



(LOSS AND) DAMAGE, DOHA AND DISPLACEMENT

GLOBAL VOICES UNFCCC AUSTRALIAN YOUTH DELEGATION

**CATHERINE PELLING
RMIT UNIVERSITY
NOVEMBER 2012**



www.globalvoices.org.au



globalvoices

GLOBAL VOICES

Global Voices is a non-profit organisation seeking to promote an understanding of and participation in international diplomacy by young Australians.

We do this through regular events and research & development opportunities in Australia, and the coordination of youth delegations to important diplomatic forums abroad.

Our mission is to provide opportunities to young Australians to research, discuss and contribute to foreign policy both at home and abroad.

Our vision is for young Australians to be heard and engaged on the world stage.

UNFCCC

The United Nations Framework Convention on Climate Change (or UNFCCC) is a global mechanism that aims to provide an intergovernmental platform to mitigate the effects of climate change globally. Membership is almost universal across the world with 194 countries listed as members of the UNFCCC.

The ultimate objective of the UNFCCC is to stabilise the level of greenhouse gas emissions in the Earth's atmosphere as to stop any major disruptions to the world's environments and ecosystems as a result of human induced interference with the climate system. It was established at the Rio Earth summit in 1992 in response to international concerns about climate change. Its establishment was a formal recognition that climate change was an issue that simply could not be resolved by individual nations; a coordinated response was required.

Member-states attend an annual 'Conference of Parties' (or COP) to assess the level of progress in mitigating the effects of climate change and establishing legally binding obligations for countries to reduce their emissions. In 2012, the main COP will be held in Qatar.

CATHERINE PELLING

Catherine Pelling 22, is a Bachelor of Arts (International Studies) (Honours) student at RMIT University. She is the Secretary of Right Now, a not-for-profit human rights media organisation.

What is the current place of climate change-induced displacement in the UNFCCC? To what extent could the UNFCCC be used to address this issue, specifically the use of Loss and Damage?

Abstract

Forced migration and displacement as a result of climate change and its effects is a matter of growing urgency for the international community. The purpose of this paper is to explore the role the United Nations Framework Convention on Climate Change (UNFCCC) and its mechanisms can play in addressing this issue. This paper responds to the questions: What is the current place of climate change-induced displacement in the UNFCCC? To what extent could the UNFCCC be used to address this issue, specifically the use of Loss and Damage? The protection gap that exists within our present international system with regards to people who could be *internationally* displaced by climate change, such as those from Small Island Developing States (SIDS) is illustrated. A milestone was achieved in 2010 at COP16 when displacement and migration were officially incorporated into the outcome text and these issues were therefore acknowledged by states. However, little has occurred since. A mechanism to address Loss and Damage could be used to tackle the issue, yet the form this mechanism will take needs to be agreed upon first. AOSIS provides a comprehensive suggestion for how the UNFCCC could effectively attend to Loss and Damage.

Introduction

Over the next few decades, two issues of immense international concern will increasingly intersect: climate change and migration. Displacement as a result of climate change and its effects could impact a large number of people worldwide. Of growing concern, and beyond the effects of this migration itself, is the lack of protection within international law for these displaced people. In particular, it is people who are displaced across *international* borders, such as those from small island states, who fall into a gap within the international legal and protection system as, in a technical and legal sense, they are neither refugees nor stateless persons nor internally displaced persons. However, the United Nations Framework Convention on Climate Change (UNFCCC) is a potential forum for the effective management of climate change-induced displacement. It was at the fourteenth Conference of the Parties (COP14) in 2008 that migration and displacement in relation to climate change were first mentioned and accepted¹. This is the first international body where states have begun to broadly acknowledge the issue of displacement and, of greater significance, are actually considering means to address it. This paper will explore this development further and will consider how measures such as Loss and Damage, with its focus on the adverse effects of climate change, could be utilised in the future to address issues of displacement. However, as Small Island Developing States (SIDS) are amongst the regions most vulnerable to the threats of climate change and displacement, this paper will begin by outlining the effects of climate change on them. This is followed with an illustration of the gap within international law faced by internationally displaced

¹ K Warner, 'Migration and Global Environmental Change: PD23: Migration and displacement in the context of adaptation to climate change developments in the UNFCCC climate negotiations and potential for future action', *UK Government's Foresight Project*, October 2011, viewed on 1 November 2012, <<http://www.bis.gov.uk/assets/foresight/docs/migration/policy-development/11-1269-pd23-migration-displacement-in-adaptation-climate-change>>, p.12.

persons. This paper will conclude with some recommendations for the future, in particular for COP18 in Doha, later this year.

