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# Understanding human mobility in the global climate regime through a translocal lens

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## ABSTRACT

This paper examines how a translocal approach could enrich conceptualisations of human mobility in the context of the current climate regime. Drawing on the concept of ‘translocal legalities’, it is argued that a socio-legal and translocal analysis could inform the existing analyses of climate-related mobility. Through the case of post-cyclone Idai relocations in Mozambique, it demonstrates the need to capture multi-faced and multi-level aspects of climate-related mobility. This involves different degrees of adaptation but also inevitable losses and damages that defy conventional categorisation into economic or non-economic. A translocal approach, which is empirically grounded in local realities, but also takes into account national and international level developments, can enable a more nuanced understanding of climate-related relocations. It provides insights into both the adaptation and loss and damage aspects in their full complexities and thereby brings about a more informed perspective on human mobility in the current climate regime.

**KEYWORDS** Human mobility; climate regime; adaptation; loss and damage; justice

## Introduction

The accelerating pace of climate change and its adverse impacts are often referred to as the ‘defining crisis of our time’.<sup>1</sup> In reality, climate change is part of wider processes of environmental change and degradation<sup>2</sup> that characterise the current ‘Anthropocene’ era in which ‘we’ as the world (and especially

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<sup>1</sup> See for example United Nations ‘The Climate Crisis – A Race We Can Win’ (2020) <[www.un.org/en/un75/climate-crisis-race-we-can-win](http://www.un.org/en/un75/climate-crisis-race-we-can-win)> (accessed 25 March 2022).

<sup>2</sup> See Ilan Kelman, JC Gaillard and Jessica Mercer, ‘Climate Change’s Role in Disaster Risk Reduction’s Future: Beyond Vulnerability and Resilience’ (2015) 6 *International Journal of Disaster Risk Reduction*, 21- for further discussion on how climate change interacts with other environmental and non-environmental phenomena that exacerbate long-term development concerns.

the Global North) have stretched the use of resources on our planet too far.<sup>3</sup> Climate change is hence part of a wider crisis, underlined by a range of long-standing issues such as 'inequities, injustices, social oppression, discrimination, poor wealth distribution, and a value system that permits exploitation of environmental resources irrespective of the long-term consequences'.<sup>4</sup> Human mobility that takes place in this wider context of environmental change, including disasters and climate change,<sup>5</sup> is a phenomenon where the inextricable links between such environmental and non-environmental factors come about in a particularly salient way.<sup>6</sup> At the same time, mobility in general is a phenomenon that 'highlights the multiple, often intersecting connections between places, [...] and how translocal ties and flows transform local settings'.<sup>7</sup> This makes mobility particularly illuminating for illustrating the extent to which climate change requires a transnational governance response that can translate into translocal solutions.

To address climate-related mobility challenges, climate finance is considered to be essential. The 26th Conference of Parties of the United Nations Framework Convention on Climate Change (hereunder COP26) has not made notable breakthroughs with regard to securing climate finance.<sup>8</sup> That does not mean, however, that discussions about human mobility were absent from the COP26 agenda. On the contrary, it was a topic for many side events and was also repeatedly highlighted in plenary discussions.<sup>9</sup> Yet, despite the wealth of experiences with different types of climate-related

<sup>3</sup> See Emily Webster and Laura Mai, 'Transnational Environmental Law in the Anthropocene' (2020) 11 *Transnational Legal Theory* 1 for further reading suggestions on the development of 'the Anthropocene' as a concept in transnational studies, especially in the context of transnational environmental law.

<sup>4</sup> Ilan Kelman, JC Gaillard and Jessica Mercer, 'Climate Change's Role in Disaster Risk Reduction's Future: Beyond Vulnerability and Resilience' (2015) 6 *International Journal of Disaster Risk Reduction*, 25.

<sup>5</sup> In this article, whenever the reference is made to climate-related mobility, it is understood to be part of this broader context of environmental change.

<sup>6</sup> Lorenzo Guadagno and Daria Mokhnacheva, 'Human Mobility and Disaster Risk Reduction, Including Climate Change' in Ilan Kelman, Jessica Mercer and JC Gaillard (eds) *The Routledge Handbook of Disaster Risk Reduction Including Climate Change Adaptation* (Routledge, London 2017) (Guadagno and Mokhnacheva); Walter Kälin, 'Migration' in Lavanya Rajamani and Jacqueline Peel (eds) *The Oxford Handbook of International Environmental Law (2nd Edition)*, (Oxford University Press, Oxford 2021) (Kälin, 'Migration').

<sup>7</sup> Benjamin Etzold, Milena Belloni, Russell King, Albert Kraler and Ferruccio Pastore 'Transnational Figurations of Displacement' (TRAFIG working paper no.1, 2019) online: <<https://trafig.eu/output/working-papers/2019-01/D011-TWP-Transnational-Figurations-of-Displacement-Etzold-et-al-2019-v02p-20190709.pdf>> (accessed 25 March 2022).

<sup>8</sup> Helen Mountford, David Waskow, Lorena Gonzalez, Chirag Gajjar, Nathan Cogswell, Mirna Holt, Taryn Fransen, Molly Bergen and Rhys Gerholdt 'COP26: Key Outcomes from the UN Climate Talks in Glasgow', November 17 2021, online: <[www.wri.org/insights/cop26-key-outcomes-un-climate-talks-glasgow](http://www.wri.org/insights/cop26-key-outcomes-un-climate-talks-glasgow)> (accessed 13 July 2022). This article was finalised before the outcomes of COP27 discussions became available and thus does not account for the relevant developments that took place after COP27.

<sup>9</sup> For the list of COP26 meetings and side events addressing human mobility in the context of disasters and climate change see, for example, compilations created by the International Organisation for Migration: <https://environmentalmigration.iom.int/human-mobility-cop26>) and the Platform on Disaster Displacement: <https://disasterdisplacement.org/disaster-displacement-at-cop26-2>. Both websites accessed 13 August 2022.

mobilities and their impacts shared through these discussions, the current setup of the climate regime does not really cater for the complexities of the local-level realities. The lack of relevant climate finance means that the tangible impacts of the regime are yet to reach the local levels at the scale required.

As it is, the current climate regime represents an international regime that is primarily constituted by the United Nations Framework Convention on Climate Change (UNFCCC), the climate negotiations that take place at subsequent Conferences of the Parties (COPs) of the UNFCCC, and the Intergovernmental Panel on Climate Change (IPCC) that provides the scientific basis for such negotiations.<sup>10</sup> Although ‘the universe of climate change law extends well beyond the UN climate regime’,<sup>11</sup> the current international climate regime remains a rather specific normative system. In this sense, it is not designed to address phenomena that cut across multiple policy areas, and which require multi-scalar, interdisciplinary approaches, such as human mobility.

This paper examines how a translocal approach could enrich conceptualisations of human mobility in the context of the current climate regime. In line with Boas et al, climate-related mobility is understood to encompass a ‘wide range of mobilities and immobilities’<sup>12</sup> involving short-term, long-term, circular movements and various forms of immobility that result from peoples’ inability and/or unwillingness to move from places facing increasing disaster risks in the context of climatic and broader environmental changes. While the focus here is primarily placed on internal movements, it is noted that there are significant differences in the legal regimes and protections that apply to people moving within their countries or across international borders in the context of environmental factors.<sup>13</sup>

Drawing on the concept of ‘translocal legalities’<sup>14</sup> as explained in the next section, it is argued that a socio-legal analysis which takes a translocal approach could inform the existing analyses of climate-related mobility. In the context of this paper, a translocal approach is informed by the knowledge of international and transnational developments in climate policy, including how human mobility is conceptualised in the global climate regime. At the same time, methodologically it is rooted in the empirical understanding of the lived realities of mobile and immobile people affected by the direct

<sup>10</sup> Lavanya Rajamani and Jacob Werksman, ‘Climate Change’ [2021] *The Oxford Handbook of International Environmental Law* 491.

<sup>11</sup> *Ibid* 492–93.

<sup>12</sup> Ingrid Boas and others, ‘Climate Mobilities: Migration, Im/Mobilities and Mobility Regimes in a Changing Climate’ (2022) 48(14) *Journal of Ethnic and Migration Studies* 3

<sup>13</sup> For further discussion see for example Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches* (UNHCR Legal and Protection Policy Research Series, 2012) <[www.unhcr.org/4f33f1729.pdf](http://www.unhcr.org/4f33f1729.pdf)> (accessed 25 March 2022).

