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Climate displacement and the relevance of climate justice: A trend analysis of South Africa, Zimbabwe, South Sudan and Liberia

Ademola Oluborode Jegede, Gerald Dan Yeakula,** Justin Monyping Ater,*** Mosupatsila Mothohabonoe Nare**** and Zanele Christine Fengu******

Abstract: Displacement is a major consequence of climate change being faced by populations in Africa, as shown in the experiences of South Africa, Zimbabwe, Liberia and South Sudan. As a response to the injustices and inequalities experienced by vulnerable communities, the concept of climate justice has featured in academic writings and international policy documents on climate change. However, its reflection and application in domestic legal frameworks to the specific situation of climate-induced internal displacement in Africa are scant in academic engagement. Using a doctrinal approach in engaging with existing writings and instruments on displacement and climate justice, the study interrogates the extent to which the legal framework in South Africa, Zimbabwe, Liberia and South Sudan may apply in achieving climate justice for displaced persons. The study demonstrates that whereas there is a recognition of climate justice as a legal response to climate-induced internal displacement in international law, much remains to be achieved in terms of the reflection and application of the existing legal framework at the domestic level. It then makes specific recommendations on how to strengthen existing instruments to achieve climate justice for displaced persons.

Keywords: Africa; climate-induced displacement; climate justice; displaced persons; legal framework

* BL (Nigeria) LLM LLD (Pretoria); professor of law and interim Director of Ismail Mahomed Centre for Human and Peoples' Rights, School of Law, University of Venda, South Africa; ademolajegede@gmail.com

** BSC (Liberia); LLB (Liberia); LLM (Pretoria); Program Manager at Centre for Transparency and Accountability in Liberia (CENTAL); gyeakula@gmail.com

*** LLB (Hons)(Juba); LLM(Pretoria); LP (South Sudan Bar Association); monypingjustin@gmail.com

**** LLB (South Africa); LLM (Pretoria); Professional Legal Assistant at the African Court on Human and Peoples' Rights, Arusha Tanzania; mosunare@gmail.com

***** BA in International Relations; LLB (Witwatersrand); LLM (Pretoria); Legal Researcher; zanelechrisfengu@gmail.com

1. Introduction

Human-caused climate change remains a major existential threat (IPCC 2021), with businesses playing a central role in causing a large proportion of the CO₂ emissions underlying climate change (Bruckner et al. 2014). Maino and Emrullahu (2022) and Boko et al. (2006) affirm that, while adverse effects are global, states in Africa are particularly vulnerable because of their limited capacity to adapt. The African Union's Agenda 2063 considers climate change as a major threat likely to hinder its goal of realising an integrated, prosperous and peaceful Africa (AU 2015). Climate change has numerous adverse effects on populations, but displacement and its associated consequences are particularly significant in present global reality and future projection. The UN General Assembly's Resolution 64/162 (2009) on the protection of displaced persons affirms that one of the key drivers of internal displacement is climate-induced disaster. The World Bank (2018) estimates that 140 million people will be internally displaced by slow-onset climate change impacts by 2050. While highlighting that 51 million people across the globe were internally displaced between January and June 2021, the UN High Commissioner for Refugees notes that climate change is a factor in the vulnerability of displaced persons (UNHCR 2021). More populations in Africa were implicated in the global trajectory of displacement (UNHCR 2021).

Displacement as an adverse consequence of climate change affects the human rights of populations (Jegade 2016a; Jegede 2016b, 58). The general implications of adverse climate change for rights have been recently reiterated in the UN Human Rights Council's Resolution 47/24 of 2021 which acknowledges the adverse effects of climate change, both direct and indirect, on the effective enjoyment of a range of human rights. While the countries and communities with the least resources will shoulder the greatest burden in protecting and caring for the internally displaced, how to ensure justice for such countries and populations in an unequal world where the causation and consequences of climate change are disproportionately spread remains problematic (Jegade 2020, 184).

The general relevance of climate justice in responding to the above conundrum has featured in academic writings (Newell et al. 2021; Gonzalez 2019; Okereke and Coventry 2016), and policy documents (IBA 2014; Adams and Luchsinger 2009). The urgency of deploying the climate justice lens has also been underscored by the UN Special Rapporteur on Extreme Poverty and Human Rights (UNSR Report 2019) who confirms that, globally, people in poverty are more vulnerable to climate related disasters, and the world is increasingly at peril of "climate apartheid", where "the rich pay to escape heat and hunger caused by the escalating climate crisis while the rest of the world suffers" (UNSR Report 2019, paras 12–13). This connotes that climate justice is not only an interstate

concept applicable in the polemics of North versus South responsibility for climate change, but also significant for how a state within its territory addresses the adverse consequences of climate change. It also relates to how states regulate the activities of businesses to reduce emissions and prevent adverse human rights impacts. The principles of climate justice have been generally clarified in the Bali Principles on Climate Justice (Corpwatch 2002), which basically advance justice without discrimination for climate change-induced harms suffered by vulnerable groups as well as groups that are often ignored in the society.

The relevance, reflection and application of climate justice principles to the specific situation of climate-induced internal displacement in Africa as a subject of academic engagement, however, is scanty in literature on international climate change instruments, namely the UN Framework Convention on Climate Change (UNFCCC 1992), Kyoto Protocol (1997), and Paris Agreement (2005). For instance, only the preamble of the Paris Agreement specifically references climate justice. There has also not been a focus on such considerations in the analysis of human rights instruments dealing with internal displacement, namely the UN Guiding Principles on Internal Displacement (UNGPID 1998), and, at the African regional level, the Kampala Convention (2009). Hence, whether these instruments integrate the concept of climate justice relevant in the context of climate-induced displacement in Africa merits consideration. If that can be proven, the extent to which they further reflect and apply in the availability and implementation of legal and policy environments in states in Africa is important but remains largely unexplored. From the outset, it should be mentioned that this study does not cover the concept of “loss and damage”, of which the administrative details are only just emerging and not clearly developed in the international climate negotiations.

