in Nigeria is the unwillingness of the government to domesticate the relevant international instruments that protect the rights of IDPS, the principal of which is the Kampala Convention.<sup>109</sup> According to Section 12 of the Constitution, international instruments

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<sup>105</sup> M. Eke, 'Climate change and the housing sector', *The Guardian Nigeria* 25 December 2016, available at <http://www.vanguardngr.com/2012/10/climate-change-any-impact-on-nigeria/> (accessed on 16 March 2017).

<sup>106</sup> See the report of climate change in Niger Delta, prepared by Community Research and Development Centre (CRDC), available at <http://www.global-greenhouse-warming.com/climate-change-in-Niger-Delta.html> (accessed on 16 March 2017); see also N. Uche, 'Climate Change: Any Impact on Nigeria', *The Vanguard Nigeria* 29 October 2012, available at <http://www.vanguardngr.com/2012/10/climate-change-any-impact-on-nigeria/> (accessed on 16 March 2017).

<sup>107</sup> Aloba & Obaji, 2016 *supra* note 99, p.30; 2009, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). Adopted by the Special Summit of the Union held in Kampala on 22 October 2009.

<sup>108</sup> *Idem*, p. 31.

<sup>109</sup> L. Olofinji, 'IDPs: Another case of homelessness', at <http://nigeriarealestatehub.com/internally-displaced-persons-another-case-of-homelessness.html/> (accessed on 16 March 2017).

do not have force of law unless it has been ‘transformed’ or domesticated in national law.<sup>110</sup> Thus while Nigeria has ratified the Kampala Convention, it is yet to implement it domestically. In 2011, there was a National Policy on Internally Displaced Persons in Nigeria, which was prepared and presented to the government, but to date this policy has not been adopted. This of course has a grave impact on the recognition and realisation of the rights of IDPs in Nigeria, particularly the extent to which the courts can be used to hold the state accountable.<sup>111</sup>

For the rights of IDPs in Nigeria to be adequately addressed, there is an urgent need for Nigeria to adopt laws using the rights-based approach to climate change. A law based on the rights-based approach will treat IDPs as rights holders who, irrespective of the cause of their displacement, must be accorded basic human rights as guaranteed under international human rights and humanitarian law, and the relevant instruments that pertain to them. Without a change in government approaches to the IDPs, their rights cannot be guaranteed adequately. Nigeria has non-derogable obligations to respect, protect and fulfil the rights of everyone under its territory, including IDPs.

### **II.3 Climate Change and the Right to Food and Food Security of Displaced Persons in South Sudan**

South Sudan is battling the twin forces of civil war and climate change, both of which impact on food security and nutrition, resulting in a violation of the right to food.<sup>112</sup> South Sudan is the youngest country on the continent and one of the most vulnerable to climate change because of its vastness, poverty and lack of resources for adaptation, as well as the ongoing civil war. Because of the seriousness of these impacts on security and the right to food and a safe environment, the government has put in place several legal and policy mechanisms. The South Sudan Constitution of 2011 forms the foundation of all laws in the country, including environmental rights.<sup>113</sup> In the Constitution, Section 41 provides for the protection and promotion of environmental sustainability. Section 41 provides that:

‘(1) every person or community shall have the right to a clean and healthy environment;(2) every person shall have the obligation to protect the environment for the benefit of present and future generations; (3) every person shall have the right to have the environment protected for the benefit of present and future generations, through appropriate legislative action and other measures that: (a) prevent pollution and ecological degradation;

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<sup>110</sup> See the case of *Abacha v Fawehinmi* (2000), 6 NWLR (PT 660) 228.

<sup>111</sup> Aloba & Obaji 2016, *supra* note 99, p.32.

<sup>112</sup> J. Vilda, ‘Sudan – battling the twin forces of civil war and climate change’, *The Guardian*, 21 November 2011, available at <https://www.theguardian.com/environment/2011/nov/21/sudan-civil-war-climate-change> (accessed on 16 March 2017).

