

Protecting Climate Migrants Through Regional Policies: Time to Move Beyond International Treaty Law

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ABSTRACT

The accelerated pace of climate change has brought significant attention to its impact on human migration, encompassing both involuntary displacement and voluntary relocation, as an adaptation and mitigation strategy. As cross-border movement increases due to climate change, the imperative for a robust framework to recognise and protect the rights and interests of climate migrants grows. This framework should not only facilitate migrants' entry but should also ensure their effective integration into their new host society. Such policies stand to benefit not only the migrants and their home state but also the host state. The existing literature has proposed three main suggestions towards this end: extending the protective framework of the Refugee Convention to accommodate climate migrants; utilising the existing human rights framework to protect them; or creating regional policies to facilitate their effective resettlement. The former two suggestions are currently improbable due to an absence of political will, an excessively narrow scope for protection within the existing legal frameworks, and a lack of detailed policies. Consequently, regional cooperation emerges as the most viable path for the long term. Fortunately, substantial progress has already been made in this area. This article aims to assess critically the efficacy of some well-known regional frameworks and policies in safeguarding the rights of climate migrants while ensuring that climate migration ultimately yields mutual benefits for the migrants, their home state, and the host state.

Keywords: climate migrants, regional cooperation, refugee law, human rights, integration

I. INTRODUCTION

Environmental factors have long been one of the drivers of human migration.¹ As the pace of climate change accelerates, both states and individuals are increasingly recognising the utility of migration as an adaptation and mitigation strategy.² This necessitates a reassessment of existing laws and policy frameworks governing the rights and interests of people on the move,

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¹ Elizabeth Marino, 'The Long History of Environmental Migration: Assessing Vulnerability Construction and Obstacles to Successful Relocation in Shishmaref, Alaska' (2012) 22 *Global Environmental Change* 374.

² Jon Barnett and Michael Webber, 'Accommodating Migration to Promote Adaptation to Climate Change' (2010) World Bank Policy Research Working Paper 5270/2010 <<https://ssrn.com/abstract=1589284>> accessed 4 April 2024.

as the existing framework is becoming increasingly obsolete. Various proposals have emerged, advocating for either a revision of existing frameworks or the establishment of a new sui generis framework tailored to address the concerns of climate migrants. Some have proposed that the Convention Relating to the Status of Refugees ('Refugee Convention')³ be amended to include climate change as one of the grounds for the grant of refugee status.⁴ Others have advocated for reliance on the existing human rights law framework to protect climate migrants.⁵ Refuting the efficacy of these two suggestions, some scholars have proposed the creation of specialised frameworks based on cooperation amongst states to fulfil the needs of climate migrants. While some have suggested the creation of specialised multilateral frameworks,⁶ others have supported a more regional approach for protecting climate migrants.⁷ This article focuses on the latter proposal, aiming to examine the efficacy and use of regional frameworks in the context of international climate change migration.⁸

For the purposes of this article, the term 'climate migrants' will be used to refer to individuals relocating due to climate change, rather than 'climate refugees'. Climate migrants are people who leave their home state (either voluntarily or involuntarily) due to its uninhabitable state resulting from extreme climate change. This semantic decision is based on three factors. Firstly, the movement induced by climate change is the outcome of several social, economic, and cultural factors along with climatic considerations.⁹ Secondly, the term 'refugee' has a fixed legal meaning under the Refugee Convention, wherein refugee status is granted only on the basis of certain recognised grounds.¹⁰ Thirdly, states have shown reluctance to classify climate migrants as refugees to avoid the obligations of non-refoulement

³ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 ('Refugee Convention').

⁴ LW Marshall, 'Toward a New Definition of "Refugee": Is the 1951 Convention Out of Date?' (2011) 37 European Journal of Trauma and Emergency Surgery 61; Kujo Elias McDave and Palmer Prince Dagadu, 'Reconsidering the Status and Rights of Climate Refugees Under International Law' (2023) 6 International Journal of Law and Society 168; Steven A Kolmes, Sara K Kolmes and Pei-Hsuan Lin, 'What Lies Ahead: How Aid for Climate Refugees Must Focus on Human Rights and Human Health' (2022) 64 Environment: Science and Policy for Sustainable Development 7.

⁵ Dimitra Manou and Anja Milr, 'Climate Change, Migration and Human Rights' in Dimitra Manou and others (eds), *Climate Change, Migration and Human Rights: Law and Policy Perspectives* (Routledge 2017) 7; Fernanda de Salles Cavendon-Capdeville and Diogo Andreola Serraglio, 'Vidas em Movimento: Os Sistemas de Proteção dos Direitos Humanos como Espaços de Justiça para os Migrantes Climáticos' (2022) 19 Revista de Direito Internacional 104.

⁶ Sumudu Atapattu, 'Climate Change and Displacement: Protecting "Climate Refugees" Within a Framework of Justice and Human Rights' (2020) 11 Journal of Human Rights and the Environment 86; Donald A Brown, 'Climate Change Refugees: Law, Human Rights and Ethics' in Laura Westra, Satvinder Juss and Tullio Scovazzi (eds), *Towards a Refugee Oriented Right of Asylum* (Routledge 2015) 68.

⁷ Bonnie Docherty and Tyler Giannini, 'Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees' (2009) 33 Harvard Environmental Law Review 349; Walter Kälin and Nina Schrepfer, 'Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches' (PPLA/2012/01, UNHCR 2012) <<https://www.unhcr.org/fr-fr/en/media/no-24-protecting-people-crossing-borders-context-climate-change-normative-gaps-and-possible>> accessed 4 April 2024.

⁸ See Maria Waldinger, 'The Effects of Climate Change on Internal and International Migration: Implications for Developing Countries' (2015) Centre for Climate Change Economics and Policy Working Paper 217, 2 <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2015/05/Working-Paper-192-Waldinger.pdf>> accessed 4 April 2024, wherein the author addresses, respectively, internal (within the borders of a country) and international (across the borders of a country) climate migration. This article will focus on the latter concept.

⁹ Diane C Bates, 'Environmental Refugees? Classifying Human Migrations Caused by Environmental Change' (2002) 23 Population and Environment 465.

¹⁰ Vincent Chetail, 'Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations Between Refugee Law and Human Rights Law' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (OUP 2013) 19; Guy S Goodwin-Gill, 'The International Law of Refugee Protection' in Elena Fiddian-Qasmieh and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014) 36.

under international refugee law.¹¹ By adopting ‘climate migrants’ for the reasons outlined above, we can bypass unnecessary semantic discussion and instead redirect the global focus towards the policies necessary for protecting those who are displaced.¹²

In aiming to bolster the case for specialised regional frameworks to protect the rights of climate migrants in a mutually beneficial way, this article will assess the extent to which regional policies are better equipped to meet these objectives compared to multilateral legal instruments. With this objective in mind, it will examine the policies adopted by some Caribbean nations and African states, as regional groups, to enhance the ease of movement and settlement for climate migrants. The research is confined to these two regions due to their well-established, detailed policy frameworks and their previous success in offering some level of protection to climate migrants. To that end, Section II will lay the foundations of this analysis by exploring the concept of migration as a climate change mitigation and adaptation strategy. Following this, Section III will evaluate the two main alternative proposals for protection of climate migrants, namely expanding the scope of the term ‘refugee’ under the Refugee Convention and relying on the existing human rights framework, highlighting the limitations inherent in these proposals. Section IV will then briefly explain why the development of regional frameworks is preferable to creating a new multilateral framework, followed by an overview of some selected regional frameworks aimed at regulating and protecting climate migrants in a group of Caribbean and African states. Finally, Section V will provide a critical assessment of these regional frameworks, identifying their shortcomings and offering suggestions for their improvement.

Before proceeding with the main analysis, it is first helpful to consider what drives climate migration, what it entails, and the forms it takes, which will be addressed in Section II below.

II. THE ‘WHAT’ AND THE ‘HOW’ OF CLIMATE-INDUCED MIGRATION

Migration can be an effective strategy for adapting to, and mitigating, climate change.¹³ However, the drivers behind these strategies are multifaceted and influenced by various factors. Climate change can affect the economic opportunities available in the climate migrant’s home state due to increasing population pressure on depleted natural resources. This increasing pressure not only affects livelihood opportunities but also leads to heightened internal conflicts for control over natural resources.¹⁴ In such situations, families may decide to send their

¹¹ See Issa Ibrahim Berchin and others, ‘Climate Change and Forced Migrations: An Effort Towards Recognizing Climate Refugees’ (2017) 84 *Geoforum* 147, wherein the authors conclude that there is currently a lack of state initiative to address issues related to climate refugees. Therefore, refraining from using the term ‘climate refugees’ is prudent to ensure that states would be willing actively to protect the rights of affected individuals without being concerned about political matters.

¹² See Walter Kälin, ‘The Climate Change - Displacement Nexus’ (*Brookings*, 16 July 2008) <<https://www.brookings.edu/articles/the-climate-change-displacement-nexus/>> accessed 4 April 2024, wherein the author argues that we should not be distracted by semantics, as they have little relevance to the practical effects of climate change on the lives of migrants. Rather, states and policymakers should prioritise these practical effects.

¹³ Government Office for Science, ‘Foresight: Migration and Global Environmental Change: Final Project Report’ (2011) 11–12 <<https://assets.publishing.service.gov.uk/media/5a74b18840f0b61df4777b6c/11-1116-migration-and-global-environmental-change.pdf>> accessed 4 April 2024; Barnett and Webber (n 2) 5–10; Sabine L. Perch-Nielsen, Michèle B. Bättig and Dieter Imboden, ‘Exploring the Link Between Climate Change and Migration’ (2008) 91 *Climate Change* 375.

¹⁴ Jonathan S. Blake, Aaron Clark-Ginsberg and Jay Balagna, ‘Addressing Climate Migration: A Review of National Policy Approaches’ (*RAND*, 7 December 2021) 5–6 <<https://www.rand.org/pubs/perspectives/PEA1085-1.html>> accessed 4 April 2024.

working members to states with better economic opportunities and more habitable conditions.¹⁵ This relocation of working members to another state can lead to the generation of remittances back home, aiding family members who remain behind and contributing to the home state's ability to develop climate change resilience.¹⁶ Family members receiving remittances utilise the funds for meeting their basic consumption needs, diversify income streams to reduce their dependence on environmental factors for sustenance, and also invest in infrastructural developments to mitigate the effects of climate change.¹⁷ Moreover, by relocating from the home state, migrants alleviate the pressure on their home state's dwindling pool of natural resources.¹⁸ This can also be done on a circular basis, wherein the working members of a family migrate only during particular seasons when the adverse effects of climate change become unbearable and threaten the family's livelihood. Temporary migration of this nature helps to alleviate the strain on the family's limited resources and allows working family members to earn money which they can remit back home.¹⁹ This practice alleviates the pressure on home states to ensure the sustenance of their citizens, a challenging task exacerbated by increased strain on the state's natural resources. Furthermore, given the temporary nature of such migration, host states might be more inclined to permit the free entry of migrants, as it would not unduly strain their resources.

