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CHAPTER 5

Climate Change and Social Protection: The Need for an Enhanced Legal Framework

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Abstract

Migrants exposed to climate and environmental change, especially in (Southern) Africa, seem to have limited access to social protection measures. This appears to be accentuated from a legal perspective. A range of international, African continental and sub-regional SADC (Southern African Development Community) instruments provide several pointers for appropriate action to deal with climate change, at times also from a limited social protection viewpoint. However, they stop short from a dedicated and sufficiently comprehensive engagement with social protection in a climate/environmental change context. They also often fall short of stipulating a binding legal framework, in particular a rights-basis for this purpose. And yet, a new conceptual paradigm is evident: climate and environmental change concerns are increasingly being incorporated into the social protection/security notion. It appears necessary to unpack, develop, concretise and apply the international human rights framework and the implications thereof for social protection – in the climate and environmental change sphere. There is indeed a need to overcome the reluctance at the global level to give legal protection to climate-induced migrants. It is argued that these objectives can be achieved, ideally via the adoption of a comprehensive instrument which regulates the protection of migrants exposed to climate and environmental change in legal terms and from a rights-based perspective – rather than the adoption of mere guidelines. Within the framework of such a legal instrument, provision should be made for addressing the social protection needs of those exposed to climate and environmental change in an integrated, holistic and comprehensive fashion, bearing in mind different considerations specific to social protection in the climate/environmental change context – again from a rights-based perspective. In its scope, the instrument should include both internal and cross-border migrants so affected. Ideally, such an instrument should be adopted at the global level, to be replicated at the continental, sub-regional and country-specific levels, sufficiently concretised for social protection and climate/environmental change dimensions operating at these levels.

Keywords: Climate change, environmental change, environmental migrants, legal framework, international instruments, rights-based approach, social protection

5.1

Background and context

The phenomenon of migrants exposed to climate or environmental change has become a particular characteristic of in-country and cross-border deprivation, displacement and mobility in Africa. This reality is posing considerable challenges to regulatory regimes at the global, regional (continental and sub-regional) and national level. A recent assessment report of the Intergovernmental Panel on Climate Change noted that climate change poses a significant threat to economic, social and environmental development in Africa. Warming in Africa has increased significantly over the past 50 to 100 years, with clear implications for the health, livelihoods and food security of people in Africa. This has created considerable health and economic challenges for the continent, including increased food insecurity, increased water scarcity, the spread of weather-sensitive diseases and reduced crop yields and livestock productivity. As noted in the report, extreme weather events are expected to become more frequent and agricultural yield losses are projected to reach 22% across sub-Saharan Africa, with increases in the frequency and prevalence of failed crop seasons. As a result, it has been predicted that by 2080, it is likely that 75% of Africa's population will be at risk of hunger.¹ The impact of climate change is severe for vulnerable families and households, and in particular, women who have to face the dual burden of income generation and caring, those who are disabled, and the young. Due to the dramatic and often sudden onset of floods and other natural calamities, those who move across country borders do so irregularly.

The access of these migrants to social protection interventions in the country/area of destination is usually weakly developed, as is the case when they return to their countries/areas of origin. Although the picture is changing, state practice in Africa seems to confirm a limited approach: Africa's efforts at the domestic level in tackling climate change appear to focus on disaster risk management and humanitarian care, as well as climate change adaptation, and not on longer-term social protection support. While African countries have helped to adopt and have subscribed to a range of international, continental and sub-regional climate change instruments, these instruments make minimal provision for social protection interventions.

1 Based on a presentation made by the author at the occasion of an international conference on Social Protection and Climate change in the SADC: 2030 Agenda for Sustainable Development, organised by the Southern African Social Protection Experts Network (SASPEN), Johannesburg South Africa, 14-15 August 2019. See Intergovernmental Panel on Climate Change (IPCC). 2014. *AR5 Climate Change 2014 – Impacts, Adaptation and Vulnerability* (IPCC 2014 Report, Part B – Regional Aspects) (Chapter 22). Available online: <https://bit.ly/3jnpvVr> [accessed on 27 August 2019].

5.2

A new paradigm: an expanded social protection concept

From a social protection conceptual perspective, a new paradigm is evident: climate and environmental change concerns are increasingly being incorporated into the social protection/ security notion. A recent UNDP report comments as follows:²

While the social and economic aspects of sustainable development are more evident in existing social protection programmes, environmental components are equally as important and inherently linked. People living in situations of vulnerability are often dependent on subsistence agriculture and extractive activities, which are greatly affected by natural disasters and, in the case of the latter, can also create other hazards. The sustainable management of such resources should be given greater priority to ensure that people - particularly the most vulnerable - have a stable source of livelihood. As such, this report makes the case for linking climate change adaptation measures with social protection schemes to reduce the risk of climate events undermining development efforts.

This expanded conceptual framework has a large and growing institutional and operational footprint, reflected among others in a wide range of social protection interventions applied and also developed at the national level to deal with climate and environmental change despite the many challenges, including the lack of institutional and programmatic coordination.

Yet, the regulatory environment available to deal with this remains essentially the *mainstream social protection* regulatory environment, which is said to be applied to the particular context. A cursory reference to the climate/environmental context is in broad terms contained in the International Labour Organization (ILO) Recommendation 202 of 2012 (*National Floors of Social Protection*). Paragraph 15 of the Recommendation stipulates: “Social security extension strategies should apply to persons both in the formal and informal economy and support the growth of formal employment and the reduction of informality, and *should be consistent with, and conducive to, the implementation of the social, economic and environmental development plans of Members.*” (emphasis added).

5.3

Key requirements of a rights-based approach

One would expect that the social protection legal framework in relation to climate and environmental change should reflect a rights-based approach to social protection, and not merely be relegated to policy and programmatic framework at the discretion of government or involved partners. The notion of a rights-based

² UNDP. 2016. *Social Protection for Sustainable Development: Dialogues between Africa and Brazil*, p. 15.

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approach has been described in different ways by authors. Essentially, in relation to social protection, this approach implies that:³

- σ Social protection should be considered as a right and entitlement and not just a matter of charity; those affected should be able/enabled to claim and enforce their entitlement to social protection.
- σ There is an obligation on states to recognise, guarantee and protect social protection.
- σ Certain core obligations and minimum standards may be expected in assessing the compliance with the obligation to provide social protection, particularly in relation to vulnerable groups.
- σ There is a deliberate focus on mechanisms to keep those who design and deliver social protection accountable and to involve those affected by and benefitting from social protection interventions.

