

# Protecting the Rights of Climate Displaced People

Position Paper

First published: **June 2016**

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**Mary Robinson  
Foundation**  
■ Climate Justice



# Executive Summary

Climate displacement is a growing issue faced by millions of people and its impacts can be felt at the international, regional, national and sub-national level. The most recent report of the Intergovernmental Panel on Climate Change noted that ‘vulnerability is inversely correlated with mobility, leading to those being most exposed and vulnerable to the impacts of climate change having the least capability to migrate’<sup>1</sup>. Despite this inequality, climate displacement has, to date, been dealt with in an ad hoc manner in international and domestic fora.

As the impacts of climate change will be more keenly felt in the decades to come it is critical that comprehensive, coordinated and targeted solutions are found to address climate displacement. These solutions will be best where they incorporate a human rights based approach and are couched in the principles of climate justice.

The Mary Robinson Foundation – Climate Justice (the Foundation) recommends that the international community:

- Increase the understanding of the issue
- Amplify the voices of climate displaced people, to create an understanding at the international level of the need to protect their rights
- Develop a Climate Justice Framework for Action.

The Foundation believes that by ensuring the enactment of these recommendations in the context of the principles of climate justice, including the respect for and protection of human rights, effective and resilient solutions can be found for climate displaced people.

<sup>1</sup> Adger, W.N., J.M. Pulhin, J. Barnett, G.D. Dabelko, G.K. Hovelsrud, M. Levy, Ú. Oswald Spring, and C.H. Vogel, 2014: Human security. In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, P767



Ursula Rakova was born on the Carteret Islands 86km north-east of Bougainville in Papua New Guinea. Sea level rise has forced the people of the Carteret Islands to begin the process of leaving their land to relocate onto Bougainville Island. Erosion and salt water intrusion have made it impossible to sustain their food gardens and as a result the rights to food, water and health of the islanders have been affected. The act of leaving their island atolls is also affecting the cultural rights of the Carteret Islanders, including Ursula, as they must leave the land of the 'bones of their ancestors' and negotiate a new life as outsiders near Bougainville. Ursula is now the Executive Director of Tuele Peisa an organisation seeking to facilitate an ecologically and culturally sustainable relocation and resettlement of the Tulun/Carteret Atoll community. With international support from Climate Wise Women, Ursula was able to participate in COP21 in Paris and share her story with negotiators. [https://www.youtube.com/watch?v=loX\\_c6bFEFY](https://www.youtube.com/watch?v=loX_c6bFEFY)

Photo: Mary Robinson Foundation - Climate Justice

# What is Climate Displacement?

The factors that cause a person or community to leave their home are many and varied. They include war, persecution, famine, economic hardship and disasters. In these contexts climate change is a threat multiplier, exacerbating the difficulties and challenges faced by the most vulnerable people.<sup>2</sup> Climate change is causing global temperatures to increase above pre-industrial levels, leading to a range of climate impacts from drought and floods, to changes in seasons and rising sea levels, all of which may contribute to people making the decision, or being forced to move. The numbers of people and communities which have been displaced by climate change are substantial, but difficult to quantify, as these populations are often not recognised or counted as being displaced by the impacts of climate change. Further there is a high prevalence of climate displacement taking place within national borders,<sup>3</sup> which further clouds data gathering. The legal difficulties surrounding climate displacement have been discussed extensively,<sup>4</sup> however while progress has been made, comprehensive solutions have not been found.<sup>5</sup>

The Foundation supports the view that displacement that is caused substantially by the impacts of climate change can and should be classified as 'climate displacement'. The requirement for displacement to be substantially caused by the impacts of climate change suggests both an objective and subjective element. The objective element is whether environmental changes caused by climate change occurred in the place of origin for the displaced person or people; the subjective is whether the environmental change had a significant contribution to the movement.<sup>6</sup> For example this includes the

<sup>2</sup> *Laczko, F and Aghazarm, C (ed) (2009) Migration Environment and Climate Change: Assessing the Evidence. P14. International Organisation for Migration, Geneva*

<sup>3</sup> *Brookings Institute (October 2014) Project on Internal Displacement; Climate Change and Internal Displacement, Washington*  
<http://www.brookings.edu/~media/research/files/papers/2014/10/un-idps-climate-change/climate-change-and-internal-displacement-october-10-2014.pdf>

<sup>4</sup> *See for example International Bar Association (2014) Achieving Justice and Human Rights in an Era of Climate Disruption International Bar Association Climate Change Justice and Human Rights Task Force Report P88 London*

<sup>5</sup> *McAdam Jane, (2014) Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–2013, Refugee, Vol 29, No. 2 York University, Toronto*

<sup>6</sup> *For a good discussion of the definitional issue see: the Asian Development Bank (2012), Addressing Climate Change and Migration in Asia and the Pacific P13 Mandaluyong City, Philippines*

smallholder farmers driven to the city due to degradation of their land by changing weather patterns, as well as the community forced to leave their island home due to the associated impacts of rising sea levels. We can see examples of the complex intersections of climate displacement already, in the increasing prevalence of rural urban migration in Bangladesh, to those people unable to return to their homes in the Philippines following cyclone Haiyan and in Kiribati's policy settings to ensure 'migration with dignity'.<sup>7</sup>

The term climate displacement can also overlap with existing legal categories; for example a person may flee from ethnic persecution exacerbated by resource shortages resulting from climate change. In this case they would be a refugee as well as a climate displaced person. Additionally climate displacement is a sub-category of what the International Organisation for Migration calls 'environmental induced displacement' which is wider in scope, incorporating non-climate related causes of displacement, such as earthquakes or a tsunami.<sup>8</sup>

### **Types of Climate Displacement**

Displacement due to climate change can be:

- forced; such as that undertaken when a cyclone destroys the livelihoods of individuals and forces them to leave their homes
- voluntary; such as a person leaving their farm due to climate uncertainty threatening their ability to maintain an income and reducing productivity and the ability to subsist
- planned; such as where an island community secures new land and relocates based on projected submerging of their traditional homeland.