<sup>14</sup> Matthew C Canfield, Julia Dehm and Marisa Fassi, ‘Translocal Legalities: Local Encounters with Transnational Law’ (2021) 12(3) *Transnational Legal Theory* 335.

consequences of climate change. The paper illustrates this through the case of post-cyclone Idai relocations in Mozambique. It argues that a translocal approach provides an avenue for promoting a more nuanced and comprehensive understanding of climate-related mobility and thereby a more informed – better grounded in local realities – perspective on mobility in the current climate regime. It is through the empirical reality from the Mozambique case, that one can acquire a better understanding of how adaptation and loss and damage – two of the three core pillars of the global climate regime – work out in practice.

This paper is organised as follows: the next section positions the paper within the larger body of literature on transnational law and outlines its socio-legal understanding of international law. Section three reviews the development of the current climate regime with a focus on its three pillars: mitigation, adaptation and loss and damage. Section four then reviews the dominant conceptualisations of mobility in this regime, by considering the framings of migration as adaptation and displacement as loss and damage, and planned relocations as a form of mobility positioned in between these two ends. This analysis is based on an extensive review of both academic and grey literature, including official decisions, working documents and other outputs from relevant climate conferences. The fifth section illustrates the limitations of such conceptualisation of mobility through the case of post-cyclone Idai government-led relocations in Mozambique. This section draws upon the findings from a desk study and two weeks of fieldwork in Mozambique conducted in 2019 by the second author and a co-researcher.<sup>15</sup> The final section concludes by considering the value of a socio-legal analysis adopting the translocal lens to promote a better understanding of the complex lived realities of such relocations that are not captured by the conceptualisations of human mobility in the current climate regime.

### **A translocal lens on climate-related mobility**

In recent decades, we have witnessed a rapid globalisation of our societies: a ‘widening, deepening and speeding up of global interconnectedness’, accompanied by a blurring of boundaries between the domestic and the global level.<sup>16</sup> The interconnectedness of the world manifests itself through ‘a stretching of social, political and economic activities across frontiers’ that at the same time become more intensive, and have a higher impact: activities

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<sup>15</sup> The findings from this fieldwork are described in more detail in: Carolien Jacobs and Bernardo Almeida, ‘Land and Climate Change: Rights and Environmental Displacement in Mozambique’ (2020), *Research report* (Leiden University). No ethics approval was required for this research, but the author secured permission from the relevant authorities in the country and obtained oral informed consent from the research participants.

<sup>16</sup> David Held and others, *Global Transformations: Politics, Economics, and Culture* (Stanford University Press 1999) 14.

and decisions in one region of the world may have direct consequences for individuals on the other side of the world.<sup>17</sup> The impact of human behaviour on the world's climate is a clear example of such interconnectedness: and climate change has rapidly become a global challenge with already palpable, albeit highly variegated, consequences at local levels. In this section, the paper is first positioned within the larger legal and socio-legal field, and secondly within the broader field of migration and mobility studies.

### ***A (socio-)legal approach to climate-related mobility***

How does law matter in this context? The increased global interconnectedness is accompanied by a growing institutionalisation of global governance regimes in which legal frameworks are negotiated and adapted on a global scale,<sup>18</sup> and a simultaneous shift from 'government' to 'governance' at a global level.<sup>19</sup> This happens in many different domains of the law, including in the – relatively new – domain of environmental law. It may seem self-evident; the natural environment does not adhere to the human invention of nation-state boundaries, and the impacts of climate change do not stop at a border. The analysis presented here starts – in the next section – with understanding the setup of a global climate regime from an international perspective, as this is the regime that has been gradually built and at the same time constantly challenged through the sequence of decisions adopted at the emblematic COPs. A better understanding of the way in which the climate regime has developed, and how climate-related mobility has gradually gained ground as part of climate responses is helpful for understanding the power relations involved in the development of the regime and the relation between law and society.

From this international perspective, however, one needs to move to a transnational perspective to gain a more complete understanding of the global climate regime and what is happening on the ground, acknowledging that 'important environmental regulation takes place outside formal treaty regimes' and that the state is one among many actors which play a role in governing human behaviour.<sup>20</sup> A transnational legal lens allows us to pay attention to the dynamics between the global and the national, and to study hegemonic power imbalances that are often engrained within the governance frameworks.

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<sup>17</sup> *Ibid.*

<sup>18</sup> Keebet von Benda-Beckmann and Bertram Turner, 'Anthropological Roots of Global Legal Pluralism' in Paul Schiff Berman (ed), *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press, 2020), chapter 2.

<sup>19</sup> Peer Zumbansen, 'Transnational Legal Pluralism' (2010) 1(2) *Transnational Legal Theory* 141.

<sup>20</sup> Jolene Lin, 'The Emergence of Transnational Environmental Law' in Louis Kotzé (ed), *Environmental Law and Governance for the Anthropocene* (Hart 2017) 331.

Yet, whereas transnational legal scholars are aware of the importance of looking 'beyond the state' and recognise 'the important normative contributions made by non-state actors',<sup>21</sup> the main binary in most of this scholarship remains the binary international-national. Taking into account that climate change has highly localised consequences, it is essential to also consider: 1) how the law works out in practice at these different scales; 2) which normative orders play a role at these levels, including non-state normative orders; and 3) the way in which the local level power dynamics and normative orders connect and relate to the national and transnational levels. This leads to a need to add a socio-legal and empirically oriented analysis to get a fuller understanding of the workings of the global climate regime. Following Von Benda-Beckmann et al, law, understood as a normative order, 'plays an important part in creating, producing and enforcing meanings of concepts such as 'justice', 'authority' and 'rights'; and in instantiating notions of 'legality' that may be invoked by different social actors in their construction of hegemonic and counter-hegemonic discourses'.<sup>22</sup> Optimistic scholars here even see a radical change in power relations, arguing that law for a long time was an instrument of domination (law as 'the cutting edge of colonialism'<sup>23</sup>) and has now become a 'weapon of the weak' as part of 'lawfare'.<sup>24</sup>

For the understanding of local realities, this paper takes inspiration from the long tradition of empirical research in the field of legal pluralism,<sup>25</sup> but also from a recent special issue in this journal on 'translocal legalities', defined as the 'emergent meanings, norms, and forms of authority constituted through grounded encounters with transnational legal claims, norms, and technologies of governance'.<sup>26</sup> In this sense, the concept promotes attention to everyday practices and the embeddedness of different forms of power relations and contestations within those practices through which local, national and transnational norms interact. It enables us to consider how different actors 'struggle for interpretive authority [of laws and norms] across multiple socio-political scales'.<sup>27</sup>

The case study on Mozambique serves to provide an example of the insights that can be gained by descending to that local level, and observing

<sup>21</sup> Emily Webster and Laura Mai, 'Transnational Environmental Law in the Anthropocene' (2020) 11(1–2) *Transnational Legal Theory* 1.

<sup>22</sup> Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Anne Griffiths, 'Introduction: The Power of Law' in Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Anne Griffiths (eds), *The Power of Law in a Transnational World: Anthropological Enquiries* (Berghahn Books, New York 2009) 2.

<sup>23</sup> Sally Merry, 'Law and Colonialism: Review Essay' (1991) 25(4) *Law & Society Review* 889.

<sup>24</sup> John L Comaroff and Jean Comaroff, 'Reflections on the Anthropology of Law, Governance and Sovereignty' in Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Julia Eckert (eds), *Rules of Law and Laws of Ruling: On the Governance of Laws* (Ashgate 2009).

<sup>25</sup> See von Benda-Beckmann and Turner (n 18) for an extensive overview of the development of the field.

<sup>26</sup> Canfield, Dehm and Fassi, 337 (n 14).

<sup>27</sup> *Ibid*, 338.



to what extent a global climate regime pervades into the veins of societies; the way in which other normative orders beyond the state and the international institutions play a role in shaping everyday climate responses, including mobility; and to what extent local realities connect to global discourses. By considering how government-led relocations in Mozambique are perceived and experienced by different actors, the paper argues that a fuller understanding of climate migration in this context calls not just for international and transnational, but also a translocal approach, which goes beyond the traditional international-national binary.<sup>28</sup>

### ***Insights from the field of migration and mobility studies***

Within the field of human geography, a translocal approach has been well-established, and it has been widely applied in migration and mobility studies. The translocal approach in this context has emerged as ‘a frame to understand mobility, peoples’ embeddedness while being mobile, and how mobile and immobile actors (re-)produce connectedness and thereby reshape places’.<sup>29</sup> One of the values of this perspective is its ability to capture ‘the diverse and contradictory effects of interconnectedness between places, institutions and actors’.<sup>30</sup> It is thus considered to promote ‘a more open and less linear’<sup>31</sup> conceptualisation of socio-economic and environmental disparities resulting in uneven spatial development that is often considered to be one of the major factors underlying human (im)mobility.