Small Island States and Climate Change

Kiribati, Tuvalu and the Maldives, all SIDs, are among the most threatened island nations, at the forefront of the ravages of climate change. The Intergovernmental Panel on Climate Change has reported that sea level rise will 'exacerbate inundation, storm surge, erosion and other coastal hazards'². However, it is the impact of these effects upon the infrastructure and facilities and therefore the livelihood of the island nations' people that will cause the most damage³. Locke notes that these secondary impacts are 'exacerbating existing problems associated with degradation and pollution, which in turn are threatening renewable resources, including fresh water sources, in-land tree crops, garden crops, and near-shore fishing stocks'⁴. Furthermore, these 'secondary impacts of climate change, specifically general health decline and more unreliable food and water supplies that influence population movements, may prove to have the most adverse effects on vulnerable populations at risk'⁵.

The most current report of the IPCC, the international body responsible for aggregating and assessing the climate change-relevant information provided worldwide, details the effects further. In its section on small islands, this report displays a particular concern for the reduction of water resources, which directly effects the habitability of an island, noting that '[i]n the Pacific, a 10% reduction in average rainfall (by 2050) would lead to a 20% reduction in the size of the freshwater lens on Tarawa Atoll, Kiribati. Reduced rainfall coupled with sea-level rise would compound this threat'⁶. Furthermore, it states that '[a]nthropogenic warming and sea level rise would continue for centuries due to the time scales associated with climate processes and feedbacks, even if GHG [greenhouse gas] concentrations were to be stabilised'⁷. This means that, regardless of the exact timeframe and even if all the countries in the world stopped producing greenhouse gases today, populations currently located on small islands and more low-lying areas will be so severely affected by the results of climate change that they will be forced to relocate.

It is therefore becoming increasingly obvious that, before rising seas swallow the SIDs, the islands will become uninhabitable as a result of both these primary and secondary impacts: inadequate potable water supplies, food insecurity, overpopulation and severe health and disease risks. Island communities are adapting to the environmental changes, some through resettlement and relocation to other areas and other islands of their nations. Migration has always been relied upon by human populations to adapt to change, including environmental change. Sadly, SIDs must begin to consider international migration as a final method of adapting to the effects of climate change upon their island homes. Yet, relocation en-masse is not an option under the current global migration regime.

Lacuna in the Law: Climate Change-Induced Displacement

² IPCC, 'Climate Change 2007: Synthesis Report', in IPCC, November 2007, viewed on 14 April 2012, <http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf>, p.52.

³ Ibid.

⁴ J Locke, 'Climate change-induced migration in the Pacific Region: sudden crisis and long-term developments', *The Geographical Journal*, Vol.175, 2009, pp.173.

⁵ Ibid., p.171.

⁶ IPCC, 'Chapter 16: Small islands', in IPCC, November 2007, viewed 24 May 2012, <<http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter16.pdf>>, p.689.

⁷ IPCC, 'Climate Change 2007: Synthesis Report', p.46.

The international community is presently ill-equipped to deal with climate change-induced displacement. People displaced by climate change, particularly those forced to cross international borders, such as those from small island states, currently fall into a recognition and protection gap within international law. Whilst these displaced peoples should be afforded protection on principle and under existing international human rights and humanitarian law, there is no specific protection mechanism presently in place for climate change displaced persons, as there is for refugees, stateless persons and internally displaced persons.

People displaced by climate change are often described as 'climate change' or 'environmental refugees'. However, the key definition of the 1951 Convention and Protocol Relating to the Status of Refugees defines a refugee as a person who

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it⁸.

The essential component of this definition is the well-founded fear of persecution. Zetter notes four critical problems with the idea of 'environmental refugees' and with extending the Refugee Convention to include them. He argues that '[c]limatic and other environmental changes are not persecutory – crucial to the Convention definition – nor do they occur for reason of one of the five Convention grounds'; those displaced by climate change are not fleeing their own government, as refugees do; and

in an era of resistance towards and deterrence of refugees, seeking to expand the scope of the Refugee Convention to 'climate' or 'environmental refugees' might diminish still further states' responsibilities to protect those who have manifestly fled persecution and implicitly conflict⁹.

It is this latter objection which is of particular concern to some refugee advocates, who believe that an extension of the refugee definition could diminish and undermine the current international refugee protection regime; for example, the United Nations High Commissioner for Refugees (UNHCR) has observed that 'while environmental factors can contribute to prompting cross-border movements, they are not grounds, in and of themselves, for the [granting] of refugee status under international refugee law'¹⁰. Similarly, as McAdam and Loughry observe, 'the refugee label is at best pre-emptive, and at worst offensive'¹¹ for people of Kiribati and Tuvalu. Whilst these academics view refugees as strong and resilient, they learned that 'in these small Pacific countries, which are not themselves signatories to the Refugee Convention and whose languages do not even have a word

⁸ UNHCR, 'Convention and Protocol Relating to the Status of Refugees', in *United Nations*, 1951, viewed 20 May 2012, <<http://www.unhcr.org/3b66c2aa10.html>>, p.14.

