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**LEGAL STRATEGIES FOR THE PROTECTION OF COMMUNITIES IN LIGHT OF
CLIMATE CHANGE-INDUCED DISPLACEMENTS: LESSONS FOR ZIMBABWE**

BY

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DEDICATION

This dissertation is dedicated to the memory of my dear friend James Nyamunda.

I also dedicate this work to the victims of climate change-induced displacements in Zimbabwe, justice is certain in this lifetime.

DECLARATION

This work is an expression of my original work and ideas after wide reading of other sources and gathering the views of different respondents during interviews and every source is acknowledged in this work, and it does not contain any material which has been previously submitted for a degree or other qualification.

Signature: 

Date: 1st August 2022

ACRONYMS

AU	Africa Union
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COP	Conference of Parties
DRRM	Disaster Risk Reduction and Management
FPIC	Free, Prior and Informed consent
GC	General Comment
GR	General Recommendation
IASC	Inter-Agency Standing Committee
IDMC	Internal Displacement Monitoring Centre
IDPs	Internally Displaced Persons
IFRC	International Federation of Red Cross and Red Crescent Associations
IPCC	Intergovernmental Panel on Climate Change (IPCC)
SADC	Southern African Development Community
UNDRR	United Nations Office for Disaster Risk Reduction
UNEP	United Nations Environment Program
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHCR	United Nations Human Rights Council

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CHAPTER ONE: INTRODUCTION AND BACKGROUND

1.1 Introduction

Climate change-induced disasters have been considered the number one cause of internal displacements over the last decade with twenty million people estimated displaced from their homes every year.¹ Recent research has established that internal displacements are seven times more likely to occur as a result of climate-induced extreme weather disasters like cyclones, floods and veld fires compared to geophysical disasters such as earthquakes and volcanic eruptions.² Climate change-related environmental hazards, such as drought, changing rainfall patterns, cyclones and floods are likely to result in displacement of communities as opposed to conflicts and other non-climate-related reasons.³ This is held to be true in Zimbabwe where recent events like the Tokwe-Mukosi dam overflow and Cyclone Idai has been responsible for the internal displacement of thousands of community members.⁴ It is thus apparent that climate change is a legal and social reality whose effects can result in internal displacements which in turn impacts the rights of communities including the right to housing, safe water, access to education and health care, right to life, right to dignity and affecting livelihoods.⁵

Whilst no country is immune to climate change-induced displacements and the consequences thereof, less-developed countries like Zimbabwe are more at risk as they have limited ability to prepare proficiently, and put in place effective response mechanisms and recovery programs after the effects of climate change.⁶ Consequently,

¹ "Forced from home – Climate fuelled displacement" OXFAM. Accessed 25 May, 2022 <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620914/mb-climate-displacement-cop25-021219-en.pdf>

²OXFAM (n 1 above) 3

³ A. Thomas, Protecting People Displaced by Weather-Related Disasters and Climate Change: Experience from the Field, 2014, Vol 15 No.4 Vermont Journal of Environmental Law 803–832. <https://doi.org/10.2307/vermjenlaw.15.4.803>.

⁴ OXFAM (n1 above) 5

⁵ N. Ndlovu and E.S Nwauche, "A review of land property rights of internally displaced persons in Zimbabwe: Steps towards restitution" in *National Protection of internally displaced persons in Africa: Beyond the rhetoric* 2021, 48

⁶ International Federation of Red Cross and Red Crescent Associations, "Effective law and regulation for disaster risk reduction: A multi-country report" Accessed 14 April, 2022 <https://reliefweb.int/sites/reliefweb.int/files/resources/drr-full-report.pdf> .

the key obligation to support and protect communities suffering from climate-induced displacements thus falls upon national governments like Zimbabwe that already face the burden of poverty, inequality and debt, environmental degradation and insecurity. Despite the existing status quo, in the event of climate-induced displacements, communities require protection and assistance in finding durable solutions that work for their particular situation.⁷

To set the minimum obligations upon the state which has the primary obligation, it is therefore critical to put in place legal and policy climate change-induced displacement measures applying a human rights approach and mechanisms for the involvement of affected communities.⁸ It is important to note that this can be achieved through the recognition of the plight of climate-induced internally displaced communities in national legal and policy framework relating to disaster risk reduction management and climate change mitigation and adaptation as these laws and policies can play a critical role in preventing and preparing for displacements whilst protecting communities.

The goal of the dissertation is to critically examine the different legal strategies that Zimbabwe can use to protect its communities affected by or prone to climate change-induced displacements within the contexts of disaster risk reduction and management, climate change adaptation, and internally displaced persons. It will examine Zimbabwe's legislative and regulatory frameworks for disaster risk reduction, climate change, and internally displaced persons and evaluate their sufficiency in comparison to national and international norms. Lessons will be drawn from different countries.

1.2 Background to the Study

Climate change impacts are being experienced around the world with the impacts being widely noticed and felt in the developing world. According to the Intergovernmental Panel on Climate Change (IPCC), Africa is the most affected continent in the world with a high

⁷ "Statement by the Special Rapporteur on internally displaced persons 2011, Climate Change adaptation: A human Rights-based framework for internal displacement necessary", Accessed on 5 May, 2022. <https://www.ohchr.org/en/statements/2011/07/climate-change-adaptation-human-rights-based-framework-internal-displacement>

⁸ (n 7 above)

vulnerability to climate hazards as the continent's seasonal timescales are considered the most variable.⁹ This presents the issue of how to help governments develop the required financial, operational, and legal capabilities to address the unique protection requirements of those populations who have been displaced as a result of climate change-related impacts.¹⁰

It is trite to note that there are three primary ways in which climate change can be said to affect the displacement of communities. First, the frequency of environmental or natural disasters, which drive people to evacuate in the face of urgent and life-threatening danger, has increased due to climate change.¹¹ As a consequence, climate change makes it possible for both droughts and floods to occur in the same region at the same time.¹² These effects of climate change indicate the necessity for legislative and administrative frameworks that address the problems from a human rights-based perspective. In Zimbabwe, there has been an increase in flooding which has been attributed to the impacts of climate change and such increase has caused many communities to move from their homes and with numerous impacts on the right to property, right to life, right to dignity, access to health care and education.¹³

The second way that climate change displaces communities is through slower-onset effects like altered rainfall patterns, water scarcity, and desertification that reduce the availability of natural resources that people—especially those from most rural communities or natural resources-based economies who rely on natural resources for their survival and livelihoods.¹⁴ As a result, communities may be forced to leave their current locations or relocate somewhere "voluntarily" in search of better places to settle. Communities in Zimbabwe have moved from arid locations like Masvingo to the country's

⁹ IPCC, "Climate Change 2007 – Impacts, Adaptation and Vulnerability Contribution of Working Group II to the Fourth Assessment Report of the IPCC" Accessed 24 April, 2022. https://www.ipcc.ch/site/assets/uploads/2018/03/ar4_wg2_full_report.pdf

¹⁰ W. Kalin, "Conceptualising Climate-Induced Displacement" in *Climate Change and Displacement: Multidisciplinary Perspectives* 2010, 82

¹¹ M. Naser & T. Afroz, Human Rights Implications of Climate Change Induced displacement, 2009. Vol. 21 No. 3 Bond Law Review, 153

¹² IPCC (n9 above) and SS. Mugambiwa & JC. Makhubele, Anthropogenic flash floods and climate change in rural Zimbabwe: Impacts and options for adaptation, 2021. Vol 21 Technium Social Sciences Journal Vol 21 810

¹³ Mugambiwa & Makhubele (n 12 above) 811

¹⁴ Kalin (n 10 above) 85

Eastern Highlands in pursuit of clean water, enough rainfall, rich soils, and ideal pastures for animals. More than 20,000 individuals are said to have migrated to the area as of 2016.¹⁵

Thirdly, owing to the ongoing damage that climate change is causing to the ecosystem, governments may declare some regions high-risk zones that are too unsafe for human existence.¹⁶ Communities may thus be relocated to safer locales, forbidden from returning to their former homes if they have already departed, or evacuated (either voluntarily or against their will) from their current locations.¹⁷ Areas that are along rivers, low lying and mountain regions are at risk.

From the foregoing, it is apparent that climate-induced displacements are a reality which Zimbabwe should seek to prevent, mitigate and protect communities from. It is the most marginalized and excluded that are bearing the brunt of the impacts, whether in lives, homesteads destroyed or livelihoods destroyed. It is acknowledged that there is no single strategy that can by itself safeguard communities against climate change-induced displacements and the human rights impacts it brings about. There needs to be a cohesive approach that takes into account all relevant issues and institutions – and a strong legal framework that stipulates the minimum obligations of the state, set up effective institutional mechanisms and provides for the financing of the legally provided strategies is a critical factor.¹⁸

1.3 Research Problem

Environmental disasters linked to climate change have been noted as a significant contributor to community internal displacement, particularly in developing countries where climate change is accountable for increasing the occurrence and severity of these disasters, leading to an increase in the number of internally displaced communities.¹⁹ It

¹⁵ A. Mambondiani, How Zimbabweans Welcomed Climate Migrants. Accessed 14 April, 2022. <https://www.yesmagazine.org/social-justice/2020/07/07/climate-migrants-zimbabwe>

¹⁶ Kalin (n 10 above) 86

¹⁷ Kalin (n10 above) 87

¹⁸ Thomas (n 3 above) 820

¹⁹A Roberto et al, "Internal Displacement Due to Disasters in Latin America and the Caribbean" in *Climate Change, Hazards and Adaptation Options Handling the Impacts of a Changing Climate*, 2020, 389

is the most marginalised who are bearing the brunt of climate change-induced displacements either with loss of homes and livelihoods.²⁰ A reading of recent IPCC reports reveals a country's ability to adapt to climate change and prevent its effects from becoming a disaster that results in displacements depends heavily on the collective and individual actions of people, communities and nations.²¹ There is a need for countries, regions and the world to adopt an approach that addresses all sectors, including a robust legal framework.²²

Problematically, the character of climate change-induced displacements is not adequately provided for in the current legal and institutional frameworks either at international, regional or national levels, raising issues as to the when, and the circumstances under which communities who are displaced as a result of climate change-related impacts are entitled to particular rights and protections.²³ In regional and international law, the protections afforded to communities internally displaced by climate change are fragmented and cut across different protections from those internally displaced, climate change adaptation and mitigation frameworks and disaster risk reduction and management. Further, because these protections are contained in soft law guidelines and instruments, most national Governments tend not to domesticate them.²⁴ Additionally, while the international and regional legal framework establishes critical normative principles, in many aspects its provisions remain fairly incomprehensive and inconclusive when it relates to the internal displacement of communities due to climate change-related disasters.²⁵ For example, whilst the Kampala Convention established a progressive principle on the right to fair compensation for the damage incurred because

²⁰ Roberto et al (n 19 above)

²¹ IPCC Report, "Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change" Accessed 24 April, 2022 <https://www.ipcc.ch/report/ar5/wg1/>

²² International Federation of Red Cross and Red Crescent Associations (n 6 above)

²³ Thomas (n 3 above)

²⁴ V. Kolmannskog, Climate Change, Environmental Displacement and International Law 2012. Vol. 24 *Journal of International Development*, 1074

²⁵ C. Jacobs & B. Almeida, "Land and climate change: Rights and environmental displacement in Mozambique." Van Vollenhoven Institute for Law, Governance and Society. Accessed 30 May, 2022 <https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-metajuridica/land-and-climate-change-rights-and-environmental-displacement-in-mozambique.pdf>

of displacement, but the framing of same raises a number of questions. For instance, which specific damages can be specifically attributed to displacement? And who should pay this compensation?²⁶ This is compounded by the fact that at the local level, governments like Zimbabwe are not recognising the need to put in place the legislative provisions necessary to protect communities from or after climate change-induced displacements. Despite the increasing challenges faced by communities affected by climate-induced displacements, there is very limited knowledge in existence on the disaster risk reduction and management legislative frameworks that works for communities affected by climate change -induced displacements, is there a good model to follow? What pitfalls must be avoided? On the level of importance, which legislative provisions should be considered? What makes institutions, the government and communities fail in some instance to implement the existing legal rules? What experiences can be shared by different countries?²⁷

There is therefore a need to interrogate what legal strategies Zimbabwe can put in place to protect communities that are constantly being affected by climate change-induced displacements.

1.4 Literature Review

The United Nations Office for Disaster Risk Reduction (UNDRR) propounds that because climate change increase weather and hazards communities are more vulnerable to natural hazards, and ultimately this increases the instances of climate change induced displacements.²⁸ As early as 1990, the IPCC concluded that human mobility which includes climate change -induced displacements is one of the most substantial effect of climate change.²⁹ According to Tacoli, climate change is anticipated to result in an

²⁶ V. Kolmannskog & Trebbi, Lisetta 'Climate Change, natural disasters and displacement: a multi-track approach to filling the protection gaps' 2010 Vol. 92 No. 879, *International Review of the Red Cross* 726

²⁷ "Effective law and regulation for disaster risk reduction: a multi-country report." International Federation of Red Cross and Red Crescent Associations. Accessed 5 June 2022 <https://reliefweb.int/sites/reliefweb.int/files/resources/drr-full-report.pdf>

²⁸ S Llosa & I Zodrow, "Disaster risk reduction legislation as a basis for effective" Global Assessment Report on disaster risk reduction 2011

²⁹ World Meteorological Organisation & United Nations Environment Programme (UNEP), Climate Change: The Intergovernmental Panel on Climate Change (IPCC) 1990 and 1992 Assessments 103 (1992)

increase in the frequency and force of natural hazards like cyclones, storms and floods that result in the movement of people because of sudden and immediate harm.³⁰ Additionally, slower-onset consequences of climate change, such as changes in rainfall patterns, water scarcity and ocean acidification may cause, either directly or indirectly, communities to abandon their homes and move to other areas in search of alternative livelihoods.³¹ Both the sudden effects and the slower impacts of climate change may result in either permanent or temporary community displacements.