<sup>113</sup> The Republic of South Sudan, *The Transitional Constitution of 2011*, Juba: Government Press.

(b) promote conservation; and (c) secure ecologically sustainable development and use of natural resources while promoting rational economic and social development so as to protect genetic stability and biodiversity.<sup>114</sup>

The provisions in this section are extensive and encompass the critical areas of environmental protection and sustainability. Section 41(4) further provides that ‘all levels of government shall promote energy policies that will ensure that the basic needs of the people are met while protecting and preserving the environment’.<sup>115</sup> These are bold and commendable attempts to address the impacts of climate change on individuals and the community as a whole. However, as in the case of Nigeria, Section 41 falls under Chapter 2 of the Constitution (Objectives and Principles of State Policy), which does not have the force of law, and hence, it is non-justiciable. Thus, there is a constitutional gap in legally promoting and protecting the environment.

The Bill of Rights under Part Two provides for fundamental human rights and freedoms, but it has no direct provision on natural resources or environmental rights. Section 34 guarantees the right to housing. Section 37(2)(b) under the Economic Objectives provides that ‘all levels of government shall protect and ensure the sustainable management and utilization of natural resources including land, water, petroleum, minerals, fauna and flora for the benefit of the people.’<sup>116</sup> The right to life, human dignity and integrity of persons is also guaranteed under the Bill of Rights in Section 11.

To fill some of the gaps in the constitutional provisions, as well as influenced by the imperative to ensure the sustainability of the environment in the face of climate change, the government has tabled a National Environmental Protection Bill in Parliament.<sup>117</sup> This Bill, when approved, will set the foundation for sustainable development in South Sudan, and ensure compliance with multilateral environmental agreements.<sup>118</sup>

Since its independence in 2011, South Sudan has joined global efforts to address environmental and climate change issues by becoming a State Party to the three Rio Conventions, including the UN Framework Convention on Climate Change (UNFCCC), the UN Convention on Biological Diversity (UNCBD) and the UN Convention to Combat Desertification (UNCCD). At a national level, South Sudan adopted a National Adaptation Programme of Action (NAPA) as the first step towards fulfilling its obligations under the UNFCCC in 2014.

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<sup>114</sup> The Republic of South Sudan 2011, *supra* note 120, section 41.

<sup>115</sup> The Republic of South Sudan 2011, *supra* note 120, section 41(1).

<sup>116</sup> The Republic of South Sudan 2011, *supra* note 120, section 37(2).

<sup>117</sup> Amokaye 2014, *supra* note 78, p. 127.

<sup>118</sup> United Nations Environment Programme South Sudan Office (2016). Environmental Governance, available at:

<http://staging.unep.org/disastersandconflicts/CountryOperations/southsudan/EnvironmentalGovernance/tabid/105737/Default.aspx> (accessed on 5 April 2017).

Due to the dire nature of the threats posed by climate change to economic growth in South Sudan, the NAPA contains a strategic approach for the preparation and implementation of national policies on climate change adaptation required for sustainable development. The NAPA identifies five priority areas, which are directly and indirectly related to food and its production.<sup>119</sup> These priority areas are the environment, water resources, agriculture, disaster risk reduction and policy and institutional framework. The NAPA sets out specific strategies for each area, such as ensuring that adaptation projects should promote livelihood diversification and sustainable agricultural production.<sup>120</sup>

The NAPA observes that traditional subsistence agriculture is the dominant economic activity in the country, with around 78 percent of households dependent on this as their main source of livelihood.<sup>121</sup> Rain-fed agriculture is vulnerable to climate change impacts, including erratic rainfall, floods and droughts. Livelihood diversification is, therefore, seen as an important adaptation strategy in South Sudan.<sup>122</sup> There are opportunities to develop alternative and additional livelihood strategies across all of the thematic areas identified in the NAPA. This should be promoted in the final design of the adaptation projects. It also recognises ‘the ongoing civil conflict in the country and it advocates for adaptation strategies to promote conflict resolution and peacebuilding.’<sup>123</sup> Furthermore, it recognises that agriculture production is ‘directly linked to food security, as well as enabling the creation of alternative livelihoods for the population.’<sup>124</sup> Finally, it recognises the need for ‘long-term research on climate change adaptation and that data is available for proper monitoring and evaluation.’<sup>125</sup> Despondently, while acknowledging that the twin forces of climate change and armed conflict have resulted in mass displacement and forced migration, there is no strategy dealing with this issue. The South Sudanese government would do well to take measures to address climate and environmentally-induced migration.