Support for this rights-based approach to social protection can be found in a few relevant international and regional (including African) treaties and conventions, as well as in several national constitutions and laws⁴ of many, increasingly African, countries. A rights-based approach also follows from the human rights-informed protection under international law accruing to migrants, considering their vulnerable status.⁵ And yet, as indicated below, little specific provision is made for social protection entitlements of migrants exposed to climate or environmental change.

3 Fombad, C.M. 2013. "An overview of the constitutional framework of the right to social security with special reference to South Africa." *African Journal of International and Comparative Law*, 21(1):1-31; Piron, L-H. 2004. *Rights-based Approaches to Social Protection*. Overseas Development Institute, pp. 3-4.

4 However, as noted in a 2013 study assessing social protection programmes in sub-Saharan Africa, social assistance schemes or programmes often lack a proper legal mandate: Olivier, M., Adrianarison, F. & McLaughlin, M. 2013. *Study on Social Protection in Sub-Saharan Africa: An Assessment of Existing Programmes: Final Report of a Study Commissioned by the European Commission*. European Commission, p. 31. Also, as indicated in the ILO's *World Social Protection Report 2017-2019*, social assistance mechanisms are targeted to individuals living in extreme poverty and the most vulnerable, yet often exclude a significant share of those who are targeted by the programme. In addition, in many cases, "[...] such programmes [...] lack a stable legal and financial foundation, which negatively affects their ability to provide predictable and transparent benefits to persons who need them most and leads to significant coverage gaps. Still, they play an important role in improving the situation of those benefiting from them." International Labour Organization (ILO). 2017. *World Social Protection Report 2017-2019: Universal social protection to achieve Sustainable Development Goals*. International Labour Organization [ILO], p. 4 (emphasis added).

5 See, among others, Office of the High Commissioner for Human Rights (OHCHR) and Global Migration Group (GMG). 2018. *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations* (March 2018). Available online: <https://bit.ly/3cS4owf> [accessed on 2 September 2019].

5.4

Overview: international instruments

As suggested above, international climate change instruments make minimal provision for concrete and dedicated social protection interventions. In its Preamble, the 2015 *Paris Agreement on Climate Change* refers to the human rights obligations in respect of those affected by climate change, including the right to health and the rights of migrants, children, persons with disabilities and people in vulnerable situations; it also stresses the importance of safeguarding food security. However, this instrument stops short from providing any (other) concrete framework for extending social protection to those affected. The United Nations' (UN) *Sendai Framework for Disaster Risk Reduction 2015-2030* is more elaborate in terms of addressing the social (protection) context of disasters; even so, the provisions of the *Framework*, however important, essentially contain high-level pronouncements and pointers towards action but not, as such, a legal framework embedding a rights-based approach. It stipulates as a guiding principle: "Managing the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development".⁶

It further emphasises the importance of appreciating the social and health challenges related to and impact of climate change,⁷ and the need to invest in social and health resilience of persons.⁸ Foreseen interventions include, at an overarching level, improving the social and health well-being of individuals, communities and countries.⁹ More social protection-specific related measures are indicated as part of the measures to deal with post-disaster contexts. Article 30(j) emphasises as a priority action in this regard:¹⁰ "To strengthen the design and implementation of inclusive policies and social safety-net mechanisms, including through community involvement, integrated with livelihood enhancement programmes, and access to basic health-care services, including maternal, newborn and child health, sexual

6 United Nations (UN). 2015. *Sendai Framework for Disaster Risk Reduction 2015-2030*. Article 19(c).

7 *Ibid.*, Article 4; see also Articles 24(a), (b) and (k) and 31(d).

8 *Ibid.*, Articles 14, 16, 27(b) and 29. Article 17 sets the following goal: "Prevent new and reduce existing disaster risk through the implementation of integrated measures, including social and health measures, that prevent and reduce hazard exposure and vulnerability to disaster, increase preparedness for response and recovery, and thus strengthen resilience."

9 *Ibid.*, Article 44. Article 28(e) highlights the promotion of exchange of non-sensitive information on disaster risks in the interest of sustainable social development.

10 See also Article 31(g), concerning another priority action: "To ensure the continuity of operations and planning, including social and economic recovery, and the provision of basic services in the post-disaster phase." Art 33(j) suggests the integration of "post-disaster reconstruction into the economic and social sustainable development of affected areas. This should also apply to temporary settlements for persons displaced by disasters."

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and reproductive health, food security and nutrition, housing and education, towards the eradication of poverty, to find durable solutions in the post-disaster phase and to empower and assist people disproportionately affected by disasters.”

The UN *Sustainable Development Goals (SDG)*,¹¹ while also providing for a separate Goal (SDG, 13) aimed at taking urgent action to combat climate change and its impact, nevertheless restrict their reach, in the climate change context, to high-level objectives, including building the resilience of the poor and those in vulnerable situations,¹² ensuring sustainable food production systems and implementing resilient agricultural practices,¹³ and adopting and implementing integrated policies and plans.¹⁴ It is of course true that SDGs emphasise coordinated attempts across stakeholders to address multiple vulnerabilities, and establishing a systems approach to social protection that contributes to many goals simultaneously. In this way, social protection instruments can be used to support individuals and households affected by climate-related disasters.¹⁵ However, this effectively constitutes an enabling framework, rather than embedding a rights-based approach relevant to the (social) protection of victims. Similarly, the UN *Global Compact for*

11 United Nations (UN). 2015. *Transforming our world – the 2030 Agenda for Sustainable Development* (A/RES/70/1).

12 Target 1.5: “By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters”; Target 13.1: “Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries”.

13 Target 2.4: “By 2030, ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality”.

14 Target 11.b: “By 2020, substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change, resilience to disasters, and develop and implement, in line with the Sendai Framework for Disaster Risk Reduction 2015-2030, holistic disaster risk management at all levels”; Target 13.b: “Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth and local and marginalized communities”.