Taking this into account, this paper refers to ‘climate-related mobility’ and not to climate migration. Mobility is used as a more encompassing term than migration. In the existing discussions about climate-related mobility, migration has been primarily associated with proactive, voluntary movements and it has become increasingly framed as an expression of people’s resilience and ability to adapt to changing conditions. In contrast, displacement, predominantly equated with forced, unplanned movements, has been associated with a lack of resilience and a failure to adapt.<sup>32</sup> In reality, however, the distinction between (voluntary) migration and (forced) displacement is far from clear, as different movements mostly ‘take place on a continuum between coercion and choice’.<sup>33</sup> Migration and displacement could share similar

<sup>28</sup> It is noted that within the larger field of migration studies, empirical approaches to migration are widely applied. Within the international law field, contextualised and empirically-grounded studies are still less current, and this is why the importance and value of this approach is emphasised.

<sup>29</sup> Luise Porst and Patrick Sakdapolrak ‘How Scale Matters in Translocality: Uses and Potentials of Scale in Translocal Research’ (2017) 71(2) *Erdkunde* 112.

<sup>30</sup> Clemens Greiner and Patrick Sakdapolrak, ‘Translocality: Concepts, Applications and Emerging Research Perspectives’ (2013) 7 *Geography Compass*, 375.

<sup>31</sup> *Ibid.*, 375.

<sup>32</sup> Kira Vinke, Jonas Bergmann, Julia Blocher, Himani Upadhyay and Roman Hoffmann ‘Migration as Adaptation?’ (2020) 8(4) *Migration Studies*, 626 (Vinke et al); Källin, ‘Migration’ (n 6).

<sup>33</sup> Benoit Mayer, *The Concept of Climate Migration* (Edward Elgar Publishing 2016) (Mayer), 10.

drivers of vulnerability, such as difficulties in securing livelihoods, and increasing hardships in the light of mounting environmental, socio-economic and/or political pressures.<sup>34</sup> Likewise, both displacement and migration occur on diverse temporal scales ranging from short-term cyclical movements to temporary, to permanent, and it is not uncommon to see some degree of fluidity between these movements over time. For example, people may become internally displaced in the context of drought or conflict and subsequently move across borders in search of opportunities, or because they have been affected again by another disaster or conflict.<sup>35</sup>

Similarly, mobility and immobility are not necessarily 'fixed categories'.<sup>36</sup> Any decision to move or to stay, as well as outcomes of such decisions, are shaped by a range of factors and circumstances including changes to environmental conditions, but also demographic structures, socio-economic well-being and the political/policy context.<sup>37</sup> Such a structurally conditioned nature of choices, options and opportunities to move or to stay carries implications across time and space for the people who move, but also for their communities of origin and destination.<sup>38</sup> According to Baldwin and Fornale, this is why the climate-(im)mobility nexus represents 'an encompassing *relation* which demands to be understood *in its plurality*'.<sup>39</sup>

Drawing upon these understandings, a critical analysis of the way in which mobility is conceptualised in the global climate regime will be presented. To set the context, for this analysis, the next section starts with reviewing the setup of the current climate regime.

## The setup of the climate regime

Global challenges require global responses. This section presents the paper's analysis from an international law and governance perspective looking at the characteristics of the global climate regime, the development of its three

<sup>34</sup> Jessica Camille Aguirre, 'In Central America, Climate Change is Driving Families North' (28 August 2020) *Sierra* online: <[www.sierraclub.org/sierra/2020-5-september-october/feature/in-central-america-guatemala-climate-change-driving-families-north-climate-migration](http://www.sierraclub.org/sierra/2020-5-september-october/feature/in-central-america-guatemala-climate-change-driving-families-north-climate-migration)> (accessed 26 March 2022).

<sup>35</sup> Ben Taub, 'Lake Chad: The World's Most Complex Humanitarian Disaster' (27 November 2017) *The New Yorker* online: <[www.newyorker.com/magazine/2017/12/04/lake-chad-the-worlds-most-complex-humanitarian-disaster](http://www.newyorker.com/magazine/2017/12/04/lake-chad-the-worlds-most-complex-humanitarian-disaster)> (accessed 26 March 2022).

<sup>36</sup> Caroline Zickgraf, 'Keeping People in Place: Political Factors of (Im)mobility and Climate Change' (2019) 8(8) *Social Sciences*, 228.

<sup>37</sup> Richard Black, Stephen Bennett, Sandy Thomas, and John Beddington, 'Migration as Adaptation' (2011) 478 *Nature* 447; Mayer (n 33); Sanjula Weerasinghe, 'What We Know About Climate Change and Migration', (Center for Migration Studies, 2021) online: <<https://cmsny.org/wp-content/uploads/2021/02/What-We-Know-About-Climate-Change-and-Migration-Final.pdf>> (accessed 26 March 2022).

<sup>38</sup> Jon Barnett and Cecilia McMichael, 'The Effects of Climate Change on the Geography and Timing of Human Mobility' (2018) 39 *Population and Environment*, 339; Olivia Dun, Celia McMichael, Karen McNamara, and Carol Farbotko, 'Investing in Home: Development Outcomes and Climate Change Adaptation for Seasonal Workers Living between Solomon Islands and Australia' (2020) 11(3) *Migration and Development*, 852.

<sup>39</sup> Andrew Baldwin and Elisa Fornalé, 'Adaptive Migration: Pluralising the Debate on Climate Change and Migration' (2017) 183(4) *The Geographical Journal*, 323. Emphasis in the original.

main pillars: mitigation, adaptation, and loss and damage, and the relationship between these pillars.<sup>40</sup>

According to Hajer and Versteeg, climate change has become ‘the prime emblem of the ecological challenge facing the world’<sup>41</sup> in the 1990s, owing to the ‘joint efforts by scientists, NGOs, UN agencies, diplomats and various other sponsors to place climate change on the political agenda and attract funds’.<sup>42</sup> Around the same time, the issue of environmental migration and migrants, in particular, has become increasingly construed by different actors as the ‘human face’ of climate change.<sup>43</sup>

Since then, the sheer number, as well as the diversity, of actors involved in the climate regime has continued to increase. The participation of an increasingly diverse range of stakeholders representing not just national and international levels, but also sub-national and non-governmental actors in the UN Climate Change Conferences is illustrative of this. It was also evident at the COP26 held in Glasgow in 2021.<sup>44</sup> Despite being held during the global COVID-19 pandemic, COP26 gathered 120 world leaders and over 40,000 registered participants consisting of a diverse set of party delegates, observers and media representatives.<sup>45</sup> This transnational character of the climate regime has not necessarily translated into the development of closer links with other policy domains<sup>46</sup>, which require coordination to address cross-cutting issues such as human mobility. Subsequently, more horizontal connections have been created between the international climate regime and other areas of international policy-making, as well as vertical links to relevant rules, regulations and institutions at regional, national and subnational levels.<sup>47</sup> Yet such connections essentially remain in their infancy.<sup>48</sup>

<sup>40</sup> This paper acknowledges the fact that the editors of the special issue on ‘translocal legalities’ (n 14) take issue with a top-down approach that starts with the international level, and agrees with the argument that starting from a bottom-up perspective does more justice to local realities. Yet, since the central focus of this special issue is on COP26 and the global climate regime, this paper is organised to first present the analysis of the setup of the climate regime and of conceptualisations of mobility within this regime, and only thereafter present the empirical reality on the ground.

<sup>41</sup> Maarten Hajer and Wytse Versteeg, ‘Voices of Vulnerability: The Reconfiguration of Policy Discourses’ (2012) *The Oxford Handbook of Climate Change and Society* 93.

<sup>42</sup> *Ibid.*, 85.

<sup>43</sup> Calum TM Nicholson, ‘Climate Change and the Politics of Causal Reasoning: The Case of Climate Change and Migration’ (2014) 180(2) *The Geographical Journal* 156. François Gemenne, ‘How They Became the Human Face of Climate Change. Research and Policy Interactions in the Birth of the “Environmental Migration” Concept’ in AP Piquet and P de Guchteneire (eds), *Migration and climate change* (Cambridge University Press 2011) 225.

<sup>44</sup> UNFCCC, ‘UN Climate Change Conference UK 2021’ (2021) online: <<https://unfccc.int/conference/glasgow-climate-change-conference-october-november-2021#participation>> (accessed 25 March 2022).

<sup>45</sup> UN, ‘COP26: Together for our planet’ (n.d.) online:<<https://www.un.org/en/climatechange/cop26>> (accessed 8 October 2022).

<sup>46</sup> Kate Hampton, ‘Understanding the International Climate Regime and Prospects for Future Action’ (2004) *Institute for Public Policy Research* (IPPR) 1, 4.

