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# CLIMATE CHANGE DISPLACED PERSONS AND HOUSING, LAND AND PROPERTY RIGHTS

## PRELIMINARY STRATEGIES FOR RIGHTS-BASED PLANNING AND PROGRAMMING TO RESOLVE CLIMATE-INDUCED DISPLACEMENT

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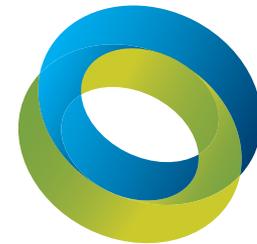


DISPLACEMENT SOLUTIONS

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Kiribati. Photograph by Jocelyn Carlin



## EXECUTIVE SUMMARY

Few global issues have received the levels of persistent global attention afforded to climate change in recent years. The vast majority of this consideration has focused on the mitigation (prevention) dimensions of climate change, with coverage of adaptation (remedial) issues receiving substantially less attention. As a result, the mitigation dimensions of climate change are now found on top of most domestic political agendas, while adaptation issues lag far behind.

Despite this considerable coverage of both of these key responses to climate change, however, only limited attention has thus far been given to the particular issue of forced displacement caused by climate change, and even less, to the particular housing, land and property (HLP) dimensions of this form of displacement. Given the fact that estimates of those to be displaced due to climate change range between 150 million and one billion persons, this dearth of attention is staggering.

This paper<sup>1</sup>, which forms a part of Displacement Solutions' Climate Change and Displacement Initiative<sup>2</sup>, attempts to begin a structural process of closing this gap by focusing squarely on these issues and proposing strategies to States and the international community on how

to best address the housing, land and property dimensions of climate change. It outlines the housing, land and property rights of climate change displaced persons, examines the consequences of climate displacement in four selected countries and proposes a range of rights-based housing, land and property legal and policy measures that can be initiated now in support of climate change displaced persons and their HLP rights.<sup>3</sup>

This report urges States to immediately re-double legal and policy efforts within the housing, land and property sectors focused specifically on the rights of climate change displaced persons, and concludes with a series of recommendations to both Governments and the international community designed to improve the HLP rights prospects of climate change displaced persons.

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1 Displacement Solutions would like to offer special thanks to the German Federal Ministry for Economic Cooperation and Development (BMZ), the German Agency for Technical Cooperation (GTZ), the International Federation of Red Cross Red Crescent Societies (IFRC), the Bodyshop Foundation, the Grand Duchy of Luxembourg and Pictet Bank for providing the funds required to prepare this publication and in supporting our broader efforts in support of climate change displaced persons. This publication was prepared by the Director of Displacement Solutions, Scott Leckie.

2 For further information on the Climate Change and Displacement Initiative, please contact [info@displacementsolutions.org](mailto:info@displacementsolutions.org).

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3 This document uses the term 'climate change displaced persons' to refer to all persons, families and communities who are forced to leave their places of habitual residence due to any of the consequences caused or exacerbated by climate change. This document explicitly does not use the term 'climate refugee', although some publications and organisations continue to utilise this term. See, for instance: Friends of the Earth, *A Citizen's Guide to Climate Refugees*, Australia, April 2007 and the recently formed *Climate Refugees Alliance* in Bangladesh.

## INTRODUCTION

A plethora of studies, papers, reports, books and films have addressed the question of climate change, its causes, its effects and ways of ameliorating its consequences to people and the planet as a whole.<sup>4</sup> The vast majority of these publications, as well as media coverage given to climate change, have focused on the scientific evidence of climate change, as well as the mitigation (or prevention) measures required to halt future climate change or keep these processes at manageable levels. These issues continue to dominate policy discussions within the climate change arena, with adaptation (or remedial) concerns relegated to a place rather far down the list of political priorities by the world's most powerful states and institutions.<sup>5</sup> The International Panel on Climate Change (IPCC) WGII Fourth Assessment Report in 2007 is fairly typical in this respect, with perhaps the most profound statement on adaptation stating simply that "A wide array of adaptation options is available, but more extensive adaptation than is currently occurring is required to reduce vulnerability to future climate change. There are barriers, limits and costs, but these are not fully understood"<sup>6</sup>.

4 See, for instance: [http://unfccc.int/essential\\_background/library/items/3598.php](http://unfccc.int/essential_background/library/items/3598.php), which contains thousands of separate entries on various aspects of climate change.

5 Some of the more interesting reports on adaptation questions, include: Norwegian Refugee Council, *Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration*, Oslo, April 2008; Fabrice Renaud, Janos J. Bogardi, Olivia Dun, Koko Warner, *Control, Adapt or Flee – How to Face Environmental Migration*, United Nations University – Institute for Environment and Human Security (UNU-EHS), InterSections Publication Series of UNU-EHS, No. 5, 2007, Bonn; Aromar Revi, 'Climate change risk: an adaptation and mitigation agenda for Indian cities', paper prepared for the Rockefeller Foundation's meeting on Building for Climate Change Resilience, Bellagio, Italy, 8-13 July 2007 and *Reducing risks to cities from climate change; an environmental or a development agenda?*, Environment and Urbanization Brief – 15, International Institute for Environment and Development, April 2007

6 Mimura, N., L. Nurse, R.F. McLean, J. Agard, L. Briguglio, P. Lefale, R. Payet and G. Sern, *Small Islands. Climate Change 2007: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, M.L. Parry, O.F. Canziani, J.P. Paulutikof, P.J. van der Linden and C.E. Hanson, Eds., Cambridge University Press, Cambridge, UK, 687-716, 2007.

Even further down the global political agenda than adaptation are the human rights implications of climate change, although these are beginning to receive much needed and important forms of attention.<sup>7</sup> Still further down the climate change agenda comes the question of the human displacement sourced to the consequences of climate change.<sup>8</sup> Right at the lowest echelon of global attention to these issues comes the topic of finding durable solutions to climate-induced forced displacement.

This is despite the stupefying fact that many millions – almost assuredly tens or even hundreds of millions – of people will face forced displacement and subsequent housing, land and property losses due to climate change in the coming decades. Indeed, human displacement issues remain a sorely neglected aspect of the current climate change debate, even though these raise very real legal, political, economic, human security, human rights, public health and even security and conflict prevention concerns. Understanding the related human rights dimensions of climate change, particularly the very practical issues associated with possible housing, land and property rights infringements affecting climate change displaced persons and their eventual restoration, will assist in providing the conceptual foundations required to develop both practical and durable

7 See, for instance, the *Report of the High Commissioner for Human Rights on the relationship between climate change and human rights* (A/HRC/10/61, 15 January 2009); International Council on Human Rights, *Climate Change and Human Rights: A Rough Guide*, Geneva, 2008; and *Forced Migration Review*, October 2008, Vol. 31 on Climate Change and Displacement.

8 Internationally, Displacement Solutions remains one of very few groups that have focused extensively on the issue of resolving cases of displacement caused by climate change. See <http://www.displacementsolutions.org/our-work>. At the national level, the work of Tulele Peisa in Papua New Guinea is exemplary of grassroots efforts to find HLP solutions for climate change displaced persons. See [www.tulelepeisa.com](http://www.tulelepeisa.com).

rights-based solutions for those facing climate-induced displacement. This report addresses two key questions. Firstly, what specific HLP rights do people forced to flee their homes and lands due to climate change – climate change displaced persons – have under existing international human rights law? And secondly, which general steps should be taken by Governments and the international community as a whole to adequately address these challenges and subsequently fulfil the rights of those concerned? In particular, which precise housing, land and property rights options are (or should be) available to climate change displaced persons in general terms, and in particular within four of the most heavily-affected countries, namely Papua New Guinea, Kiribati, Tuvalu and Bangladesh?

This paper is designed to assist current and prospective victims of climate change, in particular climate change displaced persons and organisations supporting the rights of climate change displaced persons, to better formulate their housing, land and property rights demands in terms of human rights. It is hoped that this analysis will also be of particular use to policy-makers in the run-up to the crucial round of climate negotiations in Copenhagen set for the end of 2009, where it is hoped that vital international agreement on climate change policy will take place and build upon the Kyoto Protocol to UN Framework Convention on Climate Change which expires in 2012.

At the same time, this report aims to assist local and national governments responsible for securing the housing, land and property rights of climate change displaced persons to better understand their current legal obligations under international human rights law, and where to turn in the event that they are no longer capable of respecting and protecting the housing, land and property rights of their citizens. Finally, this analysis equally seeks to assist countries throughout the world, both those generating climate change displaced persons and host countries, in determining the best policy responses to the displacement caused by climate change and the international community in supporting adequate national and local strategies to cope with the climate-induced displacement challenges ahead in a human rights consistent manner through international cooperation.

## THE HOUSING, LAND AND PROPERTY RIGHTS OF CLIMATE CHANGE DISPLACED PERSONS

Human rights play a direct role within the context of climate change in a myriad of ways. Rights such as the right to life, the right to water, the right to freedom of expression, the right to health, the right to food, the right to an adequate standard of living, the right to political participation, the right to information, the right to be free from discrimination, the right to equal treatment, the right to security of the person and a host of other rights should have a direct bearing on a wide cross section of climate change decisions made by Governments and, thus influence, how the consequences of these decisions and the impact of climate change will be experienced by individual rights-holders. The normative framework enshrining these rights is very clear, considerable, constantly evolving and ever expanding.

Taking a human rights approach to climate change-induced displacement can provide a clear and globally applicable means of developing viable rights-based solutions to this growing crisis. Grounded as the international human rights regime is, in the principle of *the inherent dignity of the human person*, implies that each and every person, family and community that is forced from their homes and lands, against their will, must have access to some form of remedy - both substantive and procedural - which respects their rights, protects their rights and, if necessary, fulfils their rights as recognised under international human rights law. In effect, everyone whose HLP rights

are affected by climate change needs to have a means of remedying these denials through the provision of appropriate and durable HLP solutions to their status as climate change displaced persons.