Given the climate change-induced displacements affect many rights of affected communities including the right to life, access to education and health care, and the right to dignity, there is a positive state obligation that is created on the need to develop laws in terms of human rights legal framework as it imposes positive obligations on the State to take legislative and or other measures to protect, promote and fulfil human rights. This was aptly stipulated by the African Commission on Human and People's Rights in the **Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR)/Nigeria No. 155/96**, where it was held that:

“Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights, both civil and political rights and social and economic, generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties... the State is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms.”

³⁰ C. Tacoli, “Migration as a Response to Local and Global Transformations: A Typology of Mobility in The Context of Climate Change” in The Demography Of Adaptation To Climate Change, 2013 <http://www.africa-adapt.net/media/resources/851/the-demography-of-adaptation-to-climate-change.pdf>

³¹ Tacoli (n 30 above)

The need to set out minimum government obligations towards communities in light of climate change-induced displacements thus becomes a positive obligation. According to Mattingly, a legal framework establishes clear legal authority for interventions and institutions that relate to hazards, risk, and risk management which may put in place policies, practices, processes, the role of institutions and officials authorities and the creation of the conducive environment for coordination or collaborative action among institutions all to protect communities.³² Legislation is a tool which creates a critical basis for effective, accountable and sustainable action at all levels of government. The development or strengthening of legislation to reduce disaster risk is among the priorities identified in international instruments such as the Hyogo Framework for Action, the Sendai Framework among others.

Because of the vulnerabilities of most Zimbabwean communities, urgent need to respond to the challenge, the government need to consider developing a pointed legislative framework or strengthen existing laws relating to disaster risk reduction and management and climate adaptation.

1.5 Research Questions

The main research question that this dissertation seeks to answer is what legal strategies can be employed to protect communities in Zimbabwe affected by climate induced displacements?

The sub-questions that the dissertation seeks to address are:

- i. How is the phenomenon of climate change-induced displacements manifesting internationally, regionally and in Zimbabwe?
- ii. What are the international and regional responses to climate change induced displacements?
- iii. What are the strengths and weaknesses of the Zimbabwean legal frameworks vis-à-vis the protection of communities affected by climate change-induced displacements?

³² Llosa & Zodrow (n 28 above)

- iv. How have other jurisdictions responded to climate-induced displacements? What lessons can be learnt from such jurisdictions?

1.6 Research Methodology

The methodology for the research does not envisage quantitative and empirical study and the dissertation will be a desktop study. The research methods to be adopted for the dissertation are descriptive, doctrinal analysis and international comparative approaches. The descriptive methodology will assist in the understanding of the relationship between climate-induced displacements, disaster risk reduction management and climate adaptation and the role of the law in protecting affected communities. The descriptive methodology will also be utilised in understanding the extent and nature of climate change-induced displacements nationally, regionally and internationally.

The doctrinal analysis of sources such as the Constitution of Zimbabwe, legislation, judicial decisions, international treaties, instruments, legal concepts and principles that have been developed at the international, regional and national levels to deal with climate change-induced displacements will be employed. These include the concept of internally displaced persons, a human rights-based approach to displacements, climate change adaptation, and disaster risk reduction among others. A number of cases that have been decided at national, regional and international levels on the obligations of the state in protecting communities affected by climate-induced displacements will also be analysed. Finally, to draw lessons for Zimbabwe on strategies that can be utilised to protect communities in light of climate-induced displacements a comparative analysis will be employed by looking at Mozambique and Bangladesh.

1.7 Significance of the Study

Whilst there has been research conducted on climate change-induced displacements in Zimbabwe, most of the work has been centred around sociology and political ecology. There is a lack of pointed work on the different legal strategies that can be utilised to protect communities from the impacts of climate change-induced displacements. This

dissertation thus seeks to contribute to the existence of a legally focused body of knowledge. Also, on legally focused research work, academic work has been focused on addressing the gaps in the current international frameworks relating to climate-induced refugees forced to move across borders who cannot be categorised and recognised under international law and not much focus has been given to internally displaced persons, this is an issue that the dissertation seeks to address.

Considering climate-induced displacements are now a pressing issue in Zimbabwe and how critical a legal framework is as a tool for the protection of communities affected by the same, the proposed dissertation is opportune.

1.8 Limitation of the Study

The discourse around climate-induced displacements is wide, comprehensive and interdisciplinary. This dissertation will therefore be limited to the legal discussions of climate-induced displacements within the framework of internally displaced persons, disaster risk reduction and climate change adaptation. These topics will provide guidance on the legal strategies required to protect communities facing climate change-induced displacements.

1.9 Chapter Synopsis

Chapter 1

This will consist of the introduction and background to the study. It will give an overview of climate change-induced displacements in general and in Zimbabwe in particular. It will also give the problem statement, the critical research questions, literature review, the significance of the study, its limitations and the methodology that is going to be used.

Chapter 2

This chapter will give a detailed overview and analysis of climate change-induced displacements from a national, regional and international perspective. The chapter will look into how the climate change phenomenon is manifesting internationally, regionally

and nationally. The chapter will discuss the concept of protection of communities affected by climate-induced displacements and the justification of the law as a protection mechanism. This comprehensive analysis will establish why legal strategies are necessary for the protection of communities affected by climate change-induced displacements.

Chapter 3

The chapter will look into protection frameworks at the international and regional levels. The chapter also contextualise the protection framework of climate change induced displacements within internal displacements, disaster risk reduction management and climate change adaptation and mitigation protection frameworks.

Chapter 4

This chapter will describe the available regulatory, institutional and administrative mechanisms around climate change-induced displacements in Zimbabwe. The chapter will identify the existing gaps in the existing framework(s).

Chapter 5

This chapter will be focused on the legal strategies that can be employed to protect communities suffering from real or potential climate change-induced displacements in Zimbabwe. Lessons will be drawn from regional and international instruments, as well as national legislation from countries like Mozambique and Bangladesh.

Chapter 6

This chapter summarises and links up the major arguments made in the previous four chapters before making conclusions and recommendations. The recommendations are essentially based on the most pragmatic suggestions on how Zimbabwe can improve its legal and regulatory framework for the protection of communities affected by climate-induced displacements.

CHAPTER TWO: CONTEXTUALISING CLIMATE CHANGE – INDUCED DISPLACEMENTS

2.1 Introduction

The 2021 Global Report on Internal Displacement produced by Internal Displacement Monitoring Centre estimates that in 2020 approximately 40.5 million new displacements were recorded with disasters causing over three times more displacements compared to conflict and violence.³³ These numbers are a clear indication of why there is a need to treat the issue of climate change-induced displacements as an emergency. According to scientists, climate change will increase communities' exposure to disaster risks through the increase in weather and climate hazards, and by multiplying community vulnerability to natural hazards because of ecosystem degradation, water and food scarcity, and changes to livelihoods.³⁴ Impacts of climate change are starting to affect communities as environmental hazards like cyclones are occurring more frequently and becoming more intense while salination, desertification, sea-level rise and other slow-onset impacts are also affecting communities' way of life.³⁵ With these changes, climate change-induced displacements are accelerating, but the legislative frameworks are taking long to evolve and develop. Most of this movement is internal and as Frances Namoumou put it, for most communities in the developing world and small-island countries, it is a matter of "the survival of our people ... on the land of our ancestors".³⁶

It is the purpose of this chapter to provide contextual background to climate change-induced displacements. Key concepts or words that will be utilised in the topic under discussion will be provided. Also, to contextualise the problem, an overview of how climate change displacements are manifesting in the world and Zimbabwe will be provided. Lastly, a justification of why the law is an important strategy to employ in the

³³ NS Khan, "Climate Crisis and Displacement: From Commitment To Action" 2022. Is. 69 *Forced Migration Review* Accessed 25 May, 2022 <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMR69%20Editors%27%20briefing%20web.pdf>

³⁴ "Making sense of movement in the context of climate change." Kaldor Centre Conference Accessed 25 May, 2022 https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/2021_Kaldor_Conference_Report.pdf

³⁵ (n 34 above)

³⁶ Kolmannskog, & Trebbi (n 26 above) 715

protection of communities affected by climate change-induced displacement will be provided.

2.2 Defining key terms

The definitions provided under the section are the definitions that will be guiding the discussions in this dissertation.

2.2.1. Displacements

Displacement is defined as the involuntary or forced movement of people from their homes and communities. It is so diverse to the extent that it can be temporary or permanent, involve a large number of people or just a small.³⁷ Whilst displacement can occur within and cross-borders, for the purposes of this work, all displacements discussed are internal displacements.

2.2.2. Relocations and Resettlement

As opposed to displacements, whilst relocation involve the physical process of moving people from one community to another, it can be voluntary or forced and regardless of the scale, relocations are intended to be permanent.³⁸ Related to relocations is the concept of ‘resettlement’, which involved offering assistance to those relocated through rebuilding houses, replacing lost or damaged assets, livelihoods, access to public and social services and providing durable solutions for the relocated community.³⁹

2.2.3. Disasters

Disasters are defined as serious disruptions to the way of life of a community that exceeds its ability to respond using its own available resources and can be either natural, man-

³⁷ J. McAdam and E. Ferris “Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues” 2015 Vol. 4 No. 1 *Cambridge Journal of International and Comparative Law* DOI:10.7574/cjicl.04.01.137 137 - 166

³⁸ McAdam & Ferris (n 37 above)

³⁹ McAdam & Ferris (n 37 above)

made and technological hazards, or resulting from any factor that exposes a community and makes it vulnerable.⁴⁰

2.2.4. Protection

Heyman defines the term protection as having three major elements. He states as follows:

“That concept (of protection) had three major elements. The first related to the status of the individual: To be under the protection of the law meant to have the status of a freeman and a citizen. A second aspect referred to substantive rights: Protection meant that the law recognized and secured an individual's rights to life-- , liberty, and property. Finally, the most basic meaning of protection referred to the enforcement of rights: the specific ways in which government prevented violations of substantive rights, or redressed and punished such violations.”⁴¹

Therefore, for the purposes of this dissertation, protection is defined as being concerned with safety, security, reducing vulnerability and providing durable solutions for communities affected by climate change-induced displacements.⁴² Protection is thus conceived from the government taking actions to reduce the vulnerability of communities to climate change-induced displacements, providing assistance in the cases where displacements are inevitable or have been made inevitable and providing durable solutions for the affected communities. This kind of protection as a process or action is underpinned by, law and regulatory frameworks.

2.2.5. Durable Solutions

A durable solution is achieved when internally displaced persons are able to enjoy their human rights without special attention being given to them because of their displacement

⁴⁰“What is disaster”. IFRC Accessed 25 May, 2022. <https://www.ifrc.org/what-disaster>

⁴¹ S Heyman, ‘The first duty of government: Protection, liberty and the fourteenth amendment’.1991, Vol 41 No. 507 *Duke Law Journal* 530

⁴² R Zetter, “Protecting environmentally displaced people Developing the capacity of legal and normative frameworks”. Refugees Studies Centre. Accessed 25 May, 2022 <https://www.refworld.org/pdfid/4da579792.pdf>

and are, no longer in need of specific assistance have any specific assistance and protection linked to their displacement.⁴³

2.2.6. Disaster risk reduction and management

Disaster risk reduction and management is a process that seeks to prevent new and reduce current disaster whilst managing residual risk, for the purposes of all of strengthening community resilience in order to achieve sustainable communities.⁴⁴

2.3 Context: Disasters and Displacement in a Changing Climate

It is trite to note that internal displacements have been occurring in the world since time immemorial and are caused by different factors including war and conflict. Regardless, internal displacements from climate change warrant attention because experts agree that the majority of people or communities displaced by climate change-related effects will be within countries and the greatest human impacts are likely to occur in less-developed countries because of not only the previous vulnerabilities to environment-related hazards like cyclones, floods, and droughts, but also to the limited ability to prepare for, respond to, and recover from natural hazards.⁴⁵ Because of the internal nature of the majority of climate change induced – displacements, the primary responsibility to assist and protect people displaced falls on national governments in countries that already face enormous challenges like poverty, environmental degradation, and insecurity.⁴⁶

It has been argued that internal displacements climate change related or otherwise are a multi-causal phenomenon, thus there is a need to take into consideration the fact that impacts of climate change or resultant disasters on their own do not result in displacement but, rather, are interlinked to other factors like impoverishment, environmental

⁴³“Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons.” Brookings Institute, Accessed 25 May, 2022 <https://www.brookings.edu/research/iasc-framework-on-durable-solutions-for-internally-displaced-persons/>

⁴⁴ “Disaster Risk Reduction” Accessed 25 May, 2022. <https://www.undrr.org/terminology/disaster-risk-reduction>

⁴⁵ Thomas (n 3 above)

⁴⁶ Thomas (n 3 above)

degradation, resource scarcity and lack of livelihood opportunities.⁴⁷ Also, climate change functions as a threat multiplier, magnifying risks with disasters occurring at frequent intervals and with increasing intensity, thus the increased risk of internal displacements.⁴⁸ It has been proposed that while climate change adaptation can help to reduce vulnerability and enhance the resilience of communities, it is unlikely to stop entirely the need for displacements.⁴⁹ This makes important the need for planned relocation with the effective participation of affected and host communities as the movement of communities can be an adaptation strategy.