<sup>47</sup> Rajamani and Werksman (n 10); Kälin, ‘Migration’ (n 6).

<sup>48</sup> *Ibid.*

One explanation for this has to do with the character of the international climate regime itself. The regime already has ‘an exceptionally broad scope, encompassing not simply environmental protection [...], but economic and development policies more generally’.<sup>49</sup> This is reflected in the setup of the climate regime with its three main pillars, each encapsulating a highly diverse set of thematic areas: mitigation, adaptation and loss and damage. Mitigation represents the first line of defence against the adverse effects of climate change. It aims at curbing greenhouse gas emissions and stabilising their concentration ‘at a level that would prevent dangerous anthropogenic interference with the climate system’.<sup>50</sup> It has been the core pillar of the UNFCCC since it was established in 1992, with the onus of responsibility placed on the industrialised countries that account for the vast majority of greenhouse gas emissions through the principle of ‘common but differentiated responsibilities’.<sup>51</sup>

However, as it became clear that mitigation efforts alone would be insufficient to substantially curb the emissions and reduce the impacts posed by the already changing climate, adaptation has become prominent in climate negotiations since the mid-2000s.<sup>52</sup> Recognising that adaptation to unavoidable impacts of climate change is necessary, this second pillar of the climate regime tasks the Global North to provide financial and technological support to ‘assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects’.<sup>53</sup> However, compared to mitigation, adaptation is considered to be a far more fluid pillar because it lacks a clear definition.<sup>54</sup> Since climate change is inextricably linked to much broader socio-economic and political processes, adaptation can hardly be divorced from adjustment to these wider processes and their consequences.<sup>55</sup> Moreover, adaptation primarily requires actions at the local rather than national level, which hitherto has been and continues to be the main arena for mitigation efforts.<sup>56</sup>

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<sup>49</sup> Daniel Bodansky and Lavanya Rajamani, ‘The Evolution and Governance Architecture of the United Nations Climate Change Regime’ in Urs Lauterbacher and Detlef F Sprinz (eds), *Global Climate Policy: Actors, Concepts and Enduring Challenges* (The MIT Press 2018), chapter 2.

<sup>50</sup> UNFCCC, ‘United Nations Framework Convention on Climate Change’ (United Nations 1992) Article 2.

<sup>51</sup> *Ibid* Article 4(4).

<sup>52</sup> Erin Roberts and Saleemul Huq, ‘Coming Full Circle: The History of Loss and Damage under the UNFCCC’ (2015) 8(2) *International Journal of Global Warming* 141.

<sup>53</sup> UNFCCC (n 50).

<sup>54</sup> According to the IPCC definition, adaptation refers to a nearly all-encompassing set of actions that constitute ‘the process of adjustment to actual or expected climate and its effects in order to moderate harm or take advantage of beneficial opportunities’. IPCC, ‘Summary for Policymakers’ in IPCC, *Climate change 2022: Impacts, adaptation and vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022) 5 online: <[www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](http://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf)> (accessed 23 March 2022).

<sup>55</sup> Giovanna Lauria, ‘A Critical Appraisal of the Concept of Climate Migration’ (2021) 9(3) *London Review of International Law* 375; Nicholson (n 43); Roberts and Huq (n 52); Baldwin and Fornalé (n 39).

<sup>56</sup> Roberts and Huq (n 52).

According to Tol, this points to a fundamental mismatch of scales between the two pillars:

Mitigation is primarily a matter of national governments in the context of international negotiations. Adaptation is primarily a matter of local managers of natural resources, and individual households and companies, in the context of a regional economy and society.<sup>57</sup>

It is the third pillar – loss and damage – that is seen as being the least established in the current climate regime. Loss and damage, which applies to ‘situations where adaptation is insufficient’<sup>58</sup> and essentially calls for actions at all levels – including, global, national and local – only became officially recognised as a separate pillar with the adoption of the Paris Agreement in 2015.<sup>59</sup> It is broadly understood as ‘the residual costs, which are not avoided through adaptation and mitigation’,<sup>60</sup> with a distinction made between economic and non-economic losses. According to Broberg, until then loss and damage was subsumed under the adaptation pillar and its late addition to the climate regime reflects ‘the reluctance of developed countries to accept the responsibility that could ultimately result in liability to pay damages’.<sup>61</sup> This reluctance is also reflected in that loss and damage was first officially incorporated at the treaty level only through its mention in the Paris Agreement at COP21 in 2015, while the Warsaw International Mechanism for Loss and Damage (WIM) was established at COP19 in 2013. Even in the Paris Agreement, however, the compromise was made to formally acknowledge loss and damage in Article 8, while clearly stating in the decision adopting the Agreement that ‘Article 8 [...] does not involve or provide a basis for any liability or compensation’.<sup>62</sup> In this respect, it has been observed that:

L&D [loss and damage] does not seem to be placed on an equal footing with mitigation and adaptation in the climate regime designed by the Paris Agreement as no reference is made to Article 8 by other treaty provisions. [...] Besides the symbolic meaning of keeping L&D separate from adaptation, Article 8 contains nothing more than tentative and cautious language.<sup>63</sup>

<sup>57</sup> Richard SJ Tol, ‘Adaptation and Mitigation: Trade-Offs in Substance and Methods’ (2005) 8(6) *Environmental Science and Policy* 573.

<sup>58</sup> Morten Broberg, ‘Interpreting the UNFCCC’s Provisions on “Mitigation” and “Adaptation” in Light of the Paris Agreement’s Provision on “Loss and Damage”’ (2020) 20(5) *Climate Policy* 528.

<sup>59</sup> UNFCCC, ‘Paris Agreement’ (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS, Art. 8 (Paris Agreement).

<sup>60</sup> UNFCCC, ‘Non-economic losses in the context of the work programme on loss and damage’, (2013) FCCC/TP/2013/2 [C(6)] online: <<http://unfccc.int/resource/docs/2013/tp/02.pdf>> (accessed 25 March 2022).

<sup>61</sup> Broberg (n 58) 529.

<sup>62</sup> UNFCCC, Decision 1/CP.21, Adoption of the Paris Agreement (2015) FCCC/CP/2015/10/Add.1, recital 51 (Adoption of Paris Agreement) online: <<https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>> (accessed 25 March 2022).

<sup>63</sup> Elisa Calliari, Swenja Surminski and Jaroslav Mysiak, ‘The Politics of (and Behind) the UNFCCC’s Loss and Damage Mechanism’ in Reinhard Mechler et al (eds), *Loss and Damage from Climate Change: Concepts, Methods and Policy Options* (Springer International Publishing 2019) 155–78, 172.

This weaker positioning of the loss and damage pillar in the climate regime explains why WIM has not yet progressed from dialogue to concrete assistance. As Evans et al note: ‘unlike the first two pillars – mitigation and adaptation – there had [...] never been any specific funding set aside for loss and damage.’<sup>64</sup> At COP25, in 2019, the WIM set up the Santiago Network as a mechanism to ‘catalyze technical assistance’ for addressing loss and damage in vulnerable countries.<sup>65</sup> Following this, states that are most susceptible to the adverse effects of climate change expected that COP26 would “operationalise” the network, providing it with money and staff, and assigning it with responsibilities so that nations could use it to request assistance’, but this was again blocked by the resistance of ‘wealthy countries [that] were happy for the network to remain as nothing more than a website’.<sup>66</sup> While at the Presidency Event ‘Exploring Loss and Damage’, COP26 President Alok Sharma noted that ‘there is a change in tone towards more practical action’<sup>67</sup> on this front, the outcome of COP26 has been considered disappointing as it only resulted in establishing the Glasgow Dialogue as an exploratory forum to continue discussing ways to fund loss and damage.<sup>68</sup> The first Glasgow Dialogue was held in June 2022 in Bonn ‘where parties and observers shared views on funding arrangements for addressing loss and damage’.<sup>69</sup> This, however, did not result in concrete outcomes as ‘the issue did not make it to the negotiations agenda’<sup>70</sup> at the conference of the UNFCCC subsidiary bodies, also held in Bonn at the same time. Consequently, this reinforced the calls from the developing countries at the Bonn conference for a dedicated finance mechanism for loss and damage to be established at COP27.<sup>71</sup>

While the WIM was created to be the primary mechanism for loss and damage (as will be discussed in the next section), its Task Force on Displacement was meant to specifically address the issue of climate-related mobility.