Climate change can also lead to conditions that render the home state completely uninhabitable. In such circumstances, individuals may be compelled to relocate permanently to states offering more favourable climatic conditions and economic opportunities.²⁰ This kind of migration is typically observed during periods of severe changes in rainfall patterns, increased frequency of droughts and floods, and the consequent decline in the availability of basic sustenance needs, such as food and potable water.²¹ By relocating to a state with more favourable climatic conditions, people both secure better livelihoods for themselves²² and also

¹⁵ Robert McLeman, 'International Migration and Climate Adaptation in an Era of Hardening Borders' (2019) 9 *Nature Climate Change* 911, 912.

¹⁶ Kanta Kumari Rigaud and others, 'Groundswell: Preparing for Internal Climate Migration' (World Bank Group 2018) 28–29 <<https://openknowledge.worldbank.org/entities/publication/2bc91c76-d023-5809-9c94-d41b71c25635>> accessed 4 April 2024. See generally Cécile Couharde, Junior Davis and Rémi Generoso, 'Do Remittances Reduce Vulnerability to Climate Variability in West African Countries? Evidence from Panel Vector Autoregression' (Discussion Paper 2, UNCTAD, September 2011) 15–17; Hajer Habib, 'Climate Change, Macroeconomic Sensitivity and the Response of Remittances to the North African Countries: A Panel VAR Analyse' (2022) 29 *International Journal of Sustainable Development and World Ecology* 401, wherein the authors demonstrate the positive impact of remittances on the home state's GDP, which can enhance its ability to adapt to climate change.

¹⁷ Issah Justice Musah-Surugu and others, 'Migrants' Remittances: A Complementary Source of Financing Adaptation to Climate Change at the Local Level in Ghana' (2018) 10 *International Journal of Climate Change Strategies and Management* 178.

¹⁸ Brian Opeskin and Therese MacDermott, 'Resources, Population and Migration in the Pacific: Connecting Islands and Rim' (2009) 50 *Asia Pacific Viewpoint* 353. However, cf Himani Upadhyay and Divya Mohan, *Migration to Adapt? Contesting Dominant Narratives of Migration and Climate Change* (UNESCO 2014), wherein the authors challenge the perception of migration as a climate adaptation strategy and the positive contribution of remittances. Nevertheless, migration can help to alleviate the pressure on local natural resources, and effective migration and integration policies can help to save families from poverty.

¹⁹ Robert A McLeman and Lori M Hunter, 'Migration in the Context of Vulnerability and Adaptation to Climate Change: Insights from Analogues' (2010) 1 *Wiley Interdisciplinary Reviews: Climate Change* 450, 451; Richard Black and others, 'Migration as Adaptation' (2011) 478 *Nature* 447.

²⁰ Sanjula Weerasinghe, 'What We Know About Climate Change and Migration' (Centre for Migration Studies, February 2021) 1 <<https://cmsny.org/wp-content/uploads/2021/02/What-We-Know-About-Climate-Change-and-Migration-Final.pdf>> accessed 4 April 2024.

²¹ International Organization for Migration, *World Migration Report 2022* (PUB2021/032/L, IOM 2021) 53, according to which weather-related disasters have caused the migration of 30 million people globally, surpassing migration due to conflict and violence.

²² Black and others (n 19).

alleviate the pressures on the depleting natural resources of the home state. This increases the likelihood of rejuvenating their home state in the long run and eventually make it habitable once more. This form of movement of people out of their home state due to climate change, be it temporary or permanent, is collectively referred to in this article as ‘migration as an adaptation and mitigation strategy’.

In this context, it is crucial to recognise that climate migration is not solely caused by climate change; it is also based on other socio-political-economic factors. Climate change enhances the pressure of the pre-existing socio-political-economic problems, like unemployment and political strife, thereby speeding up the migration process.²³ For example, the reduction in water levels in local water bodies has accelerated migration from Eastern Africa, which was already witnessing increased migration due to years of conflict and violence.²⁴ Sometimes, climate change itself leads to the creation of socio-political-economic problems, which subsequently drive population movements. For example, the scarcity of certain crucial natural resources in the Central Sahel area in Africa due to climate change has sparked violent conflicts over control of the limited natural resources, resulting in large-scale migration.²⁵ This ambiguity surrounding the exact motivation for migrants, whether climatic or socio-political-economic, can lead to states rejecting climate migrants at the border.²⁶

Different climate change scenarios can also significantly affect the urgency and temporal scope of migration. Concerning urgency, climate-induced migration can be categorised as either voluntary or involuntary migration. Voluntary migration typically occurs in situations of slow-onset climate change, where the quality of life gradually deteriorates. In such instances, individuals can often freely decide where to relocate and whether to migrate with just the working members of the family or the entire family unit. By contrast, involuntary migration is prompted by cases of extreme weather-induced disasters or when the local ecosystem collapses due to prolonged climate change.²⁷ In these cases, migration becomes not a choice but a necessity for survival. Both forms of migration can occur across and within borders.²⁸ However, this article will focus on cross-border migration.

Although there is no rigid pattern, the duration for which affected individuals choose to migrate away from their home state can depend on whether the migration is induced by slow- or sudden-onset climate change. Sudden-onset events, such as hurricanes and floods, are often associated with distress migration before, during, or after the event. Such events may lead to either temporary or permanent relocation, depending on the level of disruption experienced by the migrant due to the event. Conversely, slow-onset changes entail gradual and deteriorating changes in living conditions, such as land degradation and increased occurrences of droughts. These gradual changes typically prompt temporary migration at first, which may be seasonal, although permanent migration may be considered if conditions continue to deteriorate.²⁹ In either case, the decision to migrate is often made at the household level, which might entail either the full relocation of the entire family or the migration of one or more

²³ Jane McAdam, *Climate Change, Forced Migration, and International Law* (OUP 2012) 16–17.

²⁴ International Organization for Migration, *World Migration Report 2022* (n 21) 71.

²⁵ *ibid* 68.

²⁶ McLeman (n 15) 914, highlighting the ‘hardening of borders’ caused by anti-immigrant sentiments in many countries, which suggests that international migration will become more restricted in the future.

²⁷ It should be noted that the ‘voluntariness’ of climate migration exists on a spectrum from totally voluntary to totally forced migration: see Graeme Hugo, ‘Environmental Concerns and International Migration’ (1996) 30 *International Migration Review* 105, 106–8.

²⁸ Jane McAdam and Elizabeth Ferris, ‘Planned Relocation in the Context of Climate Change: Unpacking the Legal and Conceptual Issues’ (2015) 4 *Cambridge Journal of International and Comparative Law* 137, 159.

²⁹ McLeman and Hunter (n 19) 451–53.

working individuals, on a seasonal or more permanent basis, to secure income for their families through remittances sent back home.³⁰ This article will primarily address what will be referred to as ‘long-term migration’, which involves individuals permanently relocating with or without their families in another state, either because their home state has become uninhabitable or to alleviate the pressure on its natural resources. As a point of distinction, ‘short-term migration’ will be employed to address migrants who are temporarily displaced by a specific event, with the intention to return home after the calamity subsides and the necessary infrastructure is restored. This distinction holds significant implications for policy formulation, which will be further examined in Section IV.

Climate migration not only impacts the migrants themselves but also the host states. Concerns have been raised that climate migration can exacerbate financial strains on the host state, potentially causing conflicts within it.³¹ However, such negative perceptions are contrary to the conflict-free experiences of host communities receiving large groups of climate migrants.³² Host countries have in fact been able to integrate these migrants economically in the long run.³³ High-skilled and low-skilled migrants are known to contribute to the economy of the host state.³⁴ Host states, by accepting and integrating migrants, can capitalise on the skills of climate migrants for achieving the climate change transition goals of the host states.³⁵ Similarly, host states can integrate unskilled migrants by absorbing them into sectors where there are labour shortages internally.³⁶ Thus, migration as an adaptation and mitigation strategy fosters a symbiotic relationship between the migrant, home state, and the host state. In this dynamic, the migrant receives increased economic opportunities in the host state, while the home state benefits from remittances and decreased pressure on its resources. Simultaneously, the host state’s economy is enhanced due to the contribution of the migrant. Facilitating this requires a pre-emptive formulation of policies for the easy entry and effective integration of climate migrants, which will be further explored in Section V. While such policies pose financial challenges for host states, it will be suggested that transnational financing avenues can help to address this issue.

Having explored the multifaceted nature of climate migration and its ramifications for migrants, their home state, and the host state, Section III will proceed with an assessment of the existing multilateral frameworks for human migration. Recalling the distinction between voluntary and involuntary climate-induced migration, it could be argued that climate change-induced movement often involves a high degree of involuntariness, which suggests that climate migrants should be protected under the Refugee Convention.³⁷ Others have argued for

³⁰ *ibid*; Government Office for Science (n 13) 84.

³¹ Michael Brzoska and Christiane Fröhlich, ‘Climate Change, Migration and Violent Conflict: Vulnerabilities, Pathways and Adaptation Strategies’ (2016) 5 *Migration and Development* 190, 201–4.

³² Breno Braga and Diana Elliot, ‘The Effect of Climate Migrants on the Financial Well-being of Receiving Communities’ (Urban Institute, February 2023) 17 <<https://www.urban.org/sites/default/files/2023-02/The%20Effect%20of%20Climate%20Migrants%20on%20the%20Financial%20Well-Being%20of%20Receiving%20Communities.pdf>> accessed 4 April 2024; Valentina Bosetti, Cristina Cattaneo and Giovanni Peri, ‘Should They Stay or Should They Go? Climate Migrants and Local Conflicts’ (2021) 21 *Journal of Economic Geography* 619, 642–43.

³³ Braga and Elliot (n 32) 17.

³⁴ Jonathan Woetzel and others, ‘People on the Move: Global Migration’s Impact and Opportunity’ (McKinsey Global Institute, December 2016) 61, wherein the authors highlight that migrants contribute to the host state’s economy. Although the data pertains to migrants in general, it should equally apply to climate migrants.

³⁵ Nathaniel Mason and others, ‘Migration for Climate Action: How Labour Mobility Can Help the Green Transition’ (Working Paper, ODI, May 2022) 17 <https://cdn.odi.org/media/documents/ODI_Working_paper-Migration_for_Climate_Action_cZyCpbB.pdf> accessed 4 April 2024.

³⁶ Barnett and Webber (n 2) 31.