15 E.g. by using cash transfers to invest in crop varieties or in small-scale assets promoting livelihood diversification and increasing long-term resilience to climate-related shocks.

*Safe, Orderly and Regular Migration*¹⁶ contains no more than pointers towards action,¹⁷ while placing the focus on protection in the context of humanitarian assistance.¹⁸

Mention should also be made of the initially insufficient attention paid to the context of displaced persons who were forced to migrate across borders. This led to the development of the *Nansen Initiative*, outside the UN framework.¹⁹ Since then, the Initiative has been endorsed and subsumed in *The Platform on Disaster Displacement* (a State-led process working towards better protection for people displaced across borders in the context of disasters and climate change),²⁰ and the adoption of the *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Displacement and Climate Change*.^{21,22} These initiatives emphasise the importance of resilience building and humanitarian assistance and, in general terms, the human rights protection of affected persons. Finally, the key international refugee instruments at the global level, i.e. the *UN Protocol Relating to the Status of Refugees* (1967), read with the *UN Convention Relating to the Status of Refugees* (1951), do not recognise cross-

16 United Nations (UN). 2018. *Global Compact for Safe, Orderly and Regular Migration: Intergovernmentally Negotiated and Agreed Outcome*. See Objective 2: “Minimize the adverse drivers and structural factors that compel people to leave their country of origin, and the sub-objectives on Natural disasters, the adverse effects of climate change, and environmental degradation [...]”

17 Objective 2(h) – to understand, predict and address “the adverse effects of climate change, environmental degradation, as well as other precarious situations, while ensuring the effective respect, protection and fulfilment of the human rights of all migrants”; Objective 2(i) – to develop adaptation and resilience strategies; Objective 2(j) – to integrate displacement considerations into disaster preparedness strategies.

18 See Objective 2(k): “Harmonize and develop approaches and mechanisms at subregional and regional levels to address the vulnerabilities of persons affected by sudden-onset and slow-onset natural disasters, by ensuring they have access to humanitarian assistance that meets their essential needs with full respect for their rights wherever they are, and by promoting sustainable outcomes that increase resilience and self-reliance, taking into account the capacities of all countries involved”.

19 Launched in 2012 by Norway and Switzerland, the Initiative was conceived as a state-owned consultative process, outside the UN, to build consensus – in a bottom-up way – among interested states about how best to address cross-border displacement in the context of sudden- and slow-onset disasters. See Kälin, W. 2012. “From the Nansen Principles to the Nansen Initiative.” *Forced Migration Review*, p. 41. Available online: <https://bit.ly/34dU9hI> [accessed on 3 September 2019].

20 *The Platform on Disaster Displacement: Follow-up to the Nansen Initiative*. Available online: <https://bit.ly/3l7H55j> [accessed on 3 September 2019].

21 The Nansen Initiative. 2015. *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Displacement and Climate Change*. The *Protection Agenda* offers States a set of tools to prevent and prepare for displacement before a disaster strikes, as well as to respond to situations when people are forced to move, either within their own country or across an international border. Available online: <https://bit.ly/36r4FoE> [accessed on 2 September 2019].

22 The *Global Compact for Migration* stresses the link between *Global Compact* and the *Nansen* follow-up: Objective 2(l) refers to the need to develop coherent approaches to address the challenges of migration movements in the context of sudden-onset and slow-onset natural disasters, including by taking into consideration relevant recommendations from State-led consultative processes, such as the *Agenda* and the *Platform*.

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border flight as a result of exposure to climate or environmental change as a reason, in itself, to qualify for refugee status.²³ This is confirmed by the provisions of the UN *Global Compact on Refugees*:²⁴ Article 8, on root causes of refugee movements, states that “While not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements.”²⁵ In fact, as was indicated by the UN in relation to the adoption of the *Compact*, UN members were not ready to give “specific legal international protection to climate-induced migrants”.²⁶

These UN and related instruments and initiatives provide a range of pointers for appropriate action to deal with climate change, but stop short from addressing specific social protection measures, particularly from a rights-based perspective. We can therefore conclude that, in essence, the regulatory environment at the international level does not sufficiently reflect a dedicated and specifically developed and arranged social protection framework in relation to climate and environmental change.

5.5

Overview: African continental instruments

African Union (AU) foundational instruments, documents, policies and strategic frameworks acknowledge the need to address climate change and environmental sustainability, highlighting at times the need for appropriate social protection measures. In particular, AU *Agenda 2063* has formulated in its Aspiration 1

23 According to Article 1(2) of the UN *Protocol Relating to the Status of Refugees* (1967), read with Article 1 of the UN *Convention Relating to the Status of Refugees* (1951) ‘refugee’ is defined to mean a person “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

24 United Nations (UN). 2018. *Global Compact on Refugees*.

25 See also Article 12 of the *Global Compact*.

26 See Chadwick, V. 2018. “Global Compact for Migration not the answer for climate refugees: UN representative.” (20 March 2018). Available online: <https://bit.ly/3i8bWh2> [accessed on 2 September 2019]. For a detailed discussion on the international law deficiency in this regard, see Philip, T. 2018. “Climate change displacement and migration: an analysis of the current international legal regime’s deficiency, proposed solutions and a way forward for Australia.” *Melbourne Journal of International Law*, 19:1-27; Mayer, B. 2011. “The international legal challenges of climate-induced migration: proposal for an international legal framework.” *Colorado Journal of International Environmental Law and Policy*, 22(3):379-416; Nishimura, L. 2015. “Climate change migrants: impediments to a protection framework and the need to incorporate migration into climate change adaptation strategies.” *International Journal of Refugee Law*, 27(1):107-134.