1.1 Rationale behind the selection of states

To be sure, it is impossible to investigate all the fifty-five states of Africa, but there are commonalities across the continent in terms of the disproportionate effects of climate change and internal displacement. Hence, the focus of this paper is on four states; namely, South Africa and Zimbabwe (Southern Africa), South Sudan (East Africa), and Liberia (West Africa). The selection of these states is purposive, based on the writers’ interest in them, and the characteristics they possess in relation to climatic occurrences and displacement which, as shall be evident later, enable us to answer the research questions.

Data on South Africa shows significant climatic abnormalities causing unpredictable and extreme weather, resulting in adverse consequences especially felt in the agricultural sector (since much of the agricultural land is rain-fed), and displacement (World Bank 2021). Zimbabwe has not been spared from the effects of climate change as evidenced by

cyclone Idai which hit the country in 2019 causing massive floods in the country's four provinces. The cyclone affected around 270,000 people as per estimates while over 59,000 were displaced and relocated to host communities and temporary camps (World Bank 2019, 69–70). In South Sudan, evidence shows that the major symptoms of climate change are the increased temperatures and precipitation changes (Reliefweb 2019). Research indicates that deforestation, illegal timber exports and charcoal production have exacerbated climate change and displacement in South Sudan (Mosel and Henderson 2015). Literature also shows that South Sudan currently has 4.5 million people who are either refugees or internally displaced persons (Kensiya and Basotia 2021). The causes of these displacements are related to conflict and natural disasters (Kensiya and Basotia 2021). In Liberia, with indicators such as hotter temperatures and the unpredictability of the rainy and dry seasons (World Bank 2021), 31,186 people were affected by flooding in key counties in 2018 (Davies 2018). Sea erosion has led to significant damage and rendered thousands of people displaced in Liberia (UNDP 2017).

1.2 Methodology

With focus on the foregoing states as case studies, we deploy a doctrinal approach in response to the climate-induced internal displacement and climate justice in Africa. The doctrinal legal research approach is also known as the “black letter law”. Kharel (2018, 1) defines doctrinal legal research as “research that provides a systematic assessment of legal problems within an adequate methodological framework”. It deals with verifying existing knowledge on the legal issues (Kharel 2018, 1). The doctrinal research requires a critical review of materials, such as case law, textbooks, journal articles, government reports, policy documents and law reform documents (Kharel 2018, 2).

In deploying the doctrinal methodology, we reviewed available materials to interrogate the meaning of climate justice in relation to climate-induced internal displacement in Africa. We discussed questions as to whether relevant international instruments (under the UN and AU auspices) to which states in Africa are parties are useful in advancing climate justice for climate-induced displaced persons, and, if so, how climate justice principles are reflected in the legal and policy environment and its application in states in Africa. The paper is structured into five parts. The introduction is part 1 and is followed by part 2 which relates climate justice to the notion of climate-induced displacement. Part 3 discusses the normative bases for climate-induced displacement and climate justice under international law, while part 4 examines the adequacy of domestic legal frameworks in the reviewed states for climate justice for the displaced. Part 5 offers the conclusion and embodies a set of recommendations on how the current approach can be improved.

2. Climate justice and the notion of climate-induced displacement

The UN Development Programme (UNDP 2007, 4) describes climate change as a “human tragedy in the making”. It is an injustice in the sense that it places an unequal burden on those who have contributed least to the problem — vulnerable groups, disadvantaged individuals, and the least developed states. Thus, the concept of climate justice has emerged as a response to the injustices and inequalities experienced by the most vulnerable communities being harmed through a problem that is not of their making (Adams and Luchsinger 2009). The International Bar Association (IBA 2014, 2) defines climate justice as a concept that recognises that climate change will disproportionately affect people who have less ability to prevent, adapt or otherwise respond to increasingly extreme weather events, rising sea levels, and new resource restraints. The concept is both legal and political; the latter in the sense that it developed as a movement out of the unfair causes of climate change and the wilful irresponsibility of the polluters, and so demands the involvement of all the stakeholders (Bond 2012). It seeks the equitable treatment of all people and the absence of discrimination in the development of policies and programmes addressing climate change, as well as in the institutions that contribute to climate change and perpetuate prejudice (Schlosberg and Collins 2014).

The notion of climate justice encourages policy makers to take on a more anthropocentric approach towards issues of climate change, by considering its human rights implications. According to the Mary Robinson Foundation (2012, 2), “climate justice links human rights and development to achieve a human-centred approach” and requires equity in climate finance and promotes vulnerable groups’ participation in decision making. Additionally, it acknowledges that particular populations are disproportionately impacted by climate change (Porter et al. 2020), and that many victims of climate change have a disproportionately small share of the blame for the emissions that caused the problem in the first place (Bond 2012). For example, the United States is responsible for more than a quarter of all carbon emissions to date, while Africa’s emissions are under 3% (Mary Robinson Foundation 2012). The United Kingdom also has a huge historical footprint, though responsible for only 1% of present-day emissions (Mary Robinson Foundation 2012). It accounted for over half of all global carbon emissions up until 1882 (Mary Robinson Foundation 2012). Achieving climate justice, therefore, requires rich nations to acknowledge their historical culpability for creating this crisis and to take steps to make amends for example by supporting adaptation and mitigation in developing countries (Mary Robinson Foundation 2012).