³⁷ See n 4.

reliance on the human rights framework to avoid the refugee-migrant debate altogether.³⁸ The following section will examine these nuances and assess the efficacy of these international legal frameworks in protecting the rights of long-term migrants.

III. REFUGEE CONVENTION OR HUMAN RIGHTS: UNWORKABLE ALTERNATIVES

The migration of a person marks the beginning of a struggle for the migrant. Post-migration, migrants may face economic deterioration, conflict with the existing population in the host state, and human rights violations.³⁹ Migrants who do not qualify for refugee status are not covered by the principle of non-refoulement under the Refugee Convention, which prohibits the host state from returning a refugee to the home state when the refugee is at risk of irreparable harm upon return.⁴⁰ If climate migrants are denied admission to the host state and are forced to return to their home state, they are faced with having no legal recourse available to them.

Recognising the absence of adequate legal safeguards for climate migrants, two primary proposals have been made to protect the rights and interests of climate migrants. The two proposed alternatives have been either to add climate change as a ground for the allocation of refugee status under the Refugee Convention or to recognise the rights of climate migrants under the existing human rights framework. A combination of the two alternatives has also been proposed.⁴¹ This section will examine these proposals and assess their efficacy in protecting the rights of climate migrants, starting with the Refugee Convention.

A. EXPANDING THE SCOPE OF THE REFUGEE CONVENTION: AN UNVIABLE PROPOSITION

Article 1(2) of the Refugee Convention, coupled with the 1967 Protocol to the Convention, provides a three-factor test for classifying an individual as a refugee. These three factors are the following: (i) a well-founded fear of persecution on the basis of one's race, religion, nationality, membership of a particular social group or political opinion; (ii) that the migrant is situated outside the country of their nationality or outside the country of habitual residence (in case of persons not having any nationality); (iii) and that they are unable or unwilling (owing to the fear of persecution) to return to their home country.⁴² Among these factors, the criterion requiring a well-founded fear of persecution effectively serves as the main

³⁸ See n 6.

³⁹ Shaidl Mustafa, Darryl Newport and Clare Rigg, 'Post-Cyclonic Migration in Coastal Areas: An Assessment of Who, Where, Why Migrates, and Barriers to Migration' (2023) 92 *International Journal of Disaster Risk Reduction* 103726.

⁴⁰ Refugee Convention (n 3) art 33; Office of the United Nations Commissioner for Human Rights, 'The Principle of Non-Refoulement Under International Human Rights Law' (5 July 2018) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>> accessed 4 April 2024.

⁴¹ Shaidl Keshen and Steven Lazickas, 'Non Refoulement: A Human Rights Perspective on Environmental Migration from Small Island Developing States' (2022) 74 *Journal of International Affairs* 21; Eliza Pan, 'Reimagining the Climate Migration Paradigm: Bridging Conceptual Barriers to Climate Migration Responses' (2020) 50 *Environmental Law* 1173, wherein the authors argue for using the human rights framework to bolster the rights provided to refugees under the Refugee Convention and to extend the expanded protection to climate migrants.

⁴² Refugee Convention (n 3) art 1.

legal threshold for obtaining refugee status. The remaining two factors are essentially questions of fact.⁴³

In the context of climate migrants, there is widespread agreement that the recognised grounds for the fear of persecution are too narrow to include climate migrants.⁴⁴ Therefore, a proposal has been made to amend article 1(2) of the Convention to include imminent threat from severe climate change and disasters as a ground for granting refugee status.⁴⁵ It is argued that such an amendment would ensure better protection to climate migrants under the principle of non-refoulement.⁴⁶ However, the high threshold established by the judiciary for the granting of refugee status, coupled with the absence of favourable political will, renders the Refugee Convention an unfeasible option for protecting climate migrants.

The ‘fear of persecution’ criterion is qualified by the requirement that the fear should be well-founded. This means that, after establishing the presence of a fear of persecution, the applicant must demonstrate that this fear is objectively reasonable based on the surrounding facts and circumstances.⁴⁷ This objective standard has been upheld by national courts of various jurisdictions.⁴⁸ Applied to the case of climate migrants, the migrant would necessarily need to establish that climate change qualifies as ‘persecution’ under the Refugee Convention and that there is an objectively reasonable possibility of such ‘persecution’ upon return to the home state. This latter point might arguably be supported by scientific reports and data demonstrating the uninhabitable conditions in the home state. However, the challenge remains of establishing that climate change constitutes ‘persecution’ in the first place.

‘Persecution’ is not defined within the Refugee Convention. Academically and judicially, it is understood as an oppressive or injurious act related to the violation of certain human rights,⁴⁹ which can include socio-economic rights.⁵⁰ This violation should be severe and serious, either due to the inherent nature of the act or repeated occurrences.⁵¹ For example, constantly changing ecological factors can affect the right to life and health of residents.⁵²

Among the more severe examples could arguably be the situation faced by citizens of sinking island states. They may be subjected to fatal, extreme weather events, and the changing topology of the island can also deprive the residents of basic sustenance and cultural rights, as

⁴³ Paul Weis, ‘The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis’ (UNHCR 1990) 7 <<https://www.unhcr.org/in/media/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul-weis>> accessed 4 April 2024.

⁴⁴ McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 43–46; Matthew Scott, ‘Climate Refugees and the 1951 Convention’ in Satinder Singh Juss (ed), *Research Handbook on International Refugee Law* (Edward Elgar Publishing 2019) 348.

⁴⁵ See n 4.

⁴⁶ Refugee Convention (n 3) art 33.

⁴⁷ Weis (n 43) 7–8; Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, OUP 2007) 54.

⁴⁸ See for example *INS v Cardoza-Fonseca*, 480 US 421 (1987); *R v Secretary of State for the Home Department, ex p Sivakumaran* [1988] AC 958 (HL); *Adjei v Canada (Minister of Employment and Immigration)* [1989] 2 FC 680 (CA FCA); *R v Governor of Pentonville Prison, ex p Fernandez* [1971] 1 WLR 987 (HL).

⁴⁹ Weis (n 43) 8–9.

⁵⁰ McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 43; Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (CUP 2007) ch 3.

⁵¹ McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 43.

⁵² *Sacchi v Argentina Communication* No 104/2019, UN Doc CRC/C/88/D/104/2019 (CRC, Decision of 8 October 2021), wherein the Committee on the Rights of the Child recognised the threat to children’s right to life posed by environmental changes, although ultimately finding the petitioners’ communication inadmissible due to their failure to exhaust domestic remedies.

livelihoods, culture, and the local ecosystem are intricately linked.⁵³ Moreover, frequent over-washes due to rising sea levels can lead to a scarcity of potable fresh water.⁵⁴ Nevertheless, even if these factors might initially qualify as a human rights violation that takes the form of ‘persecution’, the term also implies the presence of a ‘persecutor’. In this context, it would be challenging to attribute the negative effects of climate change to the host state governments, unless they deliberately develop policies that exacerbate the adverse impact on the population.⁵⁵

However, even if the impact of climate change were to qualify as ‘persecution’, article 1(2) of the Refugee Convention also requires such persecution to be based on ‘race, religion, nationality, membership of a particular social group or political opinion’. This introduces a discriminatory element, meaning that climate migrants seeking refugee status must effectively demonstrate that the fear of climate change disproportionately affects them compared to other residents of their home state. However, this can be challenging because the impact of climate change is largely indiscriminate.⁵⁶ In practice, the applicant must show that the home state has refused to aid affected individuals based on some discriminatory intent.⁵⁷ This strict interpretation tends to exclude both voluntary and involuntary climate migrants, since such cases would likely be rare and difficult to prove. Consequently, the Refugee Convention currently offers limited protection to climate migrants.

In response to this limitation of the Refugee Convention, proposals were made by the Government of the Maldives in 2006 and a Bangladeshi minister in 2009 to amend the Convention to include climate change as a ground of persecution.⁵⁸ Several academics have also proposed a similar amendment to the Convention.⁵⁹ However, there appears to be an absence of the requisite political will to make these amendments. As noted by Jane McAdam, the mere fact that there are millions of displaced persons despite 148 ratifications to the Refugee Convention is testament to the absence of the requisite political will to amend the Convention.⁶⁰

One point to consider is that expanding the scope of the Refugee Convention or even framing a new convention for climate migrants would likely be a very time-consuming

⁵³ Stephen P Leatherman and Nancy Beller-Simms, ‘Sea-Level Rise and Small Island States: An Overview’ (1997) 24 *Journal of Coastal Research* 1, 3–4; *Billy v Australia* Communication No 3624/2019, UN Doc CCPR/C/135/D/3624/2019 (HRC, Views of 18 September 2023), wherein the United Nations Human Rights Committee recognised the threat of unrestrained climate change on the cultural rights of affected communities.

⁵⁴ John Connell, ‘Losing Ground? Tuvalu, the Greenhouse Effect and the Garbage Can’ (2003) 44 *Asia Pacific Viewpoint* 89, 91.

⁵⁵ McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 45. However, cf Jessica B Cooper, ‘Environmental Refugees: Meeting the Requirements of the Refugee Definition’ (1998) 6 *New York University Environmental Law Journal* 480, 502–21, where it is argued that government action (or inaction) contributing to the degradation of the environment can qualify as ‘persecution’.

⁵⁶ McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 44, 46; *RRT Case No 0907346* [2009] RRTA 1168 (Aus RRT, 10 December 2009); *Mohammed Motaahir Ali v Minister for Immigration, Local Government and Ethnic Affairs* [1994] FCA 887 (Aus FCA); *Refugee Appeal No 72186/2000* (NZ RSA, 10 August 2000); *Refugee Appeal Nos 72189/2000, 72190/2000, 72191/2000, 72192/2000, 72193/2000, 72194/2000 and 72195/2000* (NZ RSA, 17 August 2000); *Applicant A v Minister for Immigration and Ethnic Affairs* [1997] HCA 4 (Aus HC).

⁵⁷ *Refugee Appeal No 76374* (NZ RSA, 28 October 2009); *RN (Returnees) Zimbabwe CG* [2008] UKAIT 00083 [249].

⁵⁸ Frank Biermann and Ingrid Boas, ‘Protecting Climate Refugees: The Case for a Global Protocol’ (2008) 50 *Environment: Science and Policy for Sustainable Development* 8, 11; Harriet Grant, James Randerson and John Vidal, ‘UK Should Open Borders to Climate Refugees, Says Bangladeshi Minister’ *The Guardian* (Dhaka, 4 December 2009) <<https://www.theguardian.com/environment/2009/nov/30/rich-west-climate-change>> accessed 4 April 2024.

⁵⁹ See n 4.