Despite the efforts discussed above, climate change continues to threaten human rights and food security in South Sudan. The United Nations Environment Programme (UNEP) argues that ‘environmental issues such as land degradation, deforestation and climate change are threatening the prospects of long-term peace and food security in Sudan and now South Sudan.’ It states that ‘multifaceted but clear links exist between environmental problems and the on-going conflict.’<sup>126</sup> It contends that overgrazing, drought and deforestation in the country have reduced the vegetation cover, as well as the quality of topsoil. This impacts people’s livelihoods by limiting their access to agriculture and natural resources, in turn leading to an increased struggle for water and

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<sup>119</sup> The Ministry of Environment, *Republic of South Sudan’s National Adaptation Programme of Actions (NAPA) to climate change*, 2014, p. 17.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Idem*, p. 9.

<sup>122</sup> *Idem*, p. 26.

<sup>123</sup> *Idem*, 24.

<sup>124</sup> *Idem*, p. 19.

<sup>125</sup> *Idem*, p. 26.

<sup>126</sup> UNEP, *Sudan: Post-Conflict Environmental Assessment*, Nairobi: United Nations Environment Programme (2007).

fertile land. Clearly, interventions targeted at building resilience to climate change must be based on an appreciation of the ongoing situation in order to be sustainable.<sup>127</sup>

Concerning the issue of climate change and the right to food in South Sudan, it is common knowledge that climate change has many negative impacts on food and food security. This is because climate change is often associated with shocks, such as epidemics and food crises. Unfortunately, these shocks in themselves have in some cases aggravated or even triggered civil conflicts. For instance, it has been observed that the civil wars in Sudan, South Sudan and Somalia all to some extent resulted from the impacts of climate change and have been classified as drought-triggered (food shortage) armed conflicts.<sup>128</sup> There is also empirical evidence that food shortage, as well as food insecurity due to climate change, aggravate existing armed conflicts in several ways.<sup>129</sup> Such crises can exacerbate social grievances by creating a scarcity of available resources, particularly access to food for children and women.<sup>130</sup> For instance, already facing the brunt of the civil war, Libya has been experiencing food shortage due to the double-edge impact of climate change and the conflict that interrupted imports and led to exhaustion of food supplies in a country that traditionally imports 75 to 90 percent of their food. As the conflict escalated in 2014, food security prospects diminished drastically. By December 2014, an assessment indicated severe food shortages affecting 79 percent of displaced populations.

In Mali, the armed conflict in the north-eastern part of the country, coupled with the arid and semi-arid conditions, have often created acute shortage and scarcity of food. This has also frequently led to deadly clashes between pastoralists and farmers.<sup>131</sup> The 2012 armed conflict, which coincided with the nationwide drought, affected more than 3.5 million people.<sup>132</sup> The combined effect of the drought and the political turmoil was the eventual displacement of about 300,000 people, with tens of thousands of cows and sheep killed by the drought. The inactivity of the government in the area of relief for pastoralists devastated the livelihoods of many pastoralist Tuaregs, leaving masses of people in extreme poverty and food insecurity. These in turn swelled the ranks of the armed rebel factions and coerced others to steal and loot food and other material resources.<sup>133</sup> Thus, the effects of the recent surge and escalation of armed violence in

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<sup>127</sup> R. Watts, *Climate, environment and security in Sudan*. Case Study 14, Institute of Development Studies, University of Sussex, 2011.