Climate justice connects with internal displacement, as the negative impacts of climate change on individuals inside their own nations often results in internal displacement (de Sherbinin et al. 2011, 456–57). It is

also relevant to the attempts by states to address internal displacement. Although displacement may link to factors other than climate change, such as armed conflict and violence, emerging factors such as climate-induced displacement and climate-based intervention projects are an important figure of internal displacement. Extreme events associated with climate change have caused people to leave their homes in search of better living conditions, while sustainable development projects implemented in a bid to mitigate the effects of climate change have also led to internal displacement (African Growth Initiative 2022; Jegede 2016b). These projects include the Clean Development Mechanisms (CDMs), developed under the UNFCCC, and the UN Reduction of Emissions from Deforestation and Forest Degradation programme (UN REDD+), which have resulted in displacement and restricted access to land in developing countries mainly in the global South, including Africa (Jegede 2016b; Adeola and Viljoen 2018).

In South Africa, unpredictable weather conditions resulting from climate change have occasioned the forced migration of subsistence farmers and small-scale commercial farmers in pursuit of better economic prospects (World Bank 2021.). In April 2022, 459 people were killed in the floods which occurred in KwaZulu Natal (Cocks 2022). An estimated forty-eight people remained missing in the aftermath of the disaster, which displaced an estimated total of about 40,000 people (Mbatha 2022). An equally devastating consequence resulted from the Eastern Cape floods (Ghosh et al. 2022). In Liberia, floods rendered at least 4,000 people homeless in Margibi county in 2016 (Christian Aid Ministries 2016), and in 2018 about 31,186 people were affected by flooding in Montserrado and Margibi counties, with at least 187 homes damaged (Davies 2018). In Zimbabwe, two tropical cyclones and a storm occurring between 2019 and 2021 resulted in complete destruction of an estimated 11,502 homes and partial destruction of 37,134 homes (IOM 2021). As of 2022, over 41,000 people remain internally displaced by climate disasters, being sheltered in camps and host communities where health and protection risks such as exploitation, social exclusion, mistreatment, gender-based violence and in some cases child marriages are rife (Mambondiyani 2021). In South Sudan, drought and a compounded three years of flooding along the Sobat Corridor from Malakal town to the Ethiopian border has resulted in the internal displacement of a record 1.6 million people, who have fled their homes to live in abandoned buildings or sleep on the ground out in the open (UNICEF 2022).

The relevance of climate justice is in its focus on equity, participation, access to resources and justice, and the human rights implications of climate change on the disadvantaged. It embodies principles that can be used in shaping necessary attention to populations that suffer the adverse consequences of climate change. It should be reflected in procedural and

formal justice, in legislation and regulations that are critical for those seeking restitution or responding to the consequences of climate change (Porter et al. 2020). Hence, the notion of climate justice can only be as strong as the extent to which it is allowed under international law.

3. Climate-induced displacement and climate justice under international law

This section discusses the extent to which the concept of climate justice has been recognised as a legal response to climate-induced internal displacement. There is no single instrument encapsulating climate justice. Therefore, to fulfil the objectives of this section, we consider the key global and regional instruments aimed at addressing the impacts of climate change.

The linkage of climate change to internal displacement is evident in many instruments aimed at addressing climate change. Internal displacement was first addressed at COP16 under the Cancun Adaptation Framework in 2010 (Cancun AF, art 14f). The Cancun AF urges all parties to the UNFCCC *inter alia* to undertake adaptation action, taking into account their common but differentiated responsibility (CBDR), including “measures to enhance understanding, coordination and cooperation related to national, regional and international climate change-induced displacement, migration and planned relocation” (Brookings Institution 2014, 9). This sentiment is emphasised in the Paris Agreement 2015, which commits to “avert, minimize and address displacement related to the adverse impacts of climate change” (Warner 2017, 1–5). Evidence of the link can also be found in the Sendai Framework for Disaster Risk Reduction (SFDRR) 2015–2030 (UNDRR 2015) and the 2030 Agenda for Sustainable Development (UN 2015, 8). Of the seven targets in the SFDRR, Target (B) is particularly relevant for disaster displacement as it provides the goal of substantially reducing the number of people affected by disasters globally by 2030, which includes people displaced by disasters (UNDRR 2015).

It is also arguable that the UNFCCC and the Kyoto Protocol implicitly embedded the concept of climate justice by recognising the CBDR principle to mitigate North-South inequality (Saraswat and Kumar 2016). The UNFCCC also recognises both intergenerational and intra-generational equity. Besides the reference to climate justice in the preamble of the Paris Agreement (2015), a common element within each of these instruments is the incorporation of language connecting climate change and displacement. The instruments also reference human rights, signifying that a rights-based approach is essential to ensuring climate justice for vulnerable populations.

The importance of human rights in the construct of climate justice is evident in both the UNFCCC and the human rights system. For example, the Inter-Agency Standing Committee (IASC)’s Operational Guidelines

on the Protection of Persons in Situations of Natural Disasters, which applies a human-rights-based approach to situations of natural disasters, provide directions to support the efforts to “prevent, respond to and support recovery after disasters” (UNHCR 2011). Along the same line, the Peninsula Principles (2013), albeit not widely adopted, provide that the plight of climate-displaced persons should be addressed in accordance with the principle of human rights obligations and good practice (Cullen 2020). The Bali Principles of Climate Justice (Corpwatch 2002) state that communities must play a leading role in addressing climate change; the Principles also emphasise the right to self-determination of indigenous and local communities.