⁹ R, Zetter, 'Protecting People Displaced by Climate Change: Some Conceptual Challenges', in *Climate Change and Displacement: Multidisciplinary Perspectives*, J. McAdam (ed.), Hart Publishing, Oxford, 2010, p.141-142.

¹⁰ UNHCR, 'Climate Change, Natural Disasters and Human Displacement', in *Climate Change and Displacement Reader*, Earthscan, New York, 2012, pp.144-154.

¹¹ J, McAdam, & M, Loughry, 'We Aren't Refugees', in *Climate Change and Displacement Reader*, Earthscan, New York, 2012, pp.380.

for refugee, the term has many negative associations¹². Among these associations are the connotations of victimhood, loss of dignity, and discomfiture with the refugee notion of fleeing a persecutory government¹³. Describing those displaced by climate change as 'environmental' or 'climate change refugees' could therefore be potentially damaging to the self-esteem of those most in need of assistance, as well as obstructive to any real action for protection taking place.

A stateless person is defined in the 1954 Convention Relating to the Status of Stateless Persons (and the subsequent 1961 Convention on the Reduction of Statelessness) as 'a person who is not considered as a national by any State under the operation of its law'¹⁴. McAdam notes that the 'two international treaties on statelessness do not envisage the eventuality of literal, physical statelessness'¹⁵, as will eventually happen in the case of countries such as Kiribati. However, even before total submersion, the islands will become uninhabitable. The UNHCR observes that 'unless territory could be protected or...was ceded by another State, the exile of the population and the government would presumably be permanent', resulting in dependency issues on the host State, questions over sovereignty and potential 'de facto [statelessness]'¹⁶. Whilst those displaced by climate change from small island states may then eventually be considered stateless, the practical application of this status and subsequent protection may be limited as the Convention is binding only for those who have ratified it and few states have a 'status determination procedure to identify stateless persons'¹⁷.

The last category is that of internally displaced persons (IDPs) who are defined in the Guiding Principles on Internal Displacement as

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border¹⁸.

The major flaw in this category, from a climate change displacement perspective, is that, for those from small island states, internal migration will eventually stop being an option. The Guiding Principles do not and cannot cover those people forced to migrate beyond their borders.

Climate Change-Induced Displacement and the UNFCCC

One prominent suggestion to close the protection gap surrounding those displaced by climate change is to include it under the UNFCCC. Despite the potential problems of extending this international body's mandate further, the inclusion of migration and displacement in relation to climate change in the outcome texts of recent COPs has proven to be a relatively smooth process.

¹² *ibid.*

¹³ *ibid.*

¹⁴ UNHCR, 'Convention Relating to the Status of Stateless Persons', in *United Nations*, 1954, viewed 20 May 2012, <<http://www.unhcr.org/3bbb25729.html>>, p.6.

¹⁵ J, McAdam, 'Disappearing States', Statelessness and the Boundaries of International Law', in *Climate Change and Displacement: Multidisciplinary Perspectives*, Hart Publishing Ltd, Oxford, 2010, pp.119.

¹⁶ UNHCR, 'Climate Change and Statelessness: An Overview', in *Climate Change and Displacement Reader*, Earthscan, New York, 2012, pp.156.

¹⁷ McAdam, *op. cit.*, p.123.

¹⁸ United Nations, 'Guiding Principles on Internal Displacement', *Francis Deng, Representative of the Secretary-General on Internally Displaced Persons*, viewed 20 May 2012, <<http://www.unhcr.org/43ce1cff2.html>>, p.1.

The UNFCCC may not be the ideal place to manage the entirety of the issue, but climate change-induced displacement is a result of the effects of climate change and as such should have a place within the UNFCCC. Significantly, this is the first international body where *states* have begun to broadly acknowledge the issue and where some degree of action has been agreed upon¹⁹. This is an immensely important step in the move towards protecting the rights and addressing the needs of those displaced and therefore the UNFCCC provides a good starting point for managing the issue.