No country in the world is immune from climate change-related disasters, the resultant displacement is not just attributed to the event itself, but also due to a lack of adequate government capacity to respond as is the case of most African governments, Zimbabwe included. The effects of displacements on people and communities can be devastating and cause a myriad of problems for recovery and rebuilding initiatives, particularly for communities in already vulnerable situations, whether due to geography, underlying socio-economic conditions, individual circumstances or a combination of these.⁵⁰ There are a number of disasters or extreme weather reports that have been linked to climate change impacts. In South Africa, between 11 and 13 April 2022 heavy rainfall resulted in flooding and landslides resulting in the death of 448 people, displacing over 40,000 people and destroying over 12,000 houses in Kwazulu Natal Province.⁵¹ Also, the bushfires in Australia, the flooding in Germany, Belgium and Netherlands and cyclone Idai which affected Zimbabwe and Mozambique, communities have been forced to leave their homes as a result of the disasters.⁵² Despite the recurrence of such events and the acknowledgement of their existence, there exists a significant data gap around the proper

⁴⁷ J. McAdam, "Building International Approaches to Climate Change, Disasters, And Displacement" 2019, Vol 40 *Melbourne University Law Review* 24

⁴⁸ Kolmannskog & Trebbi (n 26)

⁴⁹ McAdam (n 47 above)

⁵⁰ "World Disasters Report 2012" (IFRC). Accessed 26 May, 2022 <https://www.ifrc.org/en/publications-and-reports/world-disasters-report/world-disasters-report-2012---focus-on-forced-migration-and-displacement/> 13

⁵¹ "South Africa: Floods and Landslides - Apr 2022" Accessed 26 June 2022. <https://reliefweb.int/disaster/fl-2022-000201-zaf>

⁵² "Displacement In a Changing Climate: Localized humanitarian action at the forefront of the climate crisis." IFRC. Accessed 26 May, 2022 <https://reliefweb.int/report/mozambique/displacement-changing-climate-localized-humanitarian-action-forefront-climate>

measures suitable for the protection of affected communities beyond the emergent assistance when natural disasters hit. The gap is bigger in situations where the climate-related hazard is of a slow-onset nature the gap in the available data and information is larger.⁵³

2.4. Contextualising climate-induced displacements in Zimbabwe

Given the different manifestations of climate change-induced displacements, Zimbabwe has experienced sudden displacements as a result of climate-induced natural disasters such as floods and tropical storms and has also experienced displacements as a result of the slow-onset of disasters due to climate-induced droughts. Cyclone Idai which hit Zimbabwe in 2019 brought to the fore the issue of sudden climate change-induced displacements in the country. It should be noted that Cyclone Idai was not Zimbabwe's first disaster as the country has experienced natural disasters including droughts and floods, which have all led to internal displacements.⁵⁴ The discussion on climate change-induced displacements is critical at this point as the incidence of floods, cyclones and tropical storms is now a common phenomenon in Zimbabwe. In as early as 2000, Tropical Cyclone Eline resulted in the flooding of Zambezi Basin causing the death of 700 community members, leaving 500,000 homeless and destroying infrastructure.⁵⁵ In Guruve and Muzarabani District, Tropical Cyclone Japhet caused flooding in March 2003.⁵⁶ In 2014 Tokwe-Mukosi flood disaster was responsible for the displacement of close to 50,000 community members.⁵⁷ The climate stresses contributed significantly to both the immediate time of the disaster and the subsequent struggles resulting in communities living upstream of the Tokwe-Mukosi dam being displaced to Chingwizi,

⁵³ K. Warner et al "Climate Change, Environmental Degradation and Migration. Natural Hazards" 2010 689. Accessed 26 May, 2022 <https://doi.org/10.1007/s11069-009-9419-7>

⁵⁴ K. Chatiza, "Cyclone Idai in Zimbabwe An analysis of policy implications for post-disaster institutional development to strengthen disaster risk management" OXFAM in Zimbabwe. Accessed 26 May, 2022. <https://policy-practice.oxfam.org/resources/cyclone-idai-in-zimbabwe-an-analysis-of-policy-620892/>

⁵⁵ P. Gwimbi, "Linking rural community livelihoods to resilience building in flood risk reduction in Zimbabwe" 2009 Vol. 2 No. 1 *Journal of Disaster Risk Studies* 71-79

⁵⁶ Thomas (n 3 above) 830

⁵⁷ B. Mucherera & S. Spigiel, "Forced displacement: critical lessons in the protracted aftermath of a flood disaster" *Geo Journal* <https://doi.org/10.1007/s10708-021-10471-w> 7 July 2021

Chisase and Masangula Relocation sites of Nuanetsi Ranch in Mwenezi District.⁵⁸ Further, 700 community members in the Tsholotsho district were seriously affected by tropical storm Dineo in 2017.⁵⁹ In 2019, Chipinge and Chimanimani Districts of Zimbabwe were heavily affected by Cyclone Idai which affected 270,000 community members with the storm and resultant floods and landslides resulting in the displacement of 51,000 community members.⁶⁰ In the Chipinge and Chimanimani Districts, homes, fields, schools and roads were destroyed with livelihoods disrupted as a result of Cyclone Idai-related floods and landslides. In total, Cyclone Idai is estimated to have impacted 270,000 people in Zimbabwe in which 51,000 were displaced, more than 340 died and a considerable number unaccounted for.⁶¹

Also, there is empirical evidence which indicates that there has been an increase in the movement of communities and families from the dry regions of Zimbabwe to areas which receive better rainfall.⁶² In the Manicaland Province, areas such as Mpudzi and Burma Valley have received a number of communities or families moving from areas such as Marange and Chitora.⁶³ The Ministry of Local Government, Urban and Rural Development is alleged to have reported that over 20,000 people from the dry regions of Mutare, Nyanga and Chipinge Districts have moved east, settling on fertile land which is reported not earmarked for human settlement which resulted in further displacements and challenges when cyclone Idai hit.⁶⁴ The increase in rural – urban migration in the recent years in Zimbabwe has also been attribute to the effects of climate change.⁶⁵

⁵⁸ R. Sachiti, "Tokwe Mukosi: Tale of desolation, hope" *The Herald* 26 February 2014 Accessed 26 May 2022. <https://www.herald.co.zw/tokwe-mukosi-tale-of-desolation-hope/>

⁵⁹ Mugambiwa & Makhubele (n 12 above) 811

⁶⁰ Mugambiwa & Makhubele (n 12 above) 811

⁶¹ UNICEF, Zimbabwe Humanitarian Situation Report No. 7, 31 May 2019

⁶² R. A. Mudefi, M. Sibanda & E. Chazireni, "The Impact of Climate Change on Migration Patterns of Rural Women in Marange, Zimbabwe." 2016 Vol. 10 No.1 *International Journal of Contemporary Research and Review* DOI: <https://doi.org/10.15520/ijcrr.v10i01.645>

⁶³ A. Mambondiyani, Fleeing drought, climate migrants press Zimbabwe's fertile east, *Thomson Reuters Foundation* 27 August 2015. Accessed 26 June 2022 August 27 2015 <https://www.reuters.com/article/zimbabwe-climate-migrants-idUSL5N1122GG20150827>

⁶⁴ Mambondiani (n 63 above)

⁶⁵ V. Dauson I Tanyanyiwa Sanctuary in the City? Climate Change and Internally Displaced Persons in Harare, Zimbabwe in *Climate Change, Hazards and Adaptation Options*, Climate Change Management, https://doi.org/10.1007/978-3-030-37425-9_33 Springer Nature Switzerland AG 2020 659

It is trite to note that the communal tenure system in Zimbabwe makes it difficult for communities to be adequately protected and afforded durable solutions when displaced. According to section 3 of the Communal Lands Act [Chapter 20:04], the owner of the land is the president and rural communities only have the right of use. Because of these limited rights, there is a limited effort being put into building resilient rural communities and it's difficult for communities to obtain compensation for the loss and damage of their property which is critical for them to rebuild either at their original settlements or in new areas.⁶⁶ For instance, according to 2021 reports, 2 years after Cyclone Idai, many of those who were displaced by Cyclone Idai have not been relocated or resettled with temporary sites and host families remain principal residences for the affected.⁶⁷ The government has not provided a detailed action plan and timelines for permanent resettlement initiatives. This limited access to basic amenities inhibits the affected communities from building resilient communities.

The situation is safe for those that move from their areas because of the slow-onset of harsh conditions like droughts. Since Zimbabwe does not legally recognise internally displaced persons, there is no way of knowing the total number of affected communities and suitable strategies that can be employed.

2.5. What has law got to do with it? The basis for legal strategies for the protection of Communities

From the preceding sections, it is apparent that climate change is impacting communities all over the world differently, and has influenced the increased occurrence of natural and environmental disasters leading to the displacement of communities. To deal with the challenges that come with climate change-induced displacements, there is no individual government agency, working on different resilient aspects that can by itself protect communities from the impacts of climate change-induced displacements.⁶⁸ There is a

⁶⁶ "Applying the Kampala Convention in the context of Zimbabwe" Internal Displacement Monitoring Centre. Accessed 26 May, 2022. https://www.globalprotectioncluster.org/assets/files/tools_and_guidance/Internal%20Displacement/201501-af-applying-the-kampala-convention-zimbabwe-workshop-report.en.pdf

⁶⁷ L. Munhende, "Two Years On, Cyclone Idai Victims Still Living In Tents" *New Zimbabwe* 13th March 2021. Accessed 26, May 2022. <https://www.newzimbabwe.com/two-years-on-cyclone-idai-victims-still-living-in-tents/>

⁶⁸ (n 51 above)

need for an integrated approach that addresses all sectors and relevant stakeholders, this is where the law comes in. The legal, policy, technical, and scientific interventions, including disaster risk reduction, climate change adaptation and mitigation, development, and migration opportunities, provide an indication of whether communities will be displaced or relocated and which option provides them with an opportunity to live with dignity without exposing them to risk and increasing vulnerability.⁶⁹ A legal framework creates institutions and set out the different responsibilities and obligations of those institutions whilst providing ways in which the institutions can work together to provide protection for communities affected by climate change-induced displacements.⁷⁰ Britton asserts the necessity of a comprehensive and binding legal provision so as to encourage government action for without same no specified tasks will be undertaken to provide communities vulnerable to climate change-induced displacements with protection.⁷¹ Law also provides avenues for communities to access a remedy in the event that the governments fail to discharge their legislative and binding obligations.

Notably, the type, effectiveness and practicality of legal and policy interventions are critical in ensuring favourable outcomes following a climate-induced environmental disaster, the onset of climate change impacts and related aspects, since they affect communities' resilience and coping capacity. In the context of displacements, they can influence whether communities move at all, whether they are displaced for prolonged periods, the resources that they should have access to and the ease to which they can do that, and whether relocation and resettlement options to less vulnerable areas are open to them.⁷²

Important to note that, communities facing the impacts of climate change are capable of devising a range of durable solutions and approaches to the challenges affecting them and their community, including displacements. However, a legal and policy framework is

⁶⁹ J. McAdam, "Building International Approaches to Climate Change, Disasters, And Displacement" 2017 Vol 40 No. 24 *Melbourne University Law Review* 456

⁷⁰ Llosa & Zodrow (n 28 above)

⁷¹ R. N Britton, "Getting the foundation right: in pursuit of effective disaster legislation for the Philippines" *Second Asian Conference on Earthquake Engineering* 2006.10 – 11 March 2006. Manila.

⁷² McAdam (n 63 above)

critical in order to ensure that these solutions and approaches are sustainable. Rule of law doctrines assists in empowering people and communities affected by climate change-induced displacements whilst prompting government action from the local and national level to protect rights, reduce risk and build the resilience of communities affected by climate change -induced displacements.

2.6 Conclusion

Climate change-induced displacements are a social and legal reality across the world and in Zimbabwe. With the world's climate deteriorating, the instances of the occurrence of natural disasters and the slow-set of harsh conditions is increasing. There is therefore a need for proper legislative mechanisms to be put in place to protect affected communities in Zimbabwe and across the world.

CHAPTER THREE: INTERNATIONAL AND REGIONAL PROTECTION FRAMEWORKS ON CLIMATE CHANGE - INDUCED DISPLACEMENTS

3.1 Introduction

Existing scientific data and research have established that the environmental and human impacts of climate change are currently being felt by various communities.⁷³ Among the human impacts, it's the aspect of climate-induced community displacements. Whilst, in some instances climate change cannot be solely held accountable for in-country community displacements, it is undisputed that climate change multiplies vulnerability by increasing the effects and impacts of pre-existing causes of displacement, such as poverty, and food insecurity, persecution, and conflict.⁷⁴ According to the recent Intergovernmental Panel on Climate Change Report, “ climate change is contributing to humanitarian crises where climate hazards interact with high vulnerability. Climate and weather extremes are increasingly driving displacement in all regions ...”⁷⁵ Displacements can have devastating effects on communities and create complex challenges that may affect the enjoyment of human rights by the displaced communities.