There are several human rights instruments that are of importance to climate displacement and climate justice. Although the notion of climate justice is not expressly mentioned, the UNGPID and the Convention on the Protection and Assistance of Internally Displaced Persons (Kampala Convention 2009) are noteworthy. The UNGPID relate to displacement but have no binding effect. The Kampala Convention is thus the only binding treaty which places a premium on the importance of addressing internal displacement (Jegade 2016b; Kálin 2001). Article 1 of the Kampala Convention defines internal displacement as the “involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised state borders”. This definition captures climate-induced displacement in its ambit and affords the affected persons the legal protections captured in the Convention. In particular, article 5(4) of the Convention places an obligation on states to protect and assist internally displaced persons who have been displaced because of natural and human-made disasters, and these include climate change. Along with the provisions dealing with obligations of international organisations (art 6), humane treatment, non-discrimination, equality and equal protection of law (art 3(1)(d)), prevention of gender violence (art 9(1)(d)), access to information (art 10(2)), and participation of displaced persons in finding sustainable solutions (art 11(2)), the provisions of article 5(4) are an inherent reflection of the principles of climate justice that may apply in providing protection and assistance to climate-displaced persons.

The necessity of access to information and public participation is further reinforced in article 4(1)(h) of the UNFCCC (1992) which calls for the promotion of socio-economic and legal information relating to the climate system, and article 6(a)(ii) generally dealing with public participation. Article 7(7) of the Paris Agreement (2015) highlights the fact that adaptation action can be bolstered through the exchange of information, good practices, experiences and lessons learned to guide climate services and support decision-making. In relation to public participation, the Bali Principles (Corpwatch 2002) emphasise the rights of indigenous communities to own and manage natural resources, to represent themselves, and to participate effectively at all decision-making

levels (paras 5, 6 and 21). This involves consulting and considering the opinions of the population about to be affected or displaced by a climate-based development-induced project. It is a principle strongly rooted in Article 21 of the Universal Declaration on Human Rights (1948) and recognised in the UN Declaration on the Rights of Indigenous Peoples (2007). Article 7(3)(c) of the UNGPID requires that states must seek free, prior, and informed consent of persons likely to be displaced (para 88). It is extremely important that groups likely to be affected by climate-based development-induced programs are significantly represented at the consultations.

The Bali climate justice principles (Corpwatch 2002) equally provide for accountability, and victims of climate change and associated injustices have a right to seek redress. This is crucial in trying to mitigate the effects of climate change (Dunlap and Brulle 2015). It is also important in addressing displacement and its consequences for human rights. Climate change, along with other factors, contributes to displacement, which in turn has an impact on human rights including freedom of movement, the right to enjoy a life with dignity, environment, self-determination, water and sanitation, adequate housing and a range of cultural rights (Jimenez-Damary 2020, para 21; Jegede 2020). Hence, states are required to take positive action to prevent and mitigate the impact of climate change and related displacement on the enjoyment of human rights (Resolution 64/162 2009; HRC Resolution 10/4 2009). This obligation encapsulates responsibility for early warning, preparedness, mitigation, adaptation and effective provision of humanitarian assistance and protection (Kent 2014). It remains to be established to what extent climate justice principles, as reflected in the international legal environment, have been incorporated and implemented in the domestic legal and policy environment in African states.

4. Adequacy of states' legal responses on climate justice for the displaced

This section discusses the extent to which climate justice principles are reflected in the legal and policy environments and their applications in South Africa, Zimbabwe, Liberia and South Sudan. It shows that despite there being glimpses of hope, much remains to be achieved in terms of the accommodation of the legal environment with the principles of climate justice for internally displaced persons in the states.

4.1 Ratification of relevant international instruments

In fulfilling its international obligations on climate change, South Africa ratified the UNFCCC on 29 August 1997 and was listed as a party under Non-annex I on 27 November 1997 (UNTC n.d.). The Kyoto Protocol was acceded to in July 2002 (UNFCCC n.d.(1)) and the Paris Agreement

was ratified on 01 November 2016 (UNFCCC n.d.(2)). However, South Africa has not ratified the Kampala Convention. This exempts South Africa from the legal consequences of the one singular instrument that is relevant to the incorporation of climate justice principles in addressing climate-induced displacement in South Africa.

Zimbabwe ratified the UNFCCC (UNTC n.d.) and the Paris Agreement in 2017 (UNFCCC n.d.(2)). In July 2013, Zimbabwe ratified the Kampala Convention (AU n.d.). Liberia ratified the UNFCCC in 2002 (UNTC n.d.) and acceded to the Kyoto Protocol in the same year (UNFCCC n.d.(1)). It ratified the Paris Agreement in 2018 (UNFCCC n.d.(2)), and the Kampala Convention on 23 February 2014 (AU n.d.).

South Sudan is the world's youngest and least developed country (Government of South Sudan 2018). The country became a party to the UNFCCC in 2014 (UNTC n.d.). In 2016, the country ratified the Paris Agreement (UNFCCC n.d. (2)), which is binding pursuant to article 9 of the South Sudan Constitution, which states that any treaty signed by the country is an integral part of the Constitution. In 2018, South Sudan ratified the Kampala Convention, which is the key to upholding the human rights of internally displaced persons (IDPs) by creating an enabling legal environment for their assistance and protection (AU n.d.).

By ratifying these international instruments, the states assume duties to advance climate justice for climate-displaced persons, as ratification of these instruments creates binding legal obligations for state parties. Further, according to the terms of article 27 of the Vienna Convention on the Law of Treaties (VCLT 1969), states may not use their internal law to excuse noncompliance with the provisions of international treaties. This means that through ratification of treaties relating to climate justice, states are expected to formulate domestic legislation and measures that are compatible with the principles of climate justice for internally displaced persons as set out in these instruments. Ratification also imposes on states the duty to implement legally binding obligations to facilitate the protection and fulfilment of the principles of climate justice for internally displaced persons.