Shamsuddoha and Chowdhury are amongst the advocates for including displacement issues under the UNFCCC, arguing that the UNFCCC, 'which has near universal membership, provides the common international framework to address the causes and consequences of climate change'²⁰, which includes displacement. Similarly, Williams proposes a 'regionally oriented regime operating under the auspices of the UN Climate Change Framework'²¹. Williams suggests that the UNFCCC be used as an 'international umbrella framework' that allows for 'regional cooperation and bilateral agreement that [builds] on existing geopolitical and economic relationships'²². Specifically, Williams advocates for 'explicit recognition of so-called climate change refugees in the post-Kyoto agreement that allows for, and facilitates, the development of regional programs to address the problem'²³. This is a suggestion which has been more realistic about the international system in which displacement management must operate, as opposed to the suggestion of creating a new and binding treaty²⁴. An international treaty on climate change and displacement runs the risk of its obligations being watered down in the name of state sovereignty and economic, social and political policy²⁵. Furthermore, as McAdam notes, concentration on a treaty could also result in missed opportunities for action and protection, with a 'risk that vast amounts of energy, time and resources will be channelled into treaty-related advocacy at the expense of other, perhaps more appropriate and community-attuned, responses'²⁶. Williams' proposal of regional programs under the UNFCCC umbrella and its future agreements could avoid these problems. However, these problems have not yet arisen and the inclusion of climate change-induced displacement and migration in the UNFCCC has so far been relatively smooth.

Issues of migration and displacement in relation to climate change emerged on to the UNFCCC agenda following the establishment of adaptation as an important focus of the negotiations, at

¹⁹ For example, meetings of international experts have been held on Climate Change and Displacement in Bellagio, Italy and Oslo, Norway in 2011.

²⁰ M, Shamsuddoha & R, K, Chowdhury, 'Climate Change Induced Forced Migrants: in need of dignified recognition under a new Protocol', in *Equity and Justice Working Group Bangladesh* December 2009, viewed on 22 August 2012, <<http://www.glogov.org/images/doc/equitybd.pdf>>, p.9

²¹ A, Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', *LAW & POLICY*, Vol.30, 2008, p.502.

²² *ibid.*, p.518

²³ *ibid.*, p.502

²⁴ For example, proposed by B, Docherty, & T, Giannini, 2009, 'Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees', *Harvard Environmental law Review*, vol.33, 2009, viewed 20 March 2012, <http://www.law.harvard.edu/students/orgs/elr/vol33_2/Docherty%20Giannini.pdf>, pp.349-403; A Convention For Persons Displaced By Climate Change, 'Frequently Asked Questions', *A Convention For Persons Displaced By Climate Change*, 2012, viewed 20 March 2012, <<http://www.ccdpconvention.com/documents/CCDP%20Convention%20FAQs.pdf>>, and D, Hodgkinson, T, Burton, L, Young, & H, Anderson, 'Copenhagen, Climate Change 'Refugees' and the Need for a Global Agreement', *Public Policy*, Vol.4, 2009, pp.155-174.

²⁵ Williams, *op. cit.*, p.518

²⁶ J, McAdam, 'Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer'. *International Journal of Refugee Law*, Vol.23, 2011, p.8

COP13 in Bali in 2007. It was here that the Bali Action Plan and the Ad Hoc Working Group on Long-Term Cooperation Action (AWG-LCA) were established to prepare for a post-Kyoto agreement that included adaptation measures²⁷. The following year, in 2008 at COP14 in Poznan, the assembly document of the negotiations first mentioned migration, reflecting the contributions of the wider research and humanitarian community²⁸. This mention remained in the draft negotiating text at the end of COP14 and was therefore present in the text negotiated at the high-pressure COP15 in 2009 in Copenhagen. Warner notes that at COP15 the paragraph on migration and displacement nearly became a jumble of issues of human rights, justice and compensation but that in the last hours of negotiations it was deemed 'sufficiently important to include migration and displacement' in its own subparagraph²⁹. After COP15, the AWG-LCA held a number of meetings in the lead up to COP16 in 2010, in Cancun. After the challenges of COP15, there was pressure to formulate something for Cancun that would be effective but not overly ambitious and so much attention was given to the development of a possible Cancun Adaptation Framework³⁰, which included migration and displacement. The result was a full sub-paragraph included in the outcome text of COP16, which reads:

14. Invites all Parties to enhance action on adaptation under the Cancun Adaptation Framework, taking into account their common but differentiated responsibilities 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 national, regional and international levels³¹.

As Gogarty observes 'this is hardly a concrete commitment [with its word choices of 'invite' and 'measures'] but it shows an acceptance amongst the parties that migration and displacement fall within the purview of adaptation under the remit of the Convention'³². Furthermore, Warner notes that this sub-paragraph's inclusion in the wider adaptation framework framed it as a technical, rather than a political issue³³. Similarly, the voluntary nature of the action asked for in the subparagraph meant it was uncontentious and the 'wording ['displacement, migration and planned relocation....national, regional and international levels'] was important because it signalled to decision makers that migration and displacement have different forms and will require different types of policy approaches'³⁴.