Thus, the actions of individuals, communities, and nations make a significant difference in the vulnerability of communities to climate-induced displacements. There is therefore a need to identify the necessary legal and policy strategies that are needed to ensure that communities affected by climate-induced displacements in Zimbabwe lead dignified lives.

The purpose of this chapter is to analyse the conceptual basis of legal and policy strategies currently in existence for the protection of communities in the context of climate-induced displacements from regional and international perspectives. The chapter will give a justification for legal strategies for community protection. Finally, the chapter

⁷³ (n 34 above) 2

⁷⁴ (n 34 above) 2

⁷⁵ IPCC Sixth Assessment Report, Climate Change 2022: Impacts, Adaptation and Vulnerability. Accessed 5 June, 2022 <https://www.ipcc.ch/report/ar6/wg2/>

will discuss some of the existing frameworks at the regional and international levels for the protection of communities in light of climate-induced displacements.

3.2 Conceptual Approaches to community protection in the context of climate change-induced displacements

In-country climate-induced displacements have been linked to the issues of climate change adaptation and mitigation, discourse on internally displaced persons, and disaster risk reduction and management. Resultantly, several concepts have been proffered as a basis for different legal strategies to protect affected communities. It is trite to note that the different approaches discussed herein are not mutually exclusive but can be utilized together to give the best possible protection to affected communities.

3.2.1. Human Rights- Based Approach

A human rights-based approach has been put forward as an approach that states should be guided by in putting in place legislative mechanisms to protect communities affected by climate-induced displacements. A human rights-based approach to the legal protection of communities in the context of climate-induced displacements refers to an approach where human rights are taken into account in making policy decisions and in formulating new legislation or policy directions.⁷⁶ The human rights-based approach can be utilized for developing post hoc protection, that is, developing legal protection which would apply after communities have moved or those protections which seek to adapt to climate change and reduce the need for human mobility.

The human rights-based approach to protection is premised on the correlation between climate change and human rights. The United Nations Human Rights Council and United Nations Framework Convention on Climate Change (UNFCCC) both acknowledge that there is a connection between climate change and human rights and that its effects make it more difficult to exercise the rights to food, health, dignity, and life, among other

⁷⁶ G. Dawson & R. Laut, "Human Mobility and Climate Change" 2017 Vol 8 *Journal of International Humanitarian Legal Studies* 113-201

internationally recognised rights.⁷⁷ As discussed in the previous chapter, climate change-induced displacements also have important implications for the effective enjoyment of human rights.

The human rights-based approach recognizes that the primary obligation for the protection of human rights lies on the state to respect or ensure respect for human rights under applicable international obligations, whether negative or positive. Thus, in the context of climate-induced displacements, the threshold of responsibility is governed by prevention, actual protection, and redressing harm or damage in the event of displacements.⁷⁸ It encapsulates responsibility for early or timely warning, preparedness, mitigation, and disaster risk reduction measures, concerning existential threats posed by climate change-induced displacements.⁷⁹ Proponents of this approach argue that incorporating pertinent human rights obligations into an understanding of adaptation obligations provides a necessary route to developing effective legislative frameworks for communities vulnerable to climate-induced displacements.⁸⁰

3.2.2. Adoption Approach

An adaptive strategy, according to Dawson and Laut, is characterised by pre-emptive or transformative efforts that seek to prevent the forced and uninvited nature of climate-induced displacements.⁸¹ Castles describes adaptation as meaning "designing and implementing measures to help communities affected by climate change to modify the ways they work and live to be able to cope with new environmental conditions".⁸² The protection offered to communities in the context of climate-induced displacements by the adoption approach is pre-emptive. The approach advocates for putting in place legal mechanisms that ensure communities will not get to move or if movement is inevitable,

⁷⁷ J McAdam & M. Limon, "Human Rights, climate change and cross-border displacement: the role of international human rights community in contributing to effective and just solutions" 2015 Universal Rights Group Policy Report

⁷⁸ McAdam (n 47 above)

⁷⁹ McAdam (n 47 above)

⁸⁰ McAdam & Limon (n 77 above)

⁸¹ Dawson & Laut (n 76 above) 143

⁸² S. Castles, "Afterword- What Now? Climate-Induced Displacement after Copenhagen, in *Climate Change and Displacement: Multidisciplinary Perspectives* 239

states must put in place legislative strategies that ensure communities are able to stay in their localities or relocation instead of displacement occurs.⁸³

It is therefore important to note that under the adaptive approach, community movement induced by climate change is recognised as a potential adaptation strategy which involved the participation of affected communities for its implementation. Legal mechanisms are put in place to set in motion pre-emptive plans as opposed to protection after communities have been displaced.

3.2.3. Durable Solutions Approach

The durable solutions approach is an approach that is common in discussions for communities that are internally displaced because of conflict and human rights violations.⁸⁴ Researchers are slowly adopting the approach for climate-induced displaced communities. The approach recognises that after the climate change-induced natural or environmental disaster that resulted in the displacement of communities has passed, the unique needs and human rights issues of internally displaced people do not simply go away.⁸⁵ It takes into account that communities that are internally displaced frequently experience ongoing issues and need support until they attain a durable solution to their situation, regardless of whether they choose to move back to their original communities, settle somewhere else in the country, or try to integrate locally.⁸⁶ Thus, a durable solution is achieved when internally displaced people are able to enjoy their human rights without facing prejudice as a result of their displacement and no longer require any special protection or aid linked to their displacement.⁸⁷ It is applicable whether the displaced community seek to return to their original land or are integrated into another community.

⁸³ Dawson & Laut, (n 76 above) 143

⁸⁴ M. Bradley and J. McAdam “Rethinking Durable Solutions to Displacement in the Context of Climate Change” Monday, May 14, 2012 <https://www.brookings.edu/research/rethinking-durable-solutions-to-displacement-in-the-context-of-climate-change/>

⁸⁵ Bradley and McAdam (n 84 above)

⁸⁶ Brookings Institute, Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons April 2010

⁸⁷ Bradley and McAdam (n 84 above) 5

It is trite to note that the Principles on Internal Displacement, give internally displaced persons a right to a durable solution and stipulates that they should be offered support in their process of achieving same. The obligations of national authorities and the function of the humanitarian and development community in assisting with long-term solutions are further outlined in principles 29 and 30.

Principles 29-30 provides for the responsibilities of national institutions and clearly states out how humanitarian and development organisations can assist in achieving durable solutions.

3.2.4 Hybrid Approach

International law and general legal systems are not entirely unfamiliar with the idea of hybrid law.⁸⁸ What is referred to as "hybridisation" under international law has taken many different forms, including the incorporation of substantive norms from multiple legal instruments, a combination of principles with diverse legal standings, and assimilation of the roles of state and non-state actors. This can be evident from international environmental law where soft and hard normative principles are often integrated with creating state obligations.⁸⁹

Looking at internal or in-country climate-induced displacements, the hybrid approach aims to create a legal framework anchored in environmental and climate law, human rights and disaster risk reduction and management law and can be implemented in a national, regional and international legal context.⁹⁰ It recognises that the legal obligations to address the causes and effects of climate change can be rooted in climate and environmental law, with the resultant failure to prevent causing gross human rights violations which can only be addressed under human rights law regimes, and the consequential challenge of internal displacement finding effective and sustainable

⁸⁸ S. Jolly & A. Tivedi, "Implementing the SDG-13 through the Adoption of Hybrid Law: Addressing Climate-Induced Displacement" 2019 Vol. 2 Brill *Open Law* 69-100.

⁸⁹ V. Heyvaert, "Hybrid Norms in International Law, Law, Society and Economy Working Papers 6/2009, London School of Economics and Political Science, 2009

⁹⁰ "Hybrid legal approaches to human mobility in the context of climate change." Accessed 5 June, 2022. <https://ehs.unu.edu/blog/articles/hybrid-legal-approaches-to-human-mobility-in-the-context-of-climate-change.html>

resolution in terms of the disaster risk reduction and management law.⁹¹ It is critical to note that there is no one way for a country to adopt a hybrid law approach. The adoption process can be based on the different country or community situations, procedures and institutions taking into account the different levels of government.

Additionally, related to the hybrid law, is a hybrid implementation framework which can be developed by the collaboration of international, regional and national bodies, agencies or institutions related to the environment, human rights, internally displaced people and disaster risk reduction and management. This entails maintaining the independence and mandate of the different bodies and institutions whilst facilitating the creation of a clear, cohesive and practical plan of action.⁹²

The hybrid application has already been used by the Immigration and Protection Tribunal in New Zealand in a matter relating to cross-border climate-induced displacement.⁹³ The tribunal used a rights-based perspective and a liberal interpretation of the legislation (as a prerequisite of hybrid law). The tribunal effectively expanded the interpretation of applicable domestic and international law to ensure that the existing legislative framework provides protection and addresses the needs of communities affected by climate change – induced displacements.⁹⁴ There is therefore an opportunity to explore how this can be effectively adopted for in-country climate-induced displacements.

3.3 Evolving legal frameworks for protection at the International and Regional Levels

Over the years, at both international and regional levels, there have been hard and soft law legal instruments that have been put in place around internally displaced persons, climate change and disaster risk reduction and management that are crucial for the

⁹¹ (n 90 above)

⁹² Jolly & Tivedi (n 88 above) 89

⁹³ In re AD (Tuvalu) [2014] NZIPT 501370-371 Accessed 5 June, 2022. [IMMIGRATION & PROTECTION TRIBUNAL \(refworld.org\)](https://refworld.org/)

⁹⁴ "Protection under Climate Law: A hybrid approach." Accessed 5 June, 2022 <https://rli.blogs.sas.ac.uk/2018/05/29/protection-under-climate-law-a-hybrid-approach/>

protection of communities affected by climate-induced displacements. It is the purpose of this section to discuss the key aspects of these legal instruments.

It is important to note that, the legal protection regime for internal or in-country climate-induced displacements is still evolving. At international, regional and national levels there still exist some gaps and areas for reform. Regardless, in the context of displacements brought on by climate change, it is still critical to examine the present protection system, identify deficiencies, and consider potential options for addressing those gaps.

3.3.1. Internally displaced persons

3.3.1.1. United Nations Principles on Internal Displacements

Under international human rights law, states have the primary responsibility to promote and protect the human rights of all people within their territory or jurisdiction. Where communities are displaced within national borders, states' obligations for protection under international law are set by recognised soft law instruments such as the United Nations Principles on Internal Displacement (hereinafter the Principles).⁹⁵ The Principles, adopted in 1998, are recognized by the international community as an "important international framework for the protection of internally displaced persons," addressing the rights and needs of communities before, during and after displacement.⁹⁶ Under the Principles, internally displaced persons are defined 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 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 recognised state border."⁹⁷

⁹⁵ C. Beyani, "A Human Rights-Based Approach to Protection of Environmentally Displaced Persons" Speech delivered at the Nansen Conference on Climate Change and Displacement on June 7, 2011 in Oslo, Norway. Accessed 5 June, 2022. <https://www.brookings.edu/on-the-record/a-human-rights-based-approach-to-protection-of-environmentally-displaced-persons/>; See also Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2 (1998) Accessed 5 June, 2022 <https://www.refworld.org/docid/3d4f95e11.html>

⁹⁶ UNGA, "World Summit Outcome," UN Doc A/RES/60/1 (24 October 2005) at para 132

⁹⁷ The Guidelines Introduction – Scope and Purpose paragraph 2

It has not yet been thoroughly investigated and understood how to best to protect communities who have been internally displaced due to natural and environmental catastrophes caused by climate change. Also still under consideration is the extent to which the Principles are applicable in the context of climate change -induced displacements. The Principles were designed to provide protection for people and communities internally displaced for whatever reason and they recognise that internally displaced people and communities have specific needs.⁹⁸ The Principles were developed by looking at the legal instruments under the international humanitarian law, international human rights law and international refugee law frameworks and are non-binding. Regardless of their binding nature, the Principles provide normative benchmarks for the provision of protection and assistance to internally displaced communities. As evidence, they have been incorporated into national law in some countries.⁹⁹

Whilst it is accepted that the Principles apply to communities internally displaced as a result of climate change, three protection gaps need to be discussed about climate-induced displacements. The first gap is evidenced from the fact that the Principles are only applicable in “forced” internal movement of communities as per the definition of internally displaced persons cited above. This may pose problems if one considers the slow-onset environmental degradation caused by climate change. It is not disputed that in the case of acute, sudden climate related environmental disasters, like floods or storms, the movement will be considered involuntary, ensuring that those affected are categorised as internally displaced persons as per the Principles and eligible for protection.¹⁰⁰ The deterioration caused by slow environmental degradation as a result of climate change can be related to the internal movement of people or communities when it results in communities migrating as a measure to adapt to the climate change related weather changes.¹⁰¹ The Principles are inadequate in this scenario as no guidelines are provided in determining under what circumstances can that movement be regarded as involuntary

⁹⁸ Kolmannskog & Trebbi (n 26 above)

⁹⁹ V. Kolmannskog, “Climate change, disaster, displacement and migration: initial evidence from Africa, Research Paper No. 180” UNHCR. Accessed 5 June, 2022. <https://www.unhcr.org/4b18e3599.html>;

¹⁰⁰ Thomas (n 3 above)

¹⁰¹ E. Ferris, “Protection and Planned Relocations in The Context of Climate Change” Accessed 5 June, 2022. <https://www.unhcr.org/protection/globalconsult/5024d5169/27-protection-planned-relocations-context-climate-change-elizabeth-ferris.html>

and forced.¹⁰² This creates a potential protection gap for communities internally displaced because of the slow onset of environmental degradation because of climate change.

