



DISPLACEMENT SOLUTIONS



CLIMATE CHANGE, HUMAN RIGHTS and FORCED HUMAN DISPLACEMENT: CASE STUDIES as indicators of DURABLE SOLUTIONS

On the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights and International Human Rights Day, Canberra, 10 December 2008.

MEETING PAPER

Summary

- The global discourse on the impact of climate change tends to focus on its environmental and ecological effects and the strategies and costs of mitigation and adaptation for affected states and their populations. Featuring less prominently in these debates is any practical assessment of the risk of forced human displacement both within and outside the physical territory of a sovereign state. This is despite the very real legal, political, economic, human security, human rights, public health and conflict-related concerns that forced population displacement will induce. Whilst a range of mitigation and adaptation strategies are being developed in national and regional fora, some scenarios will unavoidably include forced human displacement and some form of relocation. This will impact both on the displaced populations themselves and the receiving communities in the places to which they relocate.
- The search for global, regional and national policy solutions and strategies is always better informed if empirical evidence and experience of affected populations is gathered at an early

stage. Apart from the advantages that such ‘bottom-up’ empiricism may bring, this approach ensures that affected communities are involved from the outset in the strategies and plans that affect their lives and that they have a voice in shaping workable solutions for their futures.

- This Meeting Paper provides a brief background to an ‘invitation-only’ roundtable meeting convened jointly by Displacement Solutions, the Regional Office of the United Nations High Commissioner for Refugees and the Pacific Regional Office of UN Information Centre. It is an opportunity for interested parties to engage with representatives from affected atoll communities that are actively discussing population displacement and solutions to their plight.
- The conveners of the roundtable believe there is particular merit in looking at climate change, forced displacement and human rights through the lens of three case studies: the Carteret islands in Papua New Guinea, the Maldives and Tuvalu / Kiribati. Each of these has populations living on small island atolls who are currently facing severe challenges to cope with climate change on their home and livelihoods and the threat of future displacement (where adaptation and mitigation strategies and measures are unlikely to be sufficient).
- The meeting will attempt to address some of these questions, not from a high policy perspective but through the lens of actual case studies in affected areas where solutions are being explored and tailored to the reality of affected populations. Such an approach has the advantage of bringing a practical and solutions-focussed perspective to inform wider policy debates that will become increasingly necessary in the region.
- These particular case-studies are therefore significant in their own right but also will provide an empirical ‘entry point’ for consideration of the wider linkages between climate change, forced displacement and human rights of those affected. Given the important links between these themes, the timing of the meeting – *10th December: Human Rights Day and the 60th Anniversary of the Universal Declaration of Human Rights* – is, therefore, particularly apposite.

1. General context: the neglected human dimension of climate change impact

- 1.1 The global discourse on the impact of climate and environmental changes tends to dwell on environmental and ecological effects and the direct economic costs of mitigation and adaptation for affected states and their populations. Featuring less prominently in these debates is any concrete assessment of the risk of forced human displacement both within and outside the physical territory of a sovereign state.
- 1.2 While predictions are difficult, between 200 million and one billion people may face the loss of home, land and livelihood in the 21st Century. Already in the Pacific region alone, island groups such as the Carteret, Morelock, Tasman (and other) atolls of Papua New Guinea, as well as Tuvalu, Kiribati, Vanuatu have begun to register the impact of land lost to rising sea-levels, surge tides and salinisation of fresh water supplies.
- 1.3 Climate and environment change will not only test existing international legal frameworks and concepts,¹ but also test the very concept of state control over and management of territory and could lead, in the worst case scenario, to the prospect of state failure. In these cases, the burden of displacement is likely to fall disproportionately on poorer areas, with corresponding claims for assistance, relief and durable solutions in areas that are least able to accommodate them.²

¹ There is, as yet, no consistent terminology to describe climate-induced displacement but it seems to be clear that terms such as “environmental refugee” or “climate refugee” should be discouraged as they could potentially undermine existing legal terms, state obligations and will create confusion: *Summary of IASC Expert Meeting on Migration/Displacement and Climate Change*, 15 September 2008 (International Organisation for Migration IOM, Geneva).