²⁷ UNFCCC, 'Conference of the Parties: Report of the Conference of the Parties on its thirteenth session, held in Bali from 3 to 15 December 2007, FCCC/CP/2007/6/Add.1*', UNFCCC, March 2008, viewed on 31 October 2012, <<http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3>>, pp.3, 5

²⁸ Warner, op. cit., p.8

²⁹ K, Warner, 'Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations', in UNHCR, May 2011, viewed on 22 August 2012, <<http://www.unhcr.org/4df9cc309.pdf>>, p.10

³⁰ ibid., p.11

³¹ ibid., p.12

³² B, Gogarty, 'Climate-change Displacement: Current Legal Solutions to Future Global Problems', *Journal of Law, Information and Science*, Vol.21, 2011, p.182

³³ Warner, 'Migration and Global Environmental Change: PD23: Migration and displacement in the context of adaptation to climate change developments in the UNFCCC climate negotiations and potential for future action', p.10

³⁴ ibid., p.11

Despite the fact that 'COP16 therefore placed migration and displacement on the [climate change] agenda'³⁵, little action appears to have occurred since. The operationalization of the Cancun Adaptation Framework at COP17 in Durban in 2011 was focused upon the establishment of the Adaptation Committee, the development of national adaptation plans (NAPs) and the work programme on loss and damage³⁶, which will be discussed subsequently. Further discussion of migration and displacement did not seem to arise during the Parties' negotiations, although a side event was held, entitled 'Implementing the Cancun Adaptation Framework: Vulnerability, changing populations and human mobility'³⁷. Specific discussion at the UNFCCC on issues of migration and displacement would therefore appear to currently be on the periphery; however, these issues may be being addressed elsewhere under the broad UNFCCC umbrella.

The potential of Loss & Damage

Whilst explicit discussion in the UNFCCC regarding climate change-induced migration and displacement may have halted at present, it could be addressed by Loss and Damage. Loss and Damage has arisen, like the acknowledgment of climate change-induced displacement, from the focus upon adaptation³⁸. From the 1990s until the mid-2000s, the UNFCCC negotiations were focused mainly upon mitigation; however it soon became clear that adaptation measures were necessary because 'the level of overall ambition on emissions reduction was too low to fully prevent climate change. Scientists and policy makers concurred that some impacts of climate change may already be manifest, and adaptation was now a necessary complement to mitigation'³⁹. This evolved into 'discussions on the need for resources and activities that would help countries to adapt to and manage loss and damage'⁴⁰, which resulted in the formation of the Subsidiary Body for Implementation (SBI) Work Program on Loss and Damage, created at COP16 in Cancun⁴¹, alongside the establishment of migration and displacement issues within the COP's outcome text. COP16 recognised the need for further understanding to 'reduce loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events'⁴²; and the Work Program was asked to consider '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'⁴³. At COP17 in Durban, negotiators reached agreement on the aspects of the Work Program to be discussed between COP17 and COP18, settling on three thematic areas for consideration:

³⁵ Gogarty, op. cit., p.168.

³⁶ UNFCCC, 'Adaptation', in *UNFCCC E-Newsletter*, 2012, viewed on 2 November 2012, <http://unfccc.int/press/news_room/newsletter/items/6665.php>.

³⁷ UNFPA, 'Implementing the Cancun Adaptation Framework: Vulnerability, changing populations and human mobility', in *UNFPA*, 2011, viewed 2 November 2012, <http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/env_degradation/cop17/Vulnerability-Population-Mobility-Side-Event-Report.pdf>.

³⁸ However, the Alliance of Small Island States (AOSIS) had maintained since the 1990s that states, like themselves, who would be harmed by loss and damage should deserve compensation.

³⁹ MCII, 'Brief history of Loss & Damage in UNFCCC discussions', in *MCII*, 2012, viewed on 2 October 2012, <http://www.climate-insurance.org/front_content.php?idcat=870>.

⁴⁰ *ibid.*

⁴¹ K, Warner & S, A, Zakieldeen, 'Loss and damage due to climate change: An overview of the UNFCCC negotiations', *European Capacity Building Initiative*, 2012, viewed 2 October 2012, <<http://www.environmentportal.in/files/file/LossandDamage.pdf>>, p.4.

⁴² UNFCCC, 'Conference of the Parties: 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', *UNFCCC*, March 2011, viewed on 31 October 2012, <<http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>>, p.6.

⁴³ *ibid.*

1. Assessing the risk of loss and damage associated with the adverse effects of climate change, and current knowledge.
2. A range of approaches to address loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events, taking into consideration experience at all levels.
3. The role of the UNFCCC in enhancing the implementation of approaches to address loss and damage associated with the adverse effects of climate change⁴⁴.