<sup>128</sup> J.F. Maystadt & O.E., 'Extreme Weather and Civil War: Does Drought Fuel Conflict in Somalia through Livestock Price Shocks?', *American Journal of Agricultural Economics* 2009-96, pp. 1157; and J.F. Maystadt, M. Calderone & L. You 'Local Warming and Violent Conflict in North and South Sudan,' *Journal of Economic Geography* 2014, pp. 1-23.

<sup>129</sup> K. Harris, D. Keen & M. Mitchell, *When Disasters and Conflict Collide: Improving the Links between Disaster Resilience and Conflict Prevention*, London: Overseas Development Institute (2013).

<sup>130</sup> *Ibid.*

<sup>131</sup> R. Watts, *Managing Climate Change and Conflict in Mali*, Case Study, Brighton: Institute of Development Studies 2012.

<sup>132</sup> Integrated Regional Information Networks (IRIN), 'Drought Blamed for Food Scarcity,' *IRIN* February 22, 2009, [www.irinnews.org/report/83069/syria-drought-blamed-for-food-scarcity](http://www.irinnews.org/report/83069/syria-drought-blamed-for-food-scarcity) (accessed on 5 April 2017).

<sup>133</sup> *Ibid.*

Libya and Sudan underscore the fact that climate change aggravates food insecurity, in turn leading to armed conflict.<sup>134</sup> Climate change and its related effects, as well as the resulting mass displacement of people, not only lead to reduced food supply from food-producing areas, but also increases food demand in relatively safe (urban) areas. This leads to sharp food price rises in local markets.<sup>135</sup>

Another cause of food insecurity caused by climate change – which was observed in rural areas of DRC, Sudan and Northern Mali – is the disruption of agricultural activities due to farmers being afraid of planting their crops. Others have completely abandoned their land because of the fear of making huge losses. Those who choose to continue their farming activities have to cope with decreasing supply of farm labour and greatly reduced access to fertilizer, seeds and fuel. Therefore, food prices in the affected conflict areas have increased greatly as a result of both limited market activities and minimised trade flows stemming from reduced market and high transportation costs.<sup>136</sup> Population displacement means that farmers move from their lands and there is little farming going on. This not only impacts the quantity of food but also its nutritional content, with concerns raised that the food offered is too low in calories and increases dependency on host communities for food.

From this discussion, it is now necessary to highlight the government's obligations in responding to climate change related threats and risks such drought, flooding and desertification that lead to limited food production. As contended by Knox and Pejan, states have a duty to protect people against 'environmental threats'.<sup>137</sup> This would mean that where drought, flooding and desertification create food insecurity that threaten people's livelihoods, and the state does not take sufficient precautionary measures to protect people, they would be held accountable. For the right to food and nutrition of the people in South Sudan to be adequately addressed, there is an urgent need for the government to adopt appropriate laws and policies that are rights-based. Such laws and policies should respect, promote and protect the fundamental rights of the people including the right to food and nutrition as basic human rights guaranteed under international human rights law. The government of South Sudan, therefore, has a non-derogable duty to respect, protect and fulfil the human rights of everyone under its territory.

South Sudan should also focus on advancing agricultural best practices, afforestation and water resource development and management to improve its food production base in order to ensure that it becomes self-reliant in terms of food. Clearly, climate change undermines food security by reducing people's access to natural resources that are

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<sup>134</sup> World Bank World, *Development Report 2011: Conflict, Security, and Development*, Washington, DC: World Bank 2011.

<sup>135</sup> Famine Early Warning System Network (FEWS NET), *Conflict Related Food Insecurity Continues in the Northeast, April 2014 to September 2014*, FEWS NET Nigeria Food Security Outlook (2014).

<sup>136</sup> World Bank, *World Development Report 2011: Conflict, Security, and Development*, Washington, DC: World Bank, 2011.