4.2 Domestic legislation and policy direction

States are specifically required to develop an institutional and legal architecture that provides protections from climate-related displacement, and to integrate human rights into existing climate-policy frameworks for action (Mary Robinson Foundation 2016). As mentioned earlier, equity, participation, access to resources and justice, and the human rights implications of climate change on the disadvantaged are critical components of climate justice for the displaced. The extent to which climate justice is covered and applicable to the displaced is the focus of this subsection.

4.2.1 South Africa

The implementation of global and regional climate justice principles in the South African context is lacking in many regards. As part of its implementation of the UNFCCC, South Africa has submitted three communications under the auspices of the UNFCCC where it stated its commitments towards climate change mitigation (DEA 2018). The focus of its outlined projects in this endeavour is largely on the environmental and economic aspects of climate change, neglecting the climate justice implications of it. There is no mention of displacement resulting from climate change, a development that signifies that neither climate displacement nor climate justice has received significant attention in key documents on climate change.

The Constitution of the Republic of South Africa (1996) makes no specific pronouncement on climate change or displacement. However, section 24 of the Constitution states that “everyone has the right to an environment that is not harmful to their health or wellbeing; and to have the environment protected, for the benefit of present and future generations.” The framing of this provision portrays the protection and preservation of the environment as a human right, thus taking a human-centred focus on the environment as the climate justice approach would require. The Constitution further reflects the climate justice approach in that it provides for principles such as non-discrimination (section 9), access to justice (section 34), and public interest litigation (section 38(d)). The reference in section 24 to future and present generations connotes an intergenerational equity concept which is core to climate justice. However, these provisions have not been concretely engaged in official policy and strategic documents on climate change with any view to addressing the plight of climate-induced displaced. In particular, the policy environment in South Africa has not clearly responded to the issues of equity, participation, access to resources and justice, or the human rights implications of climate change on the disadvantaged.

A similar concern exists in relation to other domestic acts passed in South Africa which indirectly apply to climate change, i.e., the Hazardous Substances Act (1989), National Water Act (1998), Protected Areas Act (2003), Mineral and Petroleum Resources Development Act (2002), National Environmental Management Act (1998), National Environmental Management: Air Quality Act (2004), National Environmental Management: Biodiversity Act (2004), or National Environmental Management: Waste Act (2008). These laws address the environmental causes of climate change. How these instruments interact with international standards on climate justice for the displaced is, however, not clear. In relation to the extreme events which some parts of South Africa recently experienced, the utility of these documents in addressing inequality, gender and suffering of

populations affected by the crisis has not been tested. Considerations such as participation or equity, or other vulnerable statuses such as old age, youth and gender which are core components of climate justice, did not clearly guide the interventions of the government. The National Climate Change Adaptation Strategy (2019) aims at reducing the occurrence of climate change through interventions addressing its root causes, but offers no guidance on displacement arising from extreme climate occurrences. It does not create any special funds to cope with the needs of populations displaced by climate change.

Though it is not yet the law, the proposed Climate Change Bill (2018) is a sign of hope for climate justice in South Africa. It embodies principles including a multi-generationalist approach to the climate system, international equity in the apportionment of responsibility for climate change, and the realisation of justice and environmental sustainability in the economic pursuit of developmental goals (section 3). However, its lack of explicit reference to climate justice leaves those affected by displacement due to climate change without clear and actionable legal protection under the Bill. It is not clear whether such populations will be able to hold public and private entities accountable for actions or inactions in relation to adaptation and mitigation measures underlying displacement. Yet ensuring accountability for the plight of the displaced is a key element of climate justice. Contrary to the notion of climate justice, the Bill also fails to apportion equitable responsibility to those typically responsible for the causes of climate change (namely multinational corporations), or to invest responsibly in climate change interventions. The Bill deals with climate change from a national level, failing to adequately acknowledge the need for regional and international collaboration as climate justice principles would require. Despite the inadequacy of domestic legislation in encompassing climate justice principles, there seems to be some hope in the judicial precedents set by South African courts. Given the critical role that multinational corporations play in environmental degradation, the pronouncement of the Supreme Court of Appeal in *Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance* (2015) is profound. The decision clarifies that both states and corporations are accountable under the Constitution, a development which indicates that it may not be impossible to hold corporations accountable for climate wrongs.

4.2.2 Zimbabwe

Currently in Zimbabwe, practice has shown that implementation of the global and regional framework on climate change remains a grave concern (Brazier 2015). In fulfilment of its obligations under the UNFCCC the government of Zimbabwe has to date submitted three communications detailing the steps it has taken to fulfil its obligations under this treaty (Government of Zimbabwe 2016). However, these communications do

not fully address the issues and impacts of climate-induced displacement on the lives of the displaced persons, or the relevant response mechanisms that are required. The focus is rather on mitigation in five sectors; namely, energy, industrial processes, agriculture, land-use change and forestry, and waste (Government of Zimbabwe 2016). Zimbabwe has not yet endorsed the implementation of the Kampala Convention, as required of signatory states, nor officially designated an authority responsible for IDP issues, as required by the convention (Government of Zimbabwe 2016). As a result, the provisions of the Kampala Convention have not been domesticated which means that implementation of the same remains at a standstill.

The Government of Zimbabwe acknowledged the existence of internal displacement in the Global Political Agreement (2008). Zimbabwe has passed several laws with provisions on environmental management. These include the Constitution of Zimbabwe (2013), the Management Act (2002), and the Forest Act (1949). These pieces of legislation contain provisions that are relevant to climate change and environment, but silent on climate-related displacement and climate justice. Section 73(1) of the Constitution of Zimbabwe (2013) provides everyone with the right to an environment that does not harm them, and the right to have their environment protected for the present generation and the generations yet to come.