(A prosperous Africa, based on inclusive growth and sustainable development), a specific goal for this purpose, i.e. Goal 7: Environmentally sustainable climate-resilient economies and communities.²⁷ In its accompanying *First Ten Year Implementation Plan*, one of the indicated priority areas relates to climate resilience and natural disasters and preparedness. Specific targets are set for climate resilience and the reduction of deaths and property loss from natural and man-made disasters. It advocates as one of the indicative strategies at the national level, the promotion of “social and economic measures in climate change responses to support sustainable human development.”²⁸

Similar high-level pronouncements are contained in other AU foundational instruments. The *Draft African Strategy on Climate Change* (2014) describes its overall goal to include “addressing the challenges and opportunities associated with climate change in the continent, with the view of improving the livelihoods of the African people and environment they live in” and that “Africa’s priorities are to implement climate change programmes in such a way as to achieve sustainable development, alleviate poverty and attain the Millennium Development Goals, with emphasis on the most vulnerable groups, especially women and children”.²⁹ Yet, limited provision is made for concrete social protection interventions, with little indication of a rights-based approach. Social protection is specifically mentioned in relation to support for rural farmers and smallholder workers,³⁰ and for employed workers in the agriculture sector to make them more resilient and able to adapt their skills to climate change.³¹ For the rest, as regards the area of health, it reflects on the impact of climate change on health, and the need to develop climate-resilient health systems.³² It also elaborates on the impact of climate change on gender, youth and disadvantaged groups and sets as a goal the reduction of these impacts – and advocates for mainstreaming these concerns into climate change frameworks and sectoral policies, and for gender-sensitive adaptation measures.³³

27 African Union (AU). 2015. *Agenda 2063 The Africa We Want: Framework Document*. African Union Commission (AUC), p. 15, 17, 34-35, 69-71, 105, 111-112, 113-114, 124, 147-148.

28 African Union (AU). 2015. *Agenda 2063 First Ten-Year Implementation Plan 2013-2023*. pp. 20, 23, 43, 45, 59, 61-64, 119, 129-130, 135, 139. Note should also be taken of the emphasis placed in AU *Agenda 2063* on the need for climate change-focused insurance products: AU, *Agenda 2063 The Africa We Want: Framework Document*, p. 124.

29 African Union (AU). 2014. *Draft African Strategy on Climate Change*, article VI.

30 *Ibid.*, Article XI.8 – and making it clear that the AU, *Social Protection Plan for Informal Economy and Rural Workers (SPIREWORK)* provides strategic responses to these risks as they may result from climate change.

31 Article XI.8, read with Goal 17: Agriculture Development and Adaptation to Climate Change, Action 7.

32 Article XI.11.

33 Article XII.1, read with Goal 33.

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Some reference is made to agriculture and food security,³⁴ and to the importance of building resilience.³⁵

The *AU Social Policy Framework for Africa* (2008) defines its main purpose to “[...] provide an overarching policy structure to assist AU Member States in the development of their national social policies to promote human empowerment and development in their ongoing quest to address the multiple social issues facing their societies”.³⁶ Yet, in its reflection on environmental sustainability, there is little emphasis on the concrete social protection interventions, other than the reference to ensuring the “[...] effective implementation of the key tenets of the *UN Convention on Economic, Cultural and Social Rights*, which among other things, calls on its signatories to ensure that all their citizens have easy access to safe drinking water and sanitation”.³⁷

Similar inferences can be drawn from AU sectoral instruments. For example, the *AU Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods* (2014) contains specific references to food security and enhanced resilience in the context of climate change, disasters and emergencies. It stresses the need to integrate social protection measures to strengthen food security³⁸ and investment in social security for rural workers and other vulnerable social groups as a resilience-building initiative.³⁹ Similarly, the *AU Comprehensive African Agricultural Development Programme* (CAADP) (2003) highlights the need for increasing food supply and reducing hunger in emergency contexts, including direct assistance to those who are the most food insecure, in the form of safety net schemes, income transfer schemes and comprehensive integrated programmes, as well as the provision of agricultural inputs, in the form of tools, seeds and other inputs.⁴⁰

³⁴ Article XI.8.

³⁵ Article XI.5 and Goal 17, Action 6.

³⁶ African Union (AU). 2008. *Social Policy Framework for Africa* (CAMSD/EXP/4(1)), par 15.

³⁷ *Ibid.*, par 82.

³⁸ Article 3(c) of the AU, *Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods* (2014), on the commitment to ending hunger by 2025, advocates for the integration of measures for increased agricultural productivity with social protection initiatives focusing on vulnerable social groups through committing targeted budget lines within national budgets for (emphasis added):

- σ *strengthening strategic food and cash reserves to respond to food shortages occasioned by periodic prolonged droughts or other disasters/emergencies;*
- σ *strengthening early warning systems to facilitate advanced and proactive responses to disasters and emergencies with food and nutrition security implications;*
- σ *targeting priority geographic areas and community groups for interventions; and*
- σ *encouraging and facilitating increased consumption of locally produced food items, including the promotion of innovative school feeding programs that use food items sourced from the local farming community.*

³⁹ *Ibid.*, Article 6(b).

⁴⁰ African Union (AU). 2003. *Comprehensive African Agricultural Development Programme* (CAADP), p. 15-16, 47-51, 64.

Before we turn our attention to AU legal instruments, mention should be made of the AU *Social Agenda 2063* (2020). This document foresees, as one of the strategic development investments required to address environmental sustainability and climate change, investing “in initiatives and programmes that address multiple causes of vulnerability and meet the immediate needs of communities as well as dealing with addressing environmental issues”.⁴¹

A limited legal framework exists at the continental level. Article 24 of the *African Charter on Human and Peoples’ Rights* in general terms indicates that: “All peoples shall have the right to a general satisfactory environment favourable to their development.”⁴² Of particular importance is the approach adopted by the African Commission on Human and Peoples’ Rights (The Commission) in the *Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter*.⁴³ The Commission views victims of natural disasters as a vulnerable and disadvantaged group;⁴⁴ these victims enjoy the right to social security (viewed by the Commission as a derivative right),⁴⁵ implying that States parties to the Charter bear certain minimum core obligations, including the obligation:

- σ to ensure that benefits are provided in a timely manner and that beneficiaries have physical access to the social security services in order to receive benefits and information, and make contributions where relevant;⁴⁶
- σ to take the necessary action to guarantee the right of everyone to be free from hunger and to mitigate and alleviate hunger even in times of natural or other disasters;⁴⁷ and
- σ take appropriate emergency preparedness measures, such as keeping food stocks, and establishing adequate systems for distribution.⁴⁸

States parties are also enjoined to ensure that both state and non-state actors respect the rights of peoples to a satisfactory environment.⁴⁹ The right to health (Article 16 of the Charter) is said to include, among others, healthy environmental

⁴¹ African Union (AU). 2020. *Social Agenda 2063*, par 89.

