



MD. SHAMSUDDOHA

## **THE LONG ROAD TO ADDRESSING DISPLACEMENT AND MIGRATION IN THE OFFICIAL CLIMATE NEGOTIATIONS** OPPORTUNITIES, LIMITATIONS AND KEY ADVOCACY AGENDAS



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## INTRODUCTION

The First Assessment Report of the Intergovernmental Panel on Climate Change (IPCC AR1) in 1990 noted that the greatest single impact of climate change might be on human displacement and migration<sup>1</sup>. It has been established by now that the dramatic increase in the frequency and intensity of extreme weather events and slow climate processes are triggering displacement and migration within a country's political boundary and across its borders. The IPCC's Special Reports in 2012<sup>2</sup> confirmed that anthropogenic climate change is triggering magnitude and frequency of the extreme weather events leading to irreversible impacts along with widespread displacement and migration, especially in the poor and low-lying coastal countries. The IPCC projection was further confirmed by the Internal Displacement Monitoring Center (IDMC) that reported an annual average of 25.3 million new disaster displacement spanning from 2008 to 2016<sup>3</sup>; among which roughly 2 million are by geological hazards and the remaining 23.3 million are by the weather-related disasters<sup>4</sup>.

Despite many science-based projections on the flow of climate-induced displacement and forced migration, international policy discussions on this matter has remained in isolation for long. It was only in 2007, at the 13th Conference of Parties (COP 13) held in Bali in 2007

that climate-induced risk and associated loss and damages, which directly implied addressing climate induced displacement and migration, began to be discussed. At the COP 16 held in Cancun in 2010, a standalone paragraph (Para 14/f) on displacement and migration invited governments to undertake measures with regard to climate change induced displacement, migration and planned relocation.

The Cancun COP also provided the policy space for further discussion on measures for addressing climate induced loss and damages (L&D), including the demand for compensation for losses – an issue that was first raised at the 46th Session of the United Nations General Assembly in 1991 by the Alliance of Small Island States (AOSIS). Arguing the permanent and unavoidable losses to lives and property due to sea level rise, the AOSIS demanded to establish a 'Global Fund' with mandatory contributions from the industrialized countries based on their ability to pay as well as their historical responsibility for amassing greenhouse gas in the atmosphere. However, it is this very same argument on liability and compensation that developed countries disagreed to that stalled intergovernmental negotiations on loss and damage, as well as on displacement and migration.

While the Cancun COP may have provided the negotiation space for both climate-induced displacement and migration and 'loss and damage' (L & D), the latter got more significant attention by the country parties as many of them put forward a proposal to merge displacement and

1 IPCC (1990): [www.ipcc.ch/ipcc-reports/assessments-reports.htm](http://www.ipcc.ch/ipcc-reports/assessments-reports.htm)

2 ion within a country's political boundary and across its borders. The IPCC's Special Reports in 2012

3 IDMC (2017). Global Report on Internal Displacement 2017. Retrieved from: [www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf](http://www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf)

4 IOM (2018). World Migration Report 2018. Retrieved from: [https://publications.iom.int/system/files/pdf/wmr\\_2018\\_en.pdf](https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf)

migration with the L&D negotiation stream. And at COP 18 in Doha in 2012, the two different agenda items were merged under a 'Work Programme on Loss and Damage'.

Ironically, developing countries who had so much to lose failed to score a diplomatic win on the L&D discourse. Over the years, the persistent rejection of the developed country group on L&D compensation made forced developing countries to trade off their long standing compensation demand. At COP 18, the developing country group agreed to swap 'compensation' for having an 'institutional mechanism', which was later on replaced by 'rehabilitation', until finally at COP 21 in Paris in 2015, the developed countries explicitly confirmed that the Paris Agreement will not provide any basis for further negotiation for L&D compensation. Developed countries successfully steered the negotiations away from a justice-based argument (in the context of liability and compensation) towards humanitarian actions and responses, with an increased focus on disaster risk reduction and risk transfer measures. The L&D discourse became a watered-down negotiation that also ignored civil society calls to establish a global governance mechanism under the UNFCCC as climate-induced displacement and migration is an issue of global obligation.

This policy paper analyzes the official negotiations on displacement and migration, contemporary policy debates, including the gaps and loopholes of current policy directions, and finally argues for establishing a global governance mechanism with a new Legal Protocol under the UNFCCC.

## **CLIMATE-INDUCED DISPLACEMENT AND MIGRATION IN THE CLIMATE NEGOTIATIONS**

The potential role of climate change in human displacement and migration was well understood even before the topic was introduced in the official negotiations.

Lester Brown of the World Watch Institute first introduced the issue 'climate or environmental refugees' in the 1970s to classify people who were forced to migrate due to collapse of traditional means of living due to massive environmental degradation usually resulting from drought. This is interesting, since the international negotiations view displacement and migration as resulting from rising sea levels, i.e. the combined effects of polar ice melting and thermal expansion of sea water.

Based on an initial understanding of climate change impacts particularly as regards risks associated with sea-level rise, the Alliance of the Small Island States (AOSIS) worked hard to have this issue officially recognized and addressed in the international climate negotiations. The AOSIS submitted proposals that alluded to multi-category loss scenarios from rising sea levels, and called for an insurance pool as a collective loss-sharing scheme to compensate victims of displacements. However, for many years, the UNFCCC failed to acknowledge displacement and migration as an inherent consequence of rising sea levels, and neither did it accept the AOSIS proposal for loss compensations.