Compounding the opacity created by the requirement for “forced” displacement it is the requirement in the Principles that displacement must have been a consequence of a disaster without providing a definition of disaster.¹⁰³ A disaster is defined by the United Nations International Strategy for Disaster Reduction (UNISDR) a “disaster” as

“...a serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources.”¹⁰⁴

The definition fail to take into account “disasters” that are of a smaller-scale or result from the slow-onset environmental hazards related to the different impacts of climate change and affecting communities differently.¹⁰⁵ Thus, communities who may be in need of protection may be left vulnerable without protection and assistance because their situation does not fit in the prescribed definition of disaster.¹⁰⁶ Climate change induced displacement phenomenon manifests differently and this must be reflected in the prescribed definitions.

Despite the identified gaps, the Principles remain the main source of protection mechanisms that are afforded to communities internally displaced as a result of climate change, internationally.

3.3.1.2. African Union Convention for the Protection and Assistance of Internally Displaced Persons

The African Union Convention for the Protection and Assistance of Internally Displaced Persons (hereinafter the Kampala Convention) of 2009 provides a regional framework for

¹⁰² Thomas (n 3 above) 813

¹⁰³ W. Kolin et al, Incorporating the Principles on Internal Displacement into Domestic Law: Issues and Challenges, *The American Society of International Law*. Accessed 6 June, 2022. https://www.brookings.edu/wp-content/uploads/2016/06/0119_internal_displacement_complete.pdf

¹⁰⁴ Terminology, United Nations International Strategy for Disaster Reduction (Aug. 30, 2007), <http://www.unisdr.org/we/inform/terminology>

¹⁰⁵ Thomas (n3 above) 816

¹⁰⁶ Thomas (n 3 above)

a human rights-based approach to protecting and assisting internally displaced persons, which is pertinent to displacement brought on by climate change. The convention is a binding treaty that builds up on the Principles.

Important provisions of the Kampala Convention are pertinent to the protection of communities that have been displaced because of climate change related impacts. The Kampala Convention's objectives, which are more fully outlined in Article 3, include encouraging local, national, and regional actions to reduce, prohibit, and eliminate root causes of displacement; creating a legal framework for the prevention of arbitrary displacement; establishing a legal framework for cooperation and togetherness among states; providing a legal instrument for the protection and assistance of internally displaced people; and defining the role and responsibility of state parties.¹⁰⁷

The scope of the Kampala Convention is broader as compared to the Principles. The Kampala Convention defines internal displacement as “the involuntary or forced movement, evacuation or relocation of persons or groups of persons within recognized state borders.”¹⁰⁸ Internally displaced persons are in turn defined 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 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 border”¹⁰⁹ These definitions take into account not only the emergent disasters caused by climate-induced events like floods or cyclones but also take into account the slow onset of environmental damage.

The strength of the Kampala Convention is that it provides a legally binding framework that stipulates the responsibility and obligations of states in prevention of arbitrary displacement, providing protection during and assisting affected communities in finding

¹⁰⁷ A.M. Adebe, “The Kampala Convention and environmentally induced displacement in Africa” *IOM Intersessional Workshop on Climate Change, Environmental Degradation and Migration* 29-30 March 2011, Geneva, Switzerland. Accessed 6 June, 2022 <https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/climate-change-2011/SessionIII-Paper-Allehone-Mulugeta-Abebe.pdf>

¹⁰⁸ Article 1 (l) of the Kampala Convention.

¹⁰⁹ Article 1 (k) of the Kampala Convention

durable solutions.¹¹⁰ Article 5(4) provides that, “States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human-made disasters, including climate change.” Here the protection of communities internally displaced as a result of climate change is expressly mentioned.

Thus, states are enjoined to prevent internal displacements including those related to climate change impacts. Interestingly, the Kampala Convention provides for the protection of communities who are most likely to be affected by climate change-induced displacements. Article 4(1) of the Kampala Convention takes into account the need to put in place mechanisms to prevent and mitigate disasters as a legal protection measure for communities at risk of climate-induced displacements. It mandates the state to prevent and avoid the conditions that might lead to the displacement of persons by respect and ensuring respect for obligations under international law, which are sufficiently broad to cover international environmental and climate change law, while specifically mentioning human rights and humanitarian law in all circumstances. Additionally, in terms of Article 4 (2), it urges member states to create early warning systems, disaster risk reduction plans, and emergency preparedness strategies in "areas of potential displacement". The Kampala Convention, thus, take a hybrid approach to the protection of communities internally displaced because of climate change.

3.3.1.3 Housing and Property Restitution for Refugees and Displaced Persons

It is undeniable that when climate-induced disasters like cyclones or floods, communities lose their property and housing. The UN Sub-Commission on the Protection and Promotion of Human Rights approval of the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles) in August 2005 was a significant step toward offering practical guidance on the international standards governing the effective implementation of housing, land, and property restitution programmes and mechanisms.¹¹¹ All displaced people who were "arbitrarily or unjustly deprived of their previous homes, lands, properties or places of habitual residence,

¹¹⁰ Abebe (n 107 above) 6

¹¹¹ “Handbook on Housing and Property Restitution for Refugees and Displaced Persons” OHCHR. Accessed 7 June 2022. https://www.ohchr.org/sites/default/files/Documents/Publications/pinheiro_principles.pdf

regardless of the type or circumstances by which displacement initially happened," are specifically included by the Pinheiro Principles.¹¹² The application is wide enough to include communities displaced as a result of climate change-induced disasters.

Whilst the Pinheiro principles are important they still remain soft law and require national government adaptation to be effective at a local level. Also, without clear and practical provisions on climate financing, the principles will remain aspirations with national governments ignoring their application.

3.3.2. Climate Change Adaptation and Mitigation

The climate change law regime is another area that has made provisions for the protection of communities affected by climate-induced displacements. These provisions were mainly made in assessing states' obligations relating to adaptation to and mitigation of climate change.

It is critical to note that neither the Kyoto Protocol nor the United Nations Framework Convention on Climate Change (UNFCCC), two of the most important pieces of climate change legislation, contain any explicit obligations regarding displacements brought on by climate change.¹¹³ Regardless, various Conference of the Parties (COP) decisions have made an effort to draw attention to the problem of climate displacement. The Ad Hoc Working Group on Long-Term Cooperative Action, established under the Bali Action Plan, introduced climate displacement as a component of adaptation at COP16 in Cancun, Mexico.¹¹⁴ State parties were obligated by the report of the Ad Hoc Working Group on Long-Term Cooperative Action at COP16 to strengthen their adaptation efforts and take steps to promote understanding, coordination, and cooperation with regard to migration, planned relocation, and displacement brought on by climate change at the national, regional, and international levels.¹¹⁵ The action plan traces the "catalytic effect" of Cancun Adaptation Framework paragraph 14(f) (the paragraph was adopted in

¹¹² Principle 1.2

¹¹³ C. Gibb and J. Ford, 'Should the UN Framework Convention on Climate Change Recognize Climate Migrants?', *Environmental Research Letters*, 7/4: 1–9 (2012).

¹¹⁴ United Nations Framework Convention on Climate Change (UNFCCC), 'The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention', Decision 1/CP.16

¹¹⁵ (n 114 above) para 14(f)

December 2010), which recognised "climate change-induced displacement, migration, and planned relocation" as elements to be addressed within the framework of climate change adaptation.¹¹⁶ By connecting human movement with loss and harm, the COP18 in Doha added a new dimension to the direction of climate displacement.¹¹⁷

The rights of migrants are also acknowledged in the preamble of the Paris Agreement, which state parties are asked to uphold, advance, and take into account while pursuing climate change mitigation measures.¹¹⁸ However, the Paris Agreement does not specifically mention or define migrant rights or any particular legal protection for either prevention or support of climate displacement, in its text.¹¹⁹

As appears from the above discussion, the climate change regime has mostly addressed climate displacement via the lens of adaptation.¹²⁰ In the displacement-adaptation discourse, there are primarily two points of view: one sees displacement as the outcome of a failure to adapt, while the second sees displacement as a key tactic for adapting to climate change.¹²¹ The latter affirms that increasing and promoting planned relocations as opposed to forced displacements might lessen the vulnerability of a community and the individuals who are concerned since, in many situations, moving from a vulnerable community may be the only choice. However, a number of variables, such as risk perceptions, socioeconomic situations, and the form of climate change, will determine whether planned relocations can be a successful adaptation strategy.¹²²

Whilst there is some recognition of the need to promote communities affected by climate-induced displacements through climate change mitigation and adaptation obligations of

¹¹⁶ J. McAdam, "Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments" Vol. 29 No. 2 *Environmentally Induced Displacement and Forced Migration* 11-26

¹¹⁷ UNFCCC, 'Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity', Decision 3/CP.18

¹¹⁸ The Paris Agreement, preambular recital 11; The Paris Agreement is a legally binding international treaty on climate change. It was adopted by 196 Parties at COP 21 in Paris, on 12 December 2015

¹¹⁹ J. McAdam (n 116 above)

¹²⁰ A. Thomas and L. Benjamin, 'Policies and Mechanisms to Address Climate-Induced Migration and Displacement in Pacific and Caribbean Small Island Developing States', 2018 Vol. 10 No.1 *International Journal of Climate Change Strategies and Management* 86–104

¹²¹ T. Afifi et al., 'Human Mobility in Response to Rainfall Variability: Opportunities for Migration as a Successful Adaptation Strategy in Eight Case Studies', 2016 Vol. 5 No.2 *Migration and Development* 254

¹²² Afifi et al (n 121 above)

state parties to the UNFCCC, the language of climate change or disasters related to climate change should be harmonised to include terms related to the slow-onset and sudden-impact disasters, including geophysical disasters, within the framework of climate change law. This helps in creating collaborative, cohesive and solidarity actions among member states.

3.3.3. Disaster Risk Reduction and Management

The protection of communities affected by climate-induced displacements has been well articulated within the disaster risk reduction and management discourse. This section will discuss this aspect in three parts looking at: disaster risk reduction and management within the human rights discourse, disaster reduction and management within the soft law frameworks and disaster risk reduction within the African region and sub-regional frameworks.

Looking at the discussion on the impact of climate change on environmental and natural disasters, it is undeniable that these disasters poses a negative impact on the full enjoyment of human rights and throughout the disaster risk reduction and management cycle, states are enjoined to take into consideration their obligations under international, regional and national instruments.¹²³ The aspect of protection of human rights from a disaster risk reduction and management perspective can be found in different human rights instruments.

The Convention on the Elimination of Discrimination Against Women's (CEDAW) General Recommendation 37 (hereinafter GR 37) on the "Gender-Related Dimensions of Disaster Risk Reduction in a Context of Climate Change" is crucial for the protection of vulnerable communities or those who are vulnerable in communities.¹²⁴ The GR 37 was adopted to ensure that the obligations of member states under CEDAW in the context of disaster risk reduction and climate change are clarified, including the state reporting guidelines. The UN Sendai Framework on Disaster Risk Reduction, the UN Sustainable Development

¹²³ M. Hesselman, "Human Rights Law (2018)", 2019 Vol. 1 No.1 *Yearbook of International Disaster Law Online*, 398-408. DOI: <https://doi.org/10.1163/26662531-01001026>

¹²⁴ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 'General Recommendation No. 37 on Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change' (7 February 2018)

Goals, and the UN Framework Convention on Climate Change are just a few of the associated worldwide agendas that it aims to promote through coherence, accountability, and mutual reinforcement.¹²⁵ GR 37 defines¹²⁶ disasters widely and definition seeks to cover both climate-induced displacements resulting from emergent climate-induced natural and environmental disasters as well as that resulting from slow-onset of environmental and natural hazards. In the framework of disaster risk reduction and management when climate-induced catastrophes causing displacements have occurred, GR 37 encourages gender mainstreaming to human rights protection.

Additionally, the Human Rights Committee clarifies a wide range of positive obligations for the protection of the right to life in General Comment No. 36 (hereinafter GC 36) on Article 6 of the International Covenant on Civil and Political Rights¹²⁷, including those relevant to disaster risk reduction and management that also apply to climate-induced displacements. Environmental deterioration, climate change, and unsustainable growth were considered among the biggest threats to the right to life for both the present and future generations in GC 36.¹²⁸ The state duty to safeguard life under GC 36's paragraph 26 have been construed to include duties to "address the general circumstances in society that may give rise to direct risks to life or impede persons from exercising their right to life with dignity." The Committee also recommended that States put in place mechanisms to provide individuals with food, shelter, health care among others and to strengthen efficient emergency services in the fields of health and emergency response operations (including fire-fighters, ambulances, and police forces) to ensure that the right can be effectively protected.¹²⁹ Thus, GC 36 recognises the need to include the protection of communities affected by climate-induced displacements by putting in place proper disaster risk reduction and management legal and non-legal mechanisms.