<sup>64</sup> Simon Evans, Josh Gabbatiss, Robert McSweeney, Aruna Chandrasekhar, Ayesha Tandon, Giuliana Viglione, Zeke Hausfather, Xiaoying You, Joe Goodman and Sylvia Hayes, ‘COP26: Key Outcomes Agreed at the UN Climate Talks in Glasgow’, (15 November 2021) *Carbon Brief* (Evans et al) online: <[www.carbonbrief.org/cop26-key-outcomes-agreed-at-the-un-climate-talks-in-glasgow](http://www.carbonbrief.org/cop26-key-outcomes-agreed-at-the-un-climate-talks-in-glasgow)> (accessed 18 March 2022).

<sup>65</sup> UNFCCC, ‘About the Santiago Network’, <<https://unfccc.int/santiago-network/about>> (accessed 20 March 2022).

<sup>66</sup> Evans et al (n 64).

<sup>67</sup> UNFCCC, ‘Presidency Event: Exploring Loss and Damage’, November 8, 2022, online: <<https://unfccc-cop26.streamworld.de/webcast/presidency-event-exploring-loss-and-damage>> (accessed 13 October 2022).

<sup>68</sup> ‘Glasgow Climate Pact’ (13 November 2021) FCCC/PA/CMA/2021/L.16, recital 73 (Glasgow Climate Pact) <[https://unfccc.int/sites/default/files/resource/cma2021\\_L16\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf)> (accessed 25 March 2022).

<sup>69</sup> IISD, ‘Summary of the Bonn Climate Change Conference 6–12 June 2022’, (2022) 12(805) *Earth Negotiations Bulletin* 19.

<sup>70</sup> *Ibid* 20.

<sup>71</sup> *Ibid*, 20.

Yet, WIM has been lacking a dedicated financial scheme to enable tangible applications of loss and damage in practice. As observed by Calliari et al ‘while both state and non-state actors are already carrying out L&D activities at the national level and on the ground, what is (not) decided at the international level is likely to have implications for the scale and nature of practical measures to be taken’.<sup>72</sup> Importantly, this setup and the developments within the climate regime impact how climate-related mobility is conceptualised by this regime. The next section details the evolution of such conceptualisations by reviewing dominant framings of mobility in the climate regime and their implications.

### Human mobility within the climate regime

To what extent is climate-related mobility acknowledged as a real consequence of climate change within the international climate regime? Mobility has never been a central concept in the international climate regime to start with. In fact, it took sixteen COPs for a reference to mobility to be included in the UNFCCC decisions. The Cancun Adaptation Framework adopted at COP16 in 2010 mentioned ‘measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation’<sup>73</sup> as part of actions to enhance adaptation. This reference to mobility was a result of several underlying factors. First, over the course of the 2000s extensive and often overly dramatised media coverage of certain disasters, such as Hurricane Katrina in 2005<sup>74</sup> and the Pakistan Floods in 2010,<sup>75</sup> attracted attention to the human consequences of climate-induced disasters. This attention facilitated ‘the emergence of climate change as a particularly pressing global concern during the 2000s’ and in turn enabled it to become ‘a magnet attracting a range of issues that began to be discussed in their connection with climate change’<sup>76</sup>, including issues of migration and displacement. Second, the nexus between migration and climate change became increasingly conceptualised as a

<sup>72</sup> E Calliari, O Serdeczny and L Vanhala, ‘Making Sense of the Politics in the Climate Change Loss & Damage Debate’ (2020) 64 *Global Environmental Change* 2.

<sup>73</sup> UNFCCC, ‘The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’ (15 March 2011) FCCC/CP/2010/7/Add.1, recital 14(f) (Cancun Agreements) online: <<https://unfccc.int/sites/default/files/resource/docs/2010/cop16/eng/07a01.pdf>> (accessed 25 March 2022).

<sup>74</sup> Francois Gemmene, ‘What’s in a Name: Social Vulnerabilities and the Refugee Controversy in the Wake of Hurricane Katrina’ in Tamer Afifi and Jill Jäger (eds) *Environment, Forced Migration and Social Vulnerability* (Springer, New York 2010) 29.

<sup>75</sup> Zarqa Ali, ‘Visual Representation of Gender in Flood Coverage Pakistani Print Media’ (2014) 4 *Weather and Climate Extremes* 35.

<sup>76</sup> Chloé Vlassopoulos, ‘When Climate-Induced Migration Meets Loss and Damage: A Weakening Agenda-Setting Process?’ in Benoît Mayer and François Crépeau (eds) *Research Handbook on Climate Change, Migration and the Law* (Edward Elgar Publishing 2017) 381.



security issue.<sup>77</sup> The narrative of ‘climate refugees’, often popularised by climate activists in the hope to pressure states to adopt more progressive policies, but also variously (mis)used by other actors, has played a significant role in solidifying this framing.<sup>78</sup> Third, there was a remarkable mobilisation of calls for climate justice – albeit variously understood – from climate activists, developing countries and other actors, particularly in the lead-up to the COP15 in Copenhagen in 2009,<sup>79</sup> which resulted in the instrumentalisation of human mobility and especially the climate refugee issue to represent the human costs of climate change.<sup>80</sup>

Since the first mention in the Cancun Adaptation Framework, Warner observes that ‘international climate change policy has framed human mobility as a risk management issue’.<sup>81</sup> At COP18, held in Doha in 2012, the need to enhance understanding of ‘how impacts of climate change are affecting patterns of migration, displacement and human mobility’<sup>82</sup> was mentioned as part of approaches to address loss and damage and enhance adaptive capacities of countries particularly vulnerable to climate change. The incorporation of mobility considerations under the climate regime’s loss and damage pillar was further cemented in the Paris Agreement adopted in 2015. The COP21’s decision to adopt the Paris Agreement requested the establishment of the Task Force on Displacement under the WIM, placing the initial focus on ‘avert[ing], minimis[ing] and address[ing] displacement related to the adverse effects of climate change’.<sup>83</sup> This framing is not uncontested, Vlassopoulos for instance argues:

... how a residual cost, which is not avoided through adaptation and mitigation, can be averted or minimized? The impression is that, although a new category is created [ie, loss and damage] to address climate migration, what is said simply repeats what is being done as adaptation.<sup>84</sup>

<sup>77</sup> Thomas Faist and Jeanette Schade, ‘The Climate-Migration Nexus: A Reorientation’ in Thomas Faist and Jeanette Schade (eds) *Disentangling Migration and Climate Change* (Springer, New York 2013).

<sup>78</sup> Giovanni Bettini, ‘Climate Barbarians at the Gate? A Critique of Apocalyptic Narratives on ‘Climate Refugees’ (2013) 45 *Geoforum*, 63; Carmen Gonzalez ‘Climate Change, Race and Migration’ (2020) 1 *Journal of Law and Political Economy* 1, 109. Note that there is meanwhile widespread agreement among academics that climate migration entails primarily internal migration. See for instance: David J Kaczan and Jennifer Orgill-Meyer, ‘The Impact of Climate Change on Migration: A Synthesis of Recent Empirical Insights’ (2020) 158 *Climatic Change* 281.

<sup>79</sup> Paul Chatterton, David Featherstone and Paul Routledge, ‘Articulating Climate Justice in Copenhagen: Antagonism, the Commons, and Solidarity’ (2012) 45(3) *Antipode* 602.

<sup>80</sup> Lauria (n 55).

<sup>81</sup> Koko Warner, ‘Risk, Climate Change and Human Mobility in International Policy’ in Hans-Joachim Preuß, Christoph Beier and Dirk Messner (eds), *Forced Displacement and Migration* (Springer, New York 2022) 147 (Warner).

<sup>82</sup> UNFCCC, Decision 3/CP.18 recital 7(a)(vi), (28 February 2013) FCCC/CP/2012/8/Add.1, 23 online: <<https://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf>> (accessed 25 March 2022).

<sup>83</sup> Adoption of the Paris Agreement (n 62), recital 49; For information on the UNFCCC Task Force on Displacement see: <<https://unfccc.int/process/bodies/constituted-bodies/WIMExCom/TFD#eq-1>> (accessed 25 March 2022).

<sup>84</sup> Vlassopoulos (n 76) 381.