In the early years of climate diplomacy, the focus of negotiations was on governments

agreeing on targets for limiting global average temperature (mitigation). Developed countries have slowed down discussions on their obligation towards developing countries' adaptation measures pending irrefutable evidence on the impacts of and vulnerability of countries to climate change.

The adoption of the Kyoto Protocol (KP)<sup>5</sup> in 1997 resulted in legally binding commitments of developed countries to reduce their greenhouse gas (GHG) emissions by 5.2% from the level of 1990. It was presumed that the effective implementation of the KP, associated with other timely measures for GHG emissions reduction, would reduce the extent and gravity of climate change impacts, including sea level rise, hence discussion on climate-induced displacement and migration did not get through in the initial years of climate change negotiations.

Failure by the major GHG emitting countries to abide by their Kyoto Protocol commitments

made KP implementation rather slack, and undermined the collective spirit of emissions reduction as enshrined in the Convention. Dismal GHG emissions reduction by the Parties coupled with the same time rise of emissions by the major developing countries caused consistent rise in global warming, instead of its reversal.

The publication of IPCC's Third Assessment Report (IPCC TAR, 2002)<sup>6</sup>

confirmed the rise in global warming along with the increase of atmospheric GHG (equivalent to CO<sub>2</sub>) concentration from about 280 ppm in the pre-industrial era to about 368 ppm in 2000 with projected increase ranges from 540 to 970 ppm by 2100. The IPCC report also confirmed rising of socio-economic costs related to weather damage, especially to the population of the small islands and/or low lying coastal areas as they are being increasingly exposed to severe social and economic effects from the rise of sea-level and storm surges. The IPCC's Third Assessment Report established a strong rationale for addressing climate change induced risk and vulnerabilities through required adaptation actions. Such argument was further strengthened with the IPCC's 4th Assessment Report<sup>7</sup> published in 2007 which clearly marked human influence in climate change and emphasized adaptation as a necessary complement to mitigation<sup>8</sup>.

As such, since 2007, both adaptation and mitigation have been considered as the two complementary major strategies for addressing climate change. However, the implementation of these strategies especially in undertaking urgent and immediate adaptation measures became a real challenge to developing countries because these required new, additional and incremental financial resources with technology support for their implementation. The importance of adaptation and the finance related to

5 United Nations (1998): The Kyoto Protocol: <https://unfccc.int/resource/docs/convkp/kpeng.pdf>

6 IPCC TAR (2002). Third Assessment Report of the Intergovernmental Panel on Climate Change (IPCC)- Submissions from Parties: <https://unfccc.int/resource/docs/2002/sbsta/misc05.pdf>

7 IPCC (2007): Synthesis Report. [http://www.ipcc.ch/publications\\_and\\_data/publications\\_ipcc\\_fourth\\_assessment\\_report\\_synthesis\\_report](http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_synthesis_report).

8 Shamsuddoha, M (2013): Loss and damage (L & D) negotiations at the UNFCCC: Current status and future aspects; Background paper, Bread for the World-Protestant Development Service, November, 2013

it have been reflected at COP 13 where Parties agreed on the Bali Action Plan<sup>9</sup>.

Although the Bali Action Plan (Paragraph 1/C) did not explicitly mention 'climate-induced displacement and migration' as a topic to be negotiated on, policy experts and the scientific community argue that the agreed outcome documents imply otherwise. There was language around 'considering risk management and risk reduction strategies', as well as 'prioritization of actions to address loss and damage' in the Bali Action Plan. This created an opening for addressing the issue of climate displacement.

It is already very difficult to have an international agreement that commits governments to doing actions, but it is even more challenging to actually have an agreement on how these will be implemented at country level. From early 2008 to late 2009, negotiations on how to roll out the Bali Action Plan have been stalled since developed countries objected referring to people displaced by climate change impacts as 'climate refugees'. Developed countries also refused to accept liability for the displacement and migration of communities in the context of their historical responsibility for causing climate change<sup>10</sup>. Yet, discussion on climate induced displacement and migration appeared in the negotiation table intermittently. For instance, one of

the negotiating bodies<sup>11</sup> of the Bali Action called for negotiation on displacement and migration at the COP 14 held in Poznan in 2008<sup>12</sup>. Furthermore, a UNFCCC Non-paper<sup>13</sup> (No. 41) produced during the Barcelona inter-sessional in October 2009 referred to migration and displacement. However, many issues that were mentioned in the initial assembly text as well as in this Non-paper were edited out, consolidated, or removed by the Parties during the period of refining the negotiations text on the road to the Copenhagen COP 15 in 2009<sup>14</sup>. There were also a number of countries and civil society statements at COP 15 that called for addressing climate migrants under the UNFCCC. But since COP 15 failed to produce an agreed outcome, the entire discussion and decision on 'Enhanced Adaptation Actions' deferred to the next COP held in Cancun in 2010. The Cancun COP, by its decision 1.CP/16/II, recognizes the importance of undertaking measures in regards to displacement, migration and planned relocation and included a stand-alone paragraph (Para 14.f) under the Enhanced Action on Adaptation of the Cancun Agreements.