Some traces of climate justice principles can be found in legislation made pursuant to the Constitution. Section 4 of the Environmental Management Act (EMA2002) makes provision for environmental rights and principles of environmental management. Section 4(2) (c) of the EMA provides for the participation of all interested and affected parties in environmental management. This is in line with the Bali Principles of Climate Justice (Corpwatch 2002) which emphasise the rights of indigenous communities to represent themselves and to have effective participation at all decision-making levels. However, the protection of internally displaced persons is outside the scope of the EMA and it is not certain that its principles can apply to caring for the injustices and inequalities experienced by the most vulnerable communities who are being harmed through a problem that is not of their making. The Forest Act of Zimbabwe (1949) which regulates the use of forests is a colonial law and does not address current thinking in relation to the significance of forests as a climate-change intervention. It seeks to establish a commission for the administration, control and management of State Forest and for the protection of private forests, trees and forest produce. The Act does not make explicit provisions for redressing the plight of forest-dependent communities who are displaced by climate change or by its response measures, a requirement which is critical to the implementation of climate justice. Forests are carbon reservoirs and conserving them for the purpose of increasing sinks and reducing emissions may often lead to the displacement of vulnerable populations (Agrawal and Redford 2009).

The EMA (2002) makes provision for holding persons who emit substances which cause substantial air pollution accountable, by prescribing that they will be liable for imprisonment. Arguably, this applies to multilateral companies and public and private entities. Third parties affected by pollution are entitled under the EMA to reparation, restoration, restitution or compensation, as may be determined by the courts upon application by such third parties (EMA 2002). In addition to the absence of any reference to “climate change” and “climate justice”, it is difficult to stretch the EMA’s provisions to address displacement linked to climate-related emissions resulting from the activities of companies. Without a clear provision allowing for such a possibility, access to justice (which is a core component of climate justice) is limited for climate-induced displaces in Zimbabwe.

Zimbabwe does not have a law specific to climate change. The drawback of this is that no legislation thoroughly considers the intricacies of climate-change effects or the principles of climate justice as an intervention. Rather, for climate justice to be served, protection of the climate must be read into the existing laws which may not always be done successfully (Matsvaire, Zamasiya and Moyo 2020). This may create challenges for persons displaced by climate-related incidents, since the available laws do not offer recourse to climate justice in the context of climate-induced displacements. The main climate-change policy in Zimbabwe is the National Climate Policy of November 2017, which has as one of its goals “reducing vulnerability to climate variability and climate-related disasters by strengthening adaptive capacity”. The policy is, however, silent on the protection of persons who have been internally displaced by climate change in Zimbabwe. This gap leaves the vulnerable groups without any protection during climate-related displacements, as the policy framework does not proffer strategies for promoting climate justice. In 2014, Zimbabwe adopted the National Climate Change Response Strategy. Through the strategy, it acknowledges that climate change may have different impacts on different groups and commits to addressing the needs of these different groups which include children, youths, women, men, and people with disabilities. By acknowledging that different groups are affected differently by climate change, the strategy to some extent incorporates the principles of climate change. Contrary to what is expected for climate justice, however, it is uncertain what approaches and remedies should apply in the context of climate-induced displacements.

4.2.3 Liberia

Through the ratification of international instruments, Liberia has obligations to ensure climate justice in response to climate-related displacements. The Second National Communication to the UNFCCC was submitted in 2021 and contained an inventory of emissions sources and greenhouse gas

removals, and further described steps to reduce emissions (Environmental Protection Agency 2021). The communication was, however, silent on climate justice in response to internal displacement, hence the question as to whether the country has taken any steps in implementation of the same. Liberia's response to climate change is reflected in its legal frameworks and other actions; but, without a clear focus on climate justice, the path remains murky in responding to the plight of displaced persons, and of the many others who have been affected or are soon to be affected by climate shocks.

Key legal and policy frameworks are in place to tackle climate change in Liberia. However, the extent to which they promote climate justice in responding to climate-related displacement remains to be seen. The Constitution of the Republic of Liberia (1986) recognises the right to life, liberty and property; it is however silent on environmental rights and climate change. This means that there is no legal basis, at least no textual one, to link rights with the environment, let alone with climate change. Liberia must resort to other laws for such protection. Liberia has in place an Environmental Protection and Management Law (EPML 2002), which provides a legal framework for the protection of the environment, for its management, and for sustainable development. Section 3 of the EPML espouses several principles that are key to addressing climate change: the polluter-pays principle, the principle of intergenerational equity, the principle of sustainable development, and the principle of public participation. Further, the National Forestry Reform Law of 2006 provides for community involvement with conservation and forest management for commercial purposes. The Community Rights Law of 2009 also gives more rights to communities over forest resources. The foregoing legislation is, however, silent on internal displacements and provisions of climate justice in response to this challenge. Despite ratifying the international instruments that promote climate justice principles in responding to internal displacements, those instruments have not been domesticated in Liberia. With the ratification of these international instruments, one would expect a legal response recognising the widespread challenge of internal displacement and adopting the requisite national instruments as a way of implementing the country's international obligations in climate change response. One would expect that the legal environment would enforce climate justice principles by recognising the rights and needs of societal groups with high levels of vulnerability and exposure, and by demanding the equitable distribution of finance and the promotion of the participation of climate displacees in decision making. However, this is not yet the case in Liberia.