This contradictory framing is not coincidental. The establishment of the Task Force, not by the reference in the main text of the Paris Agreement, but by the decision to adopt it, was a compromise solution in response to calls from the developing countries in the lead-up to the COP21 to establish a ‘climate change displacement coordination facility’ that was met with opposition from some of the industrialised countries.<sup>85</sup> Such a facility was not acceptable to these countries as it has originally envisioned to assist in ‘providing organized migration and planned relocation’ and to undertake ‘compensation measures’.<sup>86</sup> Compared to that, the scope of the Task Force’s activities focused on mapping best practices, developing policy guidance and awareness-raising were seen to be far more palatable.<sup>87</sup>

The Task Force put forward a general set of recommendations from its first phase of work at COP24 in Katowice in 2018, in response to which the conference decision invited states and other stakeholders to ‘consider’ these recommendations ‘as appropriate’.<sup>88</sup> Among other things, these recommendations called for a better ‘understanding of human mobility (including migration, displacement and planned relocation), both internal and cross-border, in the context of climate change’.<sup>89</sup> Towards this end, the Task Force has also recommended ‘to integrate climate change related human mobility challenges and opportunities into national planning processes’ including those pertaining to adaptation.<sup>90</sup> In this sense, while the Task Force recommendations are considered to represent ‘a first (limited) attempt to look at displacement from a loss and damage perspective’,<sup>91</sup> they simultaneously continue to frame mobility as a form of adaptation.

In fact, reflecting the adoption of the Global Compact for Safe, Regular and Orderly Migration (GCM) also in 2018, the Task Force included a recommendation ‘to facilitate orderly, safe, regular and responsible migration and mobility of people [...] by enhancing opportunities for regular migration pathways, including through labour mobility’.<sup>92</sup> This illustrates an increasing (albeit still nascent and highly uneven) convergence between policy processes and discourses pertaining to climate change, disasters and

<sup>85</sup> Lisa Vanhala and Elisa Calliari, ‘Governing People on the Move in a Warming World: Framing Climate Change Migration and the UNFCCC Task Force on Displacement’ (2022) 76 *Global Environmental Change* 102578.

<sup>86</sup> UNFCCC, Negotiating text FCCC/ADP/2015/ (25 February 2015), Ad Hoc Working Group on the Durban Platform for Enhanced Action, 2nd session, part 8 Geneva, 8–13 February 2015, Agenda item 3 Implementation of all the elements of decision 1/CP.17. 70.3 (a) online: <<https://unfccc.int/documents/8660#beg>> (accessed 13 October 2022).

<sup>87</sup> Vanhala and Calliari (n 85).

<sup>88</sup> UNFCCC, Decision 10/CP.24 recital 3, (19 March 2019) FCCC/CP/2018/10/Add.1, 40 (Katowice) online: <<https://unfccc.int/sites/default/files/resource/10a1.pdf>> (accessed 25 March 2022).

<sup>89</sup> *Ibid.*, 43.

<sup>90</sup> *Ibid.*, 44.

<sup>91</sup> Kälén, ‘Migration’ (n 6) 810.

<sup>92</sup> Katowice (n 88) 44.

migration.<sup>93</sup> Over the years, such convergence has influenced how climate-related mobility is conceptualised and what relevant policy options are discussed across different policy domains.<sup>94</sup> Reflecting on the legal discussions in some of these areas, Lauria notes that the nexus between climate change and mobility has been seen as ‘a phenomenon to be first and foremost understood in order to be managed, rather than as a problem to be solved’.<sup>95</sup>

The narrative of adaptive migration that ‘suggests a positive relationship between migration and adaptation processes, involving some form of anticipation and planning’<sup>96</sup> remains persistent, but has also been subject to critique. According to Bettini et al, this narrative essentially ‘boils down to looking at the role of labour migration, and of individual or collective financial and social remittances, as buffers during environmental disasters and as a means for climate adaptation’.<sup>97</sup> By bringing forward the agency of affected people, this framing has facilitated the move away from the simplistic depiction of helpless ‘climate refugees’ that can overwhelm the Global North.<sup>98</sup> Yet, by promoting a one-sided view of migrants as resilient agents, it has been criticised for relegating the responsibility for adaptation to the individual and household level, thereby obscuring the ways in which structural issues affect the ability to move, the process of moving and any outcomes of such movements.<sup>99</sup>

Such framing is said to ‘depoliticise the realities of these migrations’<sup>100</sup> by overshadowing the inherently selective nature of migration that is highly gendered, predominantly reserved for the able-bodied and requires investments of economic (and often social) capital.<sup>101</sup> It also takes the focus away from the risks migrants face in their destinations, such as exploitation, and the hardships that their communities of origin often face in their absence, through issues such as ‘brain drain’ and/or labour shortages.<sup>102</sup> Additionally, Vinke et al caution that an overly positive representation of

<sup>93</sup> Lavanya Rajamani and Jacqueline Peel, ‘International Environmental Law: Changing Context, Emerging Trends, and Expanding Frontiers’ in Lavanya Rajamani and Jacqueline Peel (eds) *The Oxford Handbook of International Environmental Law* (Oxford University Press, second edition 2021).

<sup>94</sup> Jane McAdam, ‘From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement’ (2016) 39 *University of New South Wales Law Journal* 1518; Guadagno and Mokhnacheva (n 6); Warner (n 81); Ana Mosneaga ‘Solutions Discourse on Disaster Displacement: Implications for Policy and Practice’ (2022) *Disasters* (Mosneaga).

<sup>95</sup> Lauria (n 55), 401.

<sup>96</sup> Vinke et al (n 32) 626.

<sup>97</sup> Giovanni Bettini, Sarah Louise Nash and Giovanna Gioli ‘One Step Forward, Two Steps Back? The Fading Contours of (In)justice in Competing Discourses on Climate Migration’ (2017) 183(4) *The Geographical Journal* 352 (Bettini, Nash, and Gioli).

<sup>98</sup> Francois Gemenne, ‘One Good Reason to Speak of ‘Climate Refugees’ (2015) 49 *Forced Migration Review*, 70 (Gemenne).

<sup>99</sup> Vinke et al (n 32) 626.

<sup>100</sup> Gemenne (n 98) 71.

<sup>101</sup> Gonzalez (n 78); Phudoma Lama, Mo Hamza and Misse Wester, ‘Gendered Dimensions of Migration in Relation to Climate Change’ (2021) 13(4) *Climate and Development* 4, 326.

<sup>102</sup> Gonzalez (n 78) 109.

migration as adaptation masks the multiple ‘non-economic losses’ involved in moving out from one’s home community, including ‘negative consequences for emotional well-being [and] mental health’.<sup>103</sup>

On a more fundamental level, the uncritical adaptive migration narrative has been criticised for closing the space for ‘posing climate change as a matter of (in)justice’.<sup>104</sup> As Gonzales notes, the promotion of ‘managed’ temporary labour migration schemes as a form of adaptation ‘absolves the Global North of responsibility for climate change and for structural injustices caused by racial capitalism that increase vulnerability to displacement’.<sup>105</sup> Bettini et al further elaborate on this point by saying that the emphasis on building resilience in the discourses of adaptation as well as loss and damage means that ‘the argument for such responsibilities is replaced by initiatives to promote resilience’.<sup>106</sup> Overall, the analysis presented here shows that the language used in the current climate regime promotes a seemingly apolitical technical approach that shifts the focus away from complex socio-economic and political realities of mobility and immobility decisions and outcomes. Researchers studying global climate governance have argued that this apolitical and technical framing of human mobility enabled its relatively rapid institutionalisation within the climate regime since 2010, despite it being a highly contentious and politically sensitive issue.<sup>107</sup>

The tensions between the complexity of on-the-ground realities and the technical framing are especially evident in the context of planned relocation, which is ‘another form of mobility that is not easily captured by migration as an adaptation concept’.<sup>108</sup> Planned relocations are typically undertaken to reduce exposure to hazards,<sup>109</sup> and they are sometimes referred to as managed retreat – as a measure of adaptation.<sup>110</sup> Furthermore, in the context where internal displacement has already taken place, relocation can be promoted as a ‘solution’.<sup>111</sup> Yet, whether it is discussed as an adaptation measure or a solution, planned relocation is most often framed as ‘the last resort’.<sup>112</sup> This framing underlines that within the international

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<sup>103</sup> Vinke et al (n 32) 626.

<sup>104</sup> Bettini, Nash, and Gioli (n 97) 353.

<sup>105</sup> Gonzalez (n 83) 127.

<sup>106</sup> Bettini, Nash, and Gioli (n 97) 351.

<sup>107</sup> Angelica Johansson et al, ‘Evaluating Progress on Loss and Damage: An Assessment of the Executive Committee of the Warsaw International Mechanism under the UNFCCC’ (2022) *Climate Policy* 1; Vanhala and Calliari (n 85).

<sup>108</sup> Vinke et al (n 32) 629.

<sup>109</sup> Erica Bower and Sanjula Weerasinghe, *Leaving Place, Restoring Home: Enhancing the Evidence Base on Planned Relocation Cases in the Context of Hazards, Disasters, and Climate Change* (Platform on Disaster Displacement, 2021).