*(Para 14 ) Invites all Parties to enhance action on adaptation under the Cancun Adaptation Framework, taking into account their common but differentiated responsibilities*

9 Bali Action Plan: <https://unfccc.int/process/conferences/the-big-picture/milestones/bali-road-map>

10 CPRD (2015). Climate-Induced Displacement and Migration: Policy Gaps and Policy Alternative. [https://unfccc.int/files/adaptation/groups\\_committees/loss\\_and\\_damage\\_executive\\_committee/application/pdf/briefing\\_paper\\_climate\\_induced\\_displacement\\_and\\_migration.pdf](https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/briefing_paper_climate_induced_displacement_and_migration.pdf)

11 The COP 13 established two Working Groups e.g. an Ad-hoc Working Group on the Long Term Cooperative Action (AWG-LCA) and an Ad-hoc Working Group on the Kyoto Protocol (AWG-KP) to advance negotiation on the Bali Action Plan. The AWG-LCA was mandated to advance negotiation on adaptation related issues.

12 Warner, K. (2012): Human migration and displacement in the context of adaptation to climate change: the Cancun Adaptation Framework and potential for future action; Environment and Planning C: Government and Policy 2012, volume 30

13 A non-paper is usually a resource/or background paper issued informally in the negotiation sessions to facilitate negotiations. A non-paper does not include official document symbol. It may have an identifying number or carry the name of its author.

14 Warner, K. (2012): Note 8

*and respective capabilities, and specific national and regional development priorities, objectives and circumstances, by undertaking, inter alia, the following:.....*

*(f) Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels<sup>15</sup>.*

A standalone paragraph (Para 14-f) in the Cancun Agreement provided a relatively stronger platform for further advancing negotiation on displacement, migration and planned relocation. However, it also instigated debates in at least two areas: (a) the Cancun Agreement puts displacement and migration under 'adaptation actions', which means

that addressing the 'causes' with enhanced adaptation actions would already address the whole gamut of displacement and migration. Such a narrative on the responses of addressing climate induced displacement and migration clearly overlooks the 'consequence' of displacement and migration; and (b) Para 14 (f) emphasizes progress in academic discourse (to enhance understanding, coordination and cooperation etc.) at different levels while ignoring further discussion on the role of the UNFCCC for establishing a global governance mechanism where climate induced displacement and migration is regarded as a matter of global obligation.

The Cancun Agreement essentially took a politically neutral position on a highly political issue of global obligations and trans-boundary implications.

On the subject of displacement and migration, the Cancun COP also provided an opening for further policy discussion on measures for addressing L&D associated with the adverse impacts of climate change. For many years, since 1991, when the AOSIS first asked for a collective loss sharing scheme to compensate climate victims, this issue remained contentious. The AOSIS and other developing countries' persistence in advocating for L&D compensation somehow paid off when the COP 16 decided to establish an 'SBI<sup>16</sup> Work Programme' on L&D under the Cancun Adaptation Framework (Decision1/CP.16, Para 26).

The corresponding COP decision reads; the Conference of the Parties;

*Para 26: 'decides to hereby establish a work programme in order to consider, including through workshops and expert meetings, as appropriate, approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change; (...)'<sup>17</sup>.*

While the Cancun Adaptation Framework may have provided the negotiation space for both climate-induced displacement and migration and 'loss and damage'

15 UNFCCC (2011): Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010; FCCC/CP/2010/7/Add.1, <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>

16 The COP 1 held in Berlin in 1995 established two subsidiary bodies called the Subsidiary Body for Scientific and Technical Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) to organize sessions for negotiations.

17 *ibid*

(L & D), the latter got more significant attention by the country parties as well as by some global civil society organizations. Few of the developing countries were considering 'displacement and migration' as one of key consequences of L&D and they preferred merging displacement and migration under the SBI Work Programme of Loss and Damage. The political position of putting 'displacement and migration' under the L&D Work Programme was a strategic move based on a reading that the increasingly high political support on L&D issues would result in the establishment of a separate mechanism, along with financing, which also would provide advantageous space for addressing displacement and migration on the ground. Of the 4 submissions by the country Parties prior to the 35th SBI session held in Durban alongside with the COP 17 in 2011, the AOSIS demanded for the establishment of an 'international mechanism for loss and damage' and cited migration as a potential risk of 'loss and damage'. This AOSIS proposal argued that addressing L&D through establishing an international mechanism also covers displacement and migration. In similar fashion, the other submissions also preferred the inclusion of displacement and migration under the SBI Work Programme on Loss and Damage.

In response to the Party Submissions of merging displacement and migration to the mandate of the SBI Work Programme of L&D, the COP 18 in Doha 2012 included displacement and migration under the L&D work Programme. The corresponding decision (3.CP/18, paragraph 7.a.VI) of COP 18 reads,;

*(Para 7a) Parties acknowledged "the further work to advance understanding of and expertise on loss and damage, which includes, inter alia, ...*

*(vi) How impacts of climate change are affecting patterns of migration, displacement and human mobility<sup>18</sup>.*

Despite the call for 'Enhanced Action of Adaptation' of the Bali Action Plan, the country Parties were found reluctant to put a concrete proposal to the Ad Hoc Working Group on Long Term Cooperative Action (AWG-LCA) that was established to continue negotiation of the BAP, for addressing displacement and migration. Merging displacement and migration to the L&D work-stream made the issue less prominent in the COP process. While the developing countries failed to capitalize on the scope of para 14 (f)- i.e. the displacement and migration specific decision of the Cancun Adaptation Framework, the perplexing position of the different interest groups outside of the UNFCCC process also distracted the entire discourse to other dimensions.