Before identifying some of the HLP rights of climate change displaced persons, it is important to note that the 1992 UN Framework Convention on Climate Change (UNFCCC) mentions neither the displacement to be caused by climate change nor the human rights dimensions of global warming.<sup>9</sup> Likewise, the 1951 Refugee Convention does not recognise the particular rights of climate change displaced persons, nor do any of the major human rights treaties. This lack of inclusion of this specific group of climate change displaced persons has led some to propose the amendment of the 1951 Refugee Convention and 1967 Protocol to expand the protection of these instruments to include climate change displaced persons. This initiative does not appear likely at the moment to have the political support required to amend the Refugee Convention and Protocol. Another proposal for a Protocol on the Recognition, Protection and Resettlement of Climate Refugees to the UNFCCC<sup>10</sup> has also been developed as has a specific convention detailing the rights of those displaced due to climate change.<sup>11</sup> None of these pertinent and worthy initiatives, however, are likely to be approved any time soon.

<sup>9</sup> The closest it comes to recognising this particular manifestation of rising seas and other consequences of climate change is the following sections: 4(1)(d) All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:...(d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems....(f) Takes climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change.

<sup>10</sup> See: for instance: Biermann, F. and Boas, I. "Protecting Climate Refugees: The Case for a Global Protocol in *Environment* (vol. 50, number 6), pp. 9-16, 2008.

<sup>11</sup> See, David Hodgkinson, Tess Burton, Simon Dawkins, Lucy Young and Alex Coram, "Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses", 2008 (available at: <http://www.ias.uwa.edu.au/new-critic/eight/hodgkinson>)

The human rights dimensions of climate change were rather late arrivals into the global climate change debate.<sup>12</sup> From 2007 onwards a series of efforts have been undertaken in this regard, including the release of publications making the explicit link between human rights and climate change. For instance, after extensive lobbying efforts, following an initiative led by the Maldives, in 2008 the UN Human Rights Council decided to produce a study on the human rights dimensions of climate change. The report was released in 2009, and while not containing many particularly new ideas, was nonetheless important in signifying UN attention to these issues.<sup>13</sup> The OHCHR report notes that the following rights may be effected by climate change: the right to life, the right to adequate food, the right to water, the right to health, the right to adequate housing, and the right to self-determination,<sup>14</sup> and rightfully emphasises further that “persons affected by displacement within national borders are entitled to the full range of human rights guarantees by a given state, including protection against arbitrary or forced displacement and rights related to housing and property restitution for displaced persons”.<sup>15</sup>

The report further recommends that:

*Within countries, existing vulnerabilities are exacerbated by the effects of climate change. Groups such as children, women, the elderly and persons with disabilities are often particularly vulnerable to the adverse effects of climate change on the enjoyment of their human rights. The application of a human rights approach in preventing and responding to the effects of climate change serves to empower individuals and groups, who should be perceived as active agents of change and not as passive victims. (Para 94)*

*Further study is also needed of protection mechanisms for persons who may be considered to have been displaced within or across national borders due to climate change-related events for those populations which may be permanently displaced as a consequence of inundation of low-lying areas and island states. (Para 98)*

Also at the UN, the Special Rapporteur on Housing Rights, Raquel Rolnick, has recently drawn attention to the human rights issues arising from climate change, with an initial focus in the Maldives<sup>16</sup>, as has the Special Representative to the UN Secretary-General on the Rights on Internally Displaced Persons, Walter Kaelin.<sup>17</sup> These and a range of other initiatives increasingly recognise that housing, land and property rights lie at the core of a series of human rights remedies that are required to find durable solutions for climate change displaced persons in the context of forced climate displacement. Giving substance to these understandings, however, has been the exception to the rule.

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12 See, for instance: International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, International Council on Human Rights Policy, Versoix, 2008 and Human Rights and Equal Opportunity Commission, *Human Rights and Climate Change*, Background Paper, Human Rights and Equal Opportunity Commission, Canberra, 2008;

13 *Report of the High Commissioner for Human Rights on the relationship between climate change and human rights* (A/HRC/10/61, 15 January 2009).

14 *Id.*, pp. 8-15.

15 *Id.*, para. 57.

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16 See, for instance: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnick, Preliminary note on the mission to Maldives (18 to 26 February 2009), A/HRC/10/7/Add.4, 3 March 2009.

17 See, generally, Walter Kaelin, 'The climate change – displacement nexus,' Brookings-Bern Project on Internal Displacement, Bern, 2008.

## WHAT ARE HLP RIGHTS?

In terms of HLP rights protections, climate change displaced persons – for the moment at least – will need to rely on the rather vast body of international human rights law (and international law more generally) and the domestic human rights provisions found within the national legal frameworks of all nations as a basis for claiming and asserting their HLP rights.<sup>18</sup> While the implementation of human rights law remains weak in many countries, viewed in its entirety the normative framework offered by human rights law may prove to be more inclusive in terms of protecting the general human rights and housing, land and property rights of climate change displaced persons than many will have imagined.

Combining the sentiments of the Universal Declaration on Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966) and a range of other treaties, together with a vast array of equally important instruments and interpretive standards such as the UN Committee on Economic, Social and Cultural Rights General Comment No. 4 on the Right to Adequate Housing (1991), General Comment No. 7 on Forced Evictions (1997), the UN Guiding Principles on the Rights of Internally Displaced Persons (1998), the UN 'Pinheiro' Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) and many others, reveals a very considerable body of international human rights laws and standards which can and should be used by Governments to build

the legal, policy and institutional frameworks required to provide rights-based durable solutions to the displacement caused by climate change.<sup>19</sup>

Human rights law provides that everyone, everywhere possesses a body of HLP rights and every Government in every State is obliged to ensure the protection and enforcement of these rights. When combining together all of the entitlements and obligations inherent within this bundle rights or HLP (housing, land and property) rights as they are now commonly referred to, people everywhere are meant to be able to live safely and securely on a piece of land, to reside within an adequate and affordable home with access to all basic services and to feel safe in the knowledge that these attributes of a full life will be fully respected, protected and fulfilled. As citizens and rights holders, these rights need to be enjoyed universally by all climate change displaced persons. In this regard, if it can be shown that the HLP losses incurred by climate change displaced persons constitute either direct violations of their HLP rights, or at the very least, result in the inability to access the protections afforded under law by HLP rights, then it is clear that according to human rights law, appropriate forms of reparation and restitution must be accorded to those who have lost access to, use of or ownership over housing, land or property lost due to climate change.<sup>20</sup>

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18 It is important to note, at the same time, that the UN General Assembly while avoiding direct recognition of the HLP rights of Climate change displaced persons, has recently addressed the explicit links between climate change and international peace and security in resolution 63/281 "Climate change and its possible security implications", 11 June 2009.

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19 See, for instance: *Implementing the Principles on Housing and Property Restitution: A Practitioners Handbook*, OCHA, UNHCR, OHCHR, FAO and NRC (July 2006) and *Housing Rights Legislation*, UN Habitat Programme and the Office of the UN High Commissioner for Human Rights (2002).

20 Generally, on these issues, see: De. Greiff, P. (ed) *The Handbook of Reparations*, Oxford University Press, Oxford 2008 and Shelton, D., *Remedies in International Human Rights Law*, Oxford University Press, Oxford, 2000.

As with all other nations, people in countries most heavily affected by climate change, in particular those who are subject to forced displacement, are entitled under international human rights law to enjoy a series of rights which together constitute housing, land and property rights.<sup>21</sup> In many respects, it will be housing, land and property rights that form the basis of the durable solutions required to resolve displacement sourced to climate change. Problematically, however, domestic HLP solutions – particularly in the long-term – may prove incapable of securing the rights of climate change displaced persons, and thus these rights will need to be fully secured in host countries where these persons eventually resettle.

HLP rights are widely recognised throughout the ever evolving corpus of human rights law, and when we examine those rights which have a direct bearing upon the conditions in which people live in a residential context, eg. their housing, land or property rights, it is clear that these are far more extensive than commonly assumed. In essence, HLP law constitutes a composite of the following existing rights found within international human rights law:

- ▶ The right to adequate housing and rights in housing
- ▶ The right to security of tenure
- ▶ The right not to be arbitrarily evicted
- ▶ The right to land and rights in land
- ▶ The right to property and the peaceful enjoyment of possessions
- ▶ The right to privacy and respect for the home
- ▶ The right to HLP restitution/compensation following forced displacement
- ▶ The right to freedom of movement and to choose one's residence
- ▶ The right to political participation
- ▶ The right to information
- ▶ The right to be free from discrimination
- ▶ The right to equality of treatment and access
- ▶ The right to water
- ▶ The right to energy

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21 The recognition of HLP rights by the United Nations began immediately following the creation of the organization itself in the 1948 Universal Declaration on Human Rights, which included both housing rights (article 25(1)) and property rights (article 17). Since then, various components of the body of rights now known as HLP rights have been enshrined in a series of international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and numerous others. While international human rights law widely recognises various manifestations of HLP rights, article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which entered into force on 3 January 1976, contains perhaps the most significant international legal source of the right to adequate housing: *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.*

According to human rights law, in their totality, these HLP rights should fully inform a wide cross section of legislative, policy and practical decisions made by Governments. The degree to which these rights and underlying human rights principles such as participation, accountability, non-discrimination and transparency are woven into the contours of State law and policy will greatly affect how these decisions will be supported by individual rights-holders and to what extent they will actually be able to meet the underlying needs of the people affected. The long struggle to define the components of HLP rights and to delineate the corresponding obligations of States to secure these rights has resulted in a clear normative framework of what HLP rights mean in terms of human rights law. It is, for instance, widely agreed that States with HLP rights obligations are not necessarily required to be the primary housing providers within a society, nor are Governments necessarily required to substantively provide a house to all citizens who claim to need a dwelling in which to live. Rather, human rights laws suggest that States are expected to comply with various levels of obligations that emerge from a recognition of HLP rights that lead to the creation of conditions within a given society that are as facilitative as possible for everyone, within the shortest possible time-frame, to secure by various means, the full attributes of HLP rights. This takes many forms and involves a series of corresponding obligations.