<sup>110</sup> See for example Marjolijn Haasnoot, Judy Lawrence, and Alexandre K. Magnan, ‘Pathways to Coastal Retreat’ (2021) 372(6548) *Science* 1287.

<sup>111</sup> Mosneaga (n 94).

<sup>112</sup> Bower and Weerasinghe (n 109).

climate regime, planned relocations essentially straddle the pillars of adaptation and loss and damage since, 'the ability to adapt through relocation does not mean that people do not suffer loss and damage'.<sup>113</sup> The process raises thorny issues such as: who decides to move, and if so, where and when? It also encounters complex ethical and legal questions including those pertaining to land titles and cultural heritage sites.<sup>114</sup> Furthermore, a mapping of planned relocations around the world found that these are often imbued with political, social and economic agendas that extend well beyond that of disaster risk reduction or climate change adaptation.<sup>115</sup> In particular, state-led large-scale relocations and resettlements have been observed to be often driven by 'complex environmental, developmental and geopolitical considerations related to securing livelihoods, securing national development objectives and securing territory'.<sup>116</sup> The outcome of such processes are underpinned by 'a complex political ecology of environmental and political economic processes [...] some of which are local whilst others are structured at greater scales'.<sup>117</sup>

Generally, the realities of relocation schemes fit uneasily with the dominant conceptualisations of mobility in the current climate regime, where it is more often than not reduced to a form of adaptation. It underlines the importance of adopting an empirical and translocal approach that draws attention to the interaction between different scales and the interactions between actors at these respective scales, and thus also enables to unpack the power relations among these actors. The next section illustrates some of the complexity of relocations that becomes visible through the application of this approach by looking at the case of Mozambique.

## Post-Idai relocations in Mozambique through the translocal lens

One of the consequences of climate change is that tropical cyclones and other extreme weather events become more frequent and more severe.<sup>118</sup> Mozambique is among the most vulnerable countries in this regard.<sup>119</sup> In the Global

<sup>113</sup> Karen E McNamara and others, 'The Complex Decision-Making of Climate-Induced Relocation: Adaptation and Loss and Damage' (2018) 18(1) *Climate Policy* 114–15.

<sup>114</sup> Vinke, et al (n 32) 626.

<sup>115</sup> Erica Bower, Sanjula Weerasinghe and Daria Mokhnacheva, 'Mapping of Planned Relocation Cases: A foundation for evidence-based policy and practice' (2022) 69 *Forced Migration Review* 48.

<sup>116</sup> Fiona Miller et al, 'Double Displacement: Interactions between Resettlement, Environmental Change and Migration' (2022) 129 *Geoforum* 14.

<sup>117</sup> *Ibid* 24.

<sup>118</sup> David Eckstein, Vera Künzel and Laura Schäfer, 'Global Climate Risk Index 2021' (2021) 20 (Eckstein, Künzel, and Schäfer) online: <[www.germanwatch.org/en/19777](http://www.germanwatch.org/en/19777)> (accessed 26 March 2022).

<sup>119</sup> Governo de Moçambique, *Plano Director Para a Redução Do Risco de Desastres 2017–2030* (Government of Mozambique, 2017); WMO Mission Report, 'Reducing Vulnerability to Extreme Hydro-Meteorological Hazards in Mozambique after Cyclone IDAI', 1 online: <[https://library.wmo.int/doc\\_num.php?explnum\\_id=6259](https://library.wmo.int/doc_num.php?explnum_id=6259)> (accessed 26 March 2022).

Climate Risk Index of countries most affected by extreme weather events between 2000–2019, it was listed fourth.<sup>120</sup> In recent decades, severe disasters have not only become more frequent,<sup>121</sup> but have also often led to temporary displacement and more permanent resettlement in the country.<sup>122</sup> Cyclone Idai, which hit the central region of Mozambique and neighbouring countries in March 2019 is a prime example of such an extreme weather event. The following section provides an analysis of the responses undertaken by actors at different levels and the way in which these responses were perceived by the people who were most affected by the cyclone. The focus is on the central Mozambican city of Beira, the country's 'most climate vulnerable city'.<sup>123</sup>

Idai forced many people to flee their houses, and left others homeless as their houses got destroyed. In the city of Beira more than 22 000 people were hosted in temporary accommodation centres; often public buildings such as schools, health centres and police stations. Within three months after Idai, the Mozambican government, by way of its National Disaster Management Institute (INGC) had organised the large-scale resettlement of around 88 000 individuals, spread over 66 new permanent resettlement sites.<sup>124</sup> This was in line with the main approach taken by the government after earlier disasters, as a strategy to reduce the number of people living in high-risk areas.<sup>125</sup> Resettlement sites were selected by the local district governments and mostly located in rural areas. People received only residential plots, and no farm lands.<sup>126</sup> In its response, the INGC acted along the lines of its Law 15/2014 on Disaster Management, and according to several national plans and governance instruments.<sup>127</sup> Significantly, the

<sup>120</sup> Eckstein, Künzle, and Schäfer (n 18).

<sup>121</sup> Luis Artur, *Continuities in Crisis: Everyday Practices of Disaster Response and Climate Change Adaptation in Mozambique*, PhD thesis (Wageningen University 2011) (Artur).

<sup>122</sup> *Ibid*; Frances Christie and Joseph Hanlon, *Mozambique & the Great Flood of 2000* (Indiana University Press, Bloomington 2001) (Christie and Hanlon). Note that the Mozambican government (and Mozambique's population) generally refers to 'resettlement' (*reassentamento*). This section follows their usage of the term, although it is noted that resettlement is generally seen as broader than relocation, including the restoration of communities and socio-economic conditions. These conditions were not fully met post-Idai. See also Jane McAdam and Elizabeth Ferris, 'Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues' (2015) 4(1) *Cambridge Journal of International and Comparative Law* 137.

<sup>123</sup> Murtah Shannon, 'Who Controls the City in the Global Urban Era? Mapping the Dimensions of Urban Geopolitics in Beira City, Mozambique' (2019) 8(2) *Land* 4.

<sup>124</sup> IOM/INGC, 'Mozambique: Tropical Cyclone Idai Multi-Sectoral Location Assessment- Round X', (*IOM Displacement Tracking Matrix*, October 2019).

<sup>125</sup> Mozambique has a long history of forced and voluntary resettlement. Colonial labour and civilisation schemes, villagisation policies and re-education camps, civil war, natural conservation projects, exploitation of minerals, oil and gas, and private investments have also caused the large-scale resettlement of people. See Carolien Jacobs and Bernardo Almeida, 'Government-Led Resettlement after Natural Disasters as a Durable Solution? The Case of Cyclone Idai' (2021) 40(2) *Refugee Survey Quarterly* 239.

<sup>126</sup> *Ibid*.

<sup>127</sup> For instance the 2017–2030 Plan on Disaster Risk Reduction, and the 2006–2016 Plan for Prevention and Reduction of Natural Disasters.

INGC Master Plan for Prevention and Mitigation of Natural Disasters, as approved by the Council of Ministers in 2006 mentions that all people living in urban flood zones should be resettled.<sup>128</sup> Resettlement of people is clearly the dominant discourse at the national level when it comes to climate solutions.

With extensive experience in managing disasters, Mozambique's INGC has over the years learnt to take a role in the driving seat when it comes to post-disaster interventions.<sup>129</sup> International humanitarian actors are supposed to intervene on the government's terms when a disaster strikes, without necessarily fully endorsing the government's approach to resettlement. Several aid workers that the second author interviewed expressed their disagreement about the way in which resettlement was done. Trapped in the dilemma of participating in a flawed process, or not intervening at all, they decided to provide support to the resettled populations. Their major concerns related to the rushed way in which resettlement sites were selected, the lack of proper compensation for the previous owners, and the gap between humanitarian aid and longer-term development assistance. A lack of funding, however, necessitated most international actors to prepare for temporary involvement only. Without sufficient funding, and without being given room for manoeuvre, the role of international actors in the aftermath of Idai was hence limited to emergency assistance in the framework of the government's resettlement interventions. The lack of funding also limits the government in executing its reconstruction plans, the total cost of which is estimated to be \$3,2 bn. In October 2022, the country's Public Works Minister announced that of the required funding, donors and lenders had until then provided only \$1.2 bn.<sup>130</sup>

The discourse at the municipal level in Beira did not coincide with the climate discourse of the national government. Discontent could be heard among municipal authorities about the resettlement of their inhabitants to neighbouring districts. A perception among these authorities – which was shared by many inhabitants – was that the national government was trying to remove people from Beira in the onset of the elections as a way to reduce the number of votes being cast in the city (and hence reducing representation at the national level).<sup>131</sup> Through international partnerships, the municipal government was meanwhile working on the Beira Recovery and Resilience Plan with the aim to 'build back better' and reduce disaster risks.<sup>132</sup> Resettlement figured less prominently in this discourse.

