



Environmental migration as economic and non-economic losses: how to meet the cost of inaction

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"(…) Right in all of us. Trust this earth uprising.
All of us bring light to exciting solutions never tried before
For it is our hope that implores us, at our uncompromising core,
To keep rising up for an earth more than worth fighting for."

Amanda Gorman [1]

"Decades of procrastination have transformed what could have been a slow transition to a carbon-neutral society into what will now have to be a more abrupt one".[2]
The climate change-migration nexus is one of the major challenges our societies will face in the coming decades. The impacts of climate change and environmental degradations on people and communities are being studied by various disciplines, sometimes through interdisciplinary research, and have revealed dynamics and difficulties in addressing the issue. Most of the data collected shows that climate change and environmental degradations are not the sole drivers of migration.[3] However, they are playing an increasingly large role in aggravating pre-existing vulnerabilities such as the consequences of industrial development, and are already impacting some parts of our world.[4]
It is reasonable to consider international negotiations as the last chance our societies can seize to meet the cost of our (in)action. The global response to climate change is still lacking effective protection for migrants who are uprooted by disasters or slow-onset degradations. No international legal status was created or adapted to allow people to move safely from one place to another. Nevertheless, climate change impacts have started to be addressed in migration frameworks.[5] Migration issues were debated and negotiated during international processes relating to climate change.[6] Some operational links have been developed through institutional cooperation and experience sharing. This coordination is gaining relevance as societies are already experiencing the climate change-migration nexus and are trying to cope. While human rights enforcement has become the main tool for corrective justice,[7] research on distributive justice, which aims to achieve just and equitable outcomes, includes debates on

economic and non-economic losses suffered by environmental migrants[8] and societies. This is a very sensitive topic to address, first because huge political discrepancies can be found within countries on the subject of migration and climate change. Second, at the international level, it is difficult to recognize industrialized countries' legal responsibilities and legal obligations. However, the Cancún framework[9] acknowledged the climate change-migration nexus and considered migration as a way to adapt. Furthermore, international negotiations have strengthened the role of UNFCCC in helping developing economies regarding the issue. In this respect, financial or capacity-building projects, among other actions, have now been launched to improve resilience and protect vulnerable communities.

The Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts (WIM) developed in 2013 (COP-19) is a very relevant vehicle that was created to address impacts on societies. Institutionalized by the Paris Agreement,[10] this modest progression could be a real tool for distributive justice. Even if loss and damage is a very controversial issue, some Nationally Determined Contributions[11] have made reference to it. Following this idea, the Task Force on displacement,[12] created by the WIM executive committee, should address controversies regarding changes in responsibility, as a pre-legal context for upgrading protection. Standards included to evaluate economics and non-economics loss and damage regarding migration must be debated, negotiated and adopted.

Measures that could be relevant for addressing the climate change-migration nexus could integrate financial compensation to those who were forced to move, among other things. Different frameworks have been envisaged by authors. Benoit Mayer[13] for example distinguishes three ways of understanding climate change-migration loss and damage capacities: 1) Migration can reduce loss and damage (by moving before the disaster happens), 2) Migration can be a source of loss and damage for migrants (loss of property, loss of rights, loss of protection), and 3) Migration can be a source of loss and damage for the host communities. Accordingly, another aspect could be added: 4) Migration is a source of loss and damage for the communities impacted by climate change and environmental degradations. When a particular society with its own culture, its own history and its own identity loses members, it is a failure for the whole community, which has failed to keep each person safe and secure by protecting their fundamental rights. According to an array of decisions, from UN institutions to national courts, fundamental rights are already jeopardized. The UN Human Rights Committee has advised the international community to go deeper into mitigation and adaptation;[14] otherwise the right to life could be seriously hampered. Two years later, the same UN Human Rights Committee clearly condemned Australia for its failure to implement adaptation and mitigation measures: "(...) the risk of impairment of those rights, owing to alleged serious adverse impacts that have already occurred and are ongoing, is more than a theoretical possibility."[15] To fulfil human rights obligations, States must take sufficient measures and develop their cooperation based on solidarity.[16] In this sense, Christel Cournil and her research team on climate justice have worked on human rights complaints lodged with national courts or UN surveillance committees.[17] Their work on "climate proceedings" is relevant to understand the gaps in international law, due to the political factors arising from controversial issues such as migrations. It is unacceptable to leave national judges alone to face an increasing number of calls for protection. If political institutions continue to deny economic and non-economic loss and damages in the context of migrations, national judges will have to condemn States' inaction and thus be the last barrier of protection, even though the first

purpose of States is to respect, fulfil, and give entire effect to international Human Rights law. That's why the Task Force on Displacement is the ideal solution for moving ahead. From its previous fundamental work on assessing evidence and enhancing cooperation in order to implement integrated approaches, it could be a relevant and insightful way of going deeper and improving the protection of communities already suffering from climate change impacts. It could allow stakeholders to participate in deliberations on which standards could be reasonable and thus gain a greater consensus. By developing standards for evaluating losses at the international level based on rights and needs, it could help achieve global compact incentives and would give realistic content to the commitment made to address the challenges of disasters and climate change impacts on migration, displacement, and mobility. Also, it could contribute to the necessary change from the paradigm of prevention-adaptation to the paradigm of preparation, as advised by a growing social and legal literature.[18] Perhaps, the idea of a responsibility to prepare[19] for climate change disasters should guide discussions and negotiations in developing standards for evaluating disaster and climate change impacts on migration and subsequent loss and damages for both the host and sending communities and for the primary victims: human beings.

References

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