States are bound by obligations to respect, protect, promote and fulfill these rights. Human rights laws indicate that once such obligations have been formally accepted through the ratification of an international or regional treaty or promulgation of related domestic legislation, the State must endeavour by *all appropriate means* to ensure everyone has access to HLP resources adequate for health, well-being and security, consistent with other human rights, including those affected by climate change.<sup>22</sup>

<sup>22</sup> See, for instance, Scott Leckie, 'Where It Matters Most: Enforcing International Housing Rights Nationally' in *National Perspectives on Housing Rights*, The Hague: Kluwer International Publishers

Governments must, therefore, adopt the policies, laws and programmes required - to the *maximum of their available resources* - to continually and progressively expand the enjoyment of these rights and simultaneously ensure in policy, legal or other terms, that no *deliberately retrogressive measures* are taken that lead to the decline in the enjoyment of these basic rights. Of all the HLP rights, the right to adequate housing has advanced the farthest. In 1991, the UN Committee on Economic, Social and Cultural Rights adopted 'General Comment No. 4 on the Right to Adequate Housing' which indicates that the following seven components form the core contents of the human right to adequate housing:

- (a) legal security of tenure;
- (b) availability of services, materials, facilities and infrastructure;
- (c) location;
- (d) habitability;
- (e) affordability;
- (f) accessibility; and
- (g) cultural adequacy.<sup>23</sup>

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(2003). See also Nelson Saule, 'Housing Rights in Brazil' in *National Perspectives on Housing Rights*, (Scott Leckie, ed.), The Hague: Kluwer International Publishers (2003).

<sup>23</sup> Paragraph 8 of General Comment No. 4 states: Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following: (a) Legal Security of Tenure: Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups; (b) Availability of Services, Materials, Facilities and Infrastructure: An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services; (c) Affordable: Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised, Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability tenants

General Comment No. 4 also reiterates that the right to adequate housing should not be interpreted in a narrow or restrictive sense which equates it with the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity, but that housing rights should be seen as rights to live somewhere in security, peace and dignity. To achieve these rights, States need to *respect* these rights by ensuring that no measures are taken which intentionally erode the legal and practical status of this right. Governments need to comprehensively review relevant legislation, refrain from actively violating these rights by strictly regulating forced evictions and ensure that the housing, land and property sectors are *free from all forms of discrimination at any time*. States must also assess national HLP conditions, and accurately calculate, using statistical and other data and indicators, the true scale of non-enjoyment of these rights, and the precise measures required for their remedy. All of these are directly relevant to Climate change displaced persons. Governments need to *protect* the rights of people by effectively preventing the denial

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should be protected from unreasonable rent levels or rent increases by appropriate means. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials; (d) Habitable: Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors, The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the "Health Principles of Housing" prepared by the World Health Organization (WHO) which view housing as the environmental factor most frequently associated with disease conditions in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates; (e) Accessibility: Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, 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. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernable governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement; (f) Location: Adequate housing must be in a location which allows access to employment options, health care services, schools, child care centers and other social facilities. This is both true in large cities and in rural areas where the temporal and financial costs of getting to and from places of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants; (g) Culturally Adequate: The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed and that they should ensure, inter alia, modern technological facilities, as appropriate.

of their rights by third parties such as landlords, property developers, social service providers and others capable of restricting these rights. To *promote* HLP rights, Governments should adopt targeted measures such as *national HLP strategies* that explicitly define the objectives for the development of the HLP sector, identify the resources available to meet these goals, the most cost-effective way of using them and how the responsibilities and time-frame for their implementation will be applied. Such strategies should reflect extensive genuine consultation with, and participation by, all those affected, including groups traditionally excluded from the enjoyment of HLP rights. Finally, the obligation to *fulfil* these rights involves issues of public expenditure, the regulation of national economies and land markets, housing subsidy programmes, monitoring rent levels and other housing costs, the construction and financing of public housing, the provision of basic social services, taxation, redistributive economic measures and any other positive initiatives that are likely to result in the continually expanding enjoyment of HLP rights.

In terms of human rights law, thus, citizens and residents of every country should have direct and sustained access to the full realization of the entire spectrum of housing, land and property rights, while Governments should take seriously their numerous obligations to respect, protect, promote and fulfill HLP rights.<sup>24</sup> The people of all of the countries most heavily affected by climate change, therefore - just as people everywhere - are entitled to live in societies where HLP rights are treated with the seriousness accorded them under human rights law, and in accordance with the maximum of resources available to the State to respect and protect them.

To be effective in this regard, HLP law needs to be internally consistent, conform with all relevant international standards and norms and, above all,

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24 See: Scott Leckie (ed) *National Perspectives on Housing Rights*, The Hague: Kluwer International Publishers (2003).

reflect the popular will of the population. It is difficult to point to any nation in the world today which has a flawless body of HLP legislation in place, as this area of law remains both immense, complicated and often subject to effective policy as a means to promote its implementation.<sup>25</sup> However, a solid legislative framework supporting HLP rights is indispensable if these rights are to be subject to full respect and protection, in particular when they are affected by climate change. Good HLP law is a vital adjunct to improving the HLP rights circumstances faced by climate change displaced persons, and when Governments awaken to this fact and work together with civil society to build legislation and policy that reflects the popular will and basic human needs of the population and addresses the full range of HLP concerns, then and only then, can societies everywhere begin to experience the reality of what the promise of HLP rights means in everyday life.

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25 At the same time, however, there is no shortage of excellent examples of domestic law found within all types of legal systems that each in their own way support the contention that all people must be entitled to all HLP rights. The *City Statute* in Brazil, The *Loi Besson* in France, the *Constitution* in South Africa, the *Urban Housing and Development Act* in the Philippines and many, many others can be looked to as inspirations of what is possible in an HLP legislative context when the people governed drive the legislative process from the grassroots upwards. None of these laws or any others has ever or will ever single-handedly transform a country affected by landlessness, forced evictions, discrimination and growing slums overnight into a bastion of HLP rights enjoyed by all, let alone countries that face losing their entire territories due to climate change.



Future climate-change victims, Maldives.

## FORCED DISPLACEMENT CAUSED BY CLIMATE CHANGE

While identifying the precise degree to which climate change may be the cause of particular instances of displacement remains challenging depending on the country and the context, it is clear that displacement due to the effects of climate change will – and indeed already has affected – scores of countries and tens, perhaps hundreds, of millions of people. The very real and extensive displacement and other human rights implications of climate change and the rights-based solutions that will be increasingly required in coming years as adaptation, internal relocation and international resettlement become ever more necessary clearly require greater attention by the international community and those governments which are most heavily affected.

It is often argued that the spectre of permanent, non-reversible displacement caused by climate change and rising sea levels is a phenomenon that has yet to be clearly defined enough for States and their people to enable them to take the measures required to secure the long-term HLP rights of everyone affected by climate-induced displacement. And yet, climate change-induced displacement will almost assuredly become *the* most dramatic displacement disaster - ever. Already, Papua New Guinean atolls such as the Carteret, Morelock, Tasman and Nugeria Islands, States such as Tuvalu, Kiribati, Vanuatu, the Maldives and Bangladesh and others have begun to permanently resettle people because of land lost to rising seas, subsidence and salinisation of fresh water supplies. According to a recent 2009 report *The Anatomy of a Silent Crisis: Human*

*Impact Report Climate Change*, “an estimated 26 million of the 350 million displaced worldwide are considered climate displaced people. Of these, 1 million each year are estimated to be displaced by weather-related disasters brought on by climate change”.<sup>26</sup> Clearly, these and other cases are only the beginning of what will inevitably become an ever larger problem. And yet, very little has been done to date to address these displacement dimensions of climate change, including adequately addressing the HLP issues concerned. The International Panel on Climate Change’s (IPCC) highly influential Fourth Assessment Report, for instance, simply notes that “...adaptation is occurring now, but on a limited basis”, and otherwise the report almost entirely ignored this vital issue.<sup>27</sup> Indeed, one commentator was sadly not wrong in claiming that “[T]here has been a collective, and rather successful, attempt to ignore the scale of the problem”.<sup>28</sup>

Building on the links between human rights and climate change, if we focus solely on the question of forced displacement due to climate change for the moment, estimates range from a global total of 50 million to worst-case scenarios predicting that up to one billion people could face the loss of their homes and lands during the coming century. The first *Assessment Report of the IPCC* in 1990 estimated that by 2050 some 150 million people could be displaced due to climate change,<sup>29</sup> a figure also echoed in the well-known Stern Report and by Norman Myers of

26 Global Humanitarian Forum, 2009, *The Anatomy of a Silent Crisis: Human Impact Report Climate Change*, Geneva.

27 IPCC WGII Fourth Assessment Report, *Climate Change 2007: Climate Change Impacts, Adaptation and Vulnerability*, April 2007.

28 Oli Brown, “Climate change and forced migration: Observations, projections and implications”, Background paper for the *Human Development Report 2007/2008 - Fighting climate change: Human solidarity in a divided world*, Human Development Report Office, Occasional paper 2007/17, UNDP, 2007.