During 2012, various expert and regional meetings have been held to address the first two thematic areas. The results of these meetings 'are expected to generate an adequate knowledge base to inform the COP in making a decision on loss and damage at COP 18'⁴⁵.

The Work Program is the first time that the international community has made a comprehensive attempt to address Loss and Damage⁴⁶, and it could provide a means for practically addressing issues of displacement and migration. Of particular relevance is the theme of slow onset events. Siegele notes that these would be more appropriately termed processes as they gradually occur over time, for example, sea level rise, increasing temperatures, salinisation, and desertification and so on⁴⁷. It is slow onset events that will cause migration and displacement, which are also viewed as responses to loss and damage⁴⁸. Siegele observes that the categorisation of hazards which occurs under the UNFCCC reflects the various financial instruments that could be utilised, suggesting that a type of life insurance mechanism would be most appropriate to address slow onset events⁴⁹. This would involve the long term build-up of funds to pay for probable loss and damage. It is conceivable that such a mechanism could be effective in addressing the ramifications of migration and displacement, assisting populations and their governments, on a more practical level, to migrate. The position of migration and displacement in paragraph 14(f) does signify that they are technical issues which may qualify for adaptation funding⁵⁰. However, beyond the financial risks and ramifications of loss and damage and displacement, non-economic losses, such as culture, homes and society, need to be considered⁵¹. It is hoped that at COP18 such a holistic approach will be taken to funding and considering the issue.

The Alliance of Small Island States (AOSIS) is at the forefront of loss and damage discussions. Indeed, 'as far back as 1991....AOSIS highlighted the need to address climate-related loss and damage for the most vulnerable Parties, and proposed the establishment of an international insurance pool as a

⁴⁴ K, Warner & S, A, Zakieldein, op. cit., p.5

⁴⁵ UNFCCC, 'Adaptation'

⁴⁶ S, Kreft, R, Weikmans, & S, Harmeling, 'Loss and Damage: The recent SREX report and the UNFCCC loss and damage discourse: A starting point for the debate', *Germanwatch*, 2012, viewed 2 October 2012, <http://www.pacificdisaster.net/pdnadmin/data/original/GermanWatch_2012_SREX_lossdamg.pdf>, p.3

⁴⁷ L, Siegele, 'Loss and Damage: The theme of slow onset impact', *Germanwatch*, August 2012, viewed 2 October 2012, <<http://germanwatch.org/en/download/6674.pdf>>, p.6

⁴⁸ *ibid.*, p.11

⁴⁹ *ibid.*, p.12

⁵⁰ Warner, 'Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations', op. cit., p.10; UNU-EHS, 'SBI Work Program on Loss and Damage: Ideas for work streams and areas of discussion up to and beyond COP18', in *UNU-EHS*, August 2011, viewed 25 August 2012, <<http://unfccc.int/resource/docs/2011/smsn/igo/129.pdf>>, pp.6-7

⁵¹ J, P, Hoffmaister & D, Stabinsky, 'Briefing Paper on Loss and Damage: Loss and Damage: Some key issues and considerations for SIDS expert meeting', *Third World Network*, 2012, viewed 31 October 2012, <http://unfccc.int/files/adaptation/cancun_adaptation_framework/loss_and_damage/application/pdf/loss_and_damage_bp4_sids.pdf>, p.6.

collective loss-sharing scheme to compensate victims of projected sea-level rise'⁵². AOSIS now recommend an international Loss and Damage mechanism, composed of three components:

1. An Insurance Component to help SIDS and other particularly vulnerable developing countries manage financial risk from increasingly frequent and severe extreme weather events;
2. A Rehabilitation/Compensatory Component to address the progressive negative impacts of climate change, such as sea-level rise, increasing land and ocean temperatures, and ocean acidification; and
3. A Risk Management Component to support and promote risk assessment and management tools and facilitate and inform the Insurance Component and Rehabilitation/Compensatory Component⁵³.

AOSIS suggest this three-pronged mechanism could be situated under the UNFCCC umbrella, to take advantage of administrative support and to ensure appropriate governance⁵⁴. This is a well thought-out recommendation that has been promoted and worked upon by AOSIS for over twenty years. As countries that face a unique situation regarding potential and permanent future displacement, they deserve to have significant input into the mechanism that will address their own Loss and Damage. Similarly, AOSIS' mechanism could also provide a means for effectively responding to issues of climate change-induced migration and displacement. Whilst these issues are not specifically addressed in AOSIS' submission to the Work Program on what should be included at COP18, permanent loss is discussed⁵⁵, and migration and displacement (apart from being viewed as adaptation measures) can be understood as a permanent loss: of land, of culture and of territory. If it comes to permanent displacement, affected populations, their governments and receiving governments will need some means to cover the costs of relocation. AOSIS' Insurance Component or Compensatory Component could manage this, depending upon how each Component is structured. The Risk Management Component could undoubtedly play a role in conducting risk assessments and assisting to manage and reduce the risks associated with displacement.