⁶⁰ McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 199.

process.⁶¹ This time could be better utilised for creating practical solutions to accommodate the concerns of climate migrants.⁶² Lastly, there is also the issue that climate migration is a multi-causal action, as noted in Section II of this article. This can cause practical difficulties when seeking to distinguish climate migrants who relocate due to climatic factors from those who move primarily due to socio-economic-political factors.⁶³ McAdam even argues that refugee status should not be narrowed down to the factor of climate change, since climate migrants should be offered protection irrespective of the nature of the threat faced back home.⁶⁴ However, although states might be responsive to displacements caused by sudden disasters, treaty proposals aimed at providing protection to migrants affected by slow-onset changes are unlikely to gain political traction.⁶⁵ While we can hope that states might eventually recognise the severity of threats posed by climate change and accordingly offer a higher level of protection to climate migrants, expecting them not to consider climate change as the primary factor in granting refugee status under the Refugee Convention might be overly optimistic. Therefore, the proposal to amend the Convention to include climate migrants within its scope seems unlikely at present.

Having ruled out the Refugee Convention as a viable option for protecting the rights and interests of climate migrants, the next subsection will explore the effectiveness of the existing human rights framework as an alternative.

B. HUMAN RIGHTS TO THE RESCUE: A NARROW-SCOPED REMEDY

Reliance on the existing human rights framework has been presented as a promising alternative to protecting the interests of climate migrants.⁶⁶ The utility of the human rights framework lies in its universality, which applies irrespective of nationality, race, sex, or affiliation.⁶⁷ Failing to meet the criteria for protection under the Refugee Convention, climate migrants might instead qualify for protection under the concept of ‘complementary protection’.⁶⁸ This concept refers to a range of situations under which states offer protection to individuals who are ineligible for refugee status under the Refugee Convention, yet face a significant threat to their human rights, warranting refuge in the host state.⁶⁹ It is primarily based on the right to life (recognised under article 3 of the Universal Declaration of Human Rights⁷⁰ and article 6 of the International Covenant on Civil and Political Rights (‘ICCPR’)⁷¹) and the right against

⁶¹ Dina Ionesco, ‘Let’s Talk About Climate Migrants, Not Climate Refugees’ (*Sustainable Development Goals*, 6 June 2019) <<https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/>> accessed 4 April 2024.

⁶² McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 189–90.

⁶³ Marshall (n 4) 64.

⁶⁴ McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 197.

⁶⁵ *ibid* 194.

⁶⁶ Jane McAdam and others, ‘International Law and Sea-Level Rise: Forced Migration and Human Rights’ (FNI Report 1/2016, Fridtjof Nansen Institute 2016) 43–45 <<https://www.fni.no/publications/international-law-and-sea-level-rise-forced-migration-and-human-rights>> accessed 4 April 2024; Anja Mihr, ‘Climate Justice, Migration and Human Rights’ in Manou and others (n 5) 49–54.

⁶⁷ McAdam and others (n 66) 43.

⁶⁸ See generally Giovanni Sciacaluga, *International Law and the Protection of ‘Climate Refugees’* (Palgrave Macmillan 2020) ch 11.

⁶⁹ Jane McAdam, *Complementary Protection in International Refugee Law* (OUP 2007) 2–3.

⁷⁰ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) art 3.

⁷¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (‘ICCPR’) art 6(1).

cruel, inhuman, or degrading treatment (recognised under article 7 of the ICCPR).⁷² In the context of the ICCPR, article 2 provides that state parties undertake to safeguard the rights recognised in the Covenant, which has been interpreted as encompassing a duty not to remove individuals from their territory if doing so creates ‘substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant’.⁷³

While the broader scope of complementary protection might theoretically protect climate migrants from being sent back to their home states, meeting the conditions for protection would still be challenging. Establishing the violation of a right under the ICCPR requires the applicant to establish an actual or imminent risk of a specific and sufficiently severe harm that personally affects the individual.⁷⁴ In practice, this requirement aligns more closely with the circumstances of individuals displaced by sudden environmental disasters than with those induced to migrate by slow-onset climate change.⁷⁵

The *Teitiota* opinion⁷⁶ serves as a compelling illustration of these challenges. In this case, a Kiribati national sought refugee status in New Zealand, contending that the living conditions on his home island of Tawara had become untenable due to rising sea levels, resulting in a scarcity of potable water, overcrowding, and increased violence due to land disputes. With his refugee status rejected by New Zealand authorities, the applicant applied to the Human Rights Committee to consider whether sending him back to Kiribati violated his right to life under article 6 of the ICCPR. However, the Committee concluded that the applicant fell short of the high threshold for providing substantial grounds to establish the existence of a real risk of irreparable harm. Firstly, there was no general conflict in Kiribati, and the applicant had only referred to sporadic incidents of violence resulting from land disputes, none of which had involved him directly.⁷⁷ Secondly, while the scarcity of potable water, rationed out by local authorities, was recognised as a hardship, there was no indication that the supply was inaccessible, insufficient, or unsafe.⁷⁸ Thirdly, although the conditions made it difficult to grow crops, it was not impossible.⁷⁹ Lastly, the risk to life due to rising sea levels was not deemed sufficiently imminent. Projections indicated that Kiribati would not be submerged for the next 10–15 years, during which time the state could take affirmative measures to protect or relocate its population.⁸⁰ Consequently, although state authorities needed to take into account the ongoing developments in Kiribati in future cases before them, the Committee did not find the applicant’s rights under article 6 of the ICCPR to have been violated in this instance.⁸¹

The Committee’s opinion provides valuable insights on the extent to which climate migrants can rely on the right to life to seek protection from being returned home. Firstly, it is notable that the Committee explicitly acknowledged that both slow-onset and sudden-onset processes might qualify as a violation of rights under articles 6 and 7 of the ICCPR, at least

⁷² *ibid* art 7.

⁷³ *Teitiota v New Zealand* Communication No 2728/2016, UN Doc CCPR/C/127/D/2728/2016 (HRC, Views of 23 September 2020) [9.3], referring to UNHRC, ‘General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 12.

⁷⁴ *Aalbersberg v Netherlands* Communication No 1440/2005, UN Doc CCPR/C/87/D/1440/2005 (HRC, Views of 14 August 2006) [6.3].

⁷⁵ McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 84–87.

⁷⁶ *Teitiota* (n 73).

⁷⁷ *ibid* [9.7].

⁷⁸ *ibid* [9.8].

⁷⁹ *ibid* [9.9].

⁸⁰ *ibid* [9.12].

⁸¹ *ibid* [9.14].

‘without robust national and international efforts’.⁸² However, in this particular case, the fact that there were 10–15 years before the threat would likely materialise was deemed insufficient in the light of the adaptive measures undertaken by the Kiribati Government. In practice, this would seem effectively to exclude most cases of voluntary migration due to slow-onset changes as an adaptation and mitigation strategy, either because the threat to rights under the ICCPR are too distant in time or because the host state is making efforts to adapt. Secondly, the threshold employed by the Committee for finding a violation of article 6 seems unreasonably high. As one of the dissenting members noted, the deteriorating health situation and, especially, the considerable difficulties in accessing potable water of sufficient quality should be sufficient to reach the threshold of risk. The threshold should not be set so high as to require a complete lack of potable water or that deaths have already become very frequent.⁸³ Lastly, the Committee appears to have relied too heavily on the adaptive policies of the Kiribati Government in a way that seems to emphasise intent over actual results. The second dissenter highlighted that, although there was a national sanitation policy in place, it had yet to be implemented and it should therefore fall to the state party to demonstrate that the family had access to potable water.⁸⁴ In sum, the Committee’s opinion illustrates the challenging predicament of climate migrants, whose protection not only depends on severe human rights violations caused by climate change but also that the home state practically abandons them.

To conclude, climate migrants face significant challenges in pursuing an international protection claim under human rights law. However, although the *Teitiota* opinion is not binding, the growing awareness of the negative effects of climate change and the two dissenting opinions might pave the way for more inclusive protection in the future. Nevertheless, scepticism regarding the effectiveness of complementary protection for climate migrants appears justified at present.⁸⁵ The limited protective scope of the human rights framework highlights the necessity for a specialised regime dedicated to safeguarding the rights of climate migrants, particularly those seeking long-term relocation to enhance adaptability for themselves and their families in response to the changing environment. This alternative will be explored in the next section.

IV. BILATERAL AND REGIONAL COOPERATION: OVERCOMING LEGAL HURDLES THROUGH POLICY

To overcome the limitations outlined above concerning the Refugee Convention and the human rights framework, proposals have been made for the creation of new *sui generis* frameworks tailored to the rights and interests of climate migrants. While some advocate for the creation of a new multilateral framework⁸⁶ based on principles of climate justice and responsibility sharing, others propose to rely on bilateral and regional agreements to promote the

⁸² *ibid* [9.11].

⁸³ *ibid* annex I [3]–[5].

⁸⁴ *ibid* annex II [5].

⁸⁵ This scepticism is also shared by other authors. See for example Sciacaluga (n 68) 167–77; McAdam, *Climate Change, Forced Migration, and International Law* (n 23) 98.

⁸⁶ Docherty and Giannini (n 7) 391; John Podesta, ‘The Climate Crisis, Migration, and Refugees’ (*Brookings*, 25 July 2019) <<https://www.brookings.edu/articles/the-climate-crisis-migration-and-refugees/>> accessed 4 April 2024.

free movement of climate migrants.⁸⁷ Between these two proposals, the latter seems to be more persuasive for several reasons.

Firstly, the impact of climate change and the consequent enhanced scale of human movement is rapidly increasing, demanding urgent attention and resolution.⁸⁸ As rightly noted by McAdam, prioritising the formation of a new multilateral framework would divert attention away from protecting climate migrants at present.⁸⁹ Secondly, the impact of climate change varies across regions,⁹⁰ necessitating tailored strategies and policies to address the specific concerns of each region. Thirdly, there is a notable lack of political will to address the concerns of climate migrants, a crucial element for the success of any multilateral instrument. The deployment of military forces by some states to prevent the entry of climate migrants,⁹¹ alongside negative political rhetoric to subvert the migrants' cause,⁹² illustrates the absence of political concern for the welfare of climate migrants. Rather, some states prioritise defending their sovereign right to regulate entry, placing this right above any humanitarian concern for the welfare of migrants.⁹³

Hence, bilateral and regional policies seem to be the most viable path forward given the current circumstances. Sections IV.B to IV.C and V will focus only on some selected regional initiatives that address the concerns of climate migrants, specifically focusing on some key instruments and policies from the Caribbean and African regions. The aim is to offer a detailed analysis of best practices for addressing the concerns and interests of climate migrants, providing valuable guidelines for future adoption. First, however, Section IV.A will briefly examine the viability of land purchase agreements as another alternative bilateral solution.