For instance, the State-led multi-stakeholder Platform on Disaster Displacement (PDD), launched at the World Humanitarian Summit in 2016 considers displacement and migration from an apolitical context. The Platform continues to promote the Protection Agenda developed by its predecessor the Nansen Initiative that offered States a toolbox to better prevent and prepare for displacement before a disaster strikes.

<sup>18</sup> UNFCCC (2013): Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012, FCCC/CP/2012/8/Add.1, <https://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf#page=21>

Interestingly, the Platform (and the Nansen Initiative) uses 'protection' to refer to any positive action undertaken by States on the ground of humanitarian response, but it does not aim to expand the legal obligations of States under the UNFCCC so that cross-border disaster-displaced persons and persons at risk of being displaced could find a dignified solution to the crisis. In doing so, the PDD ignores addressing the root causes of climate change as well as the historical liability of rich countries for creating present-day migration crisis, but rather puts more responsibilities on the countries of migrants' origin to solve the crisis.

## **DISPLACEMENT AND MIGRATION UNDER THE L&D WORK PROGRAMME**

Along with merging displacement and migration to the L&D Work Programme, the COP 18 took several significant decisions which includes: (a) decision on the approaches to address loss and damage;(b) decision on role of the Convention in promoting the implementation of the approaches (Decision 3/CP.18; Para 5); and (c) decision on the establishment of an institutional arrangement, such as an international mechanism, including its functions and modalities at COP 19 held in Warsaw in 2013 (Decision 3/CP.18; Para 9).

The Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts (WIM) was

### **Box 1: Function of the WIM to address L&D:**

- (a) Enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow onset impacts;
- (b) Strengthening dialogue, coordination, coherence and synergies among relevant stakeholders;
- (c) Enhancing action and support, including finance, technology and capacity building, to address loss and damage associated with the adverse effects of climate change;

established in 2013 (Decision 2/CP.19/ Para 1). The COP 19 also outlined the following major functions of the WIM (Box 1): enhance knowledge, strengthen dialogue and coordination, enhance action and support including finance, (Decision 2/CP.19/ Para 5)<sup>19</sup>.

To implement the WIM's functions, COP 19 by its Decision 2/CP.19, Para 3 established a provisional executive committee (ExCom) that got its permanent structure comprising of 20 members (10 from the Annex I Parties and 10 from the non-Annex I Parties) approved at COP 20 in Lima in 2020 (decision 2/CP.20)<sup>20</sup>.

<sup>19</sup> UNFCCC (2014). Report of the Conference of the Parties to its Nineteenth Session, held in Warsaw from 11 to 23 November 2013: <https://unfccc.int/sites/default/files/resource/docs/2013/cop19/eng/10a02r01.pdf>

<sup>20</sup> UNFCCC (2015). Report of the Conference of the Parties to its twentieth session, held in Lima from 1 to 14 December 2014: <https://unfccc.int/sites/default/files/resource/docs/2014/cop20/eng/10a03.pdf>

As mandated by the COP 19, the ExCom developed its 2 year Work Plan<sup>21</sup>, which was also approved in Lima COP for implementation. The work plan considered nine action areas, with a specific action area on displacement and migration.

*Action Area 6: Enhance the understanding of and expertise on how the impacts of climate change are affecting patterns of migration, displacement and human mobility; and the application of such understanding and expertise<sup>22</sup>.*

Interestingly, most of the action areas aim at broadening the knowledge base on issues like: (a) the effects of climate change-associated loss and damage on particularly vulnerable developing countries and poor segments of the population; (b) the risks of slow-onset changes and their effects; (c) the non-economic losses; (d) pattern of climate induced displacement and migration etc., and generating greater awareness on those issues. One of the action areas, however, was concerned with the question of improving climate risk management, which include instruments like 'risk pooling' and 'risk transfer' through climate risk insurance.

Despite having procedural progress, the entire discussion on L&D negotiations were especially tensed over the issue of compensation. Since the AOSIS put forward a proposal for an 'international

insurance pool' as a collective loss sharing scheme to compensate victims of the projected sea-level rise, L&D has remained a topic where sharp fault lines between developed and developing countries were drawn. Developed countries repeatedly rejected developing countries' call for compensation because of fear of opening the floodgates on legal liability<sup>23</sup>.

Developed countries did not want to be held liable and to compensate for the losses and damages that communities from the South would be facing with the increasing impacts of climate change. At COP 18 in Doha, Qatar, developing countries softened their stand and accepted having reference to an 'institutional mechanism' set –up, and to replace 'compensation' with 'rehabilitation'. (Decision 3/CP.18; Para 7/iv). At COP 21, developing countries once again traded-off their compensation demand in exchange for having a stand-alone Article on Loss & Damage in the Paris Climate Agreement. At COP 21 too, developed countries stood firmly that the Paris Agreement will not provide any basis for liability or compensation for losses and damages (Decision, 1/CP.21, para 51). It is ironic that loss and damage, initially conceived as a way to address climate injustice by providing compensation to developing countries, became yet another episode that proliferated more climate injustice<sup>24</sup>. Developed countries successfully shifted the discourse on loss and damage from liability and compensation to the less

21 ExCom Work Plan: <http://unfccc.int/resource/docs/2014/sb/eng/04.pdf>

22 UNFCCC (2014): *Initial two-year work plan of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts in accordance with decisions 3/CP.18 and 2/CP.19*, <https://unfccc.int/sites/default/files/resource/docs/2014/sb/eng/04.pdf>.