AOSIS has a comprehensive proposal for addressing Loss and Damage, it remains to be seen whether it will be adopted, or at the very least, seriously considered, at COP18. If Loss and Damage is effectively addressed, there will be a means for attending to the technical and practical consequences of climate change-induced migration and displacement.

⁵² AOSIS, 'Submission of Nauru on behalf of AOSIS to Subsidiary Body on Implementation, Views and information on elements to be included in the recommendations on loss and damage in accordance with decision 1/CP.16', October 2012, viewed 31 October 2012, <<http://unfccc.int/resource/docs/2012/sbi/eng/misc14.pdf>>, p.7.

⁵³ *ibid.*, p.5

⁵⁴ *ibid.*

⁵⁵ *ibid.*, p.7

Recommendations

In order for climate change-induced displacement and migration to be effectively addressed, the following recommendations are made:

1. *Establish an internationally acceptable, comprehensive and objective definition for climate change-induced displacement and migration*

As subparagraph 14(f) demonstrates, displacement and migration can take different forms and therefore different policy approaches. A definition needs to be established so that all parties involved are working from the same understanding.

2. *Further implement subparagraph 14(f)*

The matter of displacement and migration as a result of climate change is a pressing one and more pragmatic action needs to be taken to address it by asking states to not just consider the issue but to act upon it in a cooperative manner.

3. *Research further the relationship between Loss and Damage and climate change-induced displacement and migration*

Further research on this relationship could create a better understanding of how they are mutually implicated and how they may be best approached. Funding for Loss and Damage could reasonably be expected to assist with issues of displacement and migration as a result of climate change; however, this is contingent upon the establishment of an international mechanism for Loss and Damage.

Conclusion

In conclusion, the pressing nature of climate change-induced displacement and migration is becoming increasingly obvious. The experience of SIDS, as outlined above, demonstrates the urgency of the matter. Serious thought needs to be given to how this issue will be managed by the international community. The positioning of this issue within the UNFCCC text is an important step towards addressing the legal and protective gaps within the current system. However, further action needs to be taken and Loss and Damage is a potential avenue for this action to occur. It is hoped that at COP18 measures are taken to ensure that Loss and Damage is holistically addressed, including its ramifications for climate change-induced displacement and migration.

Bibliography

- Alliance of Small Island States (AOSIS), 'Submission of Nauru on behalf of AOSIS to Subsidiary Body on Implementation, Views and information on elements to be included in the recommendations on loss and damage in accordance with decision 1/CP.16', October 2012, viewed 31 October 2012, <<http://unfccc.int/resource/docs/2012/sbi/eng/misc14.pdf>>, p.7.
- Gogarty, B, 'Climate-change Displacement: Current Legal Solutions to Future Global Problems', *Journal of Law, Information and Science*, Vol.21, 2011, pp.167-188
- Hoffmaister, J, P & Stabinsky, D, 'Briefing Paper on Loss and Damage: Loss and Damage: Some key issues and considerations for SIDS expert meeting', *Third World Network*, 2012, viewed 31 October 2012, <http://unfccc.int/files/adaptation/cancun_adaptation_framework/loss_and_damage/application/pdf/loss_and_damage_bp4_sids.pdf>
- Intergovernmental Panel on Climate Change (IPCC), 'Climate Change 2007: Synthesis Report', in *IPCC*, 2007, viewed on 14 April 2012, <http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf>
- Intergovernmental Panel on Climate Change (IPCC), 'Chapter 16: Small islands', in *IPCC*, November 2007, viewed 24 May 2012, <<http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter16.pdf>>
- Kreft, S, Weikmans, R & Harmeling, S, 'Loss and Damage: The recent SREX report and the UNFCCC loss and damage discourse: A starting point for the debate', *Germanwatch*, 2012, viewed 2 October 2012, <http://www.pacificdisaster.net/pdnadmin/data/original/GermanWatch_2012_SREX_lossdamg.pdf>
- Locke, J, 'Climate change-induced migration in the Pacific Region: sudden crisis and long-term developments', *The Geographical Journal*, Vol.175, 2009, pp.171-180
- McAdam, J, 'Disappearing States', Statelessness and the Boundaries of International Law', in *Climate Change and Displacement: Multidisciplinary Perspectives*, Hart Publishing Ltd, Oxford, 2010, pp.105-129
- McAdam, J, 'Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer'. *International Journal of Refugee Law*, Vol.23, 2011, pp.2-27
- McAdam, J & Loughry, M, 'We Aren't Refugees', in *Climate Change and Displacement Reader*, Earthscan, New York, 2012, pp.379-382
- Munich Climate Insurance Initiative (MCII), 'Brief history of Loss & Damage in UNFCCC discussions', in *MCII*, 2012, viewed on 2 September 2012, <http://www.climate-insurance.org/front_content.php?idcat=870>
- Shamsuddoha, M & Chowdhury, R K, 'Climate Change Induced Forced Migrants: in need of dignified recognition under a new Protocol', in *Equity and Justice Working Group Bangladesh* December 2009, viewed on 22 August 2012, <<http://www.glogov.org/images/doc/equitybd.pdf>>
- Siegele, L, 'Loss and Damage: The theme of slow onset impact', *Germanwatch*, August 2012, viewed

