**“Theorizing a human rights-based approach to climate change-induced migration in the framework of the African Charter on Human and Peoples’ Rights and of the African Union”**

**by**

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Climate change-induced migration has progressively become a major phenomenon affecting poor countries, where the adverse effects of climate change and the serious lack of appropriate living conditions cause thousands of people to flee their homes. Since Africa has become the protagonist of a migratory flow of unprecedented proportions and duration, with up to 20 million people expected to flee in two decades, this study focuses on the reality of this Continent. Although many causes interrelate, this study suggests that enhanced protection of human rights may create the propitious context for tackling climate change-induced migration, by generalized improvement of the precarious conditions of life which concur to cause this phenomenon, that international hard law has not specifically addressed. Climate change has a huge impact on living conditions, precluding the enjoyment of numerous entitlements that relate to basic acceptable conditions of life, particularly scant in Africa. Reference goes to the right to safe drinking water and sanitation, food, adequate housing, as well as the right to family and to property, making up a quite composite framework that culminates in the threats posed to the right to life. There are several reasons that make the African human rights framework particularly interesting for addressing climate change and prevent migration. Primarily, the possible use of the African Charter on Human and Peoples’ Rights (‘the Charter’), which protects the affected entitlements, as an effective and targeted instrument of protection, capable of creating a synergistic relationship with the enforcement of African States’ duties under the Paris Agreement. This might be advanced since the Preamble of the Paris Agreement requires States Parties to “respect, promote and consider” their human rights obligations, as those enshrined in the Charter, when they address climate change. Moreover, the threshold of protection to ensure is particularly high in the system of the Charter, as it does not provide the principle of progressive realization within the maximum available resource. Another reason relates more comprehensively to the specific catalogue of entitlements that the African Charter embodies. It includes a legal basis for the affirmation of the right to healthy environment at Article 24, which refers to the “development” of people from a perspective of solidarity that also informs the right of all peoples to freely dispose of their wealth and natural resources in their own interest enshrined in Article 21 and culminates in the provision of development as a specific right in Article 22. The scope of these provisions was read in scholarship as enshrining ‘participatory development’ and ‘equitable distribution’, through a holistic interpretation of the Charter, that was also embraced by the African Commission on Human and Peoples’ Rights, as in the case *SERAC and Others v Nigeria*, were it additionally held that the Charter ensures ‘cooperative economic development’ and advanced a human rights-framed model of development that may accommodate and enhance the above-mentioned set of entitlements adversely affected by climate change. Moreover, justiciability seems viable, especially in light of the pervasive scrutiny of the African Court on Human and Peoples’ Rights over domestic legal orders, by ordering to amend legislative measures. Consequently, this study suggests that: firstly, the African Charter may allow better elucidation of States’ duties. Secondly, the Court may scrutinize through a human rights-based approach and order to amend domestic measures addressing climate change. Finally, this study argues that the African Union may offer the appropriate institutional and political framework for the elaboration of regional strategies and policies, which might also help benefit more effectively from the resources provided developed countries pursuant to the Paris Agreement, in cooperation with the NEPAD Agency as a financial strategic partner for concertation and investment.