<sup>128</sup> República de Moçambique, *Plano Director Para Prevenção e Mitigação Das Calamidades Naturais* (Conselho de Ministros, 2005) 23–24.

<sup>129</sup> Christie and Hanlon (n 122); Artur (n 121).

<sup>130</sup> Joseph Hanlon, *Mozambique News Reports and Clippings* 607 (Hanlon, 2022).

<sup>131</sup> Beira is a long-term opposition stronghold, where sentiments about being disregarded by the ruling government are generally strong, both among the municipal authorities and among the population.

<sup>132</sup> Municipality of Beira, *Municipal Recovery and Resilience Plan: A Roadmap to Building Beira Back Better*, vol 2: *Sector Reports* (2019).

The national government's preference for resettlement did also not fully resonate with the preferences of the people affected. Even in the most affected neighbourhood in Beira – part of which gets flooded daily at high tide – many people had resisted the call of the authorities to leave the place and preferred to stay, despite the harsh living conditions. They explained that they feared not being able to make a living in the new place. The central location of the neighbourhood provides relatively easy access to a wide range of jobs in the urban economy. Being used to urban lifestyles, they were reluctant to end up 'in the bush'. People who got resettled ended up in rural areas, without job opportunities and mostly without agricultural land to provide for themselves. It is hence understandable that people prefer living in high-risk areas with at least some economic opportunities rather than living in low-risk areas without an income, and dependent on time-bound humanitarian assistance. Several of the people who remained indicated that they would be willing to settle elsewhere if certain conditions would be met. They mentioned for instance the need to receive compensation for the loss of their plots; the need to access basic services such as health care, schools, or electricity; and the need to find a job.

About 8 months after the cyclone, the second author, together with the co-researcher visited one of the resettlement sites, located about 60 km from Beira. By then, most people at this site were still living in tents and continued to rely on humanitarian aid. Some people had been able to build slightly improved houses out of mud and sticks, sometimes with zinc roofs. Some had been able to secure an agricultural plot in negotiation with longer-term residents or local chiefs, and a few – seen as most vulnerable – had been provided with a small agricultural plot. Maintaining urban jobs appeared to be difficult because of the costs and time of commuting. People who had moved had mostly done so because the government had told them to do so. Having lost their homes due to the floods, they had limited choice. They were lured by the prospect that facilities would be created and some kept hopes alive that this would happen in the near future. Until then, they remained dependent on humanitarian aid.

Resettlement was realised, but it could not (yet) be seen as a durable solution to displacement that was in line with the Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internal Displacement, nor with the IASC Operational Guidelines on Protection of Persons in Situations of Natural Disasters.<sup>133</sup> The government body responsible for resettlement is an institute that is charged with disaster management, and most of the international actors which intervened had a primarily humanitarian –

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<sup>133</sup> Inter-Agency Standing Committee, *IASC Framework on Durable Solutions for Internally Displaced Persons* (The Brookings Institution/University of Bern Project on Internal Displacement 2010); Inter-Agency Standing Committee, *IASC Operational Guidelines on Protection of Persons in Situations of Natural Disasters* (IASC 2011).



and hence relatively short-term outlook. Although some of them tried to bridge the gap between humanitarian and development aid, efforts seem to fall short to turn resettlement into a durable solution. For example, a health post was constructed, but was hardly equipped, nor staffed on a permanent basis; a school was constructed, but there were no teachers yet; water taps were created at several places in the settlement site, but some of these would fall dry during the dry season. Most people continued to live in temporary shelters and depended on humanitarian aid to make ends meet.<sup>134</sup> In some households, breadwinners would leave their families at the resettlement site for most of the time and continue their urban employment, while only spending their days off at the resettlement site.

The differentiated responses of people affected by cyclone Idai underline that local needs are heterogeneous and do not match well with a one-size-fits-all policy that is developed at national and/or international levels. Some people prefer moving away from high-risk areas to safer grounds, even if these grounds are less attractive from a socio-economic perspective. Their position resonated with the national government's discourse. Others, however, prefer to cope with the risks of extreme weather events as they are more attached to their place of living, and/or dependent on local livelihoods. Their position would be more in line with the local government's discourse on increasing resilience. For both groups, the international response was not adequate in meeting their needs.

For a fuller understanding of the needs of affected populations, descending to local levels and adopting a more empirical approach to what the climate regime entails in practice is essential. This methodological approach enables to reveal the complex considerations shaping different actors' interpretations of and experiences with government-driven relocation schemes. The case of Mozambique further illustrates that climate-related mobility cannot simply be captured under either adaptation or loss and damage pillar. Whereas relocations in some cases signal (voluntary) adaptation, in other cases it is the result of top-down interventions imposed on people. As such, relocations tend to be more revealing about the agendas imposed by governments and/or aid actors, than about the intentions and preferences of the affected people who are targeted by such interventions. Regardless of whether mobility is actually voluntary or the result of an imposed intervention, the case of Mozambique also shows that it inevitably involves losses and damages. People often lose their belongings, their livelihoods, and their social networks when they move to another location, and for many of them, recovering such losses is not possible without external support in material, financial and social terms. Without carefully tailored support, the lives of relocated people risk being stalled in limbo.

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<sup>134</sup> Jacobs and Almeida (n 125).



## What can we learn from a translocal approach?

This paper has examined the conceptualisations of human mobility in the current climate regime and, through the case of post-cyclone Idai relocations in Mozambique, highlighted the extent to which such conceptualisations do not match local realities on the ground. This case shows that the realities of post-disaster relocations, including the complexities of diverse yet tightly enmeshed perspectives and the ways in which different actors engage with and/or experience these interventions, cannot be fully captured by the dominant conceptualisations of climate-related mobility in the current climate regime. While thematically displacement has gained recognition as an issue under the loss and damage pillar of the climate regime, the relative weakness of this pillar – above all reflected in the void of an operational mechanism to address actual losses and damages through climate finance – means that there continues to be greater emphasis on migration as an adaptation. This promotes a one-sided view that prevents appreciation of the multifaceted nature of human mobility, especially in the context of planned relocations, where different degrees of adaptation (or lack of it) also inevitably incur different types of losses and damages. Post-Idai relocations reveal various forms of losses and damages, brought about through interaction with diverse structural processes at different levels, that defy clear delineation into economic and non-economic categories. It also shows that such losses are borne by the most vulnerable, whether they relocate or continue to remain in high-risk areas.

Capturing these on-the-ground complexities – including the different interactions and power dynamics among the actors involved and the diverse losses and damages that relocations incur on different people can only be done through the adoption of a translocal approach. Such an approach unpacks the local, national and global levels and draws attention to the dynamics between these levels. An empirical, socio-legal application of a translocal lens enables a better understanding of global environmental problems with extremely variegated local manifestations as seen at the intersection between climate change and mobility. According to Webster and Mai:

Concurrently, these global environmental problems—characterised by, among other things, their geographical scale—may be described as “wicked” problems that [defy] resolution because of the enormous interdependencies, uncertainties, circularities, and conflicting stakeholders implicated by any effort to develop a solution’ and as such are ‘legally disruptive’ in nature, thus posing significant challenges for the law.’<sup>135</sup>

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<sup>135</sup> Webster and Mai (n 21).

By contextualising the local and national level realities of post-Idai relocations in Mozambique within the wider analysis of the conceptualisations of mobility in the global climate regime, this article contributes to the literature exploring the nexus between mobility and climate change in two ways. First, it empirically illustrates the uneasy fit between the setup of the current climate change regime and planned relocations as a form of mobility that cuts across the adaptation and loss and damage pillars of this regime. Second, by capturing how such relocations are interpreted and contested by actors at different levels, it illustrates the methodological contribution made by applying a translocal approach to understanding the power dynamics between these different levels. This approach then helps to reveal the inextricable links between economic and non-economic dimensions of loss and damage that are implicated by both mobility and immobility decisions in the context of environmental change.

While there has been a surge in studies addressing the nexus between human mobility and climate change in the past decade, in particular, there is a continuous need for more nuanced, contextualised analysis that combines insights from different levels and different disciplines to better understand this nexus. Toward this end, there is an important role that a socio-legal analysis using a translocal approach could play. For example, by being simultaneously informed by intricacies of on-the-ground realities and of the national, international as well as transnational policies and practices, it could enable a more critical examination of representation by revealing how decisions are made at these different levels, and whose voices feed into these decisions. Such an analysis is particularly needed if we are to ensure that the current climate regime is truly global, and this can only be achieved if it includes all levels: from the local to the national and international as well as transnational.

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