⁴² African Union (AU). 1982. *African Charter on Human and Peoples’ Rights*, article 24.

⁴³ African Commission on Human and Peoples’ Rights (ACHPR). 2010. *Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples’ Rights*.

⁴⁴ *Ibid.*, par 1(e).

⁴⁵ Par 81: “Therefore, although the right to social security is not explicitly protected in the African Charter, it can be derived from a joint reading of a number of rights guaranteed under the Charter including (but not limited to) the rights to life, dignity, liberty, work, health, food, protection of the family and the right to the protection of the aged and the disabled. In addition it is strongly affirmed in international law.” (authority omitted)

⁴⁶ Par 82(k).

⁴⁷ Par 86(a).

⁴⁸ Par 86(k).

⁴⁹ Par 44.

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conditions.⁵⁰ States parties are required to protect individuals and peoples against environmental hazards and alleviate the adverse effects of in particular global warming on ecosystems, livelihood and food security.⁵¹ The derivative right to housing (see Articles 14, 16 and 18(1) of the Charter) is said to include, also for victims of natural disasters, adequate housing or shelter and to acceptable living conditions in a healthy environment.⁵²

The AU *Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention) of 2009 establishes, among others, a legal framework for protecting and assisting internally displaced persons in Africa, including those displaced as a result of climate change, presumably also by way of social protection measures through imposing particular obligations on ratifying AU Member States. The Convention imposes several obligations on States parties, including the obligation to

- σ take measures to protect and assist persons who have been internally displaced due to natural or human-made disasters, including climate change;⁵³
- σ take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located;⁵⁴
- σ devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, where necessary, provide immediate protection and assistance to internally displaced persons;⁵⁵ and
- σ to be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.⁵⁶

However, social protection is largely couched in *humanitarian assistance* terms. Article 9(2)(b) requires of States Parties to:

Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities.

⁵⁰ Par 63. See also par 67(j) and (q).

⁵¹ Par 67(s).

⁵² Par 79(p). See also par 79(f).

⁵³ African Union (AU). 2009. *Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention), article 5(4).

⁵⁴ *Ibid.*, article 2(j).

⁵⁵ Article 4(2).

⁵⁶ Article 12(3).

Also, this Convention only concerns internally displaced persons and not those who have crossed international borders. Cross-border environmental migrants are therefore excluded from the application of this Convention.⁵⁷

More recently, the new Draft AU *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security* (2020) places a certain obligation on States Parties in relation to the environment and climate change, including the obligation to⁵⁸

- σ support measures to mitigate the effects of climate change and environmental degradation through social protection schemes;
- σ enhance investments for resilience-building initiatives, including social protection for rural workers and other vulnerable social groups, as well as vulnerable ecosystems, including the blue economy; and
- σ support initiatives to grow crops that adapt to climate change in order to enhance food security.

It is evident that African continental-level instruments are giving expression to the need for employing appropriate social protection measures to address the impact of climate/environmental change on those affected. Certain AU legal instruments go further and provide a limited rights-basis for the adoption and implementation of these measures in certain climate change-related circumstances (e.g. as emergency or humanitarian assistance responses). However, a dedicated and comprehensive engagement with social protection in a climate/environmental change context appears to be absent, also from a rights-based perspective.

5.6

Overview: SADC instruments

The foundational instrument of SADC, i.e. the *Treaty of the Southern African Development Community* (1992) contains a range of general provisions relevant to social development and social protection objectives.⁵⁹ It further indicates the “effective protection of the environment” as one of its objectives.⁶⁰ Yet, climate

⁵⁷ See article 1(k), definition of “internally displaced persons”.

⁵⁸ Draft African Union (AU). 2020. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security*, article 22 (a)-(c).

⁵⁹ Article 5(1)(a) of the *Treaty* stipulates that one of its objectives shall be to “promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged [...]”. Also, Member States agree to cooperate in the areas of among others food security and social welfare (article 21(3)(a) & (f)).

⁶⁰ *Ibid.*, article 5(1)(g).

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change is not specifically raised; neither does the Treaty link social development/protection interventions to the environmental framework.

A legal framework in the Southern African Development Community embodying social protection in the environmental/climate change context is largely absent in SADC instruments. Article 12(a) of the *Charter of Fundamental Social Rights in SADC (Social Charter)* (2003) does provide, in general terms but limited to workers, that: “[...] every worker in the Region has the right to health and safety at work and to a healthy and safe environment that sustains human development and access to adequate shelter”. However, no other social protection instrument (e.g. the *Code on Social Security* [2007]; *Protocol on Employment and Labour* [2014]) contains specific social protection provisions in this context.

Reference should also be made to the limited *legal* framework generally, also in relation to social protection interventions, contained in the key SADC document on climate change, i.e. the *SADC Protocol on Environmental Management for Sustainable Development* (2014). In several foundational provisions, the Protocol acknowledges the importance of a people-centred and social interest-focused approach.⁶¹ It further enjoins State Parties to take measures to address the negative impacts of climate change on, among others, food security and nutrition, health and poverty eradication.⁶² However, little is said in terms of concrete social protection measures; there is also no indication of a rights-based approach to social protection in the climate change context.

Other SADC documents/programmes, including sectoral ones, concern climate/environmental change, and do, at times, indicate the need for social protection arrangements (food security; resilience strengthening; social development arrangements), but stop short from presenting a dedicated framework, let alone a regulatory framework, for social protection interventions, for example:

61 The SADC. 2014. *Protocol on Environmental Management for Sustainable Development* mentions as one of the principles informing the Protocol that State Parties shall, in implementing the Protocol, be guided and give effect to environmental management that “places people and their needs at the forefront of its concern, and serves the people’s physical, psychological, developmental, cultural and social interests equitably” (article 3(3)(a); see also article 3(3)(b), 3(4)(h), 3(5) and 3(7)(b). Article 4(1)(a) states as a specific objective the enhancement of the protection of the environment in order to contribute to human health, wellbeing and poverty alleviation”. The Preamble refers to “Role of environmental management in socio-economic well-being, food security and poverty alleviation”.

62 *Ibid.*, article 12(c). See also article 21(1)(c), and article 18(3)(b) (on the promotion of regional food security).