² ‘The case of “sinking” small island states caused by rising sea levels constitutes a particular challenge. As a consequence, such areas would become uninhabitable and in extreme cases the remaining territory of affected states could no longer accommodate the whole population or such states would disappear entirely. If and when this occurs, the population would be permanently displaced to other countries. Again, present international law leaves such persons in limbo. They are neither economic migrants nor refugees. It remains to be seen whether they will become stateless persons under international law and even if that is the case, current legal regimes are hardly sufficient to address their very specific needs’ ‘The Climate Change – Displacement Nexus’ (address by Prof. Walter Kälin, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons, to ECOSOC Humanitarian Affairs Segment, 16 July 2008).

1.4 Apart from the direct impact on affected communities themselves, the prospect of mass human displacement raises serious concerns about land, shelter, resources and livelihoods, and minimising conflict and shortages arising from the need for adjustment by communities which will receive climate displaced populations. The cost and complexity of these rather obvious issues have been relatively neglected in the forecasts of economists, scientists and policy-makers. One consequence is the paucity of practical discussion of actual solutions to address these scenarios, in particular the specific housing, land and property rights options required for people forced from their homes due to the effects of climate and other environment-related changes.

1.5 Displacement has various manifestations, with varying legal and policy consequences. Analysis of these, generically and in relation to specific affected areas, is largely undeveloped. Some countries may lose their entire territory within one or two generations. Others may lose large proportions of land. Others may not lose land, but nonetheless see remaining land affected by overcrowding, sea water seepage and other threats to sustainable livelihoods and (related to this Meeting), disputes over land holding. Climate-based displacement may be:

- (i) **temporary**: a climate event such as a hurricane, flood, storm surge or tsunami but where people are able to return to their homes;
- (ii) **permanent local displacement**: groups are displaced locally, but on a permanent basis due to irreversible changes to their living environment, in particular sea-level rise, storm surges, coastal inundation and the lack of clean water . This form of displacement implies that localised displacement solutions will be available to this group, such as higher ground in the same locality;
- (iii) **permanent internal displacement**: where relocation is within the national borders but so far from the groups' original location that the move is permanent may involve an entire lifestyle and livelihood change (eg from coastal subsistence to inland town-dwelling);
- (iv) **permanent regional displacement**: where solutions within the national territory are non-existent or not possible (for whatever reason) and migrants must be received permanently in other countries in the region;
- (v) **permanent inter-continental displacement**: where no national and regional solutions are possible, and an internationally-coordinated relocation is required;
- (vi) **temporary regional or international displacement**: where groups are received temporarily while permanent solutions are negotiated and planned.

1.6 Each category, of course, has different policy and legal implications for governments and the international agencies and regional bodies that assume responsibility. Short-term policy responses would largely be similar to those already in place following many conflicts and disasters, and consist mainly of shelter programmes, forced migrant camps and settlements and other short-term measures. Long-term policy responses would need to be grounded more comprehensively, including within a framework addressing housing, property and land rights of both those relocated and the receiving communities and populations.

2. Specific context: actual displacement solutions (Pacific & Indian Ocean)

2.1 The particular value-added of the proposed meeting is not simply to contribute to addressing, in this region, the human dimensions of people displaced by climate change. It is an opportunity for experts, policy-makers and donors to obtain a perspective that is both (i) grounded in actual case studies of currently affected atoll communities, and (ii) a positive, solution-focussed orientation.

The case studies are of groups that, having decided that the imperative to move cannot be ignored, have taken the initiative to explore practical solutions within their local area. In particular, suggestions by the community of Carteret atolls of Papua New Guinea to relocate to mainland Bougainville, and the agreement of a local landowner and the autonomous local government to receive the displaced group, will be explored.

