



BRIDGING THE PROTECTION GAP: A LEGAL APPRAISAL OF CLIMATE MIGRANTS' RIGHTS IN NIGERIA AND UNDER INTERNATIONAL LAW: A PROPOSAL FOR REFORM

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Article Information:

Article Type:
Research Article

Manuscript Received:
31 April 2025

Final Revision Received:
24 June 2025

Published Online:
10 July 2025

Keywords:
Appraisal, Climate
Migrant, Protection,
International Law,
Nigeria.

International law establishes the jurisprudential foundation for addressing climate migration, providing a framework for nation-states to develop sustainable policies for its governance within their respective jurisdictions. In Nigeria, climate migration has become an escalating concern, with millions displaced due to climate-induced events. The protection of climate migrants presents a complex legal challenge that necessitates a multidimensional approach. Accordingly, this paper critically examines the international legal frameworks governing climate migration and the protection of affected persons. It further analyses Nigeria's legal and policy structures on climate migration through the lens of human rights, assessing their alignment with international standards. The study adopts doctrinal legal research methodology with consideration of primary and secondary sources of laws. The study reveals significant legal and policy deficiencies that undermine the effectiveness of climate migrant protection in Nigeria. It, therefore, advocates for the harmonisation of domestic legal and policy frameworks with international best practices to enhance the protection and governance of climate migration in Nigeria. The study proposes a Nigeria-Specific Climate Migration Legal Framework (NCM-LF) that combines human rights, environmental law, and refugee law to guarantee climate migrants' rights in Nigeria under International Law.

Cite this article: Bolarinwa Levi Pius and Olusola Joshua Olujobi (2026). Bridging the Protection Gap: A Legal Appraisal of Climate Migrants' Rights in Nigeria and under International Law: A Proposal for Reform. The Journal of Sustainable Development, Law and Policy. Vol. 17:1. 419-464. DOI: 10.4314/jsdlp.v17i1.15



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Publisher: Institute for Oil, Energy, Environment and Sustainable Development (OGEES Institute), Afe Babalola University, Ado Ekiti, Nigeria.

1. INTRODUCTION

The climate system is defined as the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions¹while its adverse effects is a common concern of humankind². Climate change is a pressing global issue presently with a lethal effect for the environment, world economy and human health. Climate migrants are one of the most vulnerable groups deadly affected by adverse effect of climate change being forced to emigrate from their homes, occupations and communities. Globally, the climate-induced migrants emigrate to the proximate stable democracies that operate international asylum conventions and have functional economies³. On yearly basis, millions of people are being displaced due to disasters emanating from the adverse effects of climate change including natural catastrophe and environmental degradation⁴. Climate-induced migration poses significant threats to international peace; can result in conflict and serious geopolitical crises.

In 2023, climate-related disasters accounted for 26.4 million internal displacements globally as disaster displacement record showed 56% of the total number of displacements⁵. Climate related migration is often threatened by policies or inactions of the state actors resulting in violation of the climate migrants' protection and human rights. The climate migrant victims are buffeted by social inequality, discrimination due to their disability, sex, age, class, indigeneity, ethnicity or health condition⁶. Governments of different jurisdictions have the paramount obligation to dignify, protect and safeguard the rights of all individuals in their sovereign territories which are inherently prescribed in their

¹ Article 1.3 of the United Nations Framework Convention for Climate Change

² The Preamble of the UNFCCC, *ibid*.

³ A, Lustgarten, 'The Great Climate Migration', New York Times (US, June 23, 2020), <https://perma.cc/BX7>, accessed on 3 April, 2025

⁴ Editorial, 'Climate Change: Protecting The Rights of Migrants' UNHRC (2024)

⁵ Editorial, 'Global Report on Internal Displacement' Internal Displacement Monitoring Center (2024)

⁶ *Legal Aspects Of Protecting Migrants' Rights In The Context Of Disasters, Climate Change And Environmental Degradation* (Report, IOM 2024)

sovereign laws. Arguably, state actors observe these protections in breaches.

Nigeria is a signatory to and has acceded to a number of international instruments which are indeed sufficient to safeguard or protect the rights of climate migrants. The rights of climate migrants under international law, in particular international migration law, which includes all branches of law relevant to climate migration arguably have been adequately domesticated in Nigeria⁷. For the avoidance of doubt, the Paris Agreement 2015, United Nations Framework Convention on Climate Change (UNFCCC) 1992 and their related human rights instruments to protect the rights of this class of migrants and pursuant to section 12 of the 1999 Constitution (as amended) are operational in Nigeria⁸. Enactment of the Climate Change Act 2021 is in alignment with the Nigerian constitutional framework and international instruments signed by the country to combat the adverse effect of greenhouse gas emission ravaging the country as the case globally. There are also subsidiary and policy instruments crafted to support the CCA in stemming the tide of lethality of carbon emission on our common environment which has continued to cause climate migration in Nigeria.

Nigeria is presently affected by climate change, with rising temperatures, sea-level rise and extreme weather events displacing people in their thousands yearly. The adverse experience of those climate-related disasters causes internal exodus or migration among the farmers, families, communities and professionals⁹. This climate-related migration has heightened vulnerability tension for the migrants in various shades without corresponding legal, policy, institutional or humanitarian facilities to curtail the dangers.

The gaps in the rights protection for climate migrants in Nigeria is a significant concern of this paper, as they are usually left without access to basic necessities including food, water, shelter and healthcare. International law provides some protection for climate refugees and

⁷ Nigeria has domesticated a good number of human rights-based international and regional instruments to safeguard the protections of its people.

⁸ The domestication of the UNFCCC led to the enactment of the Climate Change Act 2021

⁹ *Migration Environment, Climate Change And Risk Reduction* (Report, IOM 2024)

migrants, but these frameworks are often inadequate or inapplicable to climate migrants in Nigeria. Therefore, this paper aims to examine the legal protections available to climate migrants in Nigeria under international law and proposes reforms to tackle the protection gaps. The study specifically adopts doctrinal legal research methodology with consideration of primary and secondary sources of law; analyses data from a variety of sources including international law treaties, academic articles and reports from international organisations. It further reveals significant legal and policy barriers hobbling the rights protection of climate migrants with a view to suggesting comprehensive harmonization of all the legal frameworks to protect the rights of climate migrants in Nigeria. The findings of this study will have far-reaching implications for policymakers, practitioners and stakeholders working on issues related to climate migration and human rights.

This study is guided by theoretical frameworks of legal-stakeholder, migration and climate justice theories which summarily propound that states have obligations to protect the rights of all individuals including climate migrants within their territory or under their jurisdiction. Hence, the paper argues that the current international legal frameworks are inadequate to protect the rights of climate migrants in Nigeria and that reforms are necessary to tackle the protection gaps.

2. THE THEORETICAL FRAMEWORK FOR CLIMATE MIGRANT PROTECTION

a. Climate Justice Theory

Climate justice frames equality, human rights, and collective rights for climate change victims.¹⁰ The theory directly links human rights as a reintegration instrument for those adversely affected by climate disasters¹¹. It is erected on the principle of “respect and protection of

¹⁰ Keely Boom, ‘Climate justice: The international momentum towards climate litigation’ (Conference paper, Climate Law and Governance Initiative, Germany, November 2016)

¹¹ Mary Robinson, ‘Climate Justice: Challenge and Opportunity’, *Irish Studies in International Affairs*, (2011) pp 67–74

human rights¹²” This approach has in its core the safeguard of basic human rights to dignity of climate-induced migrants. The principle of climate justice is attributable to the inverse alliance between climate risk and responsibility¹³.

Governments and transnational entities are primal violators of climate-induced migrants’ rights particularly in Nigeria. The framework explores the Nigerian context as it relates to ‘policy measures to mitigate climate change infringement on human rights because of the exclusion of citizens from projects and inability to obtain redress’¹⁴. Climate justice advocates that climate migrants deserve reparations or special legal status under the Nigeria’s laws as the case of the Niger Delta where there are reckless violations of climate/environmental migrants’ rights without corresponding reparation¹⁵. This theory could further strengthen the Nigerian legal jurisprudence particularly the validity and enforceability of ‘environmental clause’ situated under Chapter II of the 1999 Constitution, if the *grundnorm* finally recognizes environmental/climate rights of the migrants.

b. Environmental Migration Theory

Environmental migration is one of the component of migration theory. The theory frames a causal pathways through which environmental change may induce migration flows and proposes consequential policy framework by government to implement long term planning to tackle migrants’ humanitarian challenges¹⁶. It aggregates environmental hazards as adverse effect of climate change and migration as a direct consequence

¹² *Principles of Climate Justice* (Report, ICCROM Report, Mary Robinson climate justice Foundation 2022)

¹³ Sam Barrett, ‘Subnational Climate Justice? Adaptation Finance Distribution and Climate Vulnerability’ (2014) World Development 130–142

¹⁴ Damilola Olawuyi, ‘Advancing Climate Justice in International Law: An Evaluation of the United Nations Human Rights-Based Approach’ (2015) 11 Fla A&M U L Rev 1, 105–106

¹⁵ Kenny Bruno, Joshua Karliner and China Brotsky, ‘Greenhouse Gangsters vs. Climate Justice’ Transnational Resource & Research Center (San Francisco, 2022) file:///C:/Users/DELL/Desktop/pdf accessed 3 April 2025

¹⁶ Alex, S and G Kathryn, ‘Migration Theory in Climate Mobility Research. Frontier in Climate Review’ (2022) 4 Frontiers in Climate 3

of environmental degradation¹⁷. The framework explains how environmental degradation is responsible for climate migration of the vulnerable who further suffer socio-economic and humanitarian woe. It highlights how climate change impacts, like drought, flooding, and desertification, can directly or indirectly trigger migration as often the case in Nigeria.