⁸⁷ Ama Francis, 'Free Movement Agreements and Climate-Induced Migration: A Caribbean Case Study' (Sabin Center for Climate Change Law 2019) <https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1061&context=sabin_climate_change> accessed 4 April 2024; Kamal Amakrane, 'Sinking Out of Sight' (2021) 77(1) *The World Today* 27 <<https://reader.exacteditions.com/issues/91969/page/27?term=kamal>> accessed 4 April 2024; Jane McAdam, 'Swimming Against the Tide: Why a Climate Change Displacement Treaty Is Not the Answer' (2011) 23 *International Journal of Refugee Law* 2.

⁸⁸ Elizabeth Ferris, 'Climate Migrants Can't Wait for Global Frameworks' *The Wilson Quarterly* (Washington DC, Fall 2021) <https://www.wilsonquarterly.com/quarterly/_/climate-migrants-cant-wait-for-global-frameworks> accessed 4 April 2024; Gaia Vince, 'The Century of Climate Migration: Why We Need to Plan for the Great Upheaval' *The Guardian* (London, 18 August 2022) <<https://www.theguardian.com/news/2022/aug/18/century-climate-crisis-migration-why-we-need-plan-great-upheaval>> accessed 4 April 2024.

⁸⁹ McAdam, 'Swimming Against the Tide' (n 87) 5, 26.

⁹⁰ See generally Frank Laczko and Etienne Piguet, 'Regional Perspectives on Migration, the Environment and Climate Change' in Etienne Piguet and Frank Laczko (eds), *People on the Move in a Changing Climate: The Regional Impact of Environmental Change on Migration* (Springer 2014) 9-15, wherein the authors discuss the different climatic issues faced by different regions.

⁹¹ Holly Locke, 'Use of Force in Crisis: A Comparative Look at the Domestic and International Laws Governing the Use of U.S. Military Force to Respond to Mass Climate Refugee Migration' (2020) 26 *Hastings Environmental Law Journal* 27.

⁹² Ingrid Boas and others, 'Climate Migration Myths' (2019) 9 *Nature Climate Change* 901.

⁹³ United Nations, 'General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants' (Press Release, 19 December 2018) <<https://press.un.org/en/2018/ga12113.doc.htm>> accessed 4 April 2024, wherein five states voted against the Global Compact, citing concerns over its perceived infringement of their sovereign right to regulate the entry of people into their territory.

A. LAND PURCHASE AGREEMENTS: AN UNTESTED BILATERAL OPTION

Climate change poses a significant threat of submersion to small island developing states ('SIDS'), threatening their very existence as sovereign states.⁹⁴ For their citizens, territorial submersion can lead to property loss, food and water scarcity, and the erasure of cultural ties.⁹⁵ States with substantial agrarian economies may be significantly impacted from recurring natural disasters, water scarcity, erratic rainfall, and extreme temperatures.⁹⁶ This impact on agriculture can in turn affect the right to life, employment, food, and sustenance of the citizens.⁹⁷ One intriguing solution for affected states in both instances is to purchase land from other states, enabling food production and the relocation of their citizens to safer territories.⁹⁸

There are already some early examples of SIDS procuring or intending to procure land due to climate change concerns. In 2008, the Maldives Government disclosed its plan to approach Sri Lanka and India to purchase land for relocating its citizens whose livelihoods were endangered by rising sea levels.⁹⁹ Then, in 2014, the Government of Kiribati attracted significant media attention when it purchased 5,500 acres of land in Fiji, leading Kiribati to be initially perceived as the first SIDS to have purchased land for relocation purposes.¹⁰⁰ However, it was later revealed that the primary purpose of the purchase was to utilise the land for development, cultivation, and food production.¹⁰¹

One significant drawback of land purchase agreements is the general unattractiveness of fully ceding land. Ideally, land purchase agreements by submerging SIDS would involve the formal cession of territory, entailing a full transfer of sovereignty to the purchaser, as this would enable them to retain sovereign status if their original territory becomes submerged.¹⁰² However, in practice, states are highly unlikely to cede permanently a portion of their sovereign territory unless it is virtually uninhabitable and devoid of resources or other value whatsoever.¹⁰³ Even if submerging SIDS were granted land ownership on humanitarian grounds, the transferring state would likely seek to retain sovereignty over its territory rather than

⁹⁴ Derek Wong, 'Sovereignty Sunk? The Position of "Sinking States" at International Law' (2013) 14 *Melbourne Journal of International Law* 346; Climate Change Secretariat (UNFCCC), *Climate Change: Small Island Developing States* (UNFCCC 2005) 16–23.

⁹⁵ Climate Change Secretariat (UNFCCC) (n 94) 16–23; Alex Julca and Oliver Paddison, 'Vulnerabilities and Migration in Small Island Developing States in the Context of Climate Change' (2010) 55 *Natural Hazards* 717.

⁹⁶ International Organization for Migration, 'Climate Change and Migration in Vulnerable Countries: A Snapshot of Least Developed Countries, Landlocked Developing Countries and Small Island Developing States' (2019) <https://publications.iom.int/system/files/pdf/climate_change_and_migration_in_vulnerable_countries.pdf> accessed 4 April 2024.

⁹⁷ ICCPR (n 71) art 6; International Covenant on Economic, Social, and Cultural Rights (opened for signature 19 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 11.

⁹⁸ Ori Sharon, 'To Be or Not to Be: State Extinction Through Climate Change' (2021) 51 *Environmental Law* 1041.

⁹⁹ Randeep Ramesh, 'Paradise Almost lost: Maldives Seek to Buy a New Homeland' *The Guardian* (Malé, 10 November 2008) <<https://www.theguardian.com/environment/2008/nov/10/maldives-climate-change>> accessed 4 April 2024.

¹⁰⁰ James Ellsmore and Zachary Rosen, 'Kiribati's Land Purchase in Fiji: Does It Make Sense?' (*Devpolicy Blog*, 11 January 2016) <<https://devpolicy.org/kiitibatis-land-purchase-in-fiji-does-it-make-sense-20160111/>> accessed 4 April 2024.

¹⁰¹ Elfriede Herrmann and Wolfgang Kenpf, 'Climate Change and the Imagining of Migration: Emerging Discourses on Kiribati's Land Purchase in Fiji' (2017) 29 *The Contemporary Pacific* 231, 238–39.

¹⁰² Emma Allen, 'Climate Change and Disappearing Island States: Pursuing Remedial Territory' (2018) *Brill Open Law* (advance articles) 10–11 <<https://doi.org/10.1163/23527072-00101008>> accessed 4 April 2024. Some scholars also argue that submerging SIDS have a right to re-establish territorial sovereignty in this way. See for example Kim Angell, 'New Territorial Rights for Sinking Island States' (2021) 20 *European Journal of Political Theory* 95.

¹⁰³ Rosemary G Rayfuse, 'International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma' (2010) UNSW Law Research Paper No 2010-52, 9 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1704835> accessed 4 April 2024.

formally ceding it.¹⁰⁴ Formally ceding the land would not only be economically unattractive but also politically and legally challenging.¹⁰⁵ This makes it unsurprising that Fiji retained sovereignty over the land purchased by Kiribati, allowing the Fijian Government effectively to retain control over the potential use of the land for relocation purposes.¹⁰⁶

The issues involving land purchase agreements could theoretically be resolved through internal political support for the cession of territory and conducive relations between the ceding and purchasing states. However, given the article's focus on regional plurilateral cooperation, the attention will now shift towards some selected regional policies adopted by Caribbean (Subsection B) and African (Subsection C) nations for protecting climate migrants.

B. FREE MOVEMENT AGREEMENTS: USING ECONOMIC FRAMEWORKS FOR PROTECTION

Free Movement Agreements ('FMAs') are regional economic liberalisation instruments that facilitate enhanced movement of persons across the borders of member states party to the agreement. These agreements typically relax entry and exit requirements while granting a plethora of rights to migrants.¹⁰⁷ Although FMAs normally focus on enhancing the mobility of labour and capital across borders, they are slowly being used for extending aid and recognising the rights of climate migrants.¹⁰⁸ This shift is notably observed in the Caribbean Community ('CARICOM') and the Organisation of Eastern Caribbean States ('OECS').

First among the two, the CARICOM Single Market Community was established in 1973 under the Treaty of Chaguaramas.¹⁰⁹ It presently comprises 15 member states and five associate members.¹¹⁰ The Revised Treaty of Chaguaramas, which was introduced in 2001, commits all member states to achieving the free movement of their citizens within the CARICOM.¹¹¹ To this end, CARICOM nationals are granted visa-free stays of up to six months in other CARICOM states.¹¹² It further mandates preferential treatment for skilled migrants, allowing certain 'approved' categories of workers to access the labour market of

¹⁰⁴ Lilian Yamamoto and Miguel Esteban, *Atoll Island States and International Law: Climate Change Displacement and Sovereignty* (Springer 2014) 195–97.

¹⁰⁵ Arthur K Kuhn, 'The Treaty-Making Power and the Reserved Sovereignty of States' (1907) 7 *Columbia Law Review* 172; Ted Cruz, 'Limits on the Treaty Power' (2014) 127 *Harvard Law Review Forum* 93; Srinivas Burra, 'Where Does India Stand on the Right to Self-Determination?' (2017) 52 *Economic and Political Weekly* 21; 'Norway Will Not Give Halti Mount Summit to Finland' *BBC News* (London, 14 October 2016) <<https://www.bbc.com/news/world-europe-37662811>> accessed 4 April 2024, wherein Norway decided against ceding the mountain due to constitutional restraint on the cession of territory.

¹⁰⁶ Hermann and Kempf (n 101) 239.

¹⁰⁷ Sonja Nita and others, 'Migration, Free Movement and Regional Integration: Introduction' in Sonja Nita and others (eds), *Migration, Free Movement and Regional Integration* (UNESCO Publishing 2017). A well-known example of an entity that facilitates free movement in this manner is the EU, which contains various agreements that facilitate the free movement of goods, services, capital, and people between its member states. For an accessible overview, see Ottavio Marzocchi, 'Free Movement of Persons' (*European Parliament*, April 2023) <<https://www.europarl.europa.eu/factsheets/en/sheet/147/free-movement-of-persons>> accessed 4 April 2024.

¹⁰⁸ Francis (n 87) 14–19.

¹⁰⁹ Treaty Establishing the Caribbean Community (adopted 4 July 1973, entered into force 1 August 1973).

¹¹⁰ 'Member States and Associate Members' (*CARICOM Caribbean Community*) <<https://caricom.org/member-states-and-associate-members/>> accessed 4 April 2024.

¹¹¹ Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (adopted 5 July 2001, entered into force 1 January 2006) 2259 UNTS 293 ('Revised Treaty of Chaguaramas') art 45.