29 For an overview of the various displacement estimates, see: Oli Brown “The Numbers Game” in *Forced Migration Review*, vol. 31, October 2008.

Oxford University who also predicted that, as a conservative estimate, the number of people set to be displaced by climate change would be 150 million, a figure he later expanded to 200 million.<sup>30</sup> Christian Aid estimates a higher figure of some 200-250 million people will face forced displacement.<sup>31</sup> The International Organisation for Migration (IOM) estimates that eventually some one billion people could be environmentally displaced from their original homes and lands.<sup>32</sup> In terms of likely displacement within particular countries, several stand out as particularly dire, including China (est. 30m displaced), India (est. 30m displaced), Bangladesh (est. 20m displaced) and Egypt (est. 14m displaced). Al Gore's book *An Inconvenient Truth* speaks of 20 million people being displaced in the Beijing area alone, with an additional 60 million who may be forced to move in Kolkatta and in neighbouring Bangladesh.<sup>33</sup>

But what form will this displacement take? Forced climate displacement does not occur solely due to King Tides or land loss due to rising sea levels. Rather, there are four primary types of climate-induced displacement: Weather-related disasters, such as hurricanes and flooding; Gradual environmental deterioration and slow onset disasters such as desertification, sinking of coastal zones and possible total submersion of low-lying island States; Increased disaster risks resulting in relocation of people from high-risk zones; and Social upheaval and violence attributable to climate change related factors. Each of these may cause people to involuntarily flee their homes and lands and thus be responsible for climate-induced displacement.

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30 Norman Myers, "Environmental Refugees in a globally warmed world" in *BioScience*, 43 (11), December 1993). In a later study by Myers, he raised his estimate to 200 million (Norman Myers, *Environmental refugees: an emergent security issue*, OCSE, 2005

31 Christian Aid, *Human tide: The real migration crisis*, 2007.

32 Lonergan, S and A. Swain, *Environmental Degradation and Population Displacement*. Global Environmental Change and Human Security Project, Research Report No. 2, Victoria, BC, Canada, May 1999.

33 Al Gore, *An Inconvenient Truth: The Planetary Emergency of Global Warming and What We Can Do About It*, Rodale Books, 2006.

In terms of when displacement due to climate change actually takes place, this is likely to manifest in essentially five primary ways. These are:

**1. Temporary Displacement** - People who for generally short periods of time are temporarily displaced due to a climate event such as a hurricane, flood, storm surge or tsunami but who are able to return to their homes once the event has ceased, such as during a larger than usual King Tide in Vanuatu;

**2. Permanent Local Displacement** - People who are displaced locally, but on a permanent basis due to irreversible changes to their living environment, in particular sea-level rise, coastal inundation and the lack of clean water and increasingly frequent storm surges. This form of displacement implies that localised displacement solutions will be available to this group of forced migrants, such as higher ground in the same locality. This would include dwellers along Bangladesh's coastline who flee to higher ground in the immediate vicinity;

**3. Permanent Internal Displacement** - People who are displaced inside the border of their country, but far enough away from their places of original residence that return is unlikely or impossible. This would concern a family displaced from one region of a country to another region in country, for instance, from a coastline to an inland town or city, such as the ongoing resettlement from the Carteret Islands to the larger island of Bougainville in Papua New Guinea.

**4. Permanent Regional Displacement** - People for whom displacement solutions within their own countries are non-existent or inaccessible and who migrate to nearby countries willing to offer permanent protection. This would involve, for instance, a citizen of Tokelau or Tuvalu migrating on a permanent basis to New Zealand.

**5. Permanent Inter-Continental Displacement** - People for whom no national or regional displacement solutions are available, and who are able to receive the protection of another State in another continent, such as a Maldivian who migrates to London.

Each of these five categories will have different policy and legal implications for Governments, the people concerned and whatever international agencies that may be assigned to assist climate change displaced persons to find durable solutions to their plight. Such responses, which can initially be understood in terms of short- and long-term options, have important ramifications for those affected and for those involved in ameliorating the emerging displacement crisis caused by climate change.

Problematically, the record of treatment thus far faced by those who have arguably already been displaced due to climate change does not bode particularly well for the millions yet to be displaced. Of the most well-known cases of what are seen as climate change-related displacements, none have thus far very successfully resettled those displaced, and in virtually all instances it is clear that the HLP rights of those affected have clearly not figured centrally within the remedial policies pursued to date. Community-driven initiatives and emerging alliances of climate change displaced persons are making inroads in some countries, particularly Papua New Guinea and Bangladesh, but the approaches of most governments to date to climate-induced displacement have been inadequate.

Indeed, the following four brief case studies strengthen the view that unless Governments in countries that generate climate-induced displacement fundamentally improve law, policy and practice in this regard, it is clear that initiatives driven by climate displaced people themselves will be required for rights-based solutions to climate displacement to become part of official national and international strategies designed to protect the HLP rights of climate displaced people. They also show that thus far no explicit use has been made of HLP rights as the normative basis for any of the initiatives presented.

**EACH PASSING DAY BRINGS YET MORE EVIDENCE THAT WE ARE NOW FACING A PLANETARY EMERGENCY, A CLIMATE CRISIS THAT DEMANDS IMMEDIATE ATTENTION.”**

– AL GORE

## PAPUA NEW GUINEA - THE INTEGRATED CARTERETS RELOCATION PROGRAMME OF TULELE PEISA

The resettlement process that is currently underway from the Carteret Islands in Papua New Guinea to the much larger island of Bougainville (also in PNG) is one of the first organised resettlement movements of climate change displaced persons. When the national PNG government and the Autonomous Provincial Government of Bougainville decided several years ago to resettle those from the Carterets and other atolls to Bougainville, many expected the relevant governmental bodies to effectively manage this process, by identifying and allocating sufficient land on Bougainville to resettle those fleeing their atolls. After a frustrating period of inaction by the Provincial Government in Bougainville to find durable HLP solutions for the 3,000-strong population of the Carterets – which includes the still unexplained non-expenditure of 2m Kina (+/- US\$ 670,000) allocated for these purposes under the national PNG budget – the community-driven initiative *Tulele Peisa* was founded with a view to actually finding HLP and related solutions for those to be displaced.

The Integrated Carterets Relocation Programme of Tulele Peisa offers unique policy and planning lessons for other resettlement plans in other countries. Tulele Peisa (“Riding the Waves on Our Own”) is led by the dynamic Ursula Rakova from the Carteret Islands, and has set out to find permanent housing, land and property solutions for the population of the Carterets on nearby Bougainville Island. The work of Tulele Peisa is truly path breaking and worthy of close inspection by anyone concerned with finding long-term HLP solutions for climate change displaced persons. Working against the odds and with very limited financial resources, Tulele Peisa thus far has been able to amass some 300 acres of land on Bougainville, most of which has

been donated by the Catholic Church for the purposes of resettling a portion of the Carteret Islanders. More land is obviously needed, but an important start has been made in developing the methods required to provide sustainable HLP solutions to the atoll dwellers.<sup>34</sup>

With more than 96% of Bougainville’s land mass governed by customary land ownership, finding available land for the purposes of resettlement has proven extremely challenging. There are many problems associated with the identification of land for resettlement on Bougainville, however. Most of the land is subject to claims by customary owners or privately owned, with less than 3% held by the government in PNG. The Carteret Islanders do not have the financial resources to buy land themselves for the resettlement process, while the government also lacks the political will to either purchase or expropriate land. Based on the experience of an earlier resettlement process that had failed in the area, the Islanders feel it is vital that sufficient land will be allocated to each family to enable them to earn a livelihood to ensure that the resettlement will be sustainable. This has led to their conclusion that 5 ha per family would be required, in order to provide sufficient land for farming cash crops. There are also a number of obstacles regarding obtaining clear legal title to land in Bougainville. Most land was subject to competing claims by customary landowners, and establishing clear title was a complex

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<sup>34</sup> Displacement Solutions (DS) has been working closely with Tulele Peisa since 2008 and through its Bougainville Resettlement Initiative has been seeking funds to support the work of Tulele Peisa. DS was also involved in putting together the components of what would have been the largest land purchase to date for the exclusive purposes of resettling Climate change displaced persons. Working with one of the main private landowners on Bougainville, DS put in place a plan to assist in the sale of some 7000 acres of private land to the Autonomous Government of Bougainville on the condition that the land – once it re-entered the public domain – would be set aside for the resettlement of the Carteret, Tasman, Mortlock and Nueria islanders. Suffice it to say, that neither local or national government funds were forthcoming, despite the allocation of funds within the national PNG budget which could have been used for these purposes, and the private land was then sold to a foreign developer who plans to use the land for tourism and possibly agriculture. While it is still hoped that the developer will set aside a portion of the land for use by atoll dwellers, it is clear that a golden opportunity for finding land solutions for some of the world’s first climate change displaced persons was lost. Nevertheless, despite this and other setbacks, Tulele Peisa continues to work diligently on behalf of the Carteret Islanders to find viable land and livelihood options for them on Bougainville.

(and often unclear) process. To date, the Carteret communities have only been granted land owned by the Church, but they had also entered into direct negotiations with traditional landowners as they wanted to maintain good relations and integrate with local communities upon resettlement. They still do not, however, have clear title to the land on which resettlement would take place.

Demand for resettlement from Carteret Islanders has increased since the process began due to the fact that the impact of climate change on the atoll is becoming ever more apparent. In 2006, only 3 families wanted to resettle, whereas in 2008 some 38 families wanted to move. In all, some 300 families or more will ultimately need to be relocated as the Carteret's disappear into the sea. The identification of land for the resettlement process remains one of the key challenges that needs to be addressed. In terms of the resettlement criteria developed by the Carteret's community, some 1,500 hectares of land will be required to accommodate all 300 families (5ha per family). So far, the Catholic Church has provided some 80 hectares for resettlement, with 5 families already relocated to date. The process is in its very initial stages, with some 1400 or so hectares still required to accommodate everyone in the long-term.