2.2 The meeting will also explore how the proposed case studies might be useful for mapping a way forward in other 'like' areas in this region or other regions; what housing, land and property rights issues are involved, and how these might differ across jurisdictions; what external actors and donors can do to assist with ensuring sustainable livelihoods and services; how the opportunities for a successful translocation and fulfilment of rights and needs can be maximised, while minimising disruptions to relocating and receiving communities, legal and property disputes, or the potential for conflict.

3. Normative context: international frameworks and other regional initiatives

3.1 The meeting will take place against the backdrop of many regional and international initiatives to address the challenge of climate and environment changes. The purpose of this Meeting is to address particular case studies in the search for viable solutions that might have both practical application to similar case scenarios but also inform the shape and content of wider policy debates in the region, including some of the important regional and global fora currently assessing this complex issue.

3.2 As well as questions about whether the existing international institutional framework is sufficient to deal with the issue, there are unresolved questions concerning the proper legal characterisation and appropriate terminology to be applied to climate change-induced displaced persons. This has important ramifications for assigning responsibility to appropriate domestic and international institutions and agencies to address the rights and duties concerned. There are a range of other questions (for example, the role of the Global Adaptation Fund established during the 2007 Bali meetings, in relation to addressing the costs of human displacement in future).

3.3 Issues of climate change displacement need to be seen against, and synergized with, broader initiatives, including in our own neighbourhood, such as:

- (i) *The UN Framework Convention on Climate Change and its Kyoto Protocol and Bali Action Plan;*
- (ii) *The Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States;*
- (iii) *The Pacific Islands Framework for Action on Climate Change (2006-2015);*
- (iv) The commitments made by Pacific Forum leaders in Niue on 19-20 August 2008 in particular:
 - a) The 2008 Forum Communiqué [clauses 10-14];

- b) The Pacific Plan 2005 (in relation to climate change), which also deals with the interlinkages with land reform and broader security concerns, including migration and disenfranchisement and population displacement;
 - c) The Forum's 'Land Management and Conflict Minimisation Guiding Principles' (July 2008);
- (v) The *Niue Declaration on Climate Change 2008* which refers not only to adaptation strategies but also economic and security threats and the possible need for relocation; and
- (vi) The 19 August 2008 announcement by UN Secretary-General Ban Ki Moon of the establishment of an inter-agency climate change centre to support countries in the Pacific region; and various and evolving UN Interagency initiatives including, in exceptional circumstances, the possible role of UNHCR in its function to assist with avoiding or minimizing statelessness.
- (vii) Recent initiatives including the *Malé Declaration on the Human Dimension of Global Climate Change* (14 November 2007) have also cast the issue in terms of existing human rights principles and obligations.
- (viii) In March 2008 the UN Human Rights Council decided to investigate the issues of human rights and climate change.
- (ix) In the UN context, the various policy issues relating to climate change and population displacement are now being actively discussed, including a Working Group of the UN Interagency Standing Committee (IASC) where UNHCR is directly involved.

3.4 The challenge lies in not only ensuring a principled approach is accepted at a policy level, but that this is given content and clarity in terms of guidance and support for particular communities. Some guidance can be taken from existing instruments,³ recent policy work,⁴ and the general accumulated international legal framework including on socio-economic

³ The UN *Guiding Principles on the Rights of Internally Displaced Persons* (1998), *'Pinheiro' Principles on Housing and Property Restitution for Refugees and Displaced Persons* (2005) and the *Inter-Agency Standing Committee's Operational Guidelines on Human Rights and Natural Disasters* (2006) are all of assistance; although the applicability of many of these is something the subject of debate, some direction can also be drawn from general principles that can be discerned in the wider body of existing international law dealing with situations where persons are forcibly displaced or have sought refuge elsewhere.