<sup>137</sup> J.H. Knox & R. Pejan 'Human rights principles, climate change and the rights of the child', in *UNICEF The challenge of climate change: Children on the front line* 2014, p. 54.

important to sustain their livelihoods. Given that water scarcity is a key problem to food production, there is a need for practical steps, such as putting in place machinery to expand access to groundwater supplies for humans and livestock. Along with years of violent conflict, lack of national infrastructure and a high disease burden, rainfall levels have continued to decline in South Sudan. Climate change will, thus, also possibly dent the capacity of the government to deliver services that help the population to sustain their livelihoods, which assist in promoting and maintaining peace. In finding a sustainable solution, South Sudan has a number of alternatives in terms of strengthening its adaptive capacity and building its resilience to climate stress. One issue that the government of South Sudan needs to focus on is to promote good governance, as well as build the capacity to deal with climate change threats through enacting and implementing relevant laws and policies, such as promoting climate smart agricultural practices to improve food production, accessibility and quality.

### **Conclusion And The Way Forward**

From the discussion above, it is clear that climate change adversely impacts human rights, especially the rights to life, to health, to food, to water and to housing. The relevance of this article is not the revelation of the impact of climate change on human rights in Africa, but rather the response of governments to situations where violations have occurred or threaten to occur. The article has demonstrated that governments lag behind in their obligations to protect the rights of persons in the face of global climatic change. As a result, people – especially those displaced by armed conflicts or climate change itself – continue to suffer under despicable conditions and live with the harm caused by the harsh effects of climate variation. The violations range from loss of lives, hunger and starvation, ill-health and limited access to food, to displacement.

It is, therefore, recommended that the African Union encourages states to adopt and enforce existing environmental, climate change and human rights related declarations, conventions, policies and mechanisms, taking into account the interrelated and indivisible nature of human rights. For instance, the Paris Agreement represents a positive universal agreement to tackle climate change as an urgent and serious threat to humankind, which for the first time ever all countries have signed on to, including African states. It includes references to a common target to keep global warming well below 2C – even 1.5C –, to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century.<sup>138</sup> Article 4 on mitigation reflects a call for net zero emissions in the second half of the century.<sup>139</sup> The Paris Agreement obliges developed countries to continue to take the lead in mitigation actions, while developing countries should equally continue to

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<sup>138</sup> Raymond Clemencon, 'The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?', *Journal of Environment & Development* 2016-Vol. 25(1), pp. 3–24.

<sup>139</sup> United Nations Framework Convention on Climate Change Paris Agreement: FCCC/CP/2015/L.9/Rev.1. (2015), available at: [https://unfccc.int/documentation/documents/advanced\\_search/items/6911.php?preref1/460008831](https://unfccc.int/documentation/documents/advanced_search/items/6911.php?preref1/460008831) (accessed on 27 June 2017).

enhance their mitigation efforts with support from the developed countries. Under these circumstances, African countries which are essentially developing countries may contribute by putting forward low greenhouse gas emissions development strategies, plans and actions. Furthermore, Article 7 acknowledges that the link between mitigation, ambition and adaptation needs a clear position on enhanced support for developing countries who are parties to the agreement for higher ambitions in their implementing adaptation actions.<sup>140</sup>

African governments should also invest in these initiatives, as well as provide adaptation and mitigation measures and support to vulnerable local communities. The ability of communities to cope effectively with a changing climate needs to be enhanced by not only improving laws, policies and mechanisms, but also by educating people on climate change impacts, adaptation and mitigation strategies, as well as its effects on human rights. States should work closely with local communities who are more suitable to provide vital information on the climate change impacts affecting them and how these effects can be mitigated or combated. This information can in turn inform legal and policy palliative measures. Above all, African states need to recognise that the threat of climate change is real and its effects pervasive, impacting on their economies, development, human well-being and natural environment. Finally, they must acknowledge the duty that this places on them to respect, protect, promote and fulfil the human rights of their citizens, as well as the rights of any other persons who find themselves in the territory of that state as a result of climate-induced displacement.

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<sup>140</sup> *Ibid.*