The logistics of the relocation process developed by Tulele Peisa first involves a number of steps on the atoll itself. Initially the Council of Elders was mobilised and the relocation plans discussed and approved. The plan was then put before the ABG and endorsed. Once the plan was approved, the group then set out to raise awareness of the issues throughout the islands comprising the atoll and developed a Task Force Committee which became the lead body responsible for elements of the resettlement process. Ceremonial preparations were then carried out, followed by the mobilisation of public and private resources. In terms

of activities on Bougainville, the Carterets Integrated Relocation Plan involves a well thought out 14-step process, which when completed, leads ultimately to successful resettlement by those moving to Bougainville. The fourteen steps are: 1) Scoping out available land; 2) Identifying traditional land owners; 3) Negotiating with land title holders; 4) Engaging with landowners; 5) Exchange programmes; 6) Entering into land negotiations; 7) Carrying out social and resource mapping; 8) Planting gardens; 9) Identify families using objective selection criteria; 10) Prepare families for relocation; 11) Prepare host families for relocatee arrivals; 12) Building homes; 13) Moving families to the new resettlement sites; and 14) Exchanging traditionally valuable items such as shell money.

The resettlement experience thus far concerning the Carteret Islanders, even at this very early stage, presents a number of lessons for resettlement exercises in other areas where climate-induced displacement will manifest, including:

**(a) The importance of land identification** - The identification and allocation of sufficient land for relocation purposes is central to resolving climate displacement. Much of the available land in Bougainville is privately owned or subject to claims by traditional landowners, leaving very little public land available to the government to earmark for resettlement. While the Catholic Church has provided 81ha of land for resettlement, this will provide only a small portion of the land reserves needed to resettle the entire population from the Carterets. This and all other climate change-related resettlement exercises will need to take a pro-active approach towards land allocation as a prerequisite for successful resettlement;

**(b) The central role of the affected communities** - Government efforts in support of relocation have been stalled by the unclear political situation in

Bougainville, as well as limited political will to devote the resources required to ensure successful resettlement. This, in turn, necessitated the emergence of Tulele Peisa, which again shows the vital role to be played by affected communities themselves in orchestrating their own resettlement plan; and

**(c) The need for sustainable and comprehensive resettlement** - Earlier resettlement programmes to Bougainville (and elsewhere) justified by reasons not related to climate change, failed due to the lack of livelihood opportunities for those relocated. Because the mere provision of a new house and garden is never sufficient to restore the lives and livelihoods lost as a result of involuntary resettlement, the comprehensive needs of those to be resettled have been structurally built into the plans of Tulele Peisa.

Much work remains to be done to find HLP solutions for the entire population of the Carteret's wishing to resettle to Bougainville, but a start has been made driven by the population to be displaced. It is hoped that other communities throughout the world which will require resettlement will learn from this experience, and also that movements similar to Tulele Peisa emerge on the other three PNG atolls which are equally threatened by rising sea levels.

## TUVALU

As is well known, few of the countries worst affected by climate change are under as dire a threat as Tuvalu.<sup>35</sup> The loss of land in Tuvalu is so severe and potentially catastrophic, in fact, that Prime Minister Apisai Ielemia, issued a formal request to the government in Australia in 2008 to cede to Tuvalu a small piece of territory for the purposes of re-establishing Tuvalu

<sup>35</sup> For a critical analysis of climate change and displacement in Tuvalu, see: David Corlett, 2008, *Stormy Weather: The Challenge of Climate Change and Displacement*, UNSW Press, Sydney.

on a minute portion of what is now Australian territory and resettling the entire population of the country there. Australia did not support this request, but in response to the Federal Government's reluctance, and in act of remarkable islander solidarity, representatives from the Torres Strait Islands in the north of Australia unofficially offered Tuvalu use of one of its islands to re-establish itself there.<sup>36</sup> Could this be an option for Tuvalu or other islanders as things proceed to move from bad to worse? Aside from the fact that some three thousand Tuvaluans are already said to have departed the country on a permanent basis largely for economic and educational reasons, the population density in Tuvalu is over four times higher than Kiribati; which itself has a very high population density.

Unlike the atoll dwellers such as those in PNG which at least can be resettled to Bougainville, (which, of course, is within the same country as the atolls), and a similar but less promising situation in Kiribati which, according to the government official responsible for climate change adaptation, sees its largest atoll of Kiritimati as "our version of Bougainville as far as resettlement is concerned", Tuvalu's 10,000 inhabitants have very limited domestic land options available to them. It is becoming increasingly clear that third country resettlement in all likelihood will become the only viable option available to the population should large-scale adaptation measures fail.

At the moment, however, neither Australia nor New Zealand has expressed a willingness to integrate the entire population of Tuvalu into their own territories, although both countries have immigration programmes in place for a small number of Tuvaluans each year.<sup>37</sup> New Zealand's Pacific Access Category enables 75 residents from Tuvalu to immigrate to the country each

<sup>36</sup> Similarly, in 2009, Indonesia offered to rent several of its 13,000 islands for use in resettling climate change displaced persons, although it is not clear whether any resettlement plans are actually in place.

<sup>37</sup> Friends of the Earth International, *Climate Change – voices from communities affected by climate change*, Amsterdam, 2007.

year. Principal applicants have to meet a series of strict criteria, however, which will exclude large numbers of eventual climate change displaced persons from immigrating to New Zealand. The seasonal labour scheme to New Zealand, in addition to the PAC will eventually allow 5000 workers from five Pacific nations to work within the agricultural sector. In neighbouring Australia, well over 200,000 immigrants settle in the country each year proving clearly the capacity of the regional superpower to incorporate large numbers of new arrivals every year, including those displaced due to climate change. The recently developed Pacific labour program in Australia which entitles a small number of Pacific islanders to work in Australia within the agricultural sector is seen by many as a precursor to a larger plan down the road involving ever larger numbers of Tuvaluans to its shores.

Many options are under discussion now, but nothing is as yet clear about the future of Tuvalu as a nation and the collective future of its citizens and their HLP rights. Many pleas have been made by concerned Australians and New Zealanders urging the governments of those two countries to assist Tuvaluans. One study entitled *Our Drowning Neighbours: Labor's Policy Discussion Paper on Climate Change in the Pacific*<sup>38</sup> drafted prior to the current Labor Government taking power, proposes that Australia establish an international coalition to accept climate refugees and work at the United Nations to ensure international recognition of climate refugees, however, this has yet to become policy. As a result, the citizens of Tuvalu will in all likelihood migrate in increasingly large numbers from their country to whichever countries are willing to accept them. How the HLP rights they possess under Tuvaluan law and the degree to which their housing, land and property rights are accorded them within the territories to which they emigrate remains to be seen.

38 Bob Sercombe MP & Anthony Albanese MP, *Our Drowning Neighbours: Labor's Policy Discussion Paper on Climate Change in the Pacific*, Australian Labor Party.

## KIRIBATI

Kiribati is severely threatened by rising seas and in all likelihood, the country as a whole will be uninhabitable within a century from now. The Government has tackled this reality head on and in many respects, Kiribati is well ahead of the curve in beginning to structurally address many of the displacement dimensions of climate change, many of which stem from severe overcrowding in the capital, Tawara. In 2005, the Government finalised an Integrated Land and Population Development Programme as part of the broader National Republic of Kiribati Climate Change Adaptation (CCA) Strategy which set in motion a series of actions designed to resolve climate-related challenges. In the plan, the Government plans to stabilise the national population at 125,000 by 2025 through family planning programmes and large-scale inter-island relocation. The proposed population distribution will be 50,000 in South Tawara, 45,000 spread over the other islands in the Gilberts, and the resettlement of roughly 30,000 to the larger island of Kiritimati. Severe overcrowding in Tawara (with the area of Betio islet having a population density of nearly 8000 persons per square kilometre, giving it a population density similar to Hong Kong), were as much behind the plan as broader climate change concerns.<sup>39</sup> Under the plan, squatters and other vulnerable groups in Tawara will be given incentives to move voluntarily to Kiritimati, an atoll which contains 70% of Kiribati's land mass, but which is located a full 2000km away from the capital. While the government of Kiribati has been particularly pro-active in addressing the severe climate-induced displacement crisis to come by focusing on resolving current overcrowding by adopting creative policy measures designed to promote domestic relocation to islands such as Kiritimati, it remains unclear to what extent these measures will be

39 Justin T. Locke "Climate change-induced migration in the Pacific Region: sudden crisis and long-term developments" in *The Geographical Journal*, 2009, pp. 1-10.

adequate over the longer-term. Problematically, Kiritimati is only four meters above sea level which means that people will eventually be forced to abandon even this island over the longer-term. The current measures will surely go some way towards alleviating overcrowding and growing slums, inadequate housing and landlessness (and do implicitly recognise the HLP rights of the populace), but these may turn out to be only interim measures depending on the speed with which the seas eventually rise. Like Tuvalu, Kiribati benefits from the Pacific Access Category programme, with New Zealand accepting an annual quota of immigrants from the country. Although the PAC's do not expressly mention climate change as a reason or basis for according migrant status to these groups, nor do they apportion responsibility for the displacement of these populations, the PAC is largely seen to be a precursor to a larger climate migration programme should this become inevitable. It may be in the form of regional and inter-continental resettlement that the ultimate durable solutions will be found to Kiribati's displaced population, but far more work needs to be done to develop the concrete plans required to secure the short- and long-term HLP rights of everyone in Kiribati requiring eventual relocation or resettlement.