The above forms of climate displacement can occur internally within a jurisdiction or across international borders. While the majority of the displaced will move internally, cross border movement can be made for various reasons, including, safety and wellbeing, economic, familial, cultural or social connections.

<sup>7</sup> Read more of the Government of Kiribati's relocation policy here <http://www.climate.gov.ki/category/action/relocation/> accessed on 27 June 2016

<sup>8</sup> See: International Organization for Migration (2007) Discussion Note: Migration and the Environment; MC/INF/288 [https://www.iom.int/jahia/webdav/shared/shared/mainsite/about\\_iom/en/council/94/MC\\_INF\\_288.pdf](https://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/94/MC_INF_288.pdf) accessed on 27 June 2016

# Legal Gaps

The impacts of climate change can lead to displacement that does not fit within current international law or norms. Movement may be economically motivated, having grown out of an inability to cope with continued financial stresses of increased climatic variability, or an adaptation based response<sup>9</sup> and often incorporate both these elements. None of these elements meet international legal standards or definitions allowing for migration. Moreover movement across an international border is unlikely to come under refugee law; there is no right to enter another country in the context of climate change. However, people displaced by the impacts of climate change, whether across borders or internally, have human rights protections which are those found in the Universal Declaration of Human Rights and the subsequent conventions.

At present, gaps in the application of the legal framework mean the rights of climate displaced people are not always protected. Rights that are most frequently undermined are as follows:

- loss of cultural and physical heritage<sup>10</sup>
- the loss of the ability to work<sup>11</sup> and make a decent living for themselves and their families<sup>12</sup>
- loss of access to food, clothing and housing limiting their right to an adequate standard of living<sup>13</sup>
- diminished right to self determination<sup>14</sup>
- erosion of the protections on their right to life.<sup>15</sup>

<sup>9</sup> *Adaptation based responses that induce voluntary climate displacement could include, moving a population for an island that is being threatened by rising sea levels, or a village that is moved due to encroaching desertification*

<sup>10</sup> *Article 15(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires Parties to take steps to ensure the conservation of culture. A detailed argument about the role of Cultural Heritage in international human rights law can be found in the Report of the independent expert in the field of cultural rights, Farida Shaheed A/HRC/17/38*

<sup>11</sup> *Article 6 International Covenant on Economic, Social and Cultural Rights (ICESCR)*

<sup>12</sup> *Article 7(a)(ii) ICESCR*

<sup>13</sup> *Article 11 ICESCR*

<sup>14</sup> *Article 1 International Covenant on Civil and Political Rights (ICCPR)*

<sup>15</sup> *Article 6 ICCPR*

The failure to realise these rights can be further complicated by a lack of recognition of the reasons for movement, leaving populations ignored and marginalised. Additionally, where displacement is across international borders, legal questions of entry can supersede the protection of rights for the displaced in the priorities of host nations.

The Foundation seeks to ensure the protection of climate displaced people is assured starting with a prioritisation of this issue by international bodies. The Foundation sees this as taking the form of a greater understanding, internationally, of the rights priorities that people displaced due to climate change need, which filters into domestic policy and decision making.



## **Legal Difficulties**

‘The legal and policy implications of climate change-related migration cut across many different fields, including human rights, development, humanitarian assistance, asylum, immigration and the environment. There is no international institution solely responsible for addressing climate change-related migration, nor are there any instruments of international law directly applicable to it. Although the Cancun Adaptation Framework urges states to consider measures relating to displacement, migration and planned relocation, neither the United Nations Framework Convention on Climate Change (UNFCCC) nor the Kyoto Protocol contain any specific requirements to assist those affected by climate change-related migration, in most cases the causes of which may be less directly attributable to state action.

Historically, international refugee law and domestic immigration and asylum law have developed to deal with territorially and temporally limited migration flows arising from armed conflict and persecution, and are therefore ill suited to address climate change-related migration. While some states have implemented national programmes to host migrants fleeing major natural disasters, this protection has thus far been only temporary or ad hoc. Further, the international effort to aid climate change-related migrants faces significant practical challenges. Finally, while the UN Guiding Principles on Internal Displacement may in theory apply in situations of disaster- or climate change-related displacement, they remain non-binding.’

## **International Bar Association<sup>16</sup>**

<sup>16</sup> *Supra note 4*

Selina Leem walks with Tony De Brum Foreign Minister of the Marshall Islands and Todd Stern, United States Special Envoy for Climate Change at COP21. Selina lives in the Marshall Islands which are under significant threat from rising sea levels. She displayed strong leadership at COP21 and advocated for an ambitious agreement. During the closing plenary of COP21, Selina was given the floor and said 'This agreement is for those of us whose identity, whose culture, whose ancestors, whose whole being, is bound to their lands.'

Photo: [IISD/ENB](#) | Kiara Worth



# A Climate Justice Approach to Displacement

Climate Justice seeks to safeguard the rights of the most vulnerable people, it