2 October 2012, <<http://germanwatch.org/en/download/6674.pdf>>

United Nations, 'Guiding Principles on Internal Displacement', *Francis Deng, Representative of the Secretary-General on Internally Displaced Persons*, 1998 viewed 20 May 2012, <<http://www.unhcr.org/43ce1cff2.html>>

United Nations Framework Convention on Climate Change (UNFCCC), 'Conference of the Parties: Report of the Conference of the Parties on its thirteenth session, held in Bali from 3 to 15 December 2007, FCCC/CP/2007/6/Add.1*', *UNFCCC*, March 2008, viewed on 31 October 2012, <<http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3>>

United Nations Framework Convention on Climate Change (UNFCCC), 'Conference of the Parties: 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', *UNFCCC*, March 2011, viewed on 31 October 2012, <<http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>>

United Nations Framework Convention on Climate Change (UNFCCC), 'Adaptation', in *UNFCCC E-Newsletter*, 2012, viewed on 2 November 2012, <http://unfccc.int/press/news_room/newsletter/items/6665.php>

United Nations High Commissioner for Refugees (UNHCR), 'Convention and Protocol Relating to the Status of Refugees', in *United Nations*, 1951, viewed 20 May 2012, <<http://www.unhcr.org/3b66c2aa10.html>>

United Nations High Commissioner for Refugees (UNHCR), 'Convention Relating to the Status of Stateless Persons', in *United Nations*, 1954, viewed 20 May 2012, <<http://www.unhcr.org/3bbb25729.html>>

United Nations High Commissioner for Refugees (UNHCR), 'Climate Change, Natural Disasters and Human Displacement', in *Climate Change and Displacement Reader*, Earthscan, New York, 2012, pp.144-154.

United Nations High Commissioner for Refugees (UNHCR), 'Climate Change and Statelessness: An Overview', in *Climate Change and Displacement Reader*, Earthscan, New York, 2012, pp.155-158

United Nations Population Fund (UNFPA), 'Implementing the Cancun Adaptation Framework: Vulnerability, changing populations and human mobility', in *UNFPA*, 2011, viewed 2 November 2012, <http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/env_degradation/cop17/Vulnerability-Population-Mobility-Side-Event-Report.pdf>

United Nations University – Institute for Environment and Human Security (UNU-EHS), 'SBI Work Program on Loss and Damage: Ideas for work streams and areas of discussion up to and beyond COP18', in *UNU-EHS*, August 2011, viewed on 25 August 2012, <<http://unfccc.int/resource/docs/2011/smsn/igo/129.pdf>>

Warner, K, 'Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations', in *UNHCR*, May 2011, viewed on 22 August 2012, <<http://www.unhcr.org/4df9cc309.pdf>>

Warner, K, 'Migration and Global Environmental Change: PD23: Migration and displacement in the

context of adaptation to climate change developments in the UNFCCC climate negotiations and potential for future action', *UK Government's Foresight Project*, October 2011, viewed on 1 November 2012, <<http://www.bis.gov.uk/assets/foresight/docs/migration/policy-development/11-1269-pd23-migration-displacement-in-adaptation-climate-change>>

Warner, K, & Zakieldein, S, A, 'Loss and damage due to climate change: An overview of the UNFCCC negotiations', *European Capacity Building Initiative*, 2012, viewed 2 October 2012, <<http://www.environmentportal.in/files/file/LossandDamage.pdf>>

Williams, A 'Turning the Tide: Recognizing Climate Change Refugees in International Law', *LAW & POLICY*, Vol.30, 2008, pp.502-529

Zetter, R 'Protecting People Displaced by Climate Change: Some Conceptual Challenges', in *Climate Change and Displacement: Multidisciplinary Perspectives*, Hart Publishing Ltd, Oxford, 2010, pp.131-150



globalvoices