## BANGLADESH

Although the Pacific and Indian Ocean island nations receive the bulk of attention in discussions linking climate change and displacement, few countries will actually be more affected than Bangladesh. Already severely affected by land scarcity, overcrowding and slums that grow by two million dwellers each year, and with half of Bangladesh's population living in areas less than five meters above sea level, the country has begun to witness climate-induced displacement across much of its coastline. According to one analysis "In the severe climate change scenario, sea level rise poses an existential threat that would inundate 18 percent of Bangladesh's total

land, directly impacting 11 percent of the country's population. Salt water intrusion from sea level rise in low-lying agricultural plains, along with other hazards, could lead to 40 percent decrease in food grain production and will increase forced migration to the urban slum areas".<sup>40</sup> Estimates show that with just a 1 to 2 degree increase in temperature would force physical dislocation of more than 35 million people in Bangladesh. The results of modelling longer-term changes in coastlines as a result of rising sea-levels suggest that the government may be required to support mass movements of coastal population, with perhaps one in every seven Bangladeshis displaced by climate change by the year 2050.<sup>41</sup> In order to address this dramatic crisis, some analysts have argued that for any climate displaced person legal and policy regime to be effective, it must be tailored not to the needs of individually persecuted people but of entire groups of people, such as populations of a village, cities, provinces, or even entire nation, as in the case of small island states.<sup>42</sup> In this regard, some Bangladeshi NGOs have proposed that a new status of 'Universal Natural Person' should be accorded to climate change displaced persons, who in turn should be treated as permanent residents to the regions or countries that accept them.

The recent emergence of the Climate Refugee Alliance, a grouping of affected communities assisted by the Coastal Resource Centre, and the Equity and Justice Working Group are hopeful signs that more concrete moves are underway to find viable HLP options for those threatened with forced climate displacement. Among other things, the Climate Refugee Alliance has pressured the government to set aside State land for the exclusive purpose of resettling what they are labeling as 'Climate Refugees'. The Alliance has begun to address questions of land

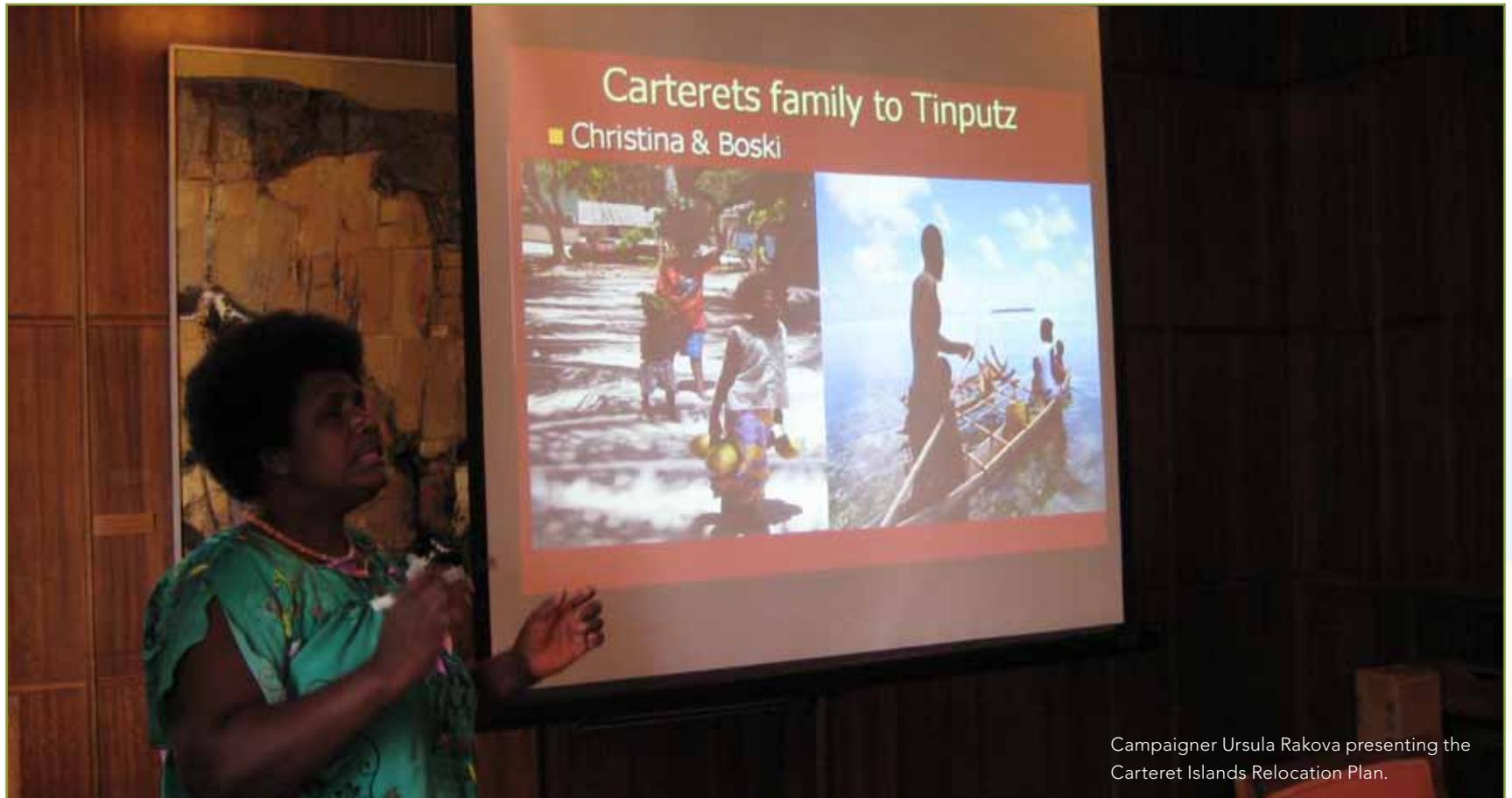
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40 Md Shamsuddoha and Rezaul Karim Chowdhury, *Climate Refugee: requires dignified recognition under a new Protocol*, Equity and Justice Working Group Bangladesh, pp. 3-4, April 2009.

41 Id, pp. 4-6.

42 Id, pp. 9-10.

purchase and acquisition and the development of community land trusts which may hold promise for the millions to be displaced in the country due to the multiple effects of climate change. Whether these measures will succeed in finding HLP results for all of Bangladesh's Climate change displaced persons, however, remains to be seen.



Campaigner Ursula Rakova presenting the Carteret Islands Relocation Plan.



## RECOMMENDATIONS - THE QUEST FOR HOUSING, LAND AND PROPERTY SOLUTIONS FOR CLIMATE CHANGE DISPLACED PERSONS

The challenge in addressing the specific HLP rights requirements of climate change displaced persons lies in not only ensuring that a principled approach to these issues is accepted at legal and policy levels, but that this is given content and clarity in terms of guidance and support for particular communities. Extensive direction can be taken from existing human rights instruments, recent policy work, disaster-response and reconstruction efforts and the general accumulated international legal framework including on socio-economic rights.

For the world's growing population of climate change displaced persons to secure both durable solutions to their displacement and the full enjoyment of all elements of their housing, land and property rights – both prior to and following their displacement – a series of steps need to be taken now by both migrant-generating and migrant-receiving states to identify and implement the legal, policy and programmatic measures required to respect and protect the pre-existing human rights of climate change displaced persons.

It is important to reiterate that these measures must be grounded deeply in laws and values that are already in place within virtually all states; indeed, securing the HLP rights of climate displaced persons will not inevitably require the establishment of new legal regimes

or institutional frameworks, although creating specific institutional frameworks for respecting and protecting the HLP rights of climate change displaced persons should be a feature common to all States facing climate-induced displacement. In many contexts, the legal and political tools required to support the implementation of these rights are already in place. In these cases, therefore, what is required will be an augmentation of existing law, policy and practice in recognition of the fact that the displacement consequences of climate change will continue to grow and that they will affect the enjoyment of basic human rights. In many settings all that remains to be achieved in this respect is simply generating the political (and economic) will to bring them to fruition, and to develop specific measures that are designed directly to assist climate displaced persons to enjoy the full spectrum of HLP rights.

Much can be done - now – by States and international community to strengthen the prospects of climate change displaced persons, twelve of which are outlined below:

### PROMOTE MAJOR, RIGHTS-BASED IMPROVEMENTS IN HLP LAW AND POLICY

Many of the HLP challenges posed by climate change can be effectively addressed within domestic settings by substantially improving existing HLP law and policy. This is particularly true in countries which may face mass displacement, but which will retain the vast majority of existing land mass. For instance, housing laws can be re-written to acknowledge that new land will be required for relocating climate change displaced persons. Insurance arrangements can be expanded to cover losses incurred due to climate change. New national (and regional) bodies can be developed to ensure the adequate protection and housing measures are available to all climate change displaced persons. These and related measures are inherently

feasible and can be employed by all States to one degree or another. From a governance perspective, citizens need to be able to identify which specific domestic institutions are responsible for ensuring the rights of climate change displaced persons, and which international institution(s) should be responsible for assisting these victims of climate change? In determining this, climate change displaced persons as beneficiaries of existing HLP rights can reasonably be expected to have provided to them clear answers to several very straightforward questions, including:

- ▶ Where do I turn for social, financial and resettlement assistance?
- ▶ Which public institution is entrusted with enforcing, respecting and protecting my HLP rights?
- ▶ If I am displaced due to climate change, what rights do I have to a new home or new land?
- ▶ What laws and rules are in place recognising my HLP rights and how can I best seek to enforce them?
- ▶ If I lose my home or land due to climate change, am I entitled to compensation or reparations? If so, where do I find out how to access these remedies?