¹²⁵ (n 124 above) paragraphs 10 -12

¹²⁶ "all those events that are small-scale and large-scale, frequent and infrequent, sudden and slow-onset caused by natural or human-made hazards, as well as related environmental, technological and biological hazards and risks, mentioned in the Sendai Framework, as well as any other chemical, nuclear and biological hazards and risks. These hazards and risks also include testing and use of all types of weapons by State and non-State actors."

¹²⁷ General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights (ICCPR), on the Right to Life (30 October 2018)

¹²⁸ (n 124 above) paragraph 62

¹²⁹ (n 127 above) paragraph 26

The Framework Principles on Human Rights and the Environment, written by UN Special Rapporteur on Human Rights and the Environment John Knox, were published in January 2018 and serve to "set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy, and sustainable environment."¹³⁰ Since Framework Principle 14 outlines the responsibility to take "additional measures to protect those most vulnerable to environmental harm based on "their needs, risks, and capacities," it is most explicitly relevant for disaster risk reduction and the protection of communities affected by climate-induced disasters.¹³¹ This includes protection of vulnerable communities affected by climate change related hazards and may have difficulties in accessing information and emergency relief.¹³² The principles acknowledge the aspect of disaster-related displacement in the context of climate change as disasters are held to multiply vulnerabilities and result in increased human rights violations and insecurities.¹³³

The Sendai Framework for Disaster Risk Reduction 2015–2030 and the Hyogo Framework for Action are crucial for the soft law frameworks on disaster risk reduction and management as well as climate change–induced displacements. The Hyogo Framework for Action called for the adoption or modification of laws as well as "regulations and mechanisms that encourage compliance and that promote incentives for undertaking risk reduction and mitigation activities."¹³⁴ In addition, the Sendai Framework, which took the place of the Hyogo Framework, identifies four action priorities and seven distinct targets for preventing and reducing disaster risks. Among the four action priorities is: understanding disaster risk ,developing strong institutions at government level to manage disaster risk, financing disaster reduction by building community resilience and improving disaster preparedness to enable effective response and achieving durable solutions.¹³⁵ Over the next 15 years, the Framework aims to significantly reduce disaster

¹³⁰ Human Rights Council, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (24 January 2018)

¹³¹ Hesselman (n 117 above)

¹³² (n 131 above) paragraphs, 40–41

¹³³ Hesselman (n 123 above) 403

¹³⁴ (n 6 above)

¹³⁵ Sendai Framework for Disaster Risk Reduction 2015-2030.

risk, losses to lives, livelihoods, and health as well as to the economic, physical, social, cultural, and environmental assets of individuals, businesses, communities, and nations.

At the African regional level, the Constitutive Act of the African Union (AU) mandate the AU to enact and implement legal and policy instruments related to disaster risk reduction and management.¹³⁶ The main regional legal instrument is the Africa Regional Disaster Risk Reduction Strategy of 2004 which aims to enhance the integration of disaster risk reduction and management and sustainable development by “increasing political commitment; improving identification and assessment of risks; increasing knowledge and awareness; improving institutional and governance frameworks; and ensuring integration of disaster risk reduction and management in emergency response, recovery and rehabilitation.”¹³⁷ The strategy recognises climate change as a trigger to natural and environmental disasters. Its second framework is the Programme of Action for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 in Africa, adopted in 2016, which directs Africa's disaster risk reduction and management and response activities. The programme of action recognised that climate variability and change had increased the frequency and severity of hydro-meteorological disasters and that coordinated regional action was required to safeguard the region's most vulnerable citizens. In the majority of African nations, including Zimbabwe, the regional efforts are still in the early stages of implementation.

For integrated planning and execution, SADC developed the Sub-Regional Disaster Risk Reduction Platform. The Disaster Preparedness and Response Strategy (2011-2015) notes that the region's population, urbanisation, and economic growth present opportunities, but it also acknowledges that these factors may also make the region more vulnerable to hazards and disaster risk, which could result in population displacement, loss of life and livelihoods, and economic damage.¹³⁸ The Regional Disaster Preparedness and Response Strategy and Fund (2016–2030) was also adopted by SADC in 2016. Its goal is to direct disaster risk programming in the sub-region and

¹³⁶ See the Constitutive Act of the African Union

¹³⁷ N. W Orago, (2019) "Africa and MENA Region (2018)", 2019 Vol. 1 No.1 *Yearbook of International Disaster Law Online*, 326-335. DOI: <https://doi.org/10.1163/26662531-01001018>

¹³⁸ IOM (2017) www.iom.int

improve the inclusion of disaster risk reduction, climate change action, and sustainable development in planning and policy frameworks.¹³⁹ The Strategy is consistent with the Sendai Framework for Disaster Risk Reduction, which emphasizes strong institutional arrangements to support disaster risk reduction, preparedness and response. Research reveals that the plan is still mainly conceptual even if the strategy requires the Member States to carry out a number of critical actions within each priority area.¹⁴⁰ It has limited consideration of the vulnerabilities, needs and rights of communities displaced as a result of climate change related disasters and it does not set corresponding state responsibilities in addressing such needs.¹⁴¹

3.4 Conclusion

Climate-induced displacements are a fact and a reality in most vulnerable communities all over the world. In response to the challenges and problems posed by climate change-induced displacements, various legal instruments were developed in the areas internally displaced persons, climate change adaptation and mitigation and disaster risk management. Though there are gaps in the legal instruments regarding the protection of internally climate-induced displacements of communities, they provide a good basis for the analysis of national and local level legislative mechanisms that states have put in place for the protection of communities affected by internal climate-induced displacements.

¹³⁹ D. Mushayavanhu & D. Makaza, “An Assessment of Compliance of Existing Southern African Development Community (SADC) Member States’ Gender-Based Violence (GBV) Laws to International Agreements and SADC Regulations. For Southern African Development Community (SADC) Parliamentary Forum (PF)” (December, 2020)

¹⁴⁰ IOM (2017) www.iom.int

¹⁴¹ Mushayavanhu & Makaza (n 139 above)

CHAPTER FOUR: THE ZIMBABWEAN LEGISLATIVE FRAMEWORK

4.1 Introduction

Zimbabwe is not immune to climate change-induced displacements. As discussed in Chapter two, since 2019, Zimbabwe has been hit by two tropical storms which have resulted in massive floods affecting both rural and urban communities¹⁴² and communities have been moving from dry areas to the Eastern Highlands and urban areas. There is therefore a need to ensure that the vulnerable communities are protected and the law plays a critical role in providing protection and durable solutions for the affected communities. It has been established that at the international level, whilst there is no specific legal instrument dealing with the protection of climate change-induced displacements, regardless, normative frameworks such as the Principles on International Displacements and the Sendai Framework, are important for the protection of communities displaced as because of climate change. Similarly, frameworks established at the regional level like the Kampala Convention also provide protection for communities affected by climate-induced displacements, to the extent that they provide protection for internally displaced persons. It is trite that for effective protection, there must be in existing local or national level legislative frameworks. The concept and reality of internal displacements is not a new phenomenon in Zimbabwe; however, the existing domestic legislative provisions fail to make adequate provisions to combat the problem.¹⁴³

It is therefore the purpose of this chapter, to review and analyse the existing legal and policy frameworks in Zimbabwe and the extent to which they provide protection for communities affected by climate change-induced displacements. In conducting the review, an analysis of provisions relating to internally displaced persons, disaster risk management and climate change governance will be conducted.

¹⁴² "Climate change and disaster management in Zimbabwe." Zimbabwe Environmental Law Association (ZELA). Accessed 7 June, 2022. <http://www.zela.org/climate-change-and-disaster-management-in-zimbabwe/>

¹⁴³ Ndlovu & Nwauche (n 4 above)

4.2 Legal and Policy Frameworks on climate-induced displacements: The Domestic Framework

4.2.1. Internally displacements persons

For a country that was among the first to ratify the Kampala Convention, Zimbabwe does not have any legislative frameworks that specifically deal with the protection of internally displaced persons let alone those displaced by climate change impacts.¹⁴⁴ Despite having signed the Kampala Convention in October 2009 and ratified same in July 2013, Zimbabwe has not domesticated the provisions of the Convention nor has it established an authority responsible for internally displaced persons.¹⁴⁵ However, the provisions of the Constitution of Zimbabwe, Amendment (No. 20) Act 2013 (hereinafter the Constitution) reveal some protections which can be extended to communities affected by climate change-induced displacements.

With regards to the protection of climate-induced displacements, the Constitution is critical in two respects. Firstly, the Constitution in Chapter 4 contains the bill of rights on fundamental human rights. Some of the human rights, for instance, the right to rights to life¹⁴⁶, human dignity¹⁴⁷, privacy¹⁴⁸, freedom of association¹⁴⁹, right to property¹⁵⁰, education¹⁵¹, health care¹⁵² and food and water¹⁵³ can potentially be impacted negatively by climate-induced displacements thus there is an obligation upon the Government of Zimbabwe to protect, promote and guarantee the said rights in the context of climate change-induced displacements.¹⁵⁴ The Kampala Convention provides that the above

¹⁴⁴(n 66 above)

¹⁴⁵ (n 66 above)

¹⁴⁶ Section 48 of the Constitution

¹⁴⁷ Section 51 of the Constitution

¹⁴⁸ Section 57 of the Constitution

¹⁴⁹ Section 58 of the Constitution

¹⁵⁰ Section 71 of the Constitution

¹⁵¹ Section 75 of the Constitution

¹⁵² Section 76 of the Constitution

¹⁵³ Section 77 of the Constitution

¹⁵⁴ Norwegian Council , “A review of the legal framework in Zimbabwe relating to the protection of IDPs” 2014 Report

mentioned rights require unique attention in internal displacements response initiatives.¹⁵⁵

However, the drawback is that save for the right to life and human dignity, the identified rights are subject to progressive realisation. The measure for reasonableness may differ where there is no specific legislation setting the minimum standards and obligations. In interpreting similar provisions on the progressive realisation of the second-generation rights, the Constitutional Court of South Africa in the case of **Government of the Republic of South Africa and Others v Irene Grootboom and others CCT11/00** held

“A court considering reasonableness will not enquire whether other desirable or favourable measures could have been adopted, or whether public money could have been spent better. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognise that a wide range of possible measures could be adopted by the State to meet its obligations. Many of these would meet the requirements of reasonableness. Once it is shown that the measures do so, this requirement is met”

Thus, by relying only on the Constitution alone without legislative provisions to set out clear steps that the State need to follow to fulfil its obligations, the protection for communities affected by climate change-induced displacements is weakened, also considering how protracted judicial reviews can be.

Secondly, the Constitution is important when one considers the applicability of international and regional treaties including soft law frameworks in Zimbabwe. It is important to note that, according to section 327 of the Constitution, a treaty is not binding upon Zimbabwe until after Parliamentary approval and is only part of Zimbabwean laws after incorporation through a statute. Although international treaties that had not been incorporated into law through an Act of Parliament are not part of Zimbabwean domestic law, section 327(6) of the Constitution mandates the judiciary to interpret statutes in line with international treaty, convention or agreement that is binding on Zimbabwe.¹⁵⁶ This

¹⁵⁵ See the Preamble of the Kampala Convention and Article 2 (e) of same.

¹⁵⁶ N. Ndlovu, "Policy and legal framework on internal displacement in Zimbabwe: an overview GENDA Policy Brief VII (July 2020), Accessed 8 June, 2022. <http://genida.org/wp-content/uploads/2021/03/Policy-Brief-7-Ndlovu.pdf>

was aptly put by Charehwa J in *State v Banda* HH47/2006, where the learned judge held that:

“I note a worrying trend that judicial officers seem not to be aware that s327(6) of the Constitution..., requires them, in interpreting legislation to adopt any reasonable interpretation that is consistent with international conventions, treaties and agreements that are binding on Zimbabwe.”

Thus, in interpreting any legislative provisions, including the Constitution, that may have an effect on communities displaced by climate change, it is critical for the court to take into consideration the provisions of the Kampala Convention.

4.2.2. Disaster Risk Reduction and Management

Currently, disaster risk reduction and management in Zimbabwe is currently governed by the Civil Protection Act [Chapter 10:06].¹⁵⁷ “Disaster” in terms of the Act is defined as “any— (a) natural disaster, major accident or another event howsoever caused; or (b) destruction, pollution or scarcity of essential supplies; or (c) disruption of essential services; or (d) influx of refugees; or (e) plague or epidemic of disease; that threatens the life or well-being of the community.”¹⁵⁸ The above definition indicates that the definition of disaster is broad, however, the question that arises is whether the Act has adequate scope to protect communities affected by climate change-induced displacement. A broad reading of sections 2 (a) and (b) can lead to a conclusion that the Civil Protection Act is applicable to climate-induced displacements where they have been caused by the emergence of natural disasters like cyclones or by the slow-onset of harsh conditions, with the latter read into the aspect of the scarcity of essential supplies in section 2(b).

Another question that arises is whether the Act has adequate provisions to trigger the protection of affected communities. A reading of the Civil Protection Act reveals that the Act is mainly concerned with civil protection and emergency management.¹⁵⁹ Its focus is

¹⁵⁷ See Accessed 10 June 2022. <https://www.climate-laws.org/geographies/zimbabwe/laws/civil-protection-act>.