Liberia has adopted several policies to address climate change. In 2018 the country adopted its National Policy and Response Strategy on Climate Change (IISD 2018). The Policy is silent on issues of climate-

induced displacement, as its areas of focus for mitigation are forestry and wildlife, agriculture, energy, mining, industry, transport, tourism, and waste management. While these areas are important, the implications of these sectors for displacement are not evident in the policy. Nor does the policy include the necessary remedies for displacees who may have claims in relation to the activities in those sectors which occasion displacement. The National Disaster Risk Management Policy (2012) and the National Drought Plan (UNCCD 2019) have been promulgated, and the Land Degradation Neutrality Technical Working Group established. However, the policies also have no clear provision for the vulnerability of populations likely to be affected by extreme climate-change events and actions. Even more concerning is that these policies do not consider the potential role of multinational corporations. Yet they are the biggest contributors to deforestation and to the creation of massive amounts of industrial waste (Climate Change Alliance Plus Initiative n.d.). These developments fail to meet expectations of equity, human rights implications, participation, access to resources, or justice for persons affected by displacement, which together constitute the notion of climate justice.

4.2.4 South Sudan

South Sudan's Initial National Communication (INC) to the UNFCCC Conference of Parties (COP) submitted in 2018 does not explicitly discuss climate justice for climate-induced displaced persons. The report analyses the main findings on the likely impact of climate change for the country, and how vulnerable its various economic sectors may be to such impacts, before presenting possible adaptation measures (Government of South Sudan 2018). After acceding to the Kampala Convention, South Sudan is developing a Bill that seeks to domesticate its principles, as required of signatory states to facilitate implementation of the same (Government of South Sudan 2018). However, there is evidence of a low level of implementation of the international and regional legal framework which undermines a climate justice approach to internal displacement within the states.

The Constitution of the Republic of South Sudan (2011), as amended in section 41, provides for environmental rights. It provides that every person or community has the right to a clean and healthy environment and an obligation to protect the environment. It further establishes the right to have the environment protected through appropriate legislative action and other measures. Section 59 of the South Sudan Petroleum Act (2012) provides that for any operating company to be granted a licence, environmental and social impact assessments are to be carried out first to make sure that the activity does not damage the environment. Section 59(4) of the Act further states that the assessment must include consultation of the public, including local communities, on the actual and potential impact of petroleum activities. This is a positive provision in the sense that participation is a key feature of the principle of climate justice.

Section 61 of the South Sudan Petroleum Act (2012) makes provision for liability for pollution damage. It provides that the licensee or contractor is liable for pollution damage and shall create a pollution damage fund for clean-up and rehabilitation of the site in which the pollution damage is found. The classification of licensees or contractors can be read to include multilateral companies including public and private entities. Section 62(3) allows for legal action on compensation for pollution damage, but provides that companies that have infringed the legislation can only be sued in the states where their actions have led to the environmental pollution. This is problematic in the sense that most of the states in the Republic of South Sudan are affected by conflict and climate change, and as a result judiciaries in some of these states are not operative. It is not feasible to require citizens of these states to sue corporations in their respective states, where courts are not functioning, and to regard this as justice. This development suggests that access to resources and remedies, a key component of climate justice, is limited.

South Sudan has in place a draft policy, the South Sudan Vision 2040, which calls for sustainable use of the environment to avoid climate change. The country has an Environment Protection Bill (2015) which is, however, still not in force. The Bill discusses issues related to environmental impact assessment in mitigating the adverse effects of climate change. The foregoing instruments seem promising for addressing activities underlying climate change, but not necessarily for addressing its consequences. Gaps remain in relation to the protection of climate displacees, and the possibility of informing interventions with climate justice principles — in particular, the human rights implications of climate-induced displacement and access to justice, which are critical components of the notion of climate justice.

In all, the foregoing shows that there are some useful aspects in the legal framework of states to ensure climate justice for displaced persons. States such as South Africa and Zimbabwe have considerable provisions regarding elements of climate justice such as participation and access to justice which are yet to be fully and strategically engaged in addressing the issue of climate-induced displacement. None of the states have climate-change-specific legislation which accommodates the principles of climate justice. There is also uncertainty regarding the accountability of non-state actors such as corporations for activities which may underlie displacement of persons in the reviewed states. This reality indicates that there remain inherent weaknesses which may undermine the realisation of climate justice for displaced populations in the reviewed states.

5. Conclusion

Climate change is a real threat to both lives and livelihoods, especially for African states. Global and regional instruments on the matter propose the adoption of a climate-justice-centred approach to climate change.

However, upon scrutiny of the recognition and application of climate justice principles in the legal framework of South Africa, Zimbabwe, Liberia and South Sudan, it is demonstrated that this approach is not yet adequately embraced. In their intervention in climate change matters, these states maintain an approach which promotes sustainable development and climate change mitigation, often to the exclusion of climate justice. An outlook which prioritises the economy and the environment over human rights is still entrenched. South Africa and South Sudan are at least in the process of enacting domestic legislation which directly deals with climate change, but even these bills are lacking in a justice-centred approach. The case of South Africa is especially concerning since it is among only a few states which to date have still not ratified the Kampala Convention. This needs to be addressed, as the Convention offers a binding basis for compelling a state to move towards a more climate-justice-centred approach.