All governments should have precise, rights-based answers to these and other questions that may be posed by climate displaced persons. Beyond the improved application of existing HLP law and State obligations to respect and protect them, the effective protection of the HLP rights of climate change displaced persons will require the existence of clearly defined institutions that can provide clear and sustainable answers to all of these questions wherever they may be posed.

## ENSURE FULL AND GENUINE CONSULTATION WITH AND PARTICIPATION BY AFFECTED COMMUNITIES, THEIR ORGANISATIONS AND EVENTUAL HOST COMMUNITIES

In order to effectively respect and protect the HLP rights of the world's growing population of climate change displaced persons, mechanisms need to be developed that ensure full consultation and participation with affected communities at all levels, as well as between donors and affected local governments to ensure the success of planning and response measures to address displacement aspects of climate change. Climate change displaced persons need to be treated as equals in the development of practical solutions to their displacement and require a central place at the negotiating tables where such solutions are identified. Affected communities should be assisted to develop organisations representing their interests and be provided with technical assistance and support, as required, in formulating their demands in a manner consistent with human rights laws. New bodies such as the recently formed Climate Change, Environment and Migration Alliance (CEEMA), which was established to help mainstream environmental and climate change considerations into the migration management policies and practice, should ensure that forced climate migrant communities and their leaders play a central role in the policy development process.<sup>43</sup>

## CARRY OUT HIGH QUALITY, LONG-TERM AND RIGHTS-BASED HLP PLANNING

Good planning, good institutional frameworks, good laws and good policies will all be required if the HLP rights of climate change displaced persons are to be taken seriously. Human rights law and the

43 Jonas Bogardi and Koko Warner, "Here Comes the Flood" in *Nature Reports Climate Change*, vol. 3, pp 9-11, January 2009.

growing number of judicial decisions on HLP rights, in particular, (See the *Grootboom Case* in South Africa in 2000, for instance) indicate that planning is one of the most important roles any local or national government can play in respecting and protecting HLP rights. Human rights laws require States not only to plan, but to carefully diagnose domestic human rights challenges, develop laws and policies adequate to address these and to ensure that remedies of various sorts are available to individuals and communities unable to or prevented from enjoying the full array of human rights protections. A number of governments have already started. In early 2008, for instance, local councils in Australia were instructed to carry out comprehensive climate change planning exercises in all communities threatened by flooding and inundation. This and other such examples could act as good models for other nations wishing to successfully mitigate and adapt to the climate changes ahead. To ensure that such plans are adequate, these plans should build in the likely displacement dimensions from the start, and to identify - on a person by person and community basis - how the HLP rights of those affected will be addressed.

There is an urgent need for all States, both those affected by climate change and eventual resettlement and in-migration, to draw-up high-quality, long-term and rights-based plans to address displacement-related aspects of climate change. Human right law provides a useful framework for such planning. Planning, in this respect, should focus on worst-case scenarios to ensure that adequate response mechanisms are in place, including, in particular the identification of adequate land resources and budgets for resettling those displaced due to climate change. Planning needs to bear in mind that additional problems such as the "lost home syndrome" that commonly affects those facing involuntary resettlement in other contexts, can be reduced if people are afforded appropriate

resettlement programmes that fully recognise and integrate their legitimate human rights. Encouragingly, some 32 national adaptation plans have been completed thus far. However, there is little evidence that land and displacement issues feature prominently in any more than a few of these adaptation plans. Further work is required to review these plans to determine the extent to which and how displacement and HLP issues and rights are addressed. National adaptation plans are vital ingredients in an overall national planning process that respects and protects the HLP rights of climate change displaced persons. Because the vast majority of climate-induced displacement will occur within the national borders of various nation states and not necessarily require international flight to third countries, it will be increasingly important to ensure that the HLP dimensions of forced climate migration find a central place within these national planning processes. As financial costs increase and the likelihood of adaptive success decreases as the effects of climate change worsen, vigorous attention and resources are needed now to appropriately address the HLP challenges facing the world's newly displaced population.

#### ENCOURAGE LAND PURCHASE, ACQUISITION AND SET-ASIDE PROGRAMMES

Land purchase, land acquisition and land set-aside programmes should be undertaken by all countries affected by climate-induced displacement. Such programmes can identify and isolate land parcels for future use by families and communities forced to flee their places of habitual residence because of climate change. States should begin now to review public land holdings and to select possible long-term resettlement sites that will be removed from the land market through land set-aside programmes. These are complex issues with innumerable dimensions, 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 small island states to be able to demonstrate that an attempt to resolve displacement issues locally has been made prior to lodging appeals for regional and other resettlement-based solutions. In this regard, States should take immediate measures to identify available land and other appropriate resources for the purposes of relocating and resettling climate change displaced persons, both those displaced internally, as well as those likely to seek resettlement in third countries. Governments should be encouraged to review domestic legislation as it relates to questions of the compulsory acquisition of land in the public interest for the exclusive purpose of expanding land reserves for the eventual use of permanently resettling climate change displaced persons. Climate change-induced displacement will put immense pressure on urban areas and the slums that surround them, and without appropriate adaptation measures, including the isolation of targeted land reserves for resettlement, the world's slums will grow at a far faster rate, and in turn create health, social, economic and other crises far worse than many would now predict.

To assist in reducing these pressures, Government's everywhere should begin identifying unused land for possible acquisition and then allocation to climate change displaced persons and their communities in a non-discriminatory way should this become necessary. Where appropriate, additional measures to release land for the relocation or resettlement of climate change displaced persons could be carried out through targeted land purchase programmes and the development of community land trusts on such land. Governments should be encouraged to establish land funds and/or to provide support to civil society land funds. Where possible, methodologies should be developed to ensure that climate change displaced persons are involved in such purchases to ensure direct buy-in by these stakeholders. The

proposed Papua New Guinea and South Pacific Evacuation, Migration, Protection, Integration and Reconstruction Fund is one model that should be studied by those engaging in land purchase initiatives.

### PROMOTE COMMUNITY LAND TRUSTS

It is clear that identifying new land (and housing) resources lies at the core of the bundle of durable solutions required to simultaneously resolve climate-induced displacement and protect the HLP rights of those affected. To maximise the utilisation of land for climate change displaced persons, efforts should be made to ensure that such land is placed within community land trusts to ensure that such land remains held in common over time. This will ensure that land allocated in this manner will be available for use by new climate change displaced persons as migrants from earlier periods eventually move to new locations elsewhere. Approaches to resettlement on new land that are based exclusively on individual property title approaches are unlikely to provide the basis for community development and infrastructure development required to secure the full spectrum of housing, land and property rights of the communities concerned.

### PREVENT THE DANGERS OF POOR RESETTLEMENT AND STRIVE FOR BEST PRACTICE OUTCOMES

Given the poor global track record in protecting the HLP rights of affected populations during processes of involuntary resettlement, every effort must be made to prevent the many dangers of poor resettlement. There now exists considerable experience with resettlement around the world which provides valuable lessons in what works and what does not. The need for sustainable resettlement and the prerogative of reconstituting societies in a rights-based way, and not simply building new houses, should be drawn upon to ensure that experiences with resettlement caused by

climate change do not lead to the same type of poor results. Some of the key issues necessary for successful resettlement include appropriate site selection, settlement design which was socially and culturally appropriate rather than being driven merely by economic factors, culturally appropriate housing, and community participation in the planning process.

To a limited degree, guidance for grappling with displacement due to climate change can be gleaned from the lessons learned in resolving displacement caused by natural disasters, however, these are premised on the notion that returning home will invariably be the remedy sought by the overwhelming majority of those displaced by disaster. Natural, manmade and environmental disasters including earthquakes, tsunamis, storms and floods and others always result in the destruction of housing that, in turn, invariably results in the large-scale displacement of people from their homes, lands and properties. In many settings, those displaced choose to return home once conditions so permit, and quickly begin the long and difficult task of rebuilding their former lives. A number of important lessons appear to be increasingly recognised by those working in post-disaster contexts, which may be of assistance in guiding thinking on how best to grapple with the displacement dimensions of climate change. Many of these are found within the useful *Protecting Persons Affected by Natural Disasters – IASC Operational Guidelines on Human Rights and Natural Disasters*, which were released in 2006.<sup>44</sup> For instance, best practice indicates that all displaced persons should have the right to voluntary return (housing, land and property restitution), without discrimination, to the homes from which they were displaced whenever this is not materially impossible. The fact that in situ rehousing efforts have proven the most efficient and effective means of providing relief to victims in other post-

disaster settings is clear. International standards now support the rights of disaster-affected populations to return to and recover their former homes and lands should they so wish. Many now appreciate that measures should be taken to remove any discriminatory inheritance and property ownership laws that may prevent the equitable transfer of property to survivors, particularly women and girls, and should ensure that women and girls do not suffer direct or indirect discrimination as a result of the relief and reconstruction efforts and that all reconstruction efforts take fully into account the needs of especially vulnerable or marginalised groups including ethnic minorities, children, the elderly, the disabled, the chronically ill and households headed by single parents or children.

When resettlement is the only option available and all other avenues have been considered, there is growing acceptance of the principle that permanent relocation should never result in homelessness, and that alternative accommodation which complies with international human rights standards on adequate housing, should be provided to everyone as a matter of rights. In many respects this is the crux of the matter as far as the housing, land and property rights of climate change displaced persons is concerned. For in contrast to most other cases of displacement where the primary objective is generally return and the restoration of HLP rights, in the case of forced displacement due to climate change, internal relocation or international resettlement may often be the only remedies available to a family or community whose present homes are no longer viable in residential terms. Forced climate displacement, therefore, forces policy makers and human rights advocates into the comparatively novel position of supporting the relocation and resettlement of people as a durable remedy, in lieu of restitution or local integration options.