¹⁵⁸ Section 2 of the Civil Protection Act.

¹⁵⁹ “Legal Preparedness For International Disaster Assistance In Southern Africa: Regional assessment and country profiles” IFRC, Geneva, 2021

on response and does not deal with prevention and finding durable solutions for affected communities. Section 11 of the Civil Protection Act clearly brings this aspect to the fore. The section mandates the development of a civil protection plan which clearly sets out the protection needs of an area and the specific roles to be played by different stakeholders. However, the downside is that these plans only encompass disaster needs and the roles to be played in the anticipation of a disaster or when a disaster occurs. Critical aspects of prevention and management post disasters are not considered in the development of the said plan.

In addition, any plan or legislative provisions that may be put in place need financing to be effective. In section 29, the Civil Protection Act established a National Civil Protection Fund. The fund is supposed to be resourced from the funds appropriated by an Act of Parliament; it is safe to infer the Act being referred to is the Finance Act. Despite the establishment of this fund, the offices responsible for effecting the provisions of the Civil Protection Act have always been under-resourced. During the 2019 National Budget consultation, the Parliamentary Portfolio Committee on Local Government advocated for better resource allocations for the Civil Protection Unit as evidence of the status of the fund.¹⁶⁰ This, therefore, means disaster risk management and sharing of valid and pointed disaster related information in Zimbabwe remain under funded.¹⁶¹ This makes disaster risk reduction and management as well as provision for durable solutions for communities affected by climate change–induced displacements difficult.

From 2003, a draft disaster risk management bill has been on the cards for Zimbabwe. On 7th June 2022, it during the post Cabinet briefing, it was reported that principles for the disaster risk reduction and management bill have been approved by Cabinet. From 2003 to 2022, the proposed bills’ aim to “provide for integrated, coordinated and mainstreaming of disaster risk management in Zimbabwe and which focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, emergency fire services, rapid and effective response to disasters and post-disaster

¹⁶⁰ Chatiza (n 54 above)

¹⁶¹ Chatiza (n 54 above)

recovery” in line with the Hyogo Framework for Action and the Sendai Framework.¹⁶² Also, in 2012 a draft National disaster risk management strategy for Zimbabwe aligned to the Hyogo Framework was developed.¹⁶³

Other policies that are critical to note within the disaster risk reduction and management in Zimbabwe are the national agricultural hazard risk profile and the livestock disease surveillance system. The former categorizes key agricultural hazards affecting Zimbabwe, where they are located, the season in which they occur, regularity and intensity as well as the extent to which communities are vulnerable and their capacity to respond to such disasters.¹⁶⁴ The agricultural hazard risk profile is a valuable instrument that can be utilised in preparing communities and providing relevant information, however, it is difficult to deduce how best this profile can be utilized in the framework of the Civil Protection Act.

The latter was developed by the Department of Livestock and Veterinary Services and it tracks imminent disasters related to livestock.¹⁶⁵ Currently, the department is utilising GIS in mapping risks related to Foot and Mouth Disease, anthrax and rabies. The existing Agriculture Information Management System needs additional financial resources for a central repository to be established and used, and for staff to be trained.

4.2.3 Climate Change Governance Framework

Zimbabwe is a party to the UNFCCC. However, at the national level, Zimbabwe does not have a standalone climate change law as compared to other African countries like Kenya. What Zimbabwe has in place are different policies and strategies. It is thus imperative to look at these and analyse the extent to which the plight of communities affected by climate-induced displacements is addressed.

¹⁶² Mushayavanhu & Makaza (n 139 above)

¹⁶³ P.P Bongo et al, 2013, ‘A rights-based analysis of disaster risk reduction framework in Zimbabwe and its implications for policy and practice’, 2013 Vol. 5 No. 2 *Journal of Disaster Risk Studies* 81

¹⁶⁴ “Capacity Assessment of the Disaster Risk Management System in Zimbabwe”. Accessed 10 June 2022 <https://www.cadri.net/system/files/2021-06/Zimbabwe-Report-May-2017.pdf>

¹⁶⁵ (n 158 above)

4.2.3.1. Zimbabwe National Climate Change Policy

The objective of the National Climate Change Policy as set out in the foreword of the document is to provide guidance in achieving communities that are resilient to climate change and an economy that is low carbon. It seeks to provide principles that will enable development in harmony with the environment and on strengthening communities' ability to adopt to climate change. The Policy recognises that the set goals can only be achieved through the consideration of the key provisions from the National Climate Change Response Strategy, National Adaptation Plan, Low Carbon Development Strategy, National Environmental Policy, Renewable Energy Policy, and Forest Policy. In short, the policy seeks to provide guidance on climate change management in Zimbabwe, improve Zimbabwe's adaptive capacity, increase the implementation of mitigation activities and domesticate Zimbabwe's obligations under the UNFCCC framework.¹⁶⁶

In Chapter 2, the National Climate Change Policy recognises the importance of the agriculture sector in Zimbabwe and the vulnerability of rural communities who are dependent on subsistence farming to climate change-induced weather changes and climate change impacts. To assist in developing community or sector resilience, the Policy makes recommendations to enhance "early warning systems on cropping season quality, rangeland condition, droughts, floods, disease/pest outbreaks and wildlife movement in order to enhance farmer preparedness."¹⁶⁷ This recognition and the measures proffered in the policy are critical to the protection of communities vulnerable to climate-induced displacements as the monitoring can allow for a planned and orderly relocation of communities that may be vulnerable to climate-induced displacements.

Critical to note is paragraph 2.6 of the National Climate Change Policy which provides for resilient human settlement and relevant to the protection of communities affected by climate change-induced displacements. According to the paragraph, to facilitate successful adaptation and resilient human settlements, it is necessary to consider the

¹⁶⁶ W. Zhakata, "Governing Climate Change: General Principles and the Paris Agreement" in *Climate Change Law in Zimbabwe: Concepts and Insights*. The Konrad Adenauer Foundation, 2019 and Government of Zimbabwe, National Climate Change Policy

¹⁶⁷ See paragraph 2.2 of the National Climate Change Policy

differences in vulnerabilities of various groups in urban and rural settlements. The government plan to provide social protection, strengthen community-based natural resource management, and mainstream climate change in planning to protect vulnerable communities. This is a critical protection mechanism.

4.2.3.2 Zimbabwe National Climate Change Response Strategy

This is a document that provides a framework for an all-inclusive and tactical approach to issues of climate change adaption, climate change mitigation, climate financing, use of technology in climate change response, public education and awareness of climate change. It helps to inform the Government on how to strengthen the climate and disaster risk management policies. This strategy is critical to the topic under discussion as it recognizes the interlinkage that exists between climate change and disaster risk reduction and management.

The vision of Zimbabwe's Climate Change Response Strategy is "to create a climate change resilient nation while its mission is to ensure sustainable development and a climate proofed economy through engaging all stakeholders recognizing the vulnerable nature of Zimbabwe's natural resources and society".¹⁶⁸ Pillar 1 of the Climate Change Response strategy is focused on Adaptation and Disaster Risk Management. This pillar recognizes the correlation that exists between adaptation, disaster risk management and the need to build sustainable human settlements. The disaster risk management pillar of the Climate Change Response Strategy has two key areas:

"The first one is titled "Disaster Risk Management and Social Infrastructure (Human Settlements)" seek to prioritise the development of an integrated and coordinated approach to reducing disaster risk and addressing the impacts of climate change through a multi-stakeholder approach; enhance early warning systems and capacity of hydro-meteorological services to advise on weather-related impacts on new infrastructure as well as mitigation of potential damage to existing infrastructure; review and update policy and by-laws on building standards and codes to make them adaptive to climate change; invest in climate-resilient social infrastructure and enhance community resilience to

¹⁶⁸ Mushayavanhu & Makaza (n 139 above)

climate change.”¹⁶⁹ The second area seeks “to strengthen the capacity of the National Meteorological and Hydrological Services to carry out research on climate change through improved data collection and management and climate modelling.”¹⁷⁰

It is important for Zimbabwe to enact a Climate Change Act which will set out the minimum government obligations relating to climate change adaptation and mitigation as well as obligations to achieve a resilient country whose development takes into cognisance the climate crisis. Whilst the discussed climate change policies are critical and have important provisions relating to the protection of communities affected by climate change-induced displacements, it is critical to have the protection measures reduced in legislative provisions that are obligatory whose breach brings sanctions and are capable of triggering the oversight role of the court and institutions like Parliament.

4.4. Conclusion

Zimbabwe does not have adequate legislative provisions to prevent and protect communities in light of climate-induced displacements. It has not legally recognised the plight of internally displaced persons; its disaster risk reduction and management laws are archaic and climate change adaptation and mitigation are only in government policies. The lack of legal and definitional clarity for climate-induced displaced communities in Zimbabwe often results in limited protections being offered to communities affected by climate change-induced displacements. Zimbabwe lacks a collaborative approach that recognises all sectors – and this includes a sustainable legislative framework for disaster risk reduction and management in light of the increasing climate-induced disasters leading to displacements of communities. There are limitations to the existence of clear rules and well-defined legal mandates and plans as well as the capacitation and financing of the responsible institutions.

There is therefore a need to interrogate what legal strategies Zimbabwe can put in place to protect the communities that are constantly being affected by climate change-induced displacements. Other countries like Mozambique and Bangladesh have made strides to

¹⁶⁹ (n 168 above)

¹⁷⁰ (n 168 above)

develop legal frameworks under disaster risk reduction management and climate change adaptation in keeping with recent occurrences of many instances of climate-induced displacements. These national-level developments and the regional and international trends provide comparable frameworks that Zimbabwe can adopt in developing its own legal regulatory framework.

CHAPTER FIVE: LESSONS FROM MOZAMBIQUE

5.1 Introduction

As discussed in the preceding chapters, climate change-induced displacements are affecting communities all over the world differently. Regardless, the phenomenon calls for government action at the local level to protect vulnerable communities. Because of the different intensity and frequency of climate change disasters, some countries are more prepared than others. Whilst no country has perfected the legal strategies for the protection of communities affected by climate change-induced displacements, a review of how countries like Mozambique which are more vulnerable to climate-induced displacements, can proffer the necessary insights for Zimbabwe.

5.2 The case of Mozambique

5.2.1. Mozambique and Climate change induced displacements

Mozambique is highly exposed and vulnerable to natural hazards and climate variability. The country's geographical location, combined with the limited resilience of the majority of its population as a result of prevalent poverty creates perfect conditions for disaster occurrence.¹⁷¹ According to the World Bank, Mozambique is ranked the third African countries exposed to multiplied environmental related disasters such as flooding, cyclones and droughts.¹⁷² Mozambique is experiencing increased flooding and drought which is threatening agriculture estimated to employ roughly 75% of Mozambique's workforce, drought causes an estimated loss of US\$20 million per year and climate change is expected to exacerbate the impact of shocks which weakens Mozambique's capacity for domestic resource mobilisation for resilience building.¹⁷³

¹⁷¹ "Assessment report on mainstreaming and implementing disaster risk reduction in Mozambique." Economic Commission for Africa. Accessed 10 June 2022. https://archive.uneca.org/sites/default/files/uploaded-documents/Natural_Resource_Management/drr/drr-mozambique_english_fin.pdf

¹⁷² "Mozambique Disaster Risk Management and Resilience Program: Technical Assessment Report" World Bank 2019 Washington, DC.

¹⁷³ (n 172 above)

In March and April 2019, Mozambique was struck by Cyclone Idai and Cyclone Kenneth respectively. In Mozambique, Cyclone Idai affected most of the port city of Beira, Sofala Province, in central Mozambique and caused huge storm surges and extensive flooding which affected Zambezia, Sofala, Tete and Inhambane Provinces and destroyed 715, 000 hectares of farmland across the country resulting in displacements of an estimate of over 93,000 people.¹⁷⁴ Whilst Mozambique was still recovering from the impacts of Cyclone Idai, on 23 January 2021, it was hit by Tropical Cyclone Eloise. The winds and excessive rainfall brought about by the cyclone resulted in flooding in Beira and surrounding Districts, leading to the loss of ten lives and the destruction of thousands of homes, dozen schools and hospitals-.¹⁷⁵ Approximately 125,000 people were affected.¹⁷⁶

As a country that is more vulnerable to the effects of climate change which has led to internal displacements of communities, Mozambique has put in place legislative provisions under the disaster risk reduction and climate change which can provide lessons for Zimbabwe.

5.2.2 Mozambique legislative frameworks

In analysing the legal frameworks in place in Mozambique, this section will look at how the legislative frameworks regarding prevention and preparation for displacement, protection of people throughout displacement and facilitation of durable solutions in the context of climate change-related disasters.