¹¹² Francis (n 87) 15.

other member states without a passport or work permit.¹¹³ Notably, the Treaty also mandates the ‘harmonisation and transferability of social security benefits’,¹¹⁴ which is achieved through the CARICOM Agreement on Social Security.¹¹⁵ However, the Agreement only applies for individuals relocating for work or those who have previously worked in two or more CARICOM countries.¹¹⁶

The second organisation, the OECS, was established under the Treaty of Basseterre in 1981, currently comprising 11 member states.¹¹⁷ Like the Revised Treaty of Chaguaramas, the Revised Treaty of Basseterre, through its Protocol of Eastern Caribbean Economic Union, also mandates the removal of all obstacles to the free movement of ‘persons, services and capital’.¹¹⁸ Consequently, all citizens of OECS member states enjoy the freedom of movement, equal employment opportunities, and a right to indefinite stay in other OECS member states.¹¹⁹ Furthermore, under the OECS Contingent Rights Policy, OECS citizens, along with their spouse and dependents, are granted various rights contingent upon the freedom of movement between states within the OECS. These rights include access to social security, healthcare, as well as primary and secondary education.¹²⁰

While CARICOM and the OECS were established for employment and economic cooperation purposes, they were instrumental in protecting three million people displaced by severe hurricanes in 2017.¹²¹ In particular, Hurricane Maria displaced a significant number of citizens from the Commonwealth of Dominica, which enjoys membership status in both the CARICOM and the OECS.¹²² Guided by the CARICOM free movement principles, Trinidad and Tobago—solely a CARICOM member—temporarily admitted Dominican citizens displaced by Hurricane Maria without any visa requirements.¹²³ The Trinidadian population also opened their homes to the displaced Dominicans, providing them with shelter, and educational services for the displaced children was provided by the Government.¹²⁴

In the same year, Antigua—an OECS member state—also granted affected Dominicans the right of entry with an automatic six-month visa based on any government documentation that they could present. Moreover, special facilities were created for individuals who had lost all of their documentation.¹²⁵ Some individuals were also granted indefinite right to

¹¹³ Revised Treaty of Chaguaramas (n 111) art 46(2)(b).

¹¹⁴ *Ibid* art 46(2)(b)(iv).

¹¹⁵ CARICOM Agreement on Social Security (adopted 1 March 1996, entered into force 1 April 1997).

¹¹⁶ *Ibid* art 3.

¹¹⁷ ‘Member States’ (*Organisation of Eastern Caribbean States*) <<https://www.oecs.org/en/who-we-are/member-states>> accessed 4 April 2024.

¹¹⁸ Revised Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union (adopted 18 June 2010, entered into force 20 January 2011), Protocol of Eastern Caribbean Economic Union (‘OECS Protocol’) art 3(e).

¹¹⁹ *Ibid* art 12. However, member states retain the right to regulate the movement of citizens with the approval of the OECS Authority under art 12(5). See also ‘Free Movement of Persons in the Eastern Caribbean’ (*Organisation of Eastern Caribbean States*) <<https://www.oecs.org/en/free-movement-in-the-eastern-caribbean#>> accessed 4 April 2024.

¹²⁰ Regional Integration Unit (OECS Commission), *OECS Policy on Rights Contingent on the Right to Freedom of Movement Within the Economic Union* (OECS Commission 2015) 6–7.

¹²¹ Francis (n 87) 17–18.

¹²² See n 110 and n 117.

¹²³ ‘T&T PM Asks Citizens to Welcome Dominicans Devastated by Hurricane Maria’ *Stabroek News* (Georgetown, Guyana, 22 September 2017) <<https://www.stabroeknews.com/2017/09/22/news/guyana/tt-pm-asks-citizens-to-welcome-dominicans-devastated-by-hurricane-maria/>> accessed 4 April 2024.

¹²⁴ Darlisa Ghoural, ‘Generous’ T&T Opens Its Doors to Displaced Dominicans’ *Loop T&T News* (21 September 2017) <<https://tloopnews.com/content/generous-tt-opens-its-doors-to-displaced-dominicans#>> accessed 4 April 2024.

¹²⁵ ‘Antigua Prepares for Influx of Dominicans’ *Antigua News Room* (24 September 2017) <<https://antiguanewsroom.com/antigua-prepares-for-influx-of-dominicans/>> accessed 5 April 2024.

stay based on the free movement of persons obligations within the OECS framework, thus facilitating permanent resettlement.¹²⁶ Accordingly, the FMAs in the Caribbean region have demonstrated their effectiveness in addressing the concerns of climate migrants forced to flee their home state due to climate-related calamities.¹²⁷

Presently, both the CARICOM and the OECS are developing policies to regulate and manage climate-induced migration.¹²⁸ CARICOM is aiming to achieve free movement of citizens within the Community by 2024, intending to draw upon principles of the Global Compact on Safe, Orderly and Regular Migration—a legally non-binding international agreement on migration negotiated under the auspices of the United Nations.¹²⁹ This policy framework strives towards cooperation amongst members, ensuring protection of the human rights of migrants and enhancing sustainable development. Similarly, the OECS is also planning a policy for regulating migration due to climate change in cases of ‘disasters, environmental degradation and climate change’.¹³⁰ While these policy initiatives aimed at regulating the movement of climate migrants are commendable, any assessment on their efficacy in protecting the rights and interests of climate migrants must await the public release and implementation of these policies. With this, attention will now turn from the Caribbean to the African regions in Subsection C below.

C. CONVENTIONS, DECLARATIONS, AND POLICIES: THE AFRICAN WAY

The African regions have been working towards protecting the rights of climate migrants through binding multilateral instruments and regional policies. A key instrument in this regard is the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (‘OAU Refugee Convention’), negotiated under the auspices of the now-defunct Organisation of African Unity (‘OAU’).¹³¹ Expanding upon the principles established in the Refugee Convention and its 1967 Protocol, the OAU Refugee Convention broadens the scope of protection to include persons compelled to leave their country due to ‘external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality’.¹³² In theory, the ‘events seriously disturbing public order’ criterion might be broad enough to encompass climate change disasters. However, the scope of this provision has been criticised for its lack of clarity, with courts and

¹²⁶ Francis (n 87) 27.

¹²⁷ *ibid.*

¹²⁸ International Organization for Migration, ‘CARICOM Advances in the Roadmap for Developing a Regional Migration Policy’ (Press Release, 29 August 2023) <<https://rosanjose.iom.int/en/news/caricom-advances-roadmap-developing-regional-migration-policy>> accessed 4 April 2024; International Organization for Migration, ‘OECS Countries Plan for Management of Cross-border Movements Due to Disasters and Climate Change’ (Press Release, 22 March 2023) <<https://rosanjose.iom.int/en/news/oecs-countries-plan-management-cross-border-movements-due-to-disasters-and-climate-change>> accessed 4 April 2024.

¹²⁹ Maxine Alleyne, ‘UN Agencies and CARICOM Collaborate on Regional Migration Policy for the Caribbean’ (*United Nations Caribbean*, 10 November 2023) <<https://caribbean.un.org/en/252966-un-agencies-and-caricom-collaborate-regional-migration-policy-caribbean>> accessed 4 April 2024. See further UNGA, ‘Global Compact for Safe, Orderly and Regular Migration’ (19 December 2018) UN Doc A/RES/73/195.

¹³⁰ ‘OECS Countries Plan for Management of Cross-border Movements Due to Disasters and Climate Change’ (*Platform on Disaster Displacement*, 30 March 2023) <<https://disasterdisplacement.org/blog/2023/03/30/oecs-countries-plan-for-management-of-cross-border-movements-due-to-disasters-and-climate-change/>> accessed 4 April 2024.

¹³¹ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1969) 1001 UNTS 45.

¹³² *ibid* art 1(2).

officials sometimes setting the threshold unreasonably high, often limiting its application to cases of virtually complete socio-economic breakdown or state collapse.¹³³ This effectively renders cases of voluntary migration due to slow-onset climate change outside the scope of the Convention. Unfortunately, it remains unclear whether the provision extends to migration due to climate change disasters, although the ‘serious’ criterion implies that not all disasters would meet the threshold for protection.¹³⁴ This uncertainty has led to a preference for granting refugee status on alternative grounds whenever possible. For example, during the 2011 East Africa drought, Somali migrants were generally granted refugee status based on human factors, such as the ongoing civil war, even when they were alleged to have fled due to the drought’s impact.¹³⁵

Apart from the OAU, the Intergovernmental Authority on Development (‘IGAD’) has formulated numerous regional policies addressing the concerns of climate migrants in the African regions. IGAD was established in 1996 to mitigate the effects of recurrent droughts and famines leading to economic hardships through regional cooperation.¹³⁶ In 2008, IGAD initiated a Regional Consultative Process aimed at developing policies to regulate migration.¹³⁷ Their last Migration Action Plan, developed in 2014, outlined strategies for admission of climate migrants, but only for climate change natural disaster-induced migrants.¹³⁸ Similarly, the IGAD Regional Climate Change Strategy provides for the development of migration policies to address the needs of individuals displaced by climate change-induced disasters.¹³⁹

In 2020, IGAD adopted the Protocol on the Free Movement of Persons in the IGAD Region, which recognises the right of all the citizens of the member states to enter and exit the territories of the member states.¹⁴⁰ To this end, the Protocol affords visa-free entry of citizens into other member states for a minimum initial period of 90 days,¹⁴¹ and member state citizens are further granted the right to residence, work, self-employment, and social security in accordance with the laws and policies of the host state.¹⁴² Notably, the Protocol explicitly acknowledges how free movement can alleviate the adverse effects of both severe climate-induced disasters and gradual environmental degradation.¹⁴³ Therefore, it obligates the member states to allow other member state citizens entry in anticipation of, during, or in the

¹³³ Tiyanjana Maluwa and Anton Katz, ‘Who Is a Refugee? Twenty-Five Years of Domestic Implementation and Judicial Interpretation of the 1969 OAU and 1951 UN Refugee Conventions in Post-Apartheid South Africa’ (2020) 27 *Indiana Journal of Global Legal Studies* 131, 192–97.

¹³⁴ *ibid* 196–97; Sanjula Weerasinghe, ‘In Harm’s Way: International Protection in the Context of Nexus Dynamics Between Conflict or Violence and Disaster or Climate Change’ (PPLA/2018/05, UNCHR, December 2018) 56–57 <<https://www.refworld.org/docid/5c2f54fe4.html>> accessed 4 April 2024.

¹³⁵ Weerasinghe, ‘In Harm’s Way’ (n 134) 56.

¹³⁶ ‘About IGAD’ (*IGAD*) <<https://igad.int/about/>> accessed 4 April 2024.