23 Kunzel, V., Schafer, L., Baldrich, R. & Minninger, S. (2017). *Loss and Damage at COP23: Looking at Small Island Developing States* (Policy Report); <http://germanwatch.org/en/download/20288.pdf>

24 CPRD (2018). *Troubled Journey towards Climate Justice: tackling manifest climate injustice in the loss and damage negotiations*. [www.cprdbd.org/towards-climate-justice/](http://www.cprdbd.org/towards-climate-justice/)

contested disaster risk reduction (DRR) and humanitarian frameworks<sup>25</sup>.

## Displacement and Migration in the 2015 Paris Climate Agreement and beyond

The Paris Climate Agreement, the international climate treaty agreed at COP 21 in 2015 included a stand-alone Article 8 on loss and damage. This is regarded as a big step forward for addressing losses and damages, along with displacement and migration. However, one needs to look closely to understand that Article 8 essentially contains nothing more than tentative and cautious language.

For instance, while the preamble of the Agreement<sup>26</sup> calls upon the countries to respect, promote and consider the rights of 'climate migrants' under their national obligations, Article 8 did not put any specific reference of its work on displacement and migration. It is only through a decision text of COP 21 that mandated the WIM Executive Committee to work on this.

The corresponding paragraph reads:

*(Para 49) the Executive Committee of the Warsaw International Mechanism to establish, according to its procedures and mandate, a task force to complement,...[ draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention*

*including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention,] to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change<sup>27</sup>;*

There are differences in analyses of the outcomes of COP 21 especially as regards loss and damage, particularly on the issue of climate induced displacement and migration. Some may consider the Paris Agreement and the COP 21 decision text as breakthroughs, while others view this as an apolitical achievement on a highly politically sensitive issue. They also provide different connotations if the implication of the decisions were analysed from a continuum of injustices to the people who are/will be forced to be displaced and migrated.

**First:** The Paris Agreement acknowledges the relationship between climate change and the enjoyment of human rights and requires countries [to respect, promote and consider their respective HR obligations] in their actions to address climate change. This means that countries should fulfil their human rights obligations while undertaking climate actions. From a human rights perspective, such a provision in a global treaty is certainly a more authoritative reference than a decision coming from the Conference of Parties (COP). However, this also implies that national governments are to assume full responsibility to ensure and safeguard the rights of children, indigenous people, and

25 Calliari E (2016) Loss and damage: a critical discourse analysis of Parties' positions in climate change negotiations. *J Risk Res* 1–23. <https://doi.org/10.1080/13669877.2016.1240706>

26 UN (2015): The Paris Agreement; [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf)

27 UNFCCC (2016): Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015; FCCC/CP/2015/10/Add.1;

other affected people, including migrants. The Paris Agreement Preamble requires that national governments respect and promote the rights of the migrants while cautiously avoiding making any reference to putting any responsibility to the countries in the global North who caused the present-day climate crisis and are forcing people to be displaced and migrated. The Preamble also disregarded the rights and entitlements of climate migrants whose habitats will be lost permanently due to unprecedented rise of sea levels, reportedly by 2 meter by 2100<sup>28</sup>.

**Second:** The Preamble of the Paris Agreement implies that climate change actions should respect and promote the rights of the climate migrants, but this is not reflected/mentioned in any of the Articles of the Paris Agreement, most especially on Article 2 which lays down the purpose of the Agreement. As such, the specific provision in the Preamble that promotes migrants' rights will not merit any legal obligation on the Parties, and governments might also not opt to uphold national human rights obligations that may be perceived to create obstacles to government-planned climate actions. For instance, governments may not be held accountable for human rights violations resulting from mega-dam projects that will supply renewable energy but will submerge and displace communities.

**Third:** This would result in differentiated interpretation and implementation across countries, thereby affecting climate

## BOX 2: COP 19 and COP 21 decisions on 'L&D finance

*2/CP.19; WIM/Para 5/C*

..... the Warsaw international mechanism shall fulfil the role under the Convention of promoting the implementation of approaches to address loss and damage associated with the adverse effects of climate change... by undertaking, inter alia, the following functions:

[Enhancing action and support, including finance, technology and capacity building, to address loss and damage associated with the adverse effects of climate change, so as to enable countries to undertake actions pursuant to decision 3/CP.18, paragraph 6]

*Decision 1/ CP21; Paris Agreement/ Article 8/Para 3*

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

migrants' human rights. Countries that did not sign and ratify core human rights treaties could not be held accountable for the non-recognition of climate migrants' rights. Even the WIM Task Force has only cautiously referred to displacement, and avoided using 'migration' and

<sup>28</sup> Jonathan L. Bamber, Michael Oppenheimer, Robert E. Kopp, Willy P. Aspinall, and Roger M. Cooke PNAS June 4, 2019 116 (23) 11195-11200; first published May 20, 2019 <https://doi.org/10.1073/pnas.1817205116>

'relocation' as both have trans-boundary implications. Although there have been several COP decisions that recognized climate induced displacement, migration and planned relocation, these have been focused on 'enhancing understanding and cooperation for knowledge generation' while conveniently avoiding any discussion or negotiation to establish a global governance mechanism to address the crisis in an organized and legitimate way.