⁴ For example, 'Climate Change and Human Rights' (International Council on Human Rights, Versoix, 2008).

rights.⁵ To date, however, only limited attention has been placed on what might be the precise housing, land and property (HLP) and other rights claims of people displaced by climate change, or on the content of corresponding obligations (and the identity of the bearers of these duties) such as relevant state duties to respect, protect and fulfil the rights of those most heavily affected by climate change.

3.5 The Meeting may begin to explore questions such as the practical ramifications of such rights and principles at a local level and what acceptable and workable solutions can be devised, in consultation with affected groups and in good time.

4. Meeting Invitees

4.1 The Meeting is by invitation only (less than 30 participants) and includes the following invitees:

- Representatives of some affected atolls of Papua New Guinea, including those where discussions about relocation are at a fairly advanced stage (and representatives of the proposed recipient government of Bougainville); representatives of other Pacific atoll and island communities, including Kiribati and Tuvalu; a high-level state official from Maldives responsible for the issue of relocation; and related diplomatic representatives in Canberra;
- The Regional Office of the United Nations High Commissioner for Refugees;
- A representative from the Pacific Islands Forum Secretariat, Suva;
- AusAID, NZAID and representatives of donor countries in Australia, including from Sweden (meeting donor);
- Academic experts including from the Centre for Climate Change Law and Policy, Australian National University, the University of New South Wales, and the International Commission of Jurists (Asia-Pacific);
- Representatives from certain interested civil society groups.

⁵ For example, the explanation that ‘victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere’ *General Comment No. 4* (right to adequate housing) (1991), UN Committee on Economic, Social and Cultural Rights, para 8(e).

- Displacement Solutions, an independent non-profit organisation registered in Geneva, specialising in providing rights-based and innovative strategies for displaced populations (see www.displacementsolutions.org).

5. Objective of the Meeting and ‘Way Forward’

5.1 **OBJECTIVE** – the principle objective of the roundtable meeting is to hear the experience of those involved in particular case studies of areas where climate change-related displacement is a reality and solutions are being negotiated. In addition to considering the case studies themselves (and the support needed for their successful implementation), this is an opportunity to set, from the ‘bottom-up’ rather than at a high level of abstraction and generality, a platform for ongoing discussions about similar solutions and strategies for analogous areas.

How Pacific islands and neighbouring states deal with climate change migrants and displacement solutions will inform the ongoing policy debates and, eventually the practice of other states not yet heavily affected by climate change. This may also contribute to broader discussions of these issues within the international community.

5.2 **WAYS FORWARD** - It is hoped that this meeting will provide impetus to a series of increasingly detailed discussions about how to best ensure practical and principled solutions for affected communities. Related strategies that the case studies may highlight include:

- Land banking and expropriation as possible domestic remedies: states might review public land holdings and domestic legislation as it relates to questions of expropriation of land. This is a complex issue with innumerable dimensions, and particularly sensitive in the land-scarce Pacific where much of the land is held communally. However, few Governments are structurally unable to at least begin the land identification process as a part of the planning process. Politically, it will be significant for Pacific nations to have demonstrated an attempt

to resolve displacement issues locally before appeals for regional and other solutions take on significant weight.

- Can we develop the parameters for a country-by-country database on climate change-induced displacement? While there appears to be increasing consensus that Pacific Island nations will face and may already be facing severe climate change-induced challenges, very little is known specifically about each country in terms of precise numbers of people affected, the size and scope of land thus far lost or likely to be lost, the variations in property law regimes and title issues, the resettlement, compensation and other policies that have been adopted to provide at least some measure of protection to these groups, and so on. Developing a country-by-country database outlining the precise effects on each country and the corresponding needs would assist in the formulation of appropriate policy and legal decisions in this region.
- What are attributes of an ideal domestic legal, policy and institutional framework to meet the needs and concerns of displaced and receiving communities, in an environmentally sustainable, economically viable manner consistent with international human rights standards?

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