- σ SADC. *Revised Strategic Regional Indicative Strategic Development Plan 2015-2020* (2015) and its reference to the SADC *Regional Agricultural Policy* (2014);⁶³
- σ COMESA-EAC-SADC. *Programme on Climate Change Adaptation and Mitigation in Eastern and Southern Africa (COMESA-EAC-SADC) Region* (2011);⁶⁴
- σ SADC. *Climate Change Adaptation in SADC – A Strategy for the Water Sector* (2011);⁶⁵ and
- σ SADC. *Regional Strategic Action Plan on Integrated Water Resources Development and Management Phase IV (RSAP)* (2016).⁶⁶

Finally, in a 2014 policy paper on climate change developed for SADC, the impact of climate change on health and human security, including food security, was stressed, as well as the need to address environmentally-induced migration and water availability, as well as support climate-resilient agriculture for regional food security.⁶⁷ No indication is given of the need for a legal framework embedding a rights-based approach.

The conclusion to be drawn is that, while certain SADC instruments acknowledge the need for social protection interventions to be adopted in a climate/environmental change context, they generally fall short of stipulating a legal framework, and hence a rights-basis, for this purpose.

63 The limited provisions of the SADC *Revised Strategic Regional Indicative Strategic Development Plan 2015-2020* (2015) in this regard place a certain focus on food and nutrition security as an expressed strategy, with reference also to (and elaborated on in Part 3D of the SADC *Regional Agricultural Policy* (2014), pp. 23-24, and with an emphasis on the availability of food security, and food reserves in the wake of disasters – all of this aimed at reducing social and economic vulnerability and developing long-term resilience and adaptive capacities for food and nutrition security (48-50, 52-54, 65, 75-76). See also the SADC *Summary of the SADC Revised Strategic Regional Indicative Strategic Development Plan 2015-2020* (2017).

64 This programme highlights livelihood protection/improvement and food security, places a focus on disaster risk reduction, and emphasises in particular the importance of vulnerability assessments informing both emergency responses and longer-term strategies for alleviating poverty and building climate-resilient livelihoods, to address chronic poverty and livelihood stresses: COMESA-EAC-SADC *Programme on Climate Change Adaptation and Mitigation in Eastern and Southern Africa (COMESA-EAC-SADC) Region* (2011) par. 4.4. and 5.5.2.

65 With its emphasis on climate change adaptation strategies, including integrated and adapted water resources management and water governance, the SADC *Regional Strategic Action Plan on Integrated Water Resources Development and Management Phase IV (RSAP)* (2016) formulates as a specific objective the improvement of food security through the development of efficient and resilient irrigation and draining systems (see par 2.2.3, 23), read with 9 and 16).

66 The SADC. *Regional Strategic Action Plan on Integrated Water Resources Development and Management Phase IV (RSAP)* emphasises among others the potential of water to be a catalyst for socio-economic development, stressing the nexus between water and food security (at (iii) and (8)).

67 Lesolle, D. 2012. *SADC Policy Paper on Climate Change: Assessing the Policy Options for SADC Member States*, par 5.1, 34.

5.7

Conclusions and the way forward: the need for a dedicated regulatory instrument

Migrants exposed to climate and environmental change, especially in (Southern) Africa, seem to have limited access to social protection measures. This appears to be accentuated from a legal perspective point of view, given the absence of appropriate legal frameworks, and of an associated rights-basis. Often the focus is on sectoral and targeted interventions/programmes, including resilience-building, climate change adaptation, disaster risk management, food security, housing support, health concerns, and similar specific interventions. In practical terms, a raft of social protection interventions is applied and even innovatively developed (e.g. weather (index) insurance, crop insurance, cash transfers and public works programmes) – at times as preventive mechanisms, but also as response and remedial measures. However, there is little emphasis on longer-term social support. Nevertheless, in addition to the deficient legal regime, there seems to be a lack of a comprehensive and integrated social protection approach, also reflected in fragmented policy, institutional and operational responses – even if there are in some areas (e.g. food security) well-developed sectoral approaches.

It can, therefore, be concluded, as appears from the analysis contained in this contribution, that there is an evident absence of an integrated legal framework – legal approaches would largely reflect the fragmented approach to access social protection indicated above and/or are restricted to ‘mere’ application of general social protection legal interventions, which do not seem to sufficiently suit the context of those exposed to climate and environmental change. This is evident at the level of global, continental and sub-regional instruments, standards and guidelines, and seems to be reflected also in national legal frameworks (e.g. African Constitutions).

The question should be raised whether there is not a need for a new social risk-based conceptual approach, which would acknowledge *exposure to climate/environmental change as a particular social (security/protection) risk*, and to develop, on that basis, an integrated, rights-based social protection framework. The development of, firstly, other risk categories, or the extension of existing risk categories, beyond the historical purview of the nine classical social security risks acknowledged in international (in particular ILO) instruments, and based on the lived experiences of societies in both the developing and developed world, is certainly not unknown. From a developed world perspective, mention could be made of the introduction of

special *long-term care* arrangements and schemes.⁶⁸ In the developing world context, the (public) insurance provided, for example, by some Indian state governments against *loss of means (e.g. tools) by which livelihoods are pursued* can, in particular, be mentioned.⁶⁹ Secondly, again from a developing world perspective, there is an evident need to move beyond a restricted social security risk focus towards a broader conceptualisation of what social security is meant to provide for. As noted by Kamala Sankaran:⁷⁰

The economic right to obtain gainful employment with the safety net provided by social security in the form of income security and health benefits has been at the center of the social security systems in the developed world. Over the last thirty years this paradigm of social security has been increasingly questioned, and an alternative conception of preventive and promotional forms of social security has been put forward. Economic security has usually meant the maintenance of existing levels of income. For the self-employed in the informal economy, *the loss of assets, loss of access to markets, and exposure to risks are often reasons for their economic insecurity*. A comprehensive right to economic security as a form of social security would require a comprehensive safety net against such risks.