The bottomline is that the focus on displacement and migration had been lost in the entire discourse on loss and damage. The Paris Agreement made a clear distinction between 'adaptation' and 'loss and damage' in placing them under separate categories – Article 7 for adaptation and Article 8 for loss and damage. However, negotiations at the post-Paris COPs (COP 22, COP 23, COP 24 respectively in 2016, 2017 and 2018 indicated that the developed country group is yet to endorse 'L&D' as one of the key approaches, along with adaptation and mitigation.

The other point of disagreement was on how to mobilize resources to finance L&D programs and activities that refers to the decisions of COP 19 and COP 21 (Box 2). Referring to those COP decisions (Decision 2/ CP.19<sup>29</sup> and Decision 1/ CP.21<sup>30</sup>) for mobilizing L&D finances, the developing country group in all the post-Paris COPs was demanding to open discussions on

'action and support' as a standalone and regular 'L&D' agenda item. In contrast, the developed country group was firm in its position of keeping L&D discussions aside, under the purview of the WIM and its Executive Committee, at least until the WIM review due at COP 25 in 2019<sup>31</sup>. The developed countries further argued that they are already supporting countries in need through humanitarian assistance, which they claim, is in another way of financing L & D.

Displacement and Migration under the Warsaw International Mechanism on Loss and Damage

The Warsaw International Mechanism was established to achieve an 'implementation of approaches to address loss and damage associated with the adverse effects of climate change, [...] in a comprehensive, integrated and coherent manner'.

The WIM has its defined roles and responsibilities mandated by COP decisions and guided by its Executive Committee. However, by nature, WIM is an ad-hoc mechanism that seeks to advance knowledge, ideas and thoughts for addressing L&D and it is actually the COP that takes the ultimate decisions on the action and support, (including finance, technology and capacity building) that will be required for addressing L&D on the ground.

Given the tasks and functions, the WIM has made some progress on its routine work and provided useful insights to the negotiations on 'loss and damage' as well as on 'displacement and migration'.

29 UNFCCC (2014). Report of the Conference of the Parties on its Nineteenth Session, held in Warsaw from 11 to 23 November 2013.: <https://unfccc.int/sites/default/files/resource/docs/2013/cop19/eng/10a02r01.pdf>

30 UNFCCC (2016). Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015. <https://unfccc.int/resource/docs/2015/cop21/eng/10.pdf>

31 CPRD (2018). Troubled Journey towards Climate Justice: tackling manifest climate injustice in the loss and damage negotiations; [www.cprdbd.org/towards-climate-justice/](http://www.cprdbd.org/towards-climate-justice/)

For instance, the initial two-year work plan of the WIM (2014-2016) identified displacement and migration as one of their priority actions (Activity 6).

Building on the results of this first phase work plan, the WIM developed its 5 year rolling work plan that got approved at COP 22<sup>32</sup>. The 5-year work plan included a strategic work stream (Work stream D) on displacement and migration to ‘*enhance cooperation and facilitation in relation to human mobility, including migration, displacement and planned relocation*’<sup>33</sup>, and identified several priority actions for 2019-2021 under its Strategic Work stream D (**Box 3**).

Both the work plans were characterised by the involvement of experts and civil society in knowledge generation and developing relevant knowledge products. The WIM has so far established an expert group on climate risk management and another on ‘non-economic losses’. A special Task Force in Displacement and Migration (TFD) was created to ‘develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change’<sup>34</sup>.

The mandate and the functions of the Task Force concluded following submission

of its report<sup>35</sup> in 2018. The report summarizes evidence and experiences of displacement and migration; identifies legal, policy and institutional challenges for addressing displacement and migration and recommends the continuation of WIM’s work on *Activity 6* i.e. enhanced cooperation and facilitation in relation to human mobility, including migration, displacement and planned relocation,” until 2020<sup>36</sup>.

So far the Warsaw International Mechanism played a significant role in documenting available knowledge on climate-related loss and damage, climate risk management and climate induced displacement and migration. However, it did not provide due attention to the slow onset processes (drought, sea-level rise, etc.) and non-economic losses and damages such as loss of cultural identity and others.

The WIM was able to broaden the knowledge base around loss and damage, and in the process strengthened its coordination and leadership role to a certain degree. But it must be remembered that the WIM was not just to serve as a knowledge platform or a forum of experts. The more important mandate of WIM was to promote the implementation of approaches to enhanced action and support, including finance, technology and capacity building so that communities may be able to address the adverse impacts of climate change. The WIM should be able to identify diverse options to mobilise financial support for implementing

32 UNFCCC (2017): Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts; Subsidiary Body for Implementation Forty-seventh session Bonn, 6–15 November 2017; <https://unfccc.int/sites/default/files/resource/docs/2017/sb/eng/01a01e.pdf>

33 *ibid*

34 UNFCCC (2016). Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015. <https://unfccc.int/resource/docs/2015/cop21/eng/10.pdf>

35 UNFCCC (2018): Report of the Task Force on Displacement, Advanced Unedited Version dated 17 September 2018 [https://unfccc.int/sites/default/files/resource/2018\\_TFD\\_report\\_17\\_Sep.pdf](https://unfccc.int/sites/default/files/resource/2018_TFD_report_17_Sep.pdf)

36 *ibid*

measures for reducing climate risks and climate change induced loss and damage. The WIM is yet to deliver on this crucial mandate.

Finally, WIM's institutional structure and governance aspects need to be strengthened with required policies and frameworks to effectively address displacement and migration from global to the national level and vice versa.