Migration theory informs the policy makers, as the case of Nigeria, about the urgency for immediate and long term planning, policy, and action as an integral part of the development responses¹⁸. This theory advocates that government policy framework for environmental migrants should promote the human rights of displaced migrants, while also tackling the causal source of migration and designing sustainable pathways¹⁹. This framework should be adopted by the Nigerian government to craft legal provisions that integrates social protection measures, and human right-based approach to reducing environmental degradation, and disaster risk.

c. Legal-Stakeholder Theory

Legal-stakeholder Theory for protecting climate migrants in Nigeria via corporate social responsibility models. Since corporate entities acquire legal/juristic personality upon incorporation, it implies that the law has recognized and granted legal status to a corporation, an inanimate thing, which has factually created a component of legal stakeholder²⁰. Legal Stakeholder advocates/frames legal, ethical and moral hedonistic calculus-CSR—evaluates potential benefits associated with corporate social responsibility for the protection of environmental victims/migrants by corporate businesses²¹. It follows that corporate

¹⁷ Vally Koubi, Lena Schaffer et al, 'Environmental Degradation and Migration' Swiss Network for International Studies (Swiss, 2009)

¹⁸ *Migration and development* (Policy Paper, Global Commission on International Migration, Geneva 2005)

¹⁹ 'A Nigerian Perspective on Expanded Regular Migration Pathway' (Workshop, IOM, Nigeria, 2024)

²⁰ N Haigh & A Griffiths, 'The natural environment as a primary stakeholder: The case of climate change' (2009) *Business Strategy and the Environment* 347–359

²¹ HO Awa & W Etim, 'Stakeholders Theory and Corporate Social Responsibility' (CSR) (2024) 9 *IJCSR* 11.

stakeholders extends to the shareholders, consumers, communities and the natural environment in which the corporation carries out its business.

By extrapolation, this theory propounds that natural environment, as legally conferred on inanimate corporation, can enjoy a legal or juristic personality with its rights protected by law²². Legal-stakeholder therefore aggregates that natural environment, or components of the nature, can enforce its rights and duties against corporate or state that violates its rights²³. Presently, this is not the case in the Nigerian context, but could be adopted via legislative framework and judicial interpretation to broaden its environmental protection jurisprudence via legislations. This could be a good standing for Nigeria to commence conferring legal personality to inanimate objects in the face of legislations. Therefore, it will further safeguard the climate-induced migrants' rights protection, if this framework is adopted and translated to legislative piece in Nigeria.

There are dualist pathways to operationalize juristic natural environment which are - participatory and financial pathways²⁴. He referred participatory stakeholding as an involvement of a wider group of interested parties in decision-making process of a corporation; while on financial stakeholding he said corporation give financial benefits to a wider group of interested parties as a corporate social responsibility accountability to the environment. In business principle, corporation is a major contributor to economic growth through the provision of raw materials, life support facilities to climate-induced migrants who are part of decision-making organ in maintenance of genetic diversity²⁵. This theory unequivocally speaks to the Nigeria's context in the provision of felicific calculus for utilitarian sustenance of the climate-induced migrants. This theory clearly views the protection of the environment as

²² Ibid.

²³ R Mitchell, B Agle et al, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What really Counts' (1997) 4 *Academy of Management Review* 854.

²⁴ A Fischer-Lascano, 'Nature as a Legal Person: Proxy Constellations in Law' (2020) 32:2 *Taylor & Francis*.

²⁵ RA Phillips and J Reichart, 'The Environment as a Stakeholder? A Fairness-based Approach' (2000) 23 *Journal of Business Ethics*.

the responsibility of the corporation and community as a complete entity.

3. INTERNATIONAL FRAMEWORKS FOR CLIMATE MIGRATION AND PROTECTION

Presently, there is no uniform legal definition of migrant due to many forms of migration both domestic and international. Hence, there is no legal definition nor legal framework specifically providing for the protection of environmental or climate induced migrants²⁶. Apparently, there is no stand-alone comprehensive international legal instrument on climate-induced migration; there are still national constitution and existing international legal frameworks that direct every State to ensure protection of the fundamental rights of their citizens within their sovereign territory. Even though there is no special institution with clear legal responsibility to address issues of climate related cross border migration not even 1951 Refugee Law and Guiding Principles on IDPs precisely addresses causes of migration, the global citizens are entitled to their universal rights protection from climate-related disasters.

A. Paris Agreement 2015

Paris Agreement is a landmark international treaty on climate change, but does not directly make provisions for climate migrant protection. It nevertheless creates necessary linkage and inference for climate migrant protection since climate migration is a necessary fall out or consequence of climate change²⁷. There are relevant provisions in the Agreement to infer, link or intersect climate migration and direct nation states to formulate legislative and policy frameworks towards protection of climate migrants. The Agreement recognises the need to tackle the impacts of climate changes on human migration²⁸. The Warsaw International Mechanism for Loss and Damage, an integral content and situated as Article 8 of the Paris Agreement contemplates the significant

²⁶ *Legal Aspects of Protecting Migrants' Rights In the Context of Disasters, Climate Change and Environmental Degradation* (Position Paper, Migration Protection Platform, Swiss 2024)

²⁷ *Migration and Climate Change* (Report, IOM 2008)

²⁸ Art. 8 (1) of the Paris Agreement

of tackling displacement and migration by climate change as follows that,

Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change²⁹.

The provision, by inference, could have sets out outline for various jurisdictions to erect and implement comprehensive legislative and policy frameworks containing risk management strategies to tackle climate related displacement and migration. The Paris Agreement contemplates the need for countries of the world to build resilience and adaptation in addressing the impacts of climate change as it relates to human migration of all forms-domestic or international migrations³⁰. The Paris Agreement is cohesive and collaborative without any form of discrimination when it advises the developed economies to support the developing economies in their efforts to combat the adverse effect of climate change and by inference, climate-induced migration. Hence, the countries around the world could glean a need to erect their jurisprudence-legal and policy frameworks upon the Paris Agreement provisions to expand and enforce climate migrant protection in their various sovereignties. The doctrine of irreducible minimum has established that Paris Agreement is proactive to have contemplated the likelihood of climate migration and set legal framework for nation states as referenced *ex ante*.

However, there are certain legal flaws in the provisions of the Paris Agreement similar to other related international instruments. There is no express mentioning of the word-‘migration or migrant’ in the provision of Article 8. It remains a jurisprudential issue among legal scholars to construe this as an oversight of the drafters of the Agreement. It could be that the drafters of the Paris Agreement follows the provisions of other international instrument, the Refugee Convention of

²⁹ Ibid, Art. 8 (3).

³⁰ Ibid, Art. 8 (1).

1951 that deliberately omitted ‘climate migration’ in their instruments. In the wording of the Refugee Convention, ‘refugee migration’ is mentioned as a specie of other forms of migration, but carefully and deliberately exempts or omits climate migration or migrant.

Although logical inferences are being explored by legal experts to contemplate ‘*climate* migration or migrant’ from the Convention, the express certainty of the word is doubtful and confusing. The common law principle of *expressio unius est exclusio alterius*, implies that the express mentioning of refugee migrant in the provision of Refugee Convention 1951 syntactically or lexically omits climate migrant. It further follows that there is no express definition or mention of ‘climate migration/migrant’ in the Paris Agreement making the inferential definition complex and dangerous for scholars to defend with certainty. Hence, it shows that there are significant gaps in the Paris Agreement regarding the protection of climate migrants. While the Agreement provides for adaptation and mitigation, it is bereft of comprehensive framework for tackling the human migration consequences of climate change, particularly for the migrants forced to trans-border due to environmental factors. . . This confusion could be settled by judicial imprimatur or amendment of the Agreement. Still, legal experts keep contemplating and researching acceptable inference of the word ‘climate migrant/migration’ particularly from Art.8 of the Paris Agreement.

b. United Nations Framework Convention on Climate Change (UNFCCC) 1992

Beyond the Paris Agreement that has only inferential interpretation for climate related migration, the United Nations Framework Convention on Climate Change (UNFCCC) has practically and unequivocally canvassed for and expanded the Paris Agreement contemplation on matters of climate migration and protection of the victims. The Preamble of the UNFCCC unequivocally provides that climate change and its toxic effects are a “common concern of humankind³¹.” The U.N. has formally stated in its international instruments that environmental rights

³¹Preamble to UN Framework Convention on Climate Change.

aggregate human rights³². Hence, the common concern application of environmental law has operationally metamorphosed human rights law from personal harm and responsibility to corporate responsibility³³. The earliest and pristine legally binding climate agreement in climate change law are in the decisions of the Paris Agreement COPs 16, 18 and 21. The Paris Agreement of COP 21 particularly its first decision is the foremost document to insert ‘*migrants*’ in its Preamble. It is evident in its content that state parties while implementing the UNFCCC are directed to:

.... respect, promote and consider their obligations on
[...] the rights [...] of migrants” when “taking action to
address climate change³⁴

The COP 16, particularly in the content of its Decision 1/CP.16, encouraged state parties to enforce the need to tackle the impact of climate change on human migration and displacement³⁵. Similarly, the COP 18, in its Decision 3/CP.18, establishes the Warsaw International Mechanism for Loss and Damage which covers matters on climate related migration. It was the COP 21 that clinically inserted in its Preamble the word ‘migrant’ and further elaborated in its content particularly in its Decision 1/CP.21 that state parties should develop and enforce measures to tackle climate related displacement and migration. At that COP 21, the Executive Committee of the Warsaw International Mechanism for Loss and Damage (WIM Exco.) was mandated to commence operationalisation of the Task Force on Displacement, *in extenso*, Climate Related Migration Task Force. The COP 21 had as part of its Term of Reference to draft recommendations reflecting collaborative approaches ‘to avert, minimise and address displacement related to the adverse impacts of climate change (Decision 1/CP.21)’³⁶.

³²UNGA Resolution, ‘The Human Right to a Clean, Healthy and Sustainable Environment’ A/HRC/RES/48/13 (Washington, 2021).

³³ M Caitlan, ‘A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?’ (2023) Chicago Journal of International Law 52

³⁴ UNFCCC Preamble

³⁵ COP 16, Decision 1/CP.16

³⁶ Ibid, Decision 1/CP.16.

Those recommendations could not be adopted until at COP24, where Parties were called to:

consider formulating laws, policies and strategies, as appropriate, that reflect the importance of integrated approaches to avert, minimise and address displacement related to the adverse impacts of climate change and in the broader perspective of human mobility, taking into consideration their respective human rights obligations and, as appropriate, other relevant international standards and legal considerations³⁷.