There is in my view ample rationale for such a dedicated social risk-based and rights-based social protection approach, namely:

- σ To strengthen and be an expression of the human right to social protection accruing to everyone,⁷¹ from the perspective of an integrated human-rights approach, bearing in mind that several other human rights are at stake too.⁷²

68 See International Labour Organization (ILO). 2017. *World Social Protection Report 2017-2019: Universal Social Protection to Achieve Sustainable Development Goals* (ILO), in particular at 80 (Box 4.2); see also European Commission *Long-term care*. Available online: <https://bit.ly/3n5UBax> [accessed on 14 September 2019] – where reference is made to the right to affordable long-term care services of good quality, in particular home-care and community-based service, embedded in Principle 18 of the *European Pillar of Social Rights* (2017).

69 For example, state governments in Karnataka and Odisha) make provision in their social security schemes for among others assistance for the purchase of working tools, which (at least in the case of Karnataka) has resulted in considerable take-up: see Olivier, M. 2019. "Social security protection for informal economy workers: Developing world perspectives." In: M. Westerfeld & M. Olivier (eds.). *Social Security Outside the Realm of the Employment Contract – Informal Work and Employee-like Workers*. Edward Elgar Publishing Ltd, pp. 2-29 at 23 and Olivier, M. 2016. *Social security reform in India – Stakeholder assessment report*. Submitted to the International Labour Organization (ILO) Decent Work team for South Asia, New Delhi and the Ministry of Labour and Employment, Government of India, p. 39, 42 (on file with the author).

70 Sankaran, K. 2012. "The human right to livelihood: Recognizing the right to be human." *Comparative Labor Law & Policy Journal*, 34: 81-94 at 89-90 (emphasis added).

71 See, among others, Articles 22 and 25 of the UN. 1948. *Declaration of Human Rights*.

72 See in this regard the instructive recent Nansen/UN publication – Platform on Disaster Displacement & UN Human Rights Office of the High Commissioner. 2019. *The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants*.

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- σ To address the multi-dimensional context of climate and environmental change.
- σ To move beyond broad or generalised standards/guidelines to an integrated and targeted framework addressing concrete areas of social protection application in a coherent manner – for an example of a successful targeted thematic-oriented international instrument, see the influential UN *Trafficking in Persons Protocol*⁷³ for a similar approach, emphasising the 4 P's, i.e. prevention, protection, prosecution and partnerships.
- σ To provide a basis for concrete policy development, institutional and programmatic design, operational roll-out and cross-sectoral coordination.
- σ To provide a measure for identifying specific areas of shortcomings, from a social protection perspective, and how to potentially address them.

To achieve this objective, specific considerations and particular dimensions need to be considered – social protection in this context fulfils a diverse set of objectives and has to deal with a range of areas and issues. In this regard, it is necessary to emphasise among others preventive, restorative, reintegrative and promotive objectives. The following indicative and non-exhaustive range of dimensions could be mentioned:

Different/varied vulnerability contexts need to be heeded – with reference to, for example:

- σ Different categories of people affected by climate and environmental change (e.g. in-country and cross-border migrants; the aged, children, women in their various capacities, bearing in mind that host communities are often also affected).
- σ The variety of sources leading to the exposure (in particular, slow-onset or rapid-onset disasters; longer-term climate change developments).
- σ Different vulnerability needs of those affected (such as food, medical care, housing, land preservation or restoration, job creation and skilling).
- σ Range of targeted social protection responses needed (for example, in the contexts of rapid responses, resilience-building).
- σ The variety of monetary and non-monetary social protection interventions required (for example, cash transfers; insurance-based arrangements).

To achieve this objective, essential human rights principles appearing from all mainstream human rights instruments, need to be heeded – in particular, the 1966 UN *International Covenant on Economic, Social and Cultural Rights* (ICESCR), ratified by almost all African countries, and the AU *African Charter on Human and Peoples' Rights*,

⁷³ United Nations (UN). 2002. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)*.

ratified by all African countries. These principles include:⁷⁴

- σ Guarantee of and respect for all human rights.
- σ Giving effect to an integrated, interrelated and interdependent understanding and application of human rights entitlements – the need for a holistic approach.
- σ Priority attention must be given to the most vulnerable.
- σ No unjustifiable discrimination is allowed.
- σ Progressive realisation of the applicable human rights framework is required.
- σ Deliberate funding allocation must be in place.
- σ A range of reasonable legislative and other measures would have to be adopted.

It appears necessary to unpack, develop, concretise and apply the international human rights framework and the implications thereof for social protection – in the climate and environmental change context. This can be done in an instrument addressing the rights deficits of climate-induced migrants generally, or an alone-standing instrument, focusing only on the social protection dimension.

In my view, there is a need to overcome the reluctance at the global level to give legal protection to climate-induced migrants. An appropriate way to provide for the above is ideally via the adoption of a comprehensive instrument which regulates the protection of migrants exposed to climate and environmental change in legal terms and from a rights-based perspective rather than the adoption of mere guidelines, even though the latter may constitute a first step towards the adoption of a binding instrument. Within the framework of such a legal instrument, provision should be made for addressing the social protection needs of those exposed to climate and environmental change in an integrated, holistic and comprehensive fashion, bearing in mind the different considerations indicated above – again from a rights-based perspective. In its scope, the instrument should include both internal and cross-border migrants so affected. Ideally, such an instrument should be adopted at the global level, to be replicated at the continental, sub-regional and country-specific levels, sufficiently concretised for social protection and climate/environmental change dimensions operating at these levels.

⁷⁴ It needs to be noted that these principles are also reflected in an increasing number of African constitutions and related African constitutional jurisprudence (for example, in the case of Kenya and South Africa).