## THE EMERGING POLICY DEBATES

The negotiations around displacement and migration suggest that the issue involves quite complex multi-dimensional aspects and raises several concerns for further debate. The following are just some of the emerging policy debates on the matter:

### **Displacement vs Migration:**

Displacement and migration, especially in the context of climate change, are sequential and it is very hard to make a clear distinction between the two. Usually, sudden and dramatic onset events like cyclone, river erosion etc. that cause massive destruction such as loss of habitat and permanent assets often force people to be displaced, most of whom return to their place of origin if the catastrophe has temporary effects and if they have livelihood prospects to go back to. Although displacement is always triggered by sudden onset disasters, economic and social factors such as the availability of resource base, social networks and of livelihood options have always been the deciding factors for

migration. This also has been established by several other studies<sup>37,38,39,40</sup> that concluded that disasters do lead to large scale displacements of people, but in most cases displacement is temporary, as most displaced people seek to return to rebuild and continue living in the ways and places with which they are familiar. However, the chronic and long-term adverse effects of an extreme weather event on the provision of environmental and non-environmental goods and services force people to be migrated, especially when the post-disaster response and recovery, broadly the governance mechanism, fails to restore the situation or fails to continue providing basic services to the affected population.

On the other hand, slow-onset disasters like droughts, sea-level rise and others, progress over time and its compounded effects make it difficult for people to continue living in those risk exposed areas. The lack of water and other productive resources force people from rural areas, for instance, to turn to routine economic migration to urban areas mainly seeking employment. In agrarian-based economies, livelihoods are directly dependent on environmental factors, and therefore any gradual and substantive changes in environmental quality and climatic conditions that deteriorate

37 Black, R. (2001): Environmental refugees: myth or reality? New Issues in Refugee Research, Working Paper No.34. University of Sussex, UNHCR Evaluation and Policy Analysis Unit, Geneva. ISSN: 1020-7473

38 Castles, S. (2002): Environmental change and forced migration: making sense of the debate. New Issues in Refugee Research, Working Paper No.70. University of Oxford Refugee Studies Centre, UNHCR Evaluation and Policy Analysis Unit, Geneva.

39 Lonergan, S. (1998): The Role of Environmental Degradation in Population Displacement. Environmental Change and Security Project Report 4: 5-15.

40 Piguet, E. (2008) Climate change and forced migration. New Issues in Refugee Research, Research Paper, no. 153. Policy Development and Evaluation Service, United National High 58 Commissioner for Refugees, Geneva.

livelihoods become the main determinant factor of migration. Such migrations are becoming increasingly evident in the drought and salinity prone areas where agricultural activities and ecosystem services are gradually diminishing and forcing people to perform routine economic migration, which ultimately lead them to permanent migration after a certain period.

Policy discussions around climate-induced displacement and migration should comprehensively cover the entirety of the matter along with their key drivers e.g. climate change impacts and climate processes.

**Cause vs Consequence:** In the climate change discourse, displacement and migration is primarily understood from their causes (sudden and slow onset disasters) hence the policy responses that are currently under negotiation focus more on disaster risk reduction, risk transfer and post-disaster rehabilitation activities. Such an approach of addressing displacement and migration overlooks the 'other side of the coin', i.e. the other dimensions of the crisis which are the consequences that climate migrant people face in the course of involuntary exodus elsewhere within the country or beyond the national jurisdiction. Any mechanism of addressing displacement and migration should comprehensively consider all aspects of the matter.

**Rights violation vs Rights protection:**

Violation of basic and universal human rights is one of the unjust consequences of climate-induced displacement and migration. Climate change also has implications particularly on violations of the socio-economic dimension of human rights -causing potential harm to the most poverty-stricken communities, exacerbating poverty and inequality, damaging traditional livelihood sources of indigenous communities and, eventually posing threat to cultural extinction of certain groups<sup>41</sup>.

While the UNFCCC clearly established the casual relationship between 'climate change and human activity', the 2009 Report of the UNHCR on Human Rights<sup>42</sup> observes the link between 'climate change and violation of human rights'. MacAdam, J and Soul<sup>43</sup> argue that climate migrants are unlikely to benefit from the human rights-based complementary protection unless there is considerable jurisprudential development in place. To protect the rights of climate-induced migrants, there should have a scope for litigation against violation of rights either in domestic or international courts, without which a case eventually will be rejected. Otherwise, climate migrants would be able claim their rights legally under the currently existing global agreements e.g. Paris Agreement and other Global Conventions on Human Rights.

41 Lachowski, T. (2013): Climate Change and Transitional Justice, ELCOP Yearbook of Human Rights, ISBN 978-984-33-6133-2

42 UNHCR (2009): Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights; A/HRC/10/61, January 2009

43 McAdam, J. and Soul (2010): An insecure Climate for Human Security? Climate Induced Displacement and International Law, UNHCR Legal and Protection Policy Research Series, Geneva

## ADAPTATION VS BEYOND ADAPTATION

The UNFCCC provides a space for negotiations on climate-induced displacement and migration under Para 14(f) of the Cancun Adaptation Framework and under Warsaw International Mechanism on loss and damage, but in both forums the measures for addressing displacement and migration are perceived as undertaking adaptation actions. This is misleading as 'adaptation' is a country-driven voluntary approach, and adaptation actions are site specific 'in situ', and have its limits and boundary<sup>44</sup>. Fleeing from climate hotspots is not an 'adaptation action', it is an attempt of 'survival' of the people who have been forced or pushed away by the climatic stimuli in the context of 'adaptation failure'<sup>45</sup>.