¹³⁷ Declaration on the Establishment of Intergovernmental Authority on Development (IGAD) Regional Consultative Process (IGAD-RCP) On Migration (adopted 14 May 2008).

¹³⁸ IGAD, ‘IGAD-Migration Action Plan (MAP) to Operationalize the IGAD Regional Migration Policy Framework (IGAD-RMPF): 2015–2020’ (2014) <<https://www.ion.int/sites/g/files/tmzbdl486/files/2018-07/igadmigrationactionplan2015-2020.pdf>> accessed 4 April 2023. A revised action plan for 2024–2028 is expected to be published soon, having recently been validated by the IGAD member states: ‘IGAD Validated the Second Phase of Migration Action Plan’ (*IGAD*, 15 November 2023) <<https://igad.int/igad-validated-the-second-phase-of-migration-action-plan/>> accessed 4 April 2024.

¹³⁹ ‘IGAD Regional Climate Change Strategy and Action Plan (2023–2030)’ (*JCPAC*, 26 August 2022) <<https://www.icpac.net/publications/igad-regional-climate-change-strategy-and-action-plan-2023-2030/>> accessed 4 April 2024.

¹⁴⁰ Protocol on the Free Movement of Persons in the IGAD Region (adopted 26 February 2020) (‘IGAD Free Movement Protocol’) art 3.

¹⁴¹ *ibid* art 5.

¹⁴² *ibid* art 8.

¹⁴³ *ibid* preamble.

aftermath of a disaster, further obligating the host state to facilitate the extension of stays when return to the origin state is either impossible or unreasonable.¹⁴⁴ Addressing the heightened vulnerability of herders and transhumant livestock due to climate change, the IGAD free movement framework is complemented by the IGAD Protocol on Transhumance.¹⁴⁵ This Protocol facilitates safe, seasonal cross-border mobility of livestock and herders as an adaptation and survival mechanism.¹⁴⁶ It also provides access to medical and educational services,¹⁴⁷ establishes a livestock sale system,¹⁴⁸ mandates specified grazing areas,¹⁴⁹ and provides dispute resolution mechanisms.¹⁵⁰ These measures facilitate seasonal mobility, which in turn helps to alleviate pressure on the natural resources of the migrant's home state.

Then, in 2022, the member states of IGAD, along with those of the East African Community and the States of the Horn of Africa, adopted the Kampala Ministerial Declaration on Migration, Environment and Climate Change, acknowledging the rising concern of climate-induced migration.¹⁵¹ The following year, the declaration underwent significant expansion, increasing its membership to include 48 African member states, thus elevating it from a regional to a continental level.¹⁵² Notably, it commits the signatories to integrating human rights-based approaches into their policies relating to the climate change-migration nexus, to enhancing human mobility, to facilitating the free flow of remittances, to promoting rural-urban collaboration to reduce vulnerability, and to strengthening multinational climate finance.¹⁵³

The regional instruments and policies of the Caribbean and African areas highlight a growing awareness among states at a regional level regarding the impact of climate change on human mobility. Given that the effects of climate change are felt more similarly at the regional level, it appears that states are more willing to cooperate with one another at this level, to regulate climate-induced migration better. A notable aspect of these instruments and policies is their recognition of migration as an effective mitigation and adaptation strategy. They do not actively seek to prevent migration flows but rather to facilitate the process. By providing detailed mechanisms for the socio-economic integration of migrants, they not only pave the way for smoother integration of migrants but also ensure that migrants contribute to the host state's economy in the long run. These instruments and policies will be critically examined in the following section to explore their further improvement.

V. LOOKING AT REGIONAL COOPERATION POLICIES THROUGH A CRITICAL LENS

The policies and trajectory of the aforementioned regional plans are commendable. The unified approach of the member states is driven by the similarities of the impact of climate change

¹⁴⁴ *ibid* art 16.

¹⁴⁵ IGAD Protocol on Transhumance (adopted 27 February 2020).

¹⁴⁶ *ibid* art 3.

¹⁴⁷ *ibid* art 12.

¹⁴⁸ *ibid* art 16.

¹⁴⁹ *ibid* art 9.

¹⁵⁰ *ibid* art 25.

¹⁵¹ Kampala Ministerial Declaration on Migration, Environment and Climate Change (adopted 29 July 2022) ('Kampala Declaration').

¹⁵² 'Kampala Ministerial Declaration on Migration, Environment and Climate Change' (*International Organization for Migration*) <<https://eastandhornofafrica.ion.int/kampala-ministerial-declaration-migration-environment-and-climate-change>> accessed 4 April 2024.

¹⁵³ Kampala Declaration (n 151) nos 3, 4, 6, 7, 10, 13(b)-(e).

within the regions and the consequent rise of regional climate migration. For example, several African states have witnessed a surge in climate-induced migration due to severe disasters, such as floods and droughts,¹⁵⁴ exacerbated by inefficient climate change adaptation strategies.¹⁵⁵ The Caribbean region faces comparable challenges.¹⁵⁶ However, both regions have struggled to secure the requisite funds for implementing effective climate change mitigation and adaptation measures.¹⁵⁷ In the absence of adequate international support,¹⁵⁸ these states have prudently aligned their climate change-related concerns politically and have developed transnational frameworks to leverage migration as an adaptation and mitigation strategy.

Amongst the regional frameworks covered, IGAD's policies can be highlighted for encapsulating the different requirements for long- and short-term migrants. As mentioned in Section II of this article, climate-induced migration can broadly be categorised into two types: long-term migration (with or without the migrants' families); and short-term migration. IGAD's migration policies address both types of migration. Its Free Movement Protocol and the Kampala Declaration urge states to promote the free movement of people and to facilitate the flow of remittances to their home states.¹⁵⁹ This recognition of the utility of climate change-induced migration is progressive. Remittances from climate migrants can enhance the adaptation capabilities of their home state, improve living conditions for both migrants and their families at home, and alleviate pressure on the depleting resources of the migrants' home states. These benefits can potentially decrease the number of migrants to the host state as the home state better adapts to new realities.

Interestingly, while the CARICOM and OECS frameworks do not exclusively focus on climate migrants, their policies for integrating migrants and their families within the host states are more progressive than the African policies. For example, the Caribbean frameworks recognise a broader scope of rights for climate migrants and their dependants than the African instruments.¹⁶⁰ The African and Caribbean policies equally obligate states to recognise the right to employment for both the migrant and their accompanying spouse¹⁶¹ and to provide educational services for the immigrants' children.¹⁶² However, the OECS framework surpasses this by emphasising full integration of migrants in the host state while ensuring economic and social equality between citizens and migrants.¹⁶³ Although the OECS framework does not expressly apply to climate migrants, its socially beneficial policies equally apply to migrants who move in search of employment due to the negative effects of climate change. Such policies can significantly improve effective migrant integration by ensuring a positive migration

¹⁵⁴ International Organization for Migration, *World Migration Report 2022* (n 21) 68–73.

¹⁵⁵ World Meteorological Organization, *State of Climate in Africa 2022* (WMO No 1330, 2023) 18–19.

¹⁵⁶ International Organization for Migration, *World Migration Report 2022* (n 21) 107.

¹⁵⁷ World Meteorological Organization (n 155) 18–21; Daniel Munevar, 'Climate Change and Debt Sustainability in the Caribbean: Trouble in Paradise?' (UNCTAD 2018) 2, 13–19 <https://unctad.org/system/files/non-official-document/tdb_cfd2c01_Munevar_en.pdf> accessed 4 April 2024; Alejandro Guerson, James Morsink and Sónia Muñoz, 'Caribbean Climate Crisis Demands Urgent Action by Governments and Investors' (*IMF Blog*, 27 June 2023) <<https://www.imf.org/en/Blogs/Articles/2023/06/27/caribbean-climate-crisis-demands-urgent-action-by-governments-and-investors>> accessed 4 April 2024.

¹⁵⁸ Guerson, Morsink and Muñoz (n 157) 14.

¹⁵⁹ IGAD Free Movement Protocol (n 140) preamble, arts 5, 25; Kampala Declaration (n 151) nos 3, 13(d).

¹⁶⁰ In this context, 'dependent' is used to refer to the spouse and the children of the main immigrant, as defined under article 1 of the IGAD Free Movement Protocol (n 140).

¹⁶¹ *ibid* art 9(5).

¹⁶² *ibid* art 9(4).

¹⁶³ See generally Organization of Eastern Caribbean States, 'Social Inclusion and Social Protection Framework' <<https://www.oecs.org/en/our-work/knowledge/library/social-development/social-inclusion-and-social-protection-strategic-framework-july21-2020>> (21 July 2020) accessed 4 April 2024.

experience for both working migrants and their families. Moreover, by integrating families, host states can enhance the productivity of employed migrants¹⁶⁴ and prepare the next generation of skilled workers to contribute to the host state's economy.

Furthermore, the CARICOM and OECS frameworks offer more effective solutions for settling climate migrants than the IGAD Free Movement Protocol. While the IGAD Protocol permits only a 90-day right of stay in the host country,¹⁶⁵ the CARICOM and OECS policies provide for a six-month and an indefinite right to stay, respectively.¹⁶⁶ Thus, although the IGAD Protocol progressively recognises climate migrants as a separate category of immigrants, it inadequately supports their resettlement as a mitigation or adaptation strategy.¹⁶⁷ There may be instances where individuals initially relocate for a limited duration but find themselves compelled to stay permanently in the host state due to the unsustainability of living in their home state.¹⁶⁸ In such cases, it is imperative to establish effective mechanisms allowing climate migrants to apply for permanent residency or visa extensions. Therefore, domestic immigration offices should be mandated to prioritise the requests of climate migrants to ensure effective and speedy protection rather than leaving them in an undocumented state.¹⁶⁹ A limited stay duration would only provide limited value for migrants, as they would not have sufficient time to generate any positive value in terms of improved livelihood or sending remittances back home. As for the host state, although it would incur short-term integration costs, it would lose out on any long-term economic benefits of a more prolonged stay and successful integration.¹⁷⁰ In this way, all parties might benefit long-term.

One aspect not addressed by all the frameworks covered above is cultural integration within the host society. The influx and settlement of immigrants from diverse backgrounds can cause conflicts within the host state, potentially resulting in either the marginalisation of the immigrants on a cultural basis or the conditional acceptance of immigrants after cultural adaptation.¹⁷¹ Lived experiences of migrants have brought to light the positive role that religious institutions, schools, and non-governmental organisations in the host state can play in ensuring effective integration.¹⁷² Communal and religious factors provide comfort and support for migrants, fostering a sense of security and belongingness, ultimately leading to better integration.¹⁷³ This aspect can be significant for climate migrants, as the loss of their home state—

¹⁶⁴ See generally George Borjas and Stephen Bronars, 'Immigration and the Family' (1991) 9 *Journal of Labour Economics* 123.