The COP 24 therefore invited all parties, relevant organisations and other stakeholders:

to continue developing and sharing good practices, tools and guidance in relation to averting, minimizing and addressing displacement related to the adverse impacts of climate change, *inter alia*, in: Applying international legal instruments and normative frameworks, as appropriate³⁸.

It is clear that the United Nations Framework Convention on Climate Change 1992 does not explicitly mention ‘climate migrant’ in its provisions or provide specific provision for their protection, the treaty practically and unequivocally have policy and principle instruments drafted at various fora of the COP official businesses to protect climate migrants as stated in the above resolutions.

However, the same flaws can be gleaned from the UNFCCC instrument- it does not expressly mention ‘climate migration or migrant’. The COPs, being the high-octane operational mechanism of the Paris Agreement from their decisions and recommendations above, only settled for inferential/consequential interpretation to the Warsaw

³⁷ COP 24, Decision 1/CP.24.

³⁸ “Recommendations from the report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts on integrated approaches to averting, minimizing and addressing displacement related to the adverse impacts of climate change”, paragraph (1)(h)(iii)d.

International Mechanism for Loss and Damage *clause* under Article 8 of the Paris Agreement to the effect that the Parties were directed to ‘... respect, promote and consider their obligations on [...] the rights [...] of migrants” when “taking action to address climate change³⁹. This still validates the legal principle that fundamental legal gaps may not be cured by inferential amendments, not even by judicial activism. Hence, the significant gaps in the protection of climate migrants under the UNFCCC remains a fundamental issue to be resolved.. While the UNFCCC addresses climate change and its impacts, it doesn't provide specific legal protections or mechanisms for climate-induced migrants. This substantial gaps leaves many individuals and communities vulnerable, particularly those who are displaced or forced to migrate due to climate-related events.

c. 1951 Refuge Convention and its 1967 Protocol

Another branch of international law framework regulating the climate related migrants and protection is the 1951 Refugee Convention and its 1967 Protocol relating to the status of the refugees. Generally, climate refugees are not significantly defined, hence no provision for their protection or abatement for their threat they are not mentioned expressly under the 1951 Convention or other provisions of international law the Despite the significant threats they face, climate refugees are not formally defined, protected, or recognised under the 1951 Convention Refuge Convention, its 1967 Protocol or other provisions of international law⁴⁰. The two instruments have limited scope of application regarding international protection of environmental migration, its provision can be interpreted to safeguard or protect individuals displaced due to climate related reasons⁴¹. The Convention defines a refugee as a person who has crossed an international border due to a well-founded fear of persecution

³⁹ Ibid, Decision 1/CP21.

⁴⁰ T McDonnell, ‘NPR: the Refugees the World Barely Pays Attention to, Goats and Soda’ (June, 2018) <https://perma.cc/7TTP-BNBX> accessed 4 April 2025

⁴¹ There is synergistic reason to interpret the two international instruments in the path of climate/environmental rights protection

based on race, religion, nationality, or membership in a particular social group⁴².

Climate related environmental degradation can be considered a form of persecution, particularly if it is caused by the government action. This could be gleaned from a practical situation in Nigeria where the state actors get royalties and some accrued benefits from the multinational corporations in the Niger Delta whose operations have wrecked environmental havocs to the communities thereby causing the victims to agitate for survival or migration⁴³. These victims of environmental degradations are members of social/professional groups such as fishermen, farmers who could even be victims of sea level rise or draught, as contemplated by the Refugee Conventions. Hence, these victims who escape international borders due to the cited climate-related threats may be covered by refugee protection under international law⁴⁴.

Therefore, the key enforcement tools for driving climate-related migration and protection of its vulnerable could be made operational or expansive in interpretation of the Convention and its Protocol when linked to persecution of or discrimination against the climate related refugees/migrants⁴⁵. In some international happenings, the aftermaths of disasters, climate change and environmental degradation may heighten or aggravate the risk of discrimination or persecution of the climate/environmental vulnerable, which could necessitate the vulnerable refugees invoking international protection under international and regional refugee law.⁴⁶

However, many literatures on this subject have also amplified gaps in the existing legal and institutional arrangements in the 1951 Refugee Convention and its 1969 Protocol on regulating climate change-induced displacement and migration. The two instruments conspicuously omits or exempts reference to or definition of climate

⁴² Article 1A(2) of the Refugee Convention

⁴³ Ibid, Article 1B(1).

⁴⁴ Ibid, Article 33.

⁴⁵ The interpretation of international human right framework has no boundary so far Human right-based violation has been reported or is seen to have been committed.

⁴⁶ Ibid, p 8.

migration or migrant. Since there is no definition section for climate migration in the two instruments, there can be policy or legal protection of the climate-induced migrants. Though, humanitarian and human rights-approached provisions could be enshrined in some national constitutions and existing international legal frameworks, there are bleak situations where such breach of trans-border climate-induced migration may neither have a remedy nor enforcement of any right under the Refugee Convention and its 1969 Protocol. In fact, where there is a case of cross-border climate-induced migration, none of the relevant legal frameworks - namely 1951 Refugee Law and Guiding Principles on IDPs has definite remedial provision to tackle the matter. It is still not helpful that there is no distinct international institution with a detailed responsibility to protect the climate migrants' rights and entitlement or tackle matters of displacement and migration.

d. The 1969 OAU Convention Governing Specific Aspect of Refugee Problems and the 1984 Cartagena Declaration

Africa continent has relevant convention as ratified and operated by the AU member states. The 1969 Organization for African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems⁴⁷ broadens the definition of a refugee which could interpretively and significantly protect the rights of the climate migrants within the African sovereignty. This definition of refugee encompasses individuals forced to leave their country due to 'events seriously disturbing public order'⁴⁸. The phrase 'events seriously disturbing public order,' is interpretively and contextually open to all shades of events seriously disturbing public order including climate related events which adverse effect are seriously disturbing public order. This expanded interpretation/inference of refugee status criteria could significantly include those vulnerable to the adverse impacts of climate change. For the avoidance of doubt, Article I (2) of the 1969 OAU Convention unequivocally enforces refugee protection that,

⁴⁷ Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969.

⁴⁸ Article I (2) of the 1969 OAU Convention

every person who, owing to ... events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality

This regional legal framework aggregates a complementary and operational regional space to protect persons crossing borders in the context of climate related disasters as migrants. The provision also fortifies the doctrine of absolute non-refoulement, which embraces protection for all environmental migrants under international customary law and human rights law, and for refugees under refugee law⁴⁹. The 1984 Cartagena Declaration, though not a treaty, has a replica operation of the 1969 OAU Convention in its Conclusion III(3) that refugees include,

persons who have fled their country because their lives, security or freedom have been threatened by ... other circumstances which have seriously disturbed public order.

The doctrine of non-refoulement postulates that no person notwithstanding his status may be expelled or brought back to a territory when there are reliable facts to perceive high and real risk of persecution or irredeemable threat⁵⁰ to their sacred life or a likelihood of their human rights being violated, if forced to return⁵¹. However, it is important for climate related migrants to establish clinical ground of environmental degradation that significantly endangers their sacred human rights to invoke the doctrine of non-refoulement, else their protection is not

⁴⁹ Ibid, p7

⁵⁰ Examples of such risks of irreparable harm include, for instance: risk to life; of torture and cruel, inhumane or degrading treatment or punishment; flagrant denial of the right to a fair trial; liberty of the person; serious forms of sexual and gender-based violence; death penalty or death row; female genital mutilation; prolonged solitary confinement; severe violations of economic, social and cultural rights (amounting to violation of the right to life or freedom from torture, degrading living conditions, complete lack of medical treatment, or mental illness, among other serious human rights violations), OHCHR, The principle of non-refoulement under international human rights law

⁵¹ Ibid, 16

guaranteed. Alternatively, the climate related migrants may cite practical climate hazards threatening vulnerability⁵². In addition, the climate migrants must have been directly affected by the high risk of climate disaster, not stating how such disaster simply affects the generality of the citizens in their state of origin from where they emigrated⁵³. The threshold for establishing substantial grounds of a real risk of irreparable harm could be gleaned from complex and overspreading rights violations that do not directly aggregates as a lone rights violation, but sum up as irreparable harms stringently proscribed as a single rights violation from such climate related disaster.

The European Court of Human Rights has interpretively widened the concept of cruel, inhuman, or degrading treatment or punishment to include degrading living conditions in the origin state to include lack of available medical treatment⁵⁴. This is logically inferred as component of threat to right to health and life deriving from vulnerabilities experienced by environmental migrants. Hence, the vulnerable climate migrants could invoke international human right or humanitarian protection enshrined in these international treaties or conventions⁵⁵

However, the 1969 OAU Convention is fraught with flaws that could render its operationally ineffective or unjusticiable on core and specific matters of rights protection of climate-induced migrants. Non-inclusion of ‘climate migration or migrant’ in the Convention is a serious legal hubris affecting operational efficiency in application of the Convention. The inferential interpretation or application of the word ‘Refugee’ to cover climate migrants fleeing owing to ... events seriously

⁵² C Christopher, “Non-refoulement and Environmental Degradation: Examining the Entry Points and Improving Access to Protection,” *The Global Migration Research Series* No 26, 2020

⁵³ UNHRC Resolution, General Comment No 36, para 30, CCPR/C/127/D/2728/2016, (January 2020)

⁵⁴ *Sufi and Elmi v the United Kingdom* App Nos 8319/07 and 11449/07 (ECtHR, Judgment of 28 June 2011) para 291. See also *Paposhvili v Belgium* App No 41738/10 (ECtHR [GC], Judgment of 13 December 2016) paras 175 and 183.

⁵⁵ *Environmental Migrants: Challenges and Opportunities for the Protection of their Rights. Legal Framework Manual and Activity Packet* (IOM Capstone Workshop Project, Columbia University, School of International and Public Affairs 2021)

disturbing public order in either *part or the whole of his country of origin* or nationality,⁵⁶ may not fit within the Convention's definition or contemplation of a refugee. The Convention does not explicitly mention climate migrants or victims of environmental displacement, but *refugees* fleeing persecution, war, or violence; which can make its application or operation difficult in tackling matters of rights protection of climate migrants in Nigeria.