Many climate change impacts, especially resulting from the slow onset events already crossed the hard limits of adaptation<sup>46</sup> as adaptation options to those slow onset events do not exist yet. Such climate change impacts include sea-level rise, salinization of agricultural land, desertification, pest and disease outbreak etc. essentially cause irreversible losses to the means of livelihoods e.g. productive assets and ecosystem services and forces people to undertake long-term economic migration. A particular case in point is that of the reported consecutive crop losses due to prolonged droughts lasting from

2004 to 2010 in Burkina Faso that forced several thousand people to be migrated<sup>47</sup>. Mass forced migration was also reported from the Southern part of Bangladesh-the cyclone *Sidr* and *Aila*-affected areas - as the residual impacts of those cyclones e.g. logging of saline water, contamination of drinking water sources and acute crisis of drinking water etc. become a persistent problem<sup>48</sup>.

Again, in the course of migration, the migrants face multi-category losses and damages ranging from the economic loss to non-economic loss, social loss to cultural loss; very often they also suffer from the denial of enjoying basic human rights.

## CHALLENGES AHEAD AND RECOMMENDATIONS

While the 'human displacement and climate change nexus' has been well understood with more certain scientific evidence from across the world, the policy and political processes are yet to come-up with a just solution to the crisis. The negotiations on climate induced L&D and migration clearly show that developed countries have long been able to hinder any progress in L&D negotiations on the ground of 'liability and compensation', and still continue doing so when the demand for L&D finances comes-up. In parallel to the UNFCCC process, other State-led initiatives (e.g. the Nansen Initiative,

44 CPRD (2015). Climate-Induced Displacement and Migration: Policy Gaps and Policy Alternative. [https://unfccc.int/files/adaptation/groups\\_committees/loss\\_and\\_damage\\_executive\\_committee/application/pdf/briefing\\_paper\\_climate\\_induced\\_displacement\\_and\\_migration.pdf](https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/briefing_paper_climate_induced_displacement_and_migration.pdf)

45 Ibid

46 Klein, R., Midgley, G., Preston, B., Alam, M., Berkhout, F., Dow, K., & Keskitalo, E. (2014). Adaptation opportunities, constraints and limits. Impacts, Adaptation and Vulnerability. Cambridge University Press.

47 Traore, S. & O wiyu, T. (2013). Dirty droughts causing loss and damage in Northern Burkina Faso. International Journal of Global Warming, 5(4), 498-513.

48 Ibid, 36, 36

Global Platform on Disaster Displacement etc.) also undermine the debates on the rights of the climate induced displaced and migrants.

So far the COP decisions on displacement and migration” were just a reiteration of similar issues; knowledge generation, development of technical papers and strengthening coordination among different actors outside of the UNFCCC etc. Moreover, as stated above, discussion at different COPs surfaced debates on the theoretical perspectives of considering the issue plainly as a humanitarian crisis, while bypassing obligation of the countries to correct the ‘manifest injustice’ that caused/and continue causing the crisis.

The frustrating scenario raises serious concerns among civil society organizations on the appropriateness of the existing agreement and mechanism (e.g. Paris Agreement and the Warsaw International Mechanism) to adequately address the cause and consequence of forced displacement and migration.

The following recommendations may be considered as key advocacy agendas to advance negotiations on the matter;

- a. While the Paris Rulebook<sup>49</sup> included displacement and migration in its Transparency Framework, negotiations should not be limited only within the mandate and timeframe of the Paris Agreement. The scope and measures for addressing

displacement and migration should also be reflected in the Convention.

- b. Merging displacement and migration to the L&D work-stream made this issue indistinguishable. It is unlikely that the WIM, as an ad-hoc and technical wing, would be able to adequately address the issue unless an independent institutional and governance mechanism is established under the Convention.

Given the scope of para 14 (f) of the Cancun Agreement, negotiation on displacement, migration and planned relocation should be reintroduced as a standalone agenda item to the COP process so that a global governance mechanism could be established.

- c. Currently there is no specific international institution with a clear mandate to deal with climate migrants, to address causes of displacement and migration and ensure their rights and entitlement as global citizens.

There should be an independent, stand-alone legal protocol under the function and authority of the Conference of the Parties (COPs) of the UNFCCC. Discussions at the UNFCCC e.g. Para 14 (f) of the Cancun Adaptation Framework already laid a foundation to progress further discussion in addressing climate-induced displacement and migration.

Such a Protocol should be drawn on the basis of the widely agreed principles of the UNFCCC such as ‘common but differentiated responsibilities and respective capacities’ (CBDR-RC) and

<sup>49</sup> The Paris Agreement ‘rule book’ is aimed to create the rules and processes which are needed to provide the operational guidance for fulfilling the goal of the Agreement and providing clarity on countries’ efforts to reach the global goal of keeping temperature rise well below 2 degree centigrade.

should focus both at international and domestic levels to ensure comprehensive protection from the impacts of climate change, and

guarantee protection of substantive human rights as per international law.





**“..in the course of migration, the migrants face multi-category losses and damages ranging from the economic loss to non-economic loss, social loss to cultural loss; very often they also suffer from the denial of enjoying basic human rights.”**

MD. SHAMSUDDOHA