The principal Act governing climate change-induced displacements is the Regulation of Disaster Risk Management and Reduction Act Law No. 10/2020 of 24 August. This legal framework is complemented by a considerable number of national plans and governance instruments such as the 1999 Policy for Disaster Management, 2010 Strategy and Action Plan for Gender, Environment, and Climate Change; 2006-2016 Plan for Prevention and Reduction of Natural Disasters, 2017-2030 Plan on Disaster Risk Reduction.¹⁷⁷ A reading

¹⁷⁴ E. Crossley et al 'Funding disasters: tracking global humanitarian and development funding for response to natural hazards,' Centre for Disaster Protection and Development Initiatives. London, 2019

¹⁷⁵ <https://www.ifrc.org/emergency/mozambique-2021-2022-floods-and-cyclones>

¹⁷⁶ <https://www.ifrc.org/emergency/mozambique-2021-2022-floods-and-cyclones>

¹⁷⁷ Jacobs & Almeida (n 25 above)

of the said document reveals that unlike in Zimbabwe, where the focus is mainly on assistance in emergencies, the legal and policy framework for Mozambique has shifted towards a risk assessment, prevention and provision of durable solutions for affected communities.

Law No.10/200 mentioned above is comprehensive and contains several provisions related to the assessment and prevention of risks and administration of climate-induced disasters, with sufficient legal protections for affected local communities. For example, in terms of application, Article 3 clearly states that the regulation applies to public administration bodies and institutions, citizens and other individuals or legal entities, public or private, who, in the performance of their duties, contribute to the management and reduction of disaster risk.¹⁷⁸ This provision acknowledges the need for inter-agency integration. It recognises that whilst it is important to have an authority overseeing disaster risk, all other related government departments and agencies must be aware of and apply the provisions of the Act.

In analysing the key governance legal frameworks that must be put in place to protect communities affected by climate change-induced displacements, it is key to consider the following questions: is displacement integrated into the relevant legal and policy framework? Are there any standards, guidelines and principles developed to address displacement from prevention, preparedness, protection and durable solutions perspective? Are there any responsible government institutions set up to implement the legislative provisions? Are there any sufficient provisions for access to remedy for aggrieved communities?¹⁷⁹ A reading of Law10/2020 reveals that the Government of Mozambique has mainstreamed displacement into its disaster risk management and reduction legislative provisions. Article 18 on sustainable recovery clearly acknowledges that government need to support communities to rebuild and provide durable solutions as a result of disasters. The regulations also have provisions mandating responsible government institutions to put in place adequate forms of prevention and taking into

¹⁷⁸ Regulation of Disaster Risk Management and Reduction Act Law No. 10/2020 of 24 August

¹⁷⁹ International Federation of Red Cross and Red Crescent Societies and United Nations Development Program, The Checklist on Law and Disaster Risk Reduction An annotated outline. 2019.

consideration socio-economic and cultural cooperation¹⁸⁰, it has emergency early warning systems that activate national operation centres,¹⁸¹ the emergency operation centres and establishes local, provincial and national disaster risk management offices in Articles 32 to 40.

According to Scott, “preventing and preparing for displacement means taking steps to address the root causes of displacement, including economic and social inequality, access to resources, livelihoods, shelter and so forth.”¹⁸² Article 4 of Law 10/2020 sets an obligation to survey, forecast and assess the risks facing Mozambique taking into consideration all the factors including socio-economic factors. Article 20 even mandates the responsible authorities to constantly carry out disaster assessments so as to keep in check the disasters affecting Mozambique. Further Article 19 (2) (a) mandates authorities to carry out a survey on the need for temporary shelter, water and sanitation, hygiene, health, and infrastructure rehabilitation, among other needs in the event of displacements. The application of these provisions is another matter but the Act makes provisions for the protection of communities.

In providing protection for communities affected by climate change-induced the consultation with and participation of affected communities is central. Within the displacement discourse, the principle of free, prior and informed consent (FPIC) and applies in situations where voluntary relocations and resettlements are part of the government’s plans to prevent and protect affected communities.¹⁸³ Article 18 as read with Article 23 (2) (f) of Law 10/2020 indicates that planned resettlement is a strategy that the government of Mozambique seek to utilise in protecting communities. However, the provisions do not make reference to the participation and consultation of affected communities. Also, the 2017-2030 Plan on Disaster Risk Reduction makes it a plan to resettle communities from dangerous areas. According to research, planned resettlement

¹⁸⁰ Article 4 of Law 10/2020

¹⁸¹ Article 13 of Law 10/2020

¹⁸² M. Scott, “The role of national law and policy in addressing displacement in the context of disasters and climate change in Asia and the Pacific” in *Climate Change, Disasters and Internal Displacements in Asia and the Pacific: A Human Rights Based Approach* Routledge, 2019

¹⁸³, “Guidance on protecting people from disasters and environmental change through planned relocation.” UNHCR, Brookings. Georgetown University, 2015. Accessed 10 June 2022. <https://www.unhcr.org/protection/environment/562f798d9/planned-relocation-guidanceoctober-2015.html>

is already happening in Mozambique and in some instances, it has reduced the vulnerability of communities especially those in Zambezi, Save, Buzi and Limpopo Valleys.¹⁸⁴ After Cyclone Idai, the government of Mozambique identified sites for resettlement, 22 sites are located in Sofala province where communities from Beira, Savane, Mandruzi and Mutua are relocated.¹⁸⁵

However, there are reports alleging that the resettlement process is being pushed in order to dispossess indigenous people of their land as the current process is opening up the land to environmental degradation and is not sufficiently financed thus making resettled communities rely on international and regional humanitarian organisations for assistance.¹⁸⁶ The reports indicate that the resettlement drive is not pushed by the need to protect communities but by the government's need to privatise land occupied by small and rural farmers to achieve its agro-based economy targets.¹⁸⁷ These challenges and allegations can be dealt with by increasing consultations and participation of affected communities in the resettlement communities.

Connected to consultations and participation is the right to information. This right, which is closely related to the concept of open governance requires government to avail to the public information that is of public interest and to take steps to remove restrictions on when and how the public should access the information as well as disseminating the information in simple formats.¹⁸⁸ In the context of climate change and climate related disasters and displacements, the right of access to information pertaining to the risks the community is exposed to, the measures that the government has put or is putting in place to protect them and early warning systems is crucial.¹⁸⁹ Law 10/2020 has critical provisions that relate to the dissemination of information on disasters.

¹⁸⁴ Jacobs & Almeida (n 25 above)

¹⁸⁵ Jacobs & Almeida (n 25 above)

¹⁸⁶ M. Sieroka, "Development Diaspora: Marginalization in Mozambique's Climate-Induced Displacement Policy." *The Observer* August 10, 2020. Accessed 13 June 2022 <https://theobserver-qiaa.org/development-diaspora-marginalization-in-mozambiques-climate-induced-displacement-policy-1>

¹⁸⁷ Sieroka (n 187 above)

¹⁸⁸ Scott (n 183 above)

¹⁸⁹ A. Riccardi, 'The right to know: The role of transparency, access to information and freedom of expression in overcoming disasters', in *Handbook of Human Rights and Disasters*. Routledge, 2018

5.3 Conclusion

From the preceding discussions. It is clear that Mozambique has made some strides in putting in place legislative provisions for the protection of communities affected by climate change displacements. There are provisions that Zimbabwe can borrow from.

CHAPTER SIX: CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

Climate change induced displacement are a reality for Zimbabwe and the world. Both rapid and slow onset climate related disasters Zimbabwe is experiencing have caused havoc and caused the displacement of communities, from Cyclone Idai to El-Nino, many communities have had to leave their homes and move elsewhere within Zimbabwe. Displaced communities have faced loss of their homes, limited access to health services, education and other human rights because of their situation.

This dissertation has contextualised the plight of communities affected by climate induced displacements and gave a justification why there is a need to put in place legal strategies to protect affected communities in Zimbabwe. An analysis of the existing international and regional framework was conducted as well as an analysis of the national legal frameworks for Zimbabwe. It is thus the purpose of this chapter to summarise the key arguments, findings and recommendations.

6.2 Summary of Major Arguments

This dissertation highlighted that climate change induced displacements are a huge problem in Zimbabwe and the government of Zimbabwe has an obligation to provide protection for the affected communities and this can be done through the enactment of strong legal and policy frameworks. It is argued that systematic and pointed integration of legal provisions related to the protection of climate change induced displacements in to legislative frameworks on climate change, disaster risk reduction and internal displacements can provide the much-needed protection for affected communities. It is argued that these legal frameworks should not only look at protection as just assistance during disasters but look at legal mechanisms for preventing, preparing and protecting communities affected by displacement as well as providing for durable solutions. Where possible, regulations specifically looking at the protection of communities affected by climate induced displacements must be enacted given the dynamic manifestation of the

challenge. It was argued that the legal provisions put in place must also allow for inter-agency collaborations and affected communities' participation.

6.3 Summary of Main Findings

On legal strategies for protection of communities affected by climate change induced displacements, at international and regional levels there is no framework that deals specifically on climate induced displacements. Regardless, the frameworks providing protection for internally displaced persons through the Principles and the Kampala Convention; frameworks of disaster risk reduction and management like the Sendai Framework and General Comments to CEDAW and frameworks on climate change providing for loss and damage have provisions that can be utilised to protect communities affected by climate change induced displacements. These Frameworks have provisions that the government of Zimbabwe can utilise in reforming and enacting laws that provides protection to affected communities through the prevention of and preparation for and throughout displacements and the provisions for during solutions whether the communities return to their homes or are resettled elsewhere.

For Zimbabwe, this dissertation found that despite Zimbabwe having ratified the Kampala Convention, there is a lack of legal recognition or protection framework for internally displaced person in general and as a result of climate change related disasters specifically within the local legal framework. The Constitution however has a declaration of rights that affords protection to all persons, including those displaced as a result of climate change. Further, the Civil Protection Act which is the central legislative framework for Zimbabwe disaster risk reduction and management in Zimbabwe is inadequate to provide comprehensive protection for communities. The Act only deals with the protection in cases of emergency but does not provide for anything regarding prevention, preparation and the provision of durable solutions for communities displaced due to climate related disasters. In addition, though climate change related policies which have been put in place by the government of Zimbabwe recognise the need to protect communities and inter-agency collaborations, the policies lack legal backing to make them obligatory and binding upon the government of Zimbabwe.

Also, whilst the legislative framework put in place in Mozambique is far from perfect, the law on Disaster Risk Reduction accompanies with climate change strategies and policies provide lessons that Zimbabwe can learn from when strengthening its own legislative protection mechanisms for communities affected by climate change induced displacements.

6.4 Recommendations

It is therefore recommended that:

6.4.1 Domestication of the Kampala Convention

The government of Zimbabwe domesticate the Kampala Convention and incorporate its provisions into an Act of Parliament which establishes a local framework addressing internal displacement in a comprehensive, clear and binding manner including the identification and appointment of a national institution coordinating protection of communities internally displaced.

6.4.2 Climate change induced displacements considered within disaster risk reduction and management; and climate change governance

The government of Zimbabwe must consider climate induced displacements in the context of disaster risk reduction and climate change adaptation and mitigation which requires legislative provisions not only to provide assistance during emergencies but to prevent, prepare for displacement and provide durable solutions. Zimbabwe must therefore accelerate the finalisation of the Disaster Risk Reduction Bill and the Climate Change Bill, and ensure that these legislative provisions reflect measures that the government will take to address climate change induced displacements is paramount.

6.4.3 Climate change induced displacements integrated in land use laws

Legislative provisions related to urban and rural planning like the Regional Town and Country Planning Act (RTCPA) [Chapter 29:12] must provide for climate change vulnerability land use planning to avoid settlements in high-risk areas. Also, in land use planning, the vulnerability of informal settlements must be taken into account.

6.4.4 Sendai Framework considered in the proposed Disaster Reduction Bill

The proposed Disaster Reduction Bill must be in compliance with Principle 17 of the Sendai Framework which provided that states must prevent new and reduce existing disaster risk through the implementation of integrated and inclusive economic, structural, legal, social, health, cultural, educational, environmental, technological, political and institutional measures that prevent and reduce hazard exposure and vulnerability to disaster, increase preparedness for response and recovery, and thus strengthening community resilience.

6.4.5 Promote systematic assessments

A systematic assessment must be conducted in the law reform process to take into account the financial and human resources needed to implement the provisions related to the protection of communities affected by climate induced displacements. Also ensure that during the budgeting process, adequate resources are allocated for the protection of communities. This includes keeping up to date data to inform targeted responses and protection.

6.4.6 Loss and Damage mainstreamed into legislative provisions

In relation to the loss of land, housing and property by communities, the government of Zimbabwe must include in the Disaster Risk Reduction Bill provisions for compensation for loss and damage in accordance with the Kampala Convention, the U.N. Principles and the Pinheiro Principles. This includes ensuring the communities have secure tenure on their land.

6.4.7 Provision for planned relocation

Planned resettlement for vulnerable communities should also be provided for in legislative frameworks. This must include the identification of communities settled in high-risk areas and including them in the planning, monitoring and implementation of the resettlement process with proper provision for durable solutions.

6.5 Conclusion

In conclusion, climate change-induced displacements are a reality for Zimbabwe and the world. Communities affected suffer violations of their fundamental rights and freedoms, loss of their homes, and disruption of livelihoods and it takes considerable time for governments to provide durable solutions. Legal provisions play a very critical role in setting the obligations of the state and measures needed to prevent, mitigate and protect against climate change-induced displacements.

This dissertation echoed that the legal strategies for providing protection to communities displaced due to climate change-related disaster requires the integration of displacement considerations into legal and policy frameworks in the areas of climate change, disaster risk reduction and management and internal displacements, land and planning laws, from national to the local level, whilst recognising the need for a collaborative effort, community involvement, proper financing and providing durable solutions.

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