However, the ratification of international instruments on climate justice alone is not enough. There is a need for African states to prioritise the implementation of climate justice principles given the urgency of the matter. For instance, even in their climate change mitigation measures, states must address the broader systemic issues which compound displacement, such as underlying poverty and inequality related to climate-induced displacement. They must also look inwardly to tackle emissions by ensuring businesses align their operations with the aims of achieving warming levels below 1.5°C and of attaining net-zero greenhouse gas emissions by 2050, as anticipated by the Paris Agreement (2015). Policies should be crafted to encourage businesses to prioritise investments associated with low- to zero-carbon emissions. In the short term, companies must be required to conduct environmental and climate impact assessments, exercise human rights due diligence, and report on greenhouse gas emissions and climate change impacts. Also, national policy commitments, such as those made through Nationally Determined Contributions under the UNFCCC, should cover the role of business with respect to climate change.

Legal interventions alone will not suffice in the climate justice agenda, thus there is need for other non-legal measures to be applied. For instance, many African states still rely on non-renewable energy sources at a national level with very little commitment to switch to renewable energy sources despite their abundance on the continent. Many businesses still engage in industry practices which are not climate friendly. There needs to be a commitment from the business sector to unequivocally adopt environmental awareness and climate friendliness as the default. Existing mechanisms for enforcing compliance by multinational corporations with climate justice principles are weak. Those need to be strengthened and refined to ensure that they are actually effective, rather than just mere fines which corporations can afford to pay anyway and which do not

serve as any kind of deterrent to them at all. In order for the legal and policy frameworks for climate-change response to promote climate justice, they should: provide for the mobilisation of capabilities for financial and other resources; improve climate awareness in programming; promote participation; and amplify the voices of climate-displaced people in all intervention actions. In addition to the foregoing general recommendations, country-specific recommendations are provided as follows:

5.1 Country-specific recommendations for South Africa

- The Kampala Convention must be ratified and domesticated as a matter of urgency.
- The Proposed Climate Change Bill (2018) must be amended to better reflect climate justice principles such as intergenerational equity and the principle of accountability. CSOs should use international tools such as the Kampala Convention as the binding basis on which to lobby the state to play a more active role in climate justice.
- CSOs should intensify their involvement in public interest litigation where environmental rights are concerned.
- Since it is the trend that those most adversely affected by climate injustice live in remote areas away from the cities and are too often unable to access justice mechanisms such as courts and tribunals, CSOs and the government should assist in reaching this demographic by advocating for their interests.
- Sensitisation of the public to the existence of international climate justice and human rights instruments is necessary. This should be spearheaded by the government and CSOs.
- There must be improved and more effective risk management interventions in high-risk areas. Government investment in the technology required to ensure that early warning systems are accessed by vulnerable persons in remote areas must be prioritised.
- The language of the current displacement situation must shift from its currently diplomatic nature (for example, where displacement is referred to as “relocation”) to one which better encapsulates the truth of the matter.
- A national plan of action must be crafted to stipulate the state’s response strategy to the growing number of climate refugees entering the country from other, mainly Southern African, states.
- Allocation of budgetary resources to address climate-induced displacement.

5.2 Country-specific recommendations for Zimbabwe

- The country needs to expand the discourse of climate change beyond environmental issues to adequately address issues of climate-induced displacement. This can be done by setting up

the necessary mechanisms for the realisation of climate justice for internally displaced persons as set out in international and regional legal frameworks.

- A climate change law compatible with Zimbabwe's international obligations, as set out in the legal instruments that the country has ratified such as the UNFCCC, Paris Agreement and Kampala Convention, must be established. The law must be based on the principles of climate justice that have been articulated, and must endeavour to deliver justice to persons affected by the effects of climate change.
- The climate change law must make provision for holding multilateral companies accountable for their role in climate change so that they largely shoulder the burden of protecting and caring for persons affected by internal displacement induced by climate change.
- To ensure that the law is translated into practical action, the National Climate Policy must be updated to be in line with recent developments in international climate law.
- The country must promote participatory climate justice by ensuring the participation of all persons who are likely to be affected by climate-induced displacement.
- Considering the scarcity of research on climate-induced internal displacement in Zimbabwe, evidence-based research into the issue must be conducted.
- The mandate of the Environmental Management Agency must be widened to extend beyond mere environmental issues to climate issues, with the primary aim being its overseeing of the implementation of the climate law and the updated climate policy.
- Budgetary resources must be allocated to addressing climate-induced displacement.

5.3 Country-specific recommendations for Liberia

- Liberia should mainstream climate justice principles in its policies and laws relating to climate change. This can be done by revising laws and policies on climate change and disaster risk management to recognise the rights and needs of those with high levels of vulnerability.
- Resources should be directed to initiatives that prevent or lessen the effects of climate change on vulnerable populations. Low-lying coastal communities threatened by rising sea levels and sea erosion must be protected through initiatives aimed at protecting the coastline.
- Participation of vulnerable groups must be prioritised in all matters affecting them. Efforts to revise existing legislation and policies, allocation of resources for their protection and welfare, and initiatives aimed at addressing their plight must place the

vulnerable and affected at the centre, involving them in all discussions and processes.

5.4 Country-specific recommendations for South Sudan

- Generally speaking, the country does not currently have legislation on climate change or environmental rights, therefore there is a need for the Republic of South Sudan to adopt legislation on climate change and on environmental protection with specific reference to climate justice.
- Climate-related law in South Sudan must be linked to conflict. Half of the population displacement in South Sudan is related to conflict.
- South Sudan should ratify all necessary international instruments relating to climate change and human rights including the ICCPR and ICESCR. The ratification of the ICESCR and ICCPR would ensure protection and realisation of the aforesaid rights hence giving effect to the concept of climate justice as an answer for climate-induced displacement.
- South Sudan should incorporate the Kampala Convention as domestic law.
- The Petroleum Act should be amended to allow citizens to sue corporations in national courts located in states other than those where an alleged non-compliance with its provisions has taken place.
- Budgetary resources must be allocated to addressing climate-induced displacement.

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