5.8 Bibliography

5.8.1 General

- Chadwick, V. 2018. "Global Compact for Migration not the answer for climate refugees: UN representative." *Devex*, 20 March 2018. Available online: <https://bit.ly/30teMoZ3> [accessed on 28 August 2020].
- European Commission. *Long-term Care*. Available online: <https://bit.ly/34i10qr> [accessed on 28 August 2020].
- Fombad, C.M. 2013. "An overview of the constitutional framework of the right to social security with special reference to South Africa." *African Journal of International and Comparative Law*, 21:1-31. <https://doi.org/10.3366/ajicl.2013.0050>
- Intergovernmental Panel on Climate Change (IPCC). 2014. *AR5 Climate Change 2014 – Impacts, Adaptation and Vulnerability*. IPCC 2014 Report, Part B – Regional Aspects. Available online: <https://bit.ly/3jnpvVr> [accessed on 28 August 2020].
- International Labour Organization (ILO). 2017. *World Social Protection Report 2017-2019: Universal social protection to achieve Sustainable Development Goals*. International Labour Organization (ILO).
- Kälin, W. 2012. "From the Nansen Principles to the Nansen Initiative." *Forced Migration Review*, 41:48-49. Available online: <https://bit.ly/30tW1lg> [accessed on 28 August 2020].
- Lesolle, D. 2012. "SADC Policy Paper on Climate Change: assessing the Policy Options for SADC Member States." *South African Development Community*.
- Mayer, B. 2011. "The international legal challenges of climate-induced migration: proposal for an international legal framework" *Colorado Journal of International Environmental Law and Policy*, 22(3):379-416.
- Nishimura, L. 2015. "Climate change migrants: impediments to a protection framework and the need to incorporate migration into climate change adaptation strategies." *International Journal of Refugee Law*, 27(1):107-134. <https://doi.org/10.1093/ijrl/eev002>
- Olivier, M. 2016. *Social Security Reform in India – Stakeholder Assessment Report*. Submitted to the International Labour Organization (ILO Decent Work team for South Asia), New Delhi and the Ministry of Labour and Employment, Government of India.
- Olivier, M. 2019. "Social security protection for informal economy workers: Developing world perspectives." In: M. Westerfeld & M. Olivier (eds.). *Social Security Outside the Realm of the Employment Contract – Informal Work and Employee-like Workers*. Edward Elgar Publishing Ltd, pp. 2-29. <https://doi.org/10.4337/9781788113403.00007>

- Olivier, M., Adrianarison, F. & McLaughlin, M. 2013. *Study on Social Protection in Sub-Saharan Africa: An Assessment of Existing Programmes: Final Report of a Study Commissioned by the European Commission*. European Commission.
- Philip, T. 2018. "Climate change displacement and migration: an analysis of the current international legal regime's deficiency, proposed solutions and a way forward for Australia." *Melbourne Journal of International Law*, 19:1-27.
- Piron, L-H. 2004. *Rights-based Approaches to Social Protection*. Overseas Development Institute.
- Platform on Disaster Displacement & UN Human Rights Office of the High Commissioner. 2019. *The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-border Migrants*.
- Sankaran, K. 2012. "The human right to livelihood: Recognizing the right to be human" *Comparative Labor Law & Policy Journal*, 34(1):81-94.
- UNDP. 2016. *Social Protection for Sustainable Development: Dialogues between Africa and Brazil*.

5.8.2 International instruments and related documents

- African Commission on Human and Peoples' Rights (ACHPR). 2010. *Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights*.
- African Union (AU). 1982. *African Charter on Human and People's Rights*.
- African Union (AU). 2003. *Comprehensive African Agricultural Development Programme (CAADP)*.
- African Union (AU). 2008. *Social Policy Framework for Africa (CAMSD/EXP/4(1))*.
- African Union (AU). 2009. *Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*.
- African Union (AU). 2014a. *Draft African Strategy on Climate Change*.
- African Union (AU). 2014b. *Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods*.
- African Union (AU). 2015a. *Agenda 2063 The Africa We Want: Framework Document*. African Union Commission.
- African Union (AU). 2015b. *Agenda 2063 First Ten-Year Implementation Plan 2013-2023*. African Union Commission.
- African Union (AU). 2020 draft. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security*.
- African Union (AU). 2020. *Social Agenda 2063*.

LIBER AMICORUM

African Union (AU). *Social Protection Plan for the Informal Economy and Rural Workers 2011-2015 (SPIREWORK)*.

COMESA-EAC-SADC 2011. *Programme on Climate Change Adaptation and Mitigation in Eastern and Southern Africa (COMESA-EAC-SADC) Region*.

European Commission. 2017. *European Pillar of Social Rights*.

International Labour Organization (ILO). Recommendation 202 of 2012. *National Floors of Social Protection*.

Office of the High Commissioner for Human Rights (OHCHR) and Global Migration Group (GMG). 2018. *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations* (March 2018). Available online: <https://bit.ly/36v2twf> [accessed on 28 August 2020].

South African Development Community (SADC). 1992. *Treaty of the Southern African Development Community*.

South African Development Community (SADC). 2003. *Charter of Fundamental Social Rights in SADC (Social Charter)*.

South African Development Community (SADC). 2007. *Code on Social Security*.

South African Development Community (SADC). 2011. *Climate Change Adaptation in SADC – A Strategy for the Water Sector*.

South African Development Community (SADC). 2014a. *Protocol on Employment and Labour*.

South African Development Community (SADC). 2014b. *Protocol on Environmental Management for Sustainable Development*.

South African Development Community (SADC). 2014c. *Regional Agricultural Policy*.

South African Development Community (SADC). 2015. *Revised Strategic Regional Indicative Strategy 2015-2020*.

South African Development Community (SADC). 2016. *Regional Strategic Action Plan on Integrated Water Resources Development and Management Phase IV (RSAP)*.

South African Development Community (SADC). 2017. *Summary of the SADC Revised Strategic Regional Indicative Strategic Development Plan 2015-2020*.

The Nansen Initiative. 2015. *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Displacement and Climate Change*.

The Platform on Disaster Displacement: Follow-up to the Nansen Initiative. Available online: <https://bit.ly/34hffvM> [accessed on 28 August 2020].

United Nations (UN). 1948. *Declaration of Human Rights*.

Climate Change and Social Protection: The Need for an Enhanced Legal Framework

United Nations (UN).1951. *Convention Relating to the Status of Refugees*.

United Nations (UN). 1966. *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.

United Nations (UN). 1967. *Protocol Relating to the Status of Refugees*.

United Nations (UN). 2002. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)*.

United Nations (UN). 2015a. *Paris Agreement on Climate Change*.

United Nations (UN). 2015b. *Sendai Framework for Disaster Risk Reduction 2015-2030*.

United Nations (UN). 2015c. *Transforming our world – the 2030 Agenda for Sustainable Development (A/RES/70/1)*.

United Nations (UN). 2018a. *Global Compact for Safe, Orderly and Regular Migration: Intergovernmentally Negotiated and Agreed Outcome*.

United Nations (UN). 2018b. *Global Compact on Refugees*.