¹⁶⁵ IGAD Free Movement Protocol (n 140) art 5(2)(b).

¹⁶⁶ Francis (n 87) 15; 'Free Movement of Persons in the Eastern Caribbean' (n 119).

¹⁶⁷ Alex Arnall, 'Resettlement as Climate Change Adaptation: What Can Be Learned from State-Led Relocation in Rural Africa and Asia?' (2019) 11 *Climate and Development* 253, wherein the author brings to light the fact that resettlement is often a strategy adopted by people as a climate change adaptation strategy.

¹⁶⁸ The Nansen Initiative, 'Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change - Volume I' (December 2015) 30 <<https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>> accessed 7 June 2024.

¹⁶⁹ *ibid* 26–30.

¹⁷⁰ OECD, 'Is Migration Good for the Economy?' (*Migration Policy Debates*, May 2014) <<https://www.oecd.org/migration/OECD%20Migration%20Policy%20Debates%20Numero%202.pdf>> accessed 4 April 2024.

¹⁷¹ See generally Yann Algan, Alberto Bisin and Thierry Verdier, 'Introduction: Perspectives on Cultural Integration of Immigrants' in Yann Algan and others (eds), *Cultural Integration of Immigrants in Europe* (OUP 2012).

¹⁷² Mark Trekson and Jorge Morales-Burnett, 'Social, Cultural, and Recreational Institutions and Climate Migration: An Evaluation of Socio-Cultural Practices in Receiving Communities' (Urban Institute, February 2023) 13–15 <<https://www.urban.org/sites/default/files/2023-02/Social%2C%20Cultural%2C%20and%20Recreational%20Institutions%20and%20Climate%20Migration.pdf>> accessed 4 April 2024.

¹⁷³ Alison Heslin, 'Climate Migration and Cultural Preservation: The Case of the Marshallese Diaspora' in Reinhard Mechler and others (eds), *Loss and Damage from Climate Change: Concepts, Methods and Policy Options* (Springer 2019) 383.

either due to its submergence or because conditions become uninhabitable—entails a loss of cultural ties.¹⁷⁴ For example, cultural festivals celebrating the traditions, arts, and cuisines of migrants facilitate their integration into the host state.¹⁷⁵ The ‘Multi Kulti Kitchen’ project in Bulgaria exemplifies such events, offering a safe platform for migrants to share their cultures and traditions.¹⁷⁶ Similarly, communal initiatives, such as the ‘Grandhotel Cosmopolis’ and ‘Give Something Back To Berlin’ projects, have created safe spaces for immigrants to connect culturally with people from their own backgrounds and to share their culture with the host state.¹⁷⁷ Therefore, in the light of these considerations, while the aforementioned instruments and policies focus on socio-economic initiatives for migrant integration, it is essential that they also address cultural and communal factors to ensure safe and effective integration.

Furthermore, unregulated and unplanned integration of migrants into the host societies can lead to their concentration into small ghettos, worsening poverty and lowering living standards for the immigrants.¹⁷⁸ In such circumstances, merely recognising the right to employment and residence within the host state would prove ineffective at ensuring the equal protection of their rights. Therefore, it is imperative to implement ground-level policies that enable migrants to exercise these rights for efficient integration. These policies may include language training and vocational skill development programmes, which can enhance employment opportunities for migrants.¹⁷⁹ States can also adopt policies to provide adequate housing for migrants¹⁸⁰ or to assist them in arranging private financing for housing facilities.¹⁸¹ While initially imposing a burden on the host state’s financial resources, the associated costs are justified in the long run. As migrants become self-sufficient, they become less dependent on the host state’s resources.¹⁸² The consequent flow of remittances to the migrants’ home state would ultimately alleviate migration pressures on the host state. Furthermore, as previously mentioned, successful integration of migrants results in their financial contributions to the host state, enhancing its capacity to adapt to, and mitigate, the impact of climate change. Therefore, instead of avoiding holistic policies that recognise the needs of climate migrants, states would benefit in the long run by constructing conducive frameworks for migrants to enhance climate change adaptation and mitigation.

However, providing migrants with the necessary support for effective integration, including socio-cultural aspects and access to social security coverage, would necessitate a substantial amount of financial resources from the host state. Placing the entire financial burden

¹⁷⁴ See generally Hermann and Kempf (n 101), wherein the authors highlight the anxious position of citizens of Kiribati over loss of culture due to the submerging of the island.

¹⁷⁵ See generally Elaine McGregor and Nora Ragab, ‘The Role of Culture and the Arts in the Integration of Refugees and Migrants’ (European Expert Network on Culture and Audiovisual, 15 February 2016).

¹⁷⁶ Zvezda Vankova, ‘Multi Kulti Kitchen’ (*European Website on Integration*) <https://migrant-integration.ec.europa.eu/integration-practice/multi-kulti-kitchen_en> accessed 4 April 2024.

¹⁷⁷ Anna Frech, ‘The Grandhotel Cosmopolis Augsburg (Germany)’ (*Oncurating*) <<https://www.on-curating.org/issue-25-reader/the-grandhotel-cosmopolis-augsburg-germany.html>> accessed 4 April 2024; ‘History and Impact’ (*Give Something Back To Berlin*) <<https://gsbtb.org/about/history-and-impact/>> accessed 4 April 2024.

¹⁷⁸ Dominika Krupocin and Jesse Krupocin, ‘The Impact of Climate Change on Cultural Security’ (2020) 13 *Journal of Strategic Security* 1, 14.

¹⁷⁹ Council of Europe, ‘Integration of Migrants and Refugees: Benefits for All Parties Involved’ (Doc 15785, 5 June 2023) 17 <<https://rm.coe.int/integration-of-migrants-and-refugees-benefits-for-all-parties-involved/1680aa9038>> accessed 4 April 2024, discussing the integration policies adopted by Norway.

¹⁸⁰ *ibid* 15.

¹⁸¹ Organization for Security and Co-operation in Europe, *Good Practices in Migrant Integration: Trainee’s Manual* (ODIHR 2018) 133–34.

¹⁸² Woetzel and others (n 34) 69–70, wherein the authors explain the long-term benefits of migrants to the recipient state as they ultimately contribute to the host state’s economy instead of solely relying on it. Although the data pertains to migrants in general, it should equally apply to climate migrants.

on the host state would not only be inequitable (considering that the host state would also be grappling with climate change-related issues) but also impractical due to the limited financial capacity of some states (especially in the African and Caribbean regions).¹⁸⁵ Climate change is an international problem, and the necessary adaptation and mitigation measures will necessitate funding from domestic, international, and private sources.¹⁸⁶ For example, the aforementioned regional bodies could approach multilateral development banks to secure funding for their regional plans, as these institutions are increasingly recognising the utility of migration as a mitigation and adaptation strategy.¹⁸⁵ States can utilise sovereign-backed bonds, such as green bonds and impact bonds, to raise finance from the private sector¹⁸⁶ and can even dedicate resources from their respective domestic budgets to relocation funds.¹⁸⁷ Furthermore, institutional arrangements, such as climate land banks, can pre-emptively arrange the land resources required for the reallocation and integration of climate migrants.¹⁸⁸ States can also incentivise private sector players to introduce accessible micro-credit policies, enabling migrants to establish their own businesses in the host state.¹⁸⁹ Policymakers should consider the viability of these options for arranging the finance necessary to ensure effective socio-economic integration of climate migrants.

VI. CONCLUSION

The accelerated rate of climate change is increasingly driving people to migrate in search of better lives. This necessitates a shift in the attitude of states towards migration, moving from providing aid in cases of climate-related disasters to a strategy for climate change adaptation and mitigation. While enhanced migration is bound to incur greater short-term costs for the host state, the proper integration of migrants can transform them into self-sustainable contributors to the host state's economy. This calls for states to formulate policies that facilitate cross-border movement and ensure that migration benefits migrants, their home state, and the host state.

International multilateral frameworks, including the Refugee Convention and the human rights framework, are not well-equipped to address the concerns of climate migrants. Therefore, regional cooperation emerges as a viable option, given that the states within a region tend to face similar climate change threats. This makes bolstering regional capabilities to deal with climate change, facilitating the movement of people, a politically prudent choice.

The case studies on the African and Caribbean regions demonstrate that efficient climate change migration policies can be most effectively built upon regional economic

¹⁸⁵ World Meteorological Organization (n 155) 18–19; Guerson, Morsink and Muñoz (n 157).

¹⁸⁶ Aimée-Noël Mbiyozo and Margaret Monyani, *Climate Linked Mobility – A Key to Development* (Institute for Security Services, July 2023) 5.

¹⁸⁷ See generally Lawrence Huang, Ravenna Sohst and Camille Le Coz, 'Financing Responses to Climate Migration: The Unique Role of Multilateral Development Banks' (*Migration Policy Institute*, November 2022) <<https://www.migration-policy.org/research/financing-responses-climate-migration>> accessed 4 April 2024.

¹⁸⁸ Augusto Lopez-Claros, 'Financing Instruments for Climate Change Mitigation and Adaptation' (Global Challenges Foundation 2021) 22–27 <<https://globalgovernanceforum.org/wp-content/uploads/2023/07/Financing-Instruments-for-Climate-Change-Mitigation-and-Adaptation.pdf>> accessed 4 April 2024.

¹⁸⁹ OECD, 'Financing Climate Future: Rethinking Infrastructure Policy Highlights' (28 November 2018) 10–11 <<https://doi.org/10.1787/9789264308114-en>> accessed 4 April 2024.

¹⁸⁸ Displacement Solutions and ECODEV, 'The Urgent Need to Prepare for Climate Displacement in Myanmar: Establishing a Myanmar National Climate Land Bank' (May 2018) <<https://reliefweb.int/report/myanmar/urgent-need-prepare-climate-displacement-myanmar-establishing-myanmar-national>> accessed 4 April 2024.

¹⁸⁹ Mbiyozo and Monyani (n 184) 7.

integration policies, highlighting their significant potential for addressing the concerns of climate migrants. By recognising the rights of employment and livelihood of migrants, these frameworks not only make migration beneficial for the migrant but also ensure that their long-term integration will be conducive for the host state. However, to maximise the potential benefits of climate migration, these regional policies must incorporate a robust integration strategy, ensuring that socio-cultural aspects are not overshadowed in favour of short-term economic considerations. While implementing such measures will require significant financial resources, there are numerous avenues to explore in effectively utilising migration as a climate change mitigation and adaptation strategy. Therefore, regional economic and political cooperation holds the key to unlocking the full potential of migration as an effective adaptation and mitigation strategy for all parties involved.