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<sup>44</sup> Inter-Agency Standing Committee, *Protecting Persons Affected by Natural Disasters – IASC Operational Guidelines on Human Rights and Natural Disasters*, Brookings-Bern Project on Internal Displacement, 2006.

The Representative of the Secretary-General on Human Rights of Internally Displaced Persons, Walter Kaelin, has backed this point of view, indicating that a person who cannot be reasonably expected to return to his/her place of habitual residence should be considered a victim of forced displacement and be granted at the very least a temporary stay within safe third countries.<sup>45</sup> This is, of course, a minimalist approach, and others have urged receiving states to provide climate change displaced persons with the full spectrum of rights enjoyed by refugees and, to the maximum possible extent, citizens of the country concerned. Under human rights law, climate change displaced persons that are forced by circumstances beyond their control to move across an international border are to be ensured general human rights guarantees in the receiving state, but do not generally possess rights to enter that state.

### MOBILIZE NATIONAL FINANCIAL RESOURCES FOR HLP RIGHTS NOW

Although all governments will be hard-pressed to allocate the financial resources required to address the needs of climate change displaced persons, efforts should be made now to mobilise national resources for these purposes. While there remains a dearth of international resources that have thus far been devoted to the impact of climate change on affected communities, most national Governments have done just as poorly in earmarking funds to protect the rights of climate change displaced persons. Given the extensive costs associated with addressing displacement-related aspects of climate change, ranging from the allocation of land and housing for resettlement, to

compensation and skills training for those relocated, there was a need to work now to acquire and allocate funds for these purposes.

### STRENGTHEN THE CAPACITY OF THE UN ADAPTATION FUND

Beyond new institutional frameworks and new standards, there can be no doubt that much more needs to be done to augment the Global Adaptation Fund. Because climate change will test the very concept of Government control over and management of territory and will very likely lead to the prospect of multiple State failures, with the burden of displacement falling disproportionately on the poorest of the poor who can never afford proper forms of mitigation or adaptation, now is not the time for the wealthy world to be stingy or cheap. We need to recall that the sentiments of international law are closer to the view that requires the protection of victims of climate change as may be thought. One standard, for instance, clearly indicates 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”.<sup>46</sup> It is clearly time to make this principle a reality through augmenting the UN Adaptation Fund and ensuring that it is directly available to climate change displaced persons and their organisations.

### EXPAND REGIONAL MIGRATION AND LABOUR PROGRAMMES

Pre-existing regional migration and labour programmes in New Zealand and Australia need to be expanded, and similar initiatives undertaken in other regions likely to face large-scale forced climate displacement. The Pacific Access Category in New Zealand is a laudable first-step in creating immigration options for a number of Pacific islanders, but it is doubtful that this measure alone will be sufficient. Australia’s more recent labour

<sup>45</sup> Representative of the Secretary-General on Human Rights of Internally Displaced Persons, *Displacement Caused by the Effects of Climate Change: Who will be affected and what are the gaps in the normative framework for their protection?*, Background Paper, 2008.

<sup>46</sup> *General Comment No. 4 (right to adequate housing)* (1991), UN Committee on Economic, Social and Cultural Rights, para. 8(e).

programme which provides employment visas to nationals from five Pacific nations to work within the agricultural sector is equally an important first step in recognising the eventual need to open resettlement to ever growing numbers of Pacific Islanders, however, it is clearly only a very partial effort towards finding larger rights-based solutions for all who are displaced in the region. These regional measures require re-appraisal and expansion both in terms of the number of annual beneficiaries, as well as in terms of the particular housing, land and property dimensions of these programmes. Other regions, most notably Europe, Asia and North America should also seriously consider similar regional migration and labour programmes.

### ESTABLISH A PACIFIC REGION FORCED DISPLACEMENT SOLUTIONS INITIATIVE

The relative proportional scale of forced climate displacement in the Pacific region demands the presence of a regional institutional framework that can provide support to all of the Pacific Islands nations in the region – both climate displaced person generating and climate displaced person receiving – to ensure that all climate change displaced persons in the region are provided with the best possible HLP rights outcomes to their displacement. A body of this nature could, in principle, be coordinated by a range of institutions with reasonable track records in the region, most notably the UN High Commissioner for Refugees (UNHCR), the UN Economic and Social Council for Asia and the Pacific (ESCAP) or perhaps the UN Development Programme (UNDP). The Coordinating Body of the Pacific Region Forced Displacement Solutions Initiative would be entrusted with assisting all governments in the region to develop 5, 10 and 25 year plans designed to best grapple with the looming displacement crisis in the region and to ensure Pacific citizens that their human rights will be met in full. Such an institution could be recognised as the primary regional body entrusted with implementing the broader responsibility to protect in the

event that national governments are no longer capable of doing so.<sup>47</sup> The development of a country-by-country database on climate change-induced displacement can eventually be developed with a fair degree of precision, and if undertaken would play a vital role in the Pacific Region Displacement Solutions Initiative. At the same time, to date not enough is known specifically about each country in terms of precise numbers of people affected, the size and scope of land thus far lost and 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. Developing a country-by-country database outlining the precise displacement effects on each country and the corresponding needs to find durable solutions for all would assist greatly in the formulation of appropriate policy and legal decisions. Such processes would facilitate greater understanding of the attributes of ideal domestic legal, policy and institutional frameworks designed to meet the needs and concerns of displaced and receiving communities, in an environmentally sustainable, economically viable manner consistent with international human rights standards.

### LITIGATE STRATEGICALLY AND CAREFULLY

Finally, another option open to both heavily-affected States as well as individual and community victims of forced climate displacement would be pursuing litigation at the national, regional and international levels in

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<sup>47</sup> The existence of such an institution would enable close coordination between regional and national plans geared towards specific solutions for all Climate change displaced persons. One recent article urges the immediate development of such plans, noting that “Australia has to acknowledge that the only viable future for the people of low-lying atoll states, like Kiribati and Tuvalu, lies in migration”. They continue “Given that Australia will be at the centre of plans to address the forced relocation of the populations of the atoll states, it would be in Australia’s interests to develop a plan now to manage their migration”. The Lowry Institute proposes that a two-stage migration plan under which the government would increase the number of scholarships available to students in Kiribati and Tuvalu for study in Australia. Scholarship students should be allowed to find full-time employment in Australia if they complete their education and then be eligible for permanent residency or fast-tracked family reunion visas. (See: Katherine Murphy, “Welcoming Pacific Migrants ‘in our security interests’”, 30 December 2008, *The Age*).

the pursuit of remedial action in response to their displacement. While it is by all means uncertain that such avenues will provide residential justice to those presenting such claims, cases of this sort may generate public attention leading to eventual policy and legal changes that benefit (or do not, as the case may be) climate change displaced persons. The *Inuit Case* (2005) at the Inter-American Commission on Human Rights<sup>48</sup> sought to place blame on the United States for causing global warming, which in turn led to violations of the rights of the Inuit people. Some of the rights alleged to have been violated included central HLP rights such as the right to use and enjoy the lands they have traditionally occupied, to use and enjoy their personal property and rights to residence, movement and inviolability of the home. Although this case was never actually adjudicated, it did receive considerable media attention that led to ever vigorous debates as to the origins of many of the consequences of climate change. This vanguard case shows that litigation strategies may be of possible interest to climate change displaced persons to make certain points to the broader public, but it equally reveals the remedial shortcomings of cases of this nature. At the same time, new cases filed with the specific intent of strengthening the HLP rights position of climate change displaced persons may be of considerably more utility, and the idea of developing broader HLP climate litigation strategies towards this end has definite merit.

“CLIMATE CHANGE IS STILL CONSIDERED A SOLELY ENVIRONMENTAL PROBLEM. IT IS SEEN AS A DISTANT THREAT THAT MIGHT AFFECT OUR FUTURE — A VIEWPOINT REINFORCED BY PICTURES OF GLACIERS AND POLAR BEARS — NOT HUMAN BEINGS.”

– KOFI ANNAN

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<sup>48</sup> Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, submitted by Sheila Watt-Cloutier, with the Support of the Inuit Circumpolar Conference, on Behalf of All Inuit of the Arctic Regions of the United States and Canada (7 December 2005).





## CONCLUSIONS – THE NEED FOR A NEW HLP RIGHTS GLOBAL SOCIAL CONTRACT

The outcome of the 2009 Copenhagen conference will have a massive bearing on the scale of future climate-induced displacement. It has been suggested, for instance, that should the meeting agree to cut CO2 emission levels to 450 parts per million, instead of the much lower figures suggested by the global environmental movement, this will ensure that far larger numbers of people will be displaced than would have otherwise been the case. This would seem to raise human rights concerns as such a decision would knowingly and consciously create future circumstances that will intentionally violate the housing, land and property rights, as well as other rights, of affected communities.

The world needs to be prepared for such outcomes that place HLP rights at the centre of policy and legal development in the coming years to ensure these processes are used in a way that protect rather than ignore the rights of climate change displaced persons everywhere. All who are affected by climate change - particularly those who will be displaced – must be afforded rights and remedies that protect them, provide them with housing, land and property options consistent with their rights and ensure them the lives and livelihoods that the essence of human rights and the laws and principles that comprise them, have bestowed upon them by virtue of their very humanity, their very essence of being human beings sharing our wounded world.

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DISPLACEMENT SOLUTIONS

Rue des Cordiers 14,  
Geneva 1207, Switzerland

Telephone +61.400.388.345  
Email [info@displacementsolutions.org](mailto:info@displacementsolutions.org)

[www.displacementsolutions.org](http://www.displacementsolutions.org)

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