Supposed without certainty, the Convention is interpreted to cover climate-induced migrants' protection, it would be limited in scope and applicability since the long title of the Convention referenced 'Specific Aspects of Refugee Problems'⁵⁷. It can therefore be inferred that the Convention's framework may not be adequate to address the broad needs and challenges of climate-induced migrants. Climate-induced displacement is a complex and challenging area which the Convention's applicability may be limited in scope to address matters of fundamental rights violation, mitigation and adaptation, climate litigation/justice and other deep-related environmental rights theories which are core components for tackling problems of climate-induced migrants' protection. Inversely, the present need for enforcement of climate-induced migrants' protection has made the Convention a utility of inferential interpretation and application to addressing climate-induced migration and protection.

Similarly, Cartagena Declaration on Refugees does not contain the definition of climate migration or migrant and may not be a utilitarian framework in enforcing protection rights of climate-induced migrants. The Declaration is a regional instrument that protects refugees in Latin America, notwithstanding, it does not reference climate-induced displacement except by inferential application or interpretation like under international instrument. Since the Declaration is bereft of provisions relating to climate or environmental migration, it may be limited in scope of applicability particularly in referencing it to interpret any issue of rights violation of climate-induced migrants in any clime.

⁵⁶Article I (2) of the 1969 OAU Convention

⁵⁷ The Long Title of the 1969 OAU Convention.

However, the letter and spirit of the Declaration is still being expanded to situate right protection of climate-induced migrants.

f. Kampala Ministerial Declaration on Migration, Environment, and Climate Change

In an attempt to elevate and broaden climate-induced migrants' protection, the Kampala Ministerial Declaration on Migration, Environment, and Climate Change (KDMECC) came into existence. The Declaration is the regional way of expanding the recognition of sustainable, climate-change resilient and socially just development in the lens of human mobility. It particularly captures the importance of migration for the prospect of African states. The tripartite consensus among the IOM, UNFCCC and Member States led to the facilitation of Continental Addendum⁵⁸ to coordinate successful implementation of the KDMECC. Ministers of African state governments became signatories to the continentally expanded KDMECC in September 2023 while holding Africa Climate Summit in Nairobi, Kenya. The Declaration objectively focuses on 5-point agenda of addressing: progressive desertification, land degradation, forced mobility of people and livestock, unsustainable use of ecosystems, paucity of data on climate change impacts on people and livestock and limited partnership and finance⁵⁹. The IOM Executive Secretary said at the Summit that,

the Declaration is a landmark in taking forwards regional collaboration in the specific area of migration in the context of climate change. The issue is global in nature, and for that reason so are the solutions⁶⁰.

⁵⁸ Continental Addendum I of KDMECC (Member States AU) extension://documents/2024-09/eng.-addendum-kmdecc-declaration.pdf accessed 20 April 2025

⁵⁹ J Jantti & R Kobusinge et al, 'Developing Regional Migration, Environment and Climate Change Policy Frameworks for Action: the Case of the Kampala Ministerial Declaration' (2024) 13 *Journal of Migration Policy Practice* 2

⁶⁰ *Kampala Ministerial Declaration on Migration, Environment and Climate Change* (UNCC Report, Conference on Migration and Climate Change in East and Horn of Africa, 2022) <https://unfccc.int/kampala-ministerial-declaration-on-migration-environment-and-climate-change> accessed 4 April 2025

Though the Kampala Declaration is a novel work-in-progress and is too early to evaluate its success, the Declaration suffers fundamental problem of limited conceptualization of human mobility in the context of climate change. There are also lack of concrete action plans and lack of funding for implementation. Failure to mobilise consensus on conceptual framework of human mobility in the context of climate change may significantly hinder action to contextualizing human rights inherent in climate-induced mobility. Hence the climate-induced migrants may not be able to identify or enforce their rights when violated. Unless there is an explicit definition of human mobility in the context of climate change, it may be difficult to glean rights attached therein to the migrants; and further make enforcement of those rights nugatory particularly in Nigeria where environmental rights enforcement is complex and rarely granted by courts when interpreting same as couched under the Chapter II of the 1999 Constitution. More consultations and jurisprudential supports are still needed to Kampala Declaration for operational efficiency of the Declaration in the context of climate-induced mobility and their attached rights enforcement. .

g. International Human Rights Laws on Climate Migrants Protection

International human rights law remains the most simplified framework for protecting the rights of climate related migrants. However, there is no comprehensively stand-alone international human rights instrument on the rights of environmental or climate-related migrants. There are only fragmented international, regional, and national legal and policy frameworks to interpret the rights protection of all persons including those affected by disasters, climate and environmental hazards⁶¹. The Universal Declaration of Human Rights avows that ‘everyone has the right to life⁶²’, including the climate-related migrants whose lives are vulnerable to climate hazards. Similarly, The ICCPR guarantees that ‘every human being including climate related migrant has the inherent

⁶¹ There is no stand-alone international legal framework that addresses matters relating to human rights violation of the climate-induced migrants save to forum shop relevant provisions.

⁶² Article 3 of the UDHR.

right to life and that his right shall be protected by law as no individual shall be unjustly deprived of his life⁶³. The same inherent right to life for everyone is similarly contained in the Convention on the Rights of the Child, including children whose family are climate-related migrants⁶⁴. In fact, Article 9 of ICMW categorically captures ‘migrant worker that, ‘the right to life of migrant workers and members of their families shall be protected by law’. The Protocol against the Smuggling of Migrants affirms that,

Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol⁶⁵.

The same Protocol mandates each state to enact legislation and other necessary regulatory frameworks ‘to establish as aggravating circumstances to the offences’ in Article 16 (3) above with a purpose to enforce necessary protection to ‘...the lives or safety of the migrants concerned⁶⁶. The AU African Charter on Human and Peoples’ Rights affirms that,

every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality⁶⁷

Also, Art 14 of the CEDAW, enforces similar provisions with other international human rights instruments mentioned to protect the human rights of all persons including climate related migrants as

⁶³ Article 6 (1) of the ICCPR.

⁶⁴ Art. 6 of the Convention on the Rights of the Child.

⁶⁵ Art. 16 (3) of the Protocol against the Smuggling of Migrants.

⁶⁶ Ibid, Art. 6 (3).

⁶⁷ Art. 12 of the African Charter on Human and Peoples’ Rights.

applicable in Nigeria and could be applied or interpreted in the context of rights protection of climate-induced migrants.

4. LEGAL AND POLICY INSTRUMENTS FOR CLIMATE MIGRATION AND PROTECTION IN NIGERIA

A. Legal Instruments

Nigeria has some legal frameworks enacted to safeguard the rights and protection of environmental rights. There may not be direct provision in any Nigeria's legal framework that explicitly provides for climate migration or referenced its concept. It could however be construed that climate-induced migrants' rights could be inferred from as a component of environment rights. The 1999 Constitution (as amended) and other statutory structures coupled with policy frameworks inferentially provide for enforcement of protection and rights of climate related migrants when construed as component of environmental rights. The principal domestic legal framework for protecting climate migrants in Nigeria is the Climate Change Act 2021. This legislation establishes a structure for realising the international climate change objective of attaining low greenhouse gas emissions and sustainable development. Other ancillary legislative piece is the National Commission for Refugees, Migrants, and Internally Displaced Persons Act (NCFRMI Act 2004), which deals with the protection of displaced persons.

i. The Constitution of the Federal Republic of Nigeria (as amended) 1999

Generally, there are no legal or policy hurdles to internal migration in Nigeria. The *grundnorm* liberally allows internal migration as a right of every migrant whose cause of displacement is not even a reckoning. The 1999 Constitution clearly states that,

every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof,

and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom⁶⁸

The Nigerian government has seamlessly built its policy around this constitutional framework to tackle conflict between host communities and migrant settlers which is common to various federating units particularly rural communities. Climate change is a component of the environment just like its adverse effects causing environmental hazards and displacement for climate-induced migrants. Hence, the environmentally proactive countries have made matters of climate change a constitutional priority and some have even devolved legislative actions to their sub-nationals to regulate their environment and combat adverse effect of climate change on the climate related migrants. *The 1980 Hazardous Waste Dumping Incident* necessitated inclusion of 'environmental objective clauses' into the 1999 Constitution of the Federal Republic of Nigeria (as altered) which provides that the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria⁶⁹. This provision is generally unenforceable and left as a discretionary provision or policy convenience of the executive arm of government. This used to be a universal norm and practice of jurisdictions until recent judicial intervention to remove the nugatory status of 'environmental objective clauses' and elevated it amongst the fundamental rights. Nigeria is gradually embracing this jurisprudence.

Apparently, there were some judicial setbacks when the provision was first tested in court and construed as non-justiciable. This could be directly gleaned from the concurring decision of Kalgo JSC in *AG of Lagos v. AG of Federation & Ors*⁷⁰ that the main object of section 20 was such that does not vest in the National Assembly power to legislate on planning and development control over land in the states and local governments. This was attested to by some other decisions of the courts. Even though the early stream of judicial interpretations of section 20 seemed to have weakened the dream of the citizens, environmentalists,

⁶⁸ Section 41 (1) of 1999 Constitution of Federal Republic of Nigeria.

⁶⁹ Ibid, section 20.

⁷⁰(2004) 12 SCNJ 1.

scholars and stakeholders, the provision is historic in protecting the rights of people threatened by environmental hazards.

Recent judicial activisms are operationally seeing section 20 as non-justiciable only in the letters of the constitution, but breathing life to its spirit as enforceable provision when interpreted with the combined readings of domesticated regional and international instruments together with adjudicatory activism of enforcing the same provision in other jurisdictions. The judiciary is systemically accommodating section 20 beyond a mere policy statement of legislative intent by elevating environmental and climate related rights from nugatory provisions of Chapter II to stream of fundamental rights outlined in Chapter IV of the 1999 Constitution. The ouster clause of section 6 (6) (c) is not *ipse perficio* having been qualified with an operational phrase ‘except in certain condition’.

It is now becoming judicially inevitable that section 20, among other provisional clauses in Chapter II, may now be enforceable where its breach would have consequential violations of the fundamental human rights set out in Chapter IV. In the cases of Archbishop Anthony *Olubunmi Okogie & Ors v. Attorney General of Lagos State*⁷¹, where the court decided in the Plaintiff favour that sections 16 (1) (c) and 18 of the 1979 Constitution safeguard their rights to participate in the economic decisions and hindering them would amount to the violation of their fundamental rights pursuant to section 36 of the 1979 Constitution. Also in the AG of *Ondo State v AG of Federation*⁷² where the Ondo State Government challenged the constitutionality of the ICPC Act because it was a creation of section 15(5) of Chapter II of the 1999 Constitution which is non-justiciable. However, Uwaifo, JSC, gleaned his decision from the Indian jurisprudence, validated the enforceability of the legislation thus:

Every effort is made from the Indian perspective to ensure that the Directive Principles are not dead letter. What is necessary is to see that they are observed as

⁷¹ (1981) 2 NCLR 337 at 350.

⁷² (2002) CLR 6(d) (SC).

much as practicable so as to give cognizance to the general tendency of the Directives. It is necessary therefore to say that our own situation is of peculiar significance. We do not need to seek uncertain ways of giving effect to the Directive Principles in Chapter II of our Constitution. The Constitution itself has placed the entire Chapter II under the Exclusive Legislative List. By this, it simply means that all the Directive Principles need not remain mere or pious declarations. It is for the Executive and the National Assembly, working together, to give expression to any one of them through appropriate enactment as occasion may demand⁷³.

The above ratiocination has reinforced the Supreme Court tenacity when it also decided in the case of *AG of Lagos State v AG Federation*⁷⁴ that the National Assembly was constitutionally empowered to have enacted the Federal Environmental Protection Agency Act for the purpose of protecting the Nigerian environment regardless of it being a provision under the Chapter II. The court's decision in *Aderole & Ors v. Jakande*⁷⁵ also validates that Chapter II 'need not remain mere or pious declarations'⁷⁶The above jurisprudential evolution/progress has affirmed the intent and purpose of the constitution drafters that climate related rights in Nigeria no longer operates as a nugatory or pious consequence. Even though situated in Chapter II, environmental health within the confine of sustainable development and as fundamental rights of climate-induced migrants are now guaranteed by the Constitution and relevant enabling statutes explained *ex post*.

There are still fundamental flaws on the climate-induced rights in the lens of constitutional evaluation. The general flaw is non-justiciability of section 20 among other social rights listed in Chapter II of the 1999 Nigerian Constitution which though gaining judicial support

⁷³ At pg. 30.

⁷⁴ (2003) 12 NWLR (Pt. 833) 1 SC.

⁷⁵ (1981) 1 NCLR 262.

⁷⁶ *Ibid*.

as fundamental rights canvassed above, the wheel of judicial recognition is grinding too slowly for radical evolvement of environmental rights enforcement. It implies that this judicial limitation would becloud legal avenues for climate migrants to seek redress for environmental degradation that leads to climate-induced displacement. This portends significant danger for climate-induced rights of the migrants because their enforceability depends on robust judicial legitimacy conferred on environmental rights as fundamental rights.

Similarly, Nigeria is a constitutional democracy and can only enforce those rights captured in both Chapters II and IV within the limit of the constitution. However, the non-provision or non-inclusion of climate migration or migrant in the 1999 Constitution would make it hard for climate rights stakeholders to enforce. Worse still, the judicial organ in Nigeria may be reluctant to contemplate, infer or construe climate-induced migrants' rights as environmental rights having no relevant international legal instruments to reference rights status of climate-induced migrants. Inferential interpretation according to Pierce⁷⁷ 'will diminish significantly if the Court adopts an approach to interpretation of the constitution that is less rigid'. Currently, it is a significant flaw that there is no constitutionally supported effective enforcement of climate migrants' rights by the state actors. This elicits limited protection for climate-induced displacement of persons in Nigeria amidst lack of constitutional imprimatur. There is a need for direct inclusion of climate-induced migrants' rights under Chapter IV of the 1999 Constitution. It remains to be seen whether inferential contemplation/interpretation by the Nigerian courts would speedily classify climate-induced rights among the list of fundamental rights guaranteed in the 1999 Constitution.

ii. Climate Change Act 2021

The Nigeria's enactment of the Climate Change Act is a domestic legal framework set to enforce its international obligations under the Paris Agreement. The Climate Change Act 2021 is an historic principal legal

⁷⁷ G Tsebelis, 'Constitutional Rigidity Matters: A Veto Players Approach' (2022) 52 *British Journal of Political Science* 282

framework for regulating climate change activities in Nigeria. This legislation enjoys constitutional and statutory backing in alignment with the decision of Uwaifo, JSC that environmental/climate related rights protection of the migrants *need not remain mere or pious declarations*⁷⁸ in Nigeria. It is also affirmed by one of the objectives that the Act aims at ...identifying the risks and vulnerabilities⁷⁸....with the purpose of ...implementing mitigation measures that promote low carbon economy and sustainable livelihood...⁷⁹. The Act does not specifically provides for matters of climate migration nor human rights accrued to the migrants. However, it can be deduced that climate justice litigation is a component of climate-related human rights which are also sub-component of human rights. Arguably, the Act makes provision for climate justice-based litigation rights by allowing those affected by the adverse effect of climate change to seek legal redress within the confine of law.

The express provision of section 34 of the CCA provides for climate change litigation whose purpose is to guarantee justice for those affected by adverse effect of climate change. The section states:

- (1) A person, or private or public entity that acts in a manner that negatively affects efforts towards mitigation and adaptation measures made under this Act commits an offence and is liable to a penalty to be determined by the Council
- (2) A court, before which a suit regarding climate change or environmental matters is instituted, may make order-
 - (a) to prevent, stop or discontinue the performance of any act that is harmful to the environment;
 - (b) compelling any public official to act in order to prevent or stop the performance of any act that is harmful to the environment;

⁷⁸ Section 1 (g) of the Climate Change Act 2021.

⁷⁹ Ibid, Section 1 (h).

- (c) Compensation to the victim directly affected by the acts that are harmful to the environment.

In complementing the global climate change legal frameworks, litigation is a veritable tool to invoke access to justice for climate-related victims. International institutions like Intergovernmental Panel on Climate Change (IPCC) and United Nations Environment Programme (UNEP) have accepted litigation as remedial window to get justice for the victims of climate disasters⁸⁰. It is apparently unequivocal that the letters of the CCA do not reference climate migrants or migration nor do the letters directly reference climate-related migrant rights, but could be strongly gleaned from the quoted section 34 which allows the victims of climate change disasters to seek both administrative and judicial justice or remedies as provided under sub-sections (1) and (2) respectively. The legislative duties imposed on both public and private entities by the provisions of sections 23 and 24 of the CCA, could be grounds for litigation in case of violations. This is a remarkable pattern for seeking environmental and climate justice to procure human rights such as the right to personal health, right to healthy environment, right to life and access to justice for the climate-related migrants.

The climate related rights of migrants enjoy dualistic approach (a) rights against the original violators of their environmental peace, the consequence of which leads to their internal migrations, and (b) rights against the hostilities melted on them by the host communities that have refused to accommodate their constitutionally endowed rights stated *ex ante*. The Nigerian leading cases of *Gbemre v Shell*⁸¹ and *Centre for Oil Pollution Watch (COPW) v NNPC*⁸² cases establish judicial or legal principles for the dualistic right approach-the former explains the fundamental rights of the climate-related migrant against the original violators of his environmental rights as enshrined in the CCA and supported by the constitution while the latter validates the legal rights of

⁸⁰ *The Status of Climate Litigation: A Global Review* (UNEP Report, 2017) <https://wedocs.unep.org/le/> accessed 1 April 2025

⁸¹ (2005) 6 AHRLR 152.

⁸² (2019) 5 NWLR (PT. 1666) 518.

the climate-related migrant against the hostile community that has refused to accommodate his human rights which have been made justiciable through judicial activism. The CCA arguably seems to have safeguarded and protected the former by invoking subsections (1) and (2) of section 34. The later also which is more direct to the focus of this paper has been given express constitutional imprimatur with the proactive enforcement of that Chapter II where environmental and climate related matters are situated, as fundamental rights with judicial seal.

The two cases of *Gbemre v Shell*⁸³ and *Centre for Oil Pollution Watch v NNPC*⁸⁴, though bothered more on environmental rights violation, have consequential similarities to matters of rights of climate-related migrants who could use the grounds of the cases to procure justice/rights when adversely affected by climate/environmental disasters. In *Gbemre case*, one of the plaintiff's grounds against the defendant as refrained in their affidavit was that 'gas flaring leads to the emission of carbon dioxide, the main greenhouse gas which 'contributes to adverse climate change'⁸⁵ with deadly consequences on the Niger-Deltans. The case was the first where judiciary invoked Constitutional human rights principle by holding that the gas flaring were inconsistent with Plaintiff's right to life and/ or dignity of human persons' as provided in the African Charter and the 1999 Constitution (as amended))⁸⁶. Also, in *COPW Case*, the Supreme Court held that the combined effect of sections 20 and 30 of the 1999 Constitution, section 17 (4) of the Oil Pipeline Act and Art. 24 of the African Charter recognized the rights to clean and healthy environment in Nigeria as fundamental rights. The case further resolved that the NGOs have the *locus* (legal standing) to institute court actions on environmental or climate-related migrant right protection in Nigeria. The decision of the apex court in *COPW case*, serves as a forerunner in developing the jurisprudence of climate justice gleaned from litigation which intersects climate-related migrant rights protection or enforcement.

⁸³ (2005) 6 AHRLR 152.

⁸⁴ (2019) 5 NWLR (PT. 1666) 518.

⁸⁵ *Ibid*, *Gbemre case* at 8.

⁸⁶ *Ibid*, *Gbemre* at 5.

Like the flaw of inferential interpretation/application replete of domestic and foreign legal instruments analysed above, the CCA has no direct provision for climate-induced mobility or rights accrued to climate-induced migrants in Nigeria. Climate litigation concept of justice as ventilated above seems to be a remote ground for contemplation of climate-induced human rights under the CCA. Such interpretative stance is subject to how a judge conceptualizes climate migration since there is no certainty of legal definition; this is dangerous for fundamental rights enforcement of climate-induced migrants in Nigeria. Hence, those rights can only be attempted with uncertainty without any legislative framework to reference. The drafters seemed to have no constitutional provision, judicial precedents or international instruments to reference while processing the legislative documents, hence the reason for omission of rights and protection of climate-induced migrants in the Act. Though stakeholders have ways of navigating around legal framework to achieve their objective, but such attempt is *ad hoc*. This calls for urgent amendment of the CCA to define climate migration and migrants and entrench duties and rights of stakeholders.

iii. National Commission for Refugees, Migrants and Internally Displaced Persons Act 2004

While this Act is not a stand-alone legislation for the protection of climate related migrants, it is actually a nexus dynamics which interacts or intersects refugee movements caused by climate, environmental degradation and natural disasters⁸⁷. The institution of governance in Nigeria is not oblivious of the reality of ‘sudden-onset of natural disasters and environmental degradation’ which could be the consequence of human/climate migration, hence this (NCFRMI) Act was amended and is fully utilized⁸⁸. The obligation of the Act was expanded

⁸⁷ UNGA, ‘Report of the United Nations High Commissioner for Refugees: Part II: Global Compact on Refugees’, A/73/12 (Part II), <https://www.unhcr.org/media/report-united-nations-high-commissioner-refugees-part-ii-global-compact-refugees> accessed 2 April 2025.

⁸⁸ The Agenda recognizes the multi-causality prompting human movements, referencing both conflict and violence in this context (see e.g., Vol. I, pp. 6 and 15). It also recognizes cross-border movements occur in situations where disaster and conflict overlap (see e.g., Vol. I, pp. 24 and 27).

by way of amendment in years 2002 and 2009 respectively to intervene on matters of protecting and safeguarding the rights of the internally displaced persons (IDPs) which nevertheless includes those displaced as a consequence of climate related disasters which includes flood, environmental degradation, draught, heatwaves. The National Commission for Refugees, Migrants, and Internally Displaced Persons (NCFRMI) is the main regulatory agency for migration coordination while working with related institutions and actors to enhance cohesiveness and efficiency in protecting migrants' rights via accommodation, return and reintegration.

Arguably, the Act generally seems not to have contemplated climate migrants among the internally displaced persons (IDPs). The stakeholders of climate-induced migration could only infer the rights of the IDP climate migrants from the Act. While the inferential interpretation or application is remote, it is with uncertainty as the conceptual definition of climate migration or migrants remains elusive and subject to perception of judges which could be dangerous to fundamental rights enforcement of climate-induced migrants. This further shows the confusion. The policymakers have their decisions made in relation to protecting and managing asylum seekers and refugees along with people displaced due to conflicts or persecution-Boko Haram and herdsmen migrants.⁸⁹ The rights of climate-induced migrants is remotely inferable from the Act if not nearly impossible. Hence, the Act needs urgent amendments to capture rights of climate migrants to inform the policymakers to be responsible for protection of those rights.

B. Policy Instruments

iv. National Climate Change Policy (NCCP) 2011

This policy framework was objectively formulated to give implementation, direction to the Climate Change Act 2021 particularly on how to achieve low greenhouse gas emissions, promote green growth to enhance sustainable economic development in Nigeria. The aim is to drastically reduce climate disaster which should

⁸⁹ S Mukhtar & R Aznie et al, 'Boko Haram and the Geopolitics of Forced Migration in Nigeria' (2020) 14 *Journal of International Studies* 52

consequentially abate climate related migration and rights abuse of climate migrants. Although, the impact of this policy is rarely felt, it is right policy in place to prevent factors that trigger climate related migration in Nigeria. The full implementation of this policy framework along right protection of climate migrants is ambitiously expected.

However, the policy framework is a subsidiary instrument of administrative convenience which has no provision for climate migrants or their right protection. The policy is operational within the scope of the Climate Change Act with no reference to climate-induced migration or protection of this set of migrants. The policy framework may not be able to safeguard the right protection of climate migrants unless there is first legislative amendment of the CCA to reflect on this policy framework and empower executive activism to guarantee same.

v. National Adaptation Plan (NAP) Framework

This framework was enacted in 2020 to strengthen adaptation innovations and action plans contained in NASPA-CCN. It is designed to abate climate-related migration with priorities and actions on energy, agriculture, water resources, and security. The operational efficiency would boost resilience and combat vulnerabilities by way of a coordinated, sectorial approach intersecting national development goal.

While the policy framework seems to be directed towards good objective of climate peace and management in line with adaptation and mitigation policy to abate climate-induced disasters, it does not mention or have humanitarian provisions for those displaced due to climate disasters. Since the law entrenching this policy framework never references climate migrants/migration. It becomes difficult for any of the stakeholders to enforce those sacred fundamental rights of the climate-induced migrants against the state actors or transnational corporations who violate those rights. It may be safe to conclude that legislative amendments and executive activism could popularize rights protection policy of the climate-induced migrants under this framework.

vi. Sustainable Development Goals (SDG)

In the absence of universally accepted definition of Sustainable Development the International Panel on Climate Change (IPCC) consistent with the Bruntland Commission 1987, and the Third Assessment Report (TAR).) Sustainable development is defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”⁹⁰. The essence of sustainable development throughout is meeting fundamental human needs in ways that preserve the life support systems of the planet.⁹¹ Its strength lies in reconciling real and perceived conflicts between the economy and the environment and between the present and the future⁹² Sustainable Development Goals is one of the topmost policies and a global framework adopted by nations of the world to address matters of climate migration⁹³. Nigeria has domesticated and integrated it among its climate change policy frameworks to build up resilience, promote safe and orderly migration where necessary by integrating SDG goal 13 (Climate Action) and SDG goal 10 (Reduced Inequalities). These two goals are strong hallmark to safeguard protection human rights of climate related migrants in Nigeria.

However, like other international legal and policy instruments, the SDGs do not explicitly capture climate migration or migrants. SDGs-SDG goal 13 (Climate Action) and SDG goal 10 (Reduced Inequalities) are equivocal in interpretation and rarely contextualize rights protection of climate-induced migrants. Perhaps the drafters of these 17-point noble goals were informed of the uncertainty or confusion trailing climate migrants/migration definition globally, subtly omitted reference to climate migrants’ rights in the humanitarian document. It could have

⁹⁰ Editorial, *Sustainable Development and Mitigation* (IPCC, 2001b) <https://www.google.com/se> accessed 5 April 2025

⁹¹ D Cristian & A Artene et al, ‘The Objectives of Sustainable Development - Ways to Achieve Welfare’ (2015) *Procedia Economics and Finance* 815

⁹² *Impacts, Adaptation and Vulnerability* (Report, IPCC Fourth Assessment Report: Climate Change 2007)

⁹³ S Morton & D Pencheon et al, ‘Sustainable Development Goals is one of the Topmost Policies and a Global Framework Adopted by Nations of the World to Address Matters of Climate Migration’ (2019) 174 *Journal of Public Health* 83

been a very good instrument considering its famous capacity and regulatory follow-up and enforcement against states, but for this omission, climate-induced migrants may find it difficult to enforce their rights under this document against the state and transnational corporate violators. The UN body responsible for implementing the SDGs needs to find a way to integrate climate-induced rights protection among the goals. It is so important that without comprehensive amendments of the document to include this set of rights, the SDGs may not be achieved as climate-induced displacement is adversely affecting humanitarian and human right conditions of various countries of the world.

v. Evaluation of Climate Migrant Protection in Nigeria: Practical Case Studies of Communities with Climate-Induced Displacement

There is no comprehensive stand-alone international legal framework for regulating climate related migration and protection of migrants' rights, but fragmented and scattered instruments. However, there is a trifurcated prominent principles of right to life⁹⁴, right to dignity⁹⁵ and right to non-discrimination⁹⁶, among other rights, for climate migrant protection under international law and these principles are already enshrined in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as the case of other sovereign nations⁹⁷.

Nigeria has however forum shopped some of these fragmented provisions, domesticated and integrated them into its relevant pieces of legislation to tackle matters of climate migrant protections⁹⁸. Climate migrants in Nigeria have had their protections violated severally. The distant case of expulsion of West African migrant workers from Nigeria was one of the earliest on human right and the ECOWAS Protocols violations of freedom of movement within the West African region⁹⁹.

⁹⁴ Section 33 of the 1999 Constitution.

⁹⁵ *ibid*, section 34.

⁹⁶ *ibid*, section 42.

⁹⁷ All nations of the world have these fundamental rights and principles enshrined in their constitution.

⁹⁸ Nigeria has more than enough human rights laws to enforce the rights of its citizens and it has even domesticated many international human rights instruments for its own good.

⁹⁹ Article 4 of Fundamental Principles of the ECOWAS Treaty.

Hence, there may not be top-gear utopian or operationally efficient legislative frameworks, but surely Nigeria has been responsive to matters of climate migrant protection in a number of real and practical situations as referenced *ex post*.

a. Baga Flood 2012

The Baga flood in 2012 was a severe and devastating climate disaster in Borno State, Nigeria. This lethal flood was caused by flash rainfall and the release of water from Lagdo Dam in Cameroon which led to the overflow of several rivers in Nigeria including Niger and Benue River. The flooding spread to Anambra, Kogi, Benue and Plateau States. There were over 430 deaths recorded which denied them their right to life guaranteed under section 33 of the 1999 Constitution and 566,466 climate migrants left their ancestral homes and farming profession due to exacerbated environmental degradation, deforestation and soil erosion. Thousands of homes, roads, and other critical national infrastructures constituted significant economic loss. Although the Nigerian Government came up with some reliefs and sketchy resettlement, thousands of people including the migrants were forced to relocate to other areas whose rights were severely violated. In fact, the migrants struggle to get basic necessities like shelter, food, water and healthcare.

Worst still, no action was taken against the Cameroonian Government against the violation of climate migrants' rights as enshrined in various international instruments which both countries have domesticated. Although it may be argued that those international instruments do not directly align those rights with climate migrants, such reasoning seems weak to deny the displaced their constitutional and universal rights as human beings. Baga Flooding could have been a good moment for Nigeria to enforce the jurisprudence of right protection of its citizens within both regional and international instruments, but perhaps resolved it by diplomacy without any humanitarian gesture coming from Cameroon. Till date, no action by environmentalists and other rights societies has been instituted against the Nigerian Government to enforce the violated climate migrant rights which is now being validated by judicial decisions that Chapter II *'need not remain*

mere or pious declarations'.¹⁰⁰ The Supreme Court has said that Chapter II is enforceable if such breach, as the case of Baga Flood, consequentially violates or has adverse implication on, any of the fundamental rights in Chapter IV of the 1999 Constitution.

b. Lagos Coastal Erosion

The Nigerian commercial nerve centre, Lagos experienced devastating Lagos Coastal Erosion causing environmental hazards. More than a million people were adversely affected- about 82% of the vulnerable were homeless; around 71% had no access to healthcare while about 65% were climate-induced migrants¹⁰¹. Worse still, only about 18% and 29% had access to government shelter and healthcare provisions respectively¹⁰². This therefore exposed huge humanitarian deficit and human rights violations of the people's rights under section 20 of the 1999 Constitution. Section 20 of the 1999 Constitution provides for the obligation of the government to improve the environment and safeguard the water, air and land, forest and wild life of Nigeria citizen. The provision is generally non justiciable, but could now be enforced if its implementation directly affects those fundamental rights under the Chapter IV.

The Lagos coastal disaster triggered over 1000 high octane human right complaints filed with the National Human Right Commission with no single humanitarian action¹⁰³. Climate-induced migrants were helplessly vulnerable to environmental harms intersecting their sacred human rights to health, life, adequate shelter and dignity as enshrined under Articles 24, 33, 17 of African Charter on Human and Peoples' Rights with equivalent provisions under the 1999 Constitution particularly Chapter IV as their consequential effects adversely affect the

¹⁰⁰ Ibid.

¹⁰¹ I Abdullaziz, 'Climate-Induced Migration in the Global South: an in-depth Analysis' (2024) *IOM Publication* <https://www.nature.com/articles/s44168-024-00133-1> accessed 5 April 2025

¹⁰² E Akinloye E. & O Gabriel, 'Vulnerability, Resilience and Adaptation of Lagos Coastal Communities to Flooding' (2024) *Geological Science Publication* <https://www.lyellcollection.org/doi/full/10.3389/es> accessed 5 April 2025

¹⁰³ L Awosika & J Folorunso, *Sea Land Rise and Impacts* (State of the Environment Report, Toms Print, 2011)

climate migrant fundamental rights. No justice distilled in from justiciable rights!

c. Benue Valley Flood 2017

The Benue Valley disaster was another devastating climate-related disasters spotted in the Benue Valley region in 2012¹⁰⁴. Although the region is flood-prone, the devastating flood was caused by both heavy rainfall and the release of water from the Lagdo Dam in Cameroon. It was one of the catastrophic floods ever experienced in Nigeria with of over 2 million of people affected in the following statistics- 363 death, 600,000 environmentally displaced (about 200 schools and 100 healthcare facilities destroyed)¹⁰⁵. The Nigerian Government did not avail itself of any regional or international rights instrument to enforce the constitutional rights of the victims/vulnerable as guaranteed under national and international instruments.

The dead and the living vulnerable including the environmental/climate migrants had their rights to life, shelter and health provided for under Articles 6, 11 and 12 of the International Covenant on Civil and Political Rights respectively. These sacred rights were rather sacrificed on the altar of regional diplomacy between Nigeria and Cameroon. The scratch humanitarian relief gesture of the National Emergency Management Agency could not add up to *hedonistic calculus* of humanitarian action of the government.

d. Lake Chad Basin Climate Crisis

The gradual shortage of water in the Lake Chad region with some ancillary climate induced disasters has caused loss of livelihoods and displacement of around 2.9 million dwellers in the region including 2.3 million in Nigeria¹⁰⁶. There is about 90% decrease of water supply to the population of 30 million people resulting in exodus of people due to

¹⁰⁴ D Lortyer & W Benjamin, 'Flood and Food Security in the Benue Valley: Stylized Facts' (2023) 4(2) ABUAD Journal of Social and Management Sciences 318–337

¹⁰⁵ An HOMEF Report, 2021, Floods, Climate Change & COVID-19, file:///C:/Users//Desktop/SDG%20P

¹⁰⁶ OCHA Report, 'LAKE CHAD BASIN Humanitarian Snapshot' file:///C:/UseDecember%202024).pdf

climate change and unsustainable water management¹⁰⁷. The World Bank observed that without proactive interventions, the Saharan Africa could lose over 85.7 million internal climate migrants representing 4.2 percent of the total population by the year 2050¹⁰⁸ due to climate change¹⁰⁹. The stakeholders have expressed concern on the rights abuse of the vulnerable populations in the Nigerian migrants particularly the rising statistics of climate migrations in the Lake Chad. Although some international institutions like World Bank, IOM are pledging supports, but currently the environmental issue there is alarming.

5.1 THE LEGAL AND PROTECTION GAPS

The adverse effect of climate change exacerbates climate related migration globally including Nigeria. The consequential denial of protection for the human rights of the vulnerable migrants or climate induced refugees could not be abated by the present international legal frameworks evidence that fundamental gaps in the legal and protection of the internally displaced climate migrants in Nigeria. These gaps pose existential threat to the vast majority of the Niger Deltans and people dwelling at low-lying coastal areas as highlighted:

a. Lack of Stand-Alone International Legal Framework on Climate Migration

There is no existing stand-alone legal protocol to bring environmental migration to the heart of international, regional and national operations. This is a significant barrier that hobbles institutional and policy efficiencies for the rights protection of the climate migrants. This has further hampered the necessary synergies needed among international, humanitarian and environmental laws to adequately operationalize human and other species of migrations connecting climate change. Nigeria, like other nations of the world, has no standard or uniform legal definition to safeguard protection of migrants in the context of environmental change. This has arguably compounded the problem of justiciability of climate migrants' rights in the operational context of the

¹⁰⁷ Ibid, OCHA Report

¹⁰⁸ The World Bank's Groundswell Report on Internal Climate Migration

¹⁰⁹ Ibid, HOMEf Report

‘environmental clause/provision’ contained in Chapter II of the 1999 Constitution. It is a big setback for the human right environmentalists who may have no relevant stand-alone legislation to institute legal actions against the violators of the human right of climate-related migrants. Hence, no single legal action was filed in court to challenge the violations of the climate-related migrants’ rights in the four scenarios alluded above.

b. Government Reluctance in Amending Fundamental Defect in the Climate Change Act 2021

The Climate Change Act of 2021 is fundamentally defective for not mentioning ‘migration or climate migrant’ in its definition section. The legislation is so recent that the drafters of the legislation ought to have gleaned a working definition of ‘climate migration’ from various international conferences, meetings and academic researches. The Supreme Court decision *Ondo State v AG of Federation*¹¹⁰ delivered by Uwaifo, JSC, has supported the justiciability of *‘environmental rights’* in the Chapter II of the 1999 Constitution which reinforces the constitutional obligations of the ‘executive and the National Assembly, working together, to give expression to any one of them through appropriate enactment as occasion may demand’¹¹¹. However, Nigeria is still not an environmentally conscious nation as it still struggles to recognize the environmental rights of the people as the case of usual violation of the Deltans’ environmental rights by the MNOC.

c. Lack of Uniform Nexus between Migration and Human Rights

There is a lack of synergy or integration between migration, displacement, and human rights in the climate policy, action and laws. This fundamentally creates a remote interpretation of climate rights violation as significant to fundamental human rights violations. This integration deficit cuts across all relevant international law on climate change and climate migrants’ rights. In Nigeria, except where in section 34 of the Climate Change Act that allows litigation against the

¹¹⁰ Ibid at pg. 38.

¹¹¹ Uwaifo Decision at pg. 30.

obligations under the Act, no express provision for safeguarding the human rights of the climate-induced migrants. In fact, the entire legislation does not reference human right or climate migrant. This may further raise the doubt about the Nigeria's readiness for environmental rights regime and protection of climate-induced migrants. It may be deduced that, though the Climate Change Act 2021 is historic in Nigeria change legislation, it is not a '*comprehensively greened legislation*'.

d. Lack of Judicial, Quasi-Judicial Jurisprudence and interpretations on Rights of Climate Migrants

There are many raw cases of human rights violations of climate-induced migrants in Nigeria, but none of them has been tested for judicial pronouncement. The so-called stakeholders and climate rights activists have been reluctant and passive in seeking judicial interpretations of those supposed violated rights of the climate-induced migrants. Hence, there is no certainty safe by inference to aggregate those rights as the same with rights itemized under the Chapter II of the 1999 Constitution. The Nigerian Supreme Court is also the Court of public policy meant to set a parliamentary debate on the jurisprudential validity of rights in Chapter qualifying as the same as the supposed violated rights of the climate-induced migrants and further provoke legislative direction/pace on the necessity for legal framework to capturing the rights of the climate-induced migrants. This is seriously lacking to improve the jurisprudential frontier of rights protection of climate-induced migrants in Nigeria.

5.2 Comparative Lessons from Kenya and Bangladesh's Legal Framework on Climate Protection

The case study countries were selected with testament that have operational legal frameworks for climate protection and best practices comparable to the Nigerian situation. The countries are Kenya and Bangladesh as their giant strides discussed.

a. Kenyan Legal Framework for Climate Protection

Climate-induced rights as component of environmental rights are justiciable under the Kenyan constitutional system where the Kenyans

right to a clean and healthy environment is guaranteed.¹¹² The same Constitution provides legal mechanisms for every citizen to enforce their environmental rights by seeking redress in court if their rights are violated or threatened.¹¹³ The Kenyan courts have constitutional mandate to protect environmental rights, as decided in the case of *Metal Refinery (EPZ) Ltd v. Owino Uhuru Residents*¹¹⁴ where the Supreme Court pronounced on violation of rights and fundamental freedoms with a specific focus on environmental/climate protection. The Supreme Court said,

as regards whether in the constitutional architecture it is only the 1st, 2nd and 3rd respondents who are obligated to ensure sustainable management and conservation of the environment, the preamble of the Constitution 2010 acknowledges the need to be respectful to the environment which is the people's heritage, and also expresses the determination to sustain it for the benefit of future generations. Article 42 of the Constitution further provides that every person has the right to clean and healthy environment. This includes the right to have the environment protected for the benefit of future generations. It is noteworthy that this right has both individual and collective dimensions. The individual dimension is the right of any victim or potential victim of any environmentally damaging activity to obtain reparation for harm suffered, while the collective dimension imposes a duty on individuals and states to cooperate to resolve environmental problems¹¹⁵.

However, the Nigeria's hierarchy of courts are still passive and inconsistent in adjudicating environmental rights cases brought before them. Conflicting court decisions and positions are abound in our

¹¹² Article 42 of the Kenyan Constitution 2010

¹¹³ Article 70 of the Kenyan Constitution

¹¹⁴ [2024] KESC 75 (KLR)

¹¹⁵ Para.90 of the Supreme Court Decision

jurisprudence unlike Kenya's court where justiciability of environmental/climate rights has been consistently settled as component of fundamental rights.

The Kenya's Climate Change Act of 2016, (as amended in 2023) is a characteristic of constitutionalism and the earliest in the continent governing matters relating to climate protection¹¹⁶. The Kenyan CCA mandates the Kenyan Government to formulate programmes,¹¹⁷ enhance the resilience and adaptive capacity of human and ecological systems¹¹⁸, mainstream the principle of sustainable development into the planning and mainstream intergenerational and gender equity in all aspects of decision making¹¹⁹. These are geared towards reducing climate disaster risks and averting climate-induced migrations. In facts, the Act is humanitarian in context by allowing Kenyans to apply to the Environment and Land Court for human rights redress where there is allegations that a person has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change¹²⁰. The same Act empowers the Court to 'order a discontinuance or prevention of these actions, and "...provide compensation to a victim of a violation relating to climate change duties¹²¹.

The Act further stipulates that *no proof of loss or injury by the applicant is necessary*¹²². Kenyan environmental/climate jurisprudential system has so advanced that the court has looked beyond the letters of non-inclusion of climate migration or migrants in the Act to give justice to environmental/climate migrants whose rights are or about being violated¹²³. The Kenyan judicial activism is proactive to safeguard the

¹¹⁶ While Kenya's Climate Change Act was a significant step in the continent, it wasn't the first to address climate change. The Philippines enacted a Climate Change Act in 2009, demonstrating that other nations had already established frameworks for addressing climate change.

¹¹⁷ Section 3 (2) (a and c) of Kenya's Climate Change Act

¹¹⁸ Ibid, section 3 (2) (b) of the Act.

¹¹⁹ Ibid, section 3 (2) (d-e) of the Act.

¹²⁰ Art. 42 of Kenyan Constitution

¹²¹ Section 70 (1) of the Act

¹²² Article 23 of the Act

¹²³ Section 71 (2) of the Act

constitutional rights of its citizens to healthy environment where climate-induced rights is a components which has been affirmed as a fundamental rights as demonstrated¹²⁴. The multiple legal frameworks are in synergy to protect climate-induced migrants with explicit affirmation that climate change is a significant force for displacement causing different shades of human rights issues for migrants.

Reverse is the case in Nigeria as discussed *ex ante* that the Climate Change Act 2021 does not capture climate protection in any form safe by inference to climate-induced litigation which could only be remotely contemplated. Unlike Kenya, Nigeria does not have any dedicated/special court to handle environmental/climate rights violation which are often perpetrated in the Niger-Delta by multinational corporations. It is sad that sometimes the Nigerian state actors shield those multinationals from hammer of environmental/climate justice. Even the regular courts have their dockets littered with cases running to decades-most of the times, it is justice denied with impunity for the vulnerable whose climate-induced rights are being violated.

b. Bangladeshi Legal Framework for Climate Protection

The Constitution of Bangladesh recognizes right to a healthy environment in accordance with universal norm. The Bangladeshi Constitution 2011 obliges the state to protect and preserve the environment¹²⁵. Though environmental right clause is inscribed in part II of the Constitution, Bangladeshi judiciary has affirmed by their historic decisions that environmental right is among the fundamental rights particularly as a component of right to life.¹²⁶ The current jurisprudence affirms that a claimant just needs to prove that the environmental/climate hazards have "directly and seriously affected"¹²⁷his quality of life. However, the Nigeria courts are so inconsistent and passive to give life of enforceability to environmental rights clauses as components of

¹²⁴ Ibid, Metal Refinery (EPZ) Ltd v Owino Uhuru Residents

¹²⁵ Article 18A of the Bangladeshi Constitution

¹²⁶ Dr. M. Farooque v Bangladesh 50 DLR (HCD) (1998) 84.

¹²⁷ Ibid, Art. 42 of Kenyan Constitution

fundamental rights. Timidity and corruption are bane of environmental/climate justice in Nigeria.

Beyond judicial enforcement of climate/environmental rights, Bangladesh has environment-sensitive policy framework that adopts and implements right to a healthy environment of the climate-induced migrants. As environmentally conscious country, Bangladesh frequently undertakes various environmental hazard-proof projects in a way to operationalise the constitutional obligation of the state regarding healthy environment¹²⁸. The proposal to incorporate environmental right among rights in Chapter IV of the Bangladeshi Constitution is a complementary legal letters or surplusage as it is already recognized and implemented by the Bangladeshi Government. In Bangladesh, there are procedural and substantive protection spheres for enforcing climate-induced migrants' rights. Stakeholders have democracy to participate in environmental decision-making regarding climate-induced migrants' protection, access to receive information, and seek justice in case of infringement of their rights¹²⁹. These are evidence to assert that Bangladesh has robust legal framework for climate-induced migrants' rights enforcement. However, Nigeria is bereft of all the humanitarian facilities present in Bangladesh to promote climate-induced rights. All the policy frameworks in Nigeria never support climate-induced rights either by abating climate hazards through strategic hazard-prevention policies or rolling out humanitarian policies for climate-induced migrants whose rights are being violated.

Bangladesh is replete of over 200 eco-centric legislations to address sundry climate-induced migrants' protection without constitutional barriers. The Climate Change Trust Fund Act 2010 sets up a dedicated fund for climate adaptation and mitigation which is an hallmark of climate disaster prevention or abatement and robust equitable humanitarian facilities for climate-induced vulnerable in the community¹³⁰. Also, the Disaster Management Act 2012 incorporates effective framework for disaster response in a proactive strategies to

¹²⁸ Ibid

¹²⁹ Environmental democracy emphasizes the importance of public participation in environmental decision-making, ensuring that affected communities, including climate-induced migrants, have a voice in decisions that impact their lives and livelihoods.

¹³⁰ Section 15 of Climate Change Trust Fund Act 2010 .

protect ecosystem and enhance sustainable development¹³¹. To further boost judicial intervention and constitutional environmental rights, the Environmental Court Act 2010 established Environmental Court¹³² and Special Magistrate Court¹³³ to adjudicate environmental/climate-induced cases in very robust and swift procedural patterns. Nigeria does not have all the mentioned facilities present in Kenya to guarantee climate protection save the statistics of climate-related legislations that focus on less important directions.

6. Advancing Climate Protection in Nigeria: Recommendations and Conclusion

Although there is no internationally stand-alone legal framework specifically regulating the human rights of environmental migrants and their protection as analyzed, the migrants can access the same human rights protection enshrined in their states' constitution. Nigeria has no solo legislation that particularly safeguards the rights protection of the climate-induced migrants. However, the climate-induced migrants can invoke international human rights law and, international customary law and other components of both international and regional instruments domesticated in Nigeria to enforce their rights practices as the cases in Kenya and Bangladesh. Even the 1999 Constitution succinctly captures environmental rights which are enforceable as fundamental rights under Chapter IV. Unlike Kenya and Bangladesh, the Nigerian Government is not so willing to enforce those rights particularly environmental and health rights listed under Chapter II of the 1999 Constitution. Hence, the *ex ante* evaluation of the Nigerian Government's enforcement of people's rights is very poor compared to Kenyan and Bangladeshi robust enforcement provisions. The deficit is not because there are international legal gaps, but for passive implementation of those rights to protect the climate-induced migrants. The environmentalists and climate migrant activists need to frequently approach court to test the court interpretation of the human rights of the climate-induced migrants in

¹³¹ Sections 27 and 29 of Disaster Management Act 2012 .

¹³² Section 4 of the Environmental Court Act 2010.

¹³³ Ibid, section 5.

order to replicate Kenyan and Bangladeshi approaches to enhance sustainable climate-induced rights protection in Nigeria.

To address gaps in Nigeria's legal framework on climate protection, there is a need for the United Nations to further elaborate a comprehensive legal framework that uniformly defines climate migration that preserve the nexus of climate migration and human rights. The import of this is for various States like Nigeria to use the draft as a standard and domesticate the same as its own law. Second, it is pertinent for prominence be given to the operational efficiency and seamless implementation of existing legal and policy instruments particularly the rights in Chapter II as fundamental rights in Nigeria following Kenyan and Bangladeshi jurisprudence in this area. Third, the Nigerian state should urgently implement temporary or humanitarian protection arrangement to mitigate the suffering of the climate-induced migrants in order to safeguard sustainable safety mitigation and adaptation tackle anthropogenic or natural factors causing climate-induced migration. Fourth, to drive jurisprudence in this area, environmentalists and climate rights activists should frequently approach court to seek judicial interpretation on whether human rights protections of climate-induced migrants are the same with those itemized under the Chapter II which have been judicially pronounced enforceable as those in Chapter IV. Fifth is the need for the Nigerian Government adopt a nexus between migration and human rights and legislate a flexible and synergistic framework to enforce climate-induced human rights as fundamental rights. This includes elaborating a Nigeria-Specific Climate Migration Legal Framework (NCM-LF) that combines human rights, environmental law, and refugee law. Furthermore, there is an urgent need for Nigeria Climate Migration Protection Act, modeled after international legal frameworks such as the Nansen Initiative, Global Compact on Migration among others that explicitly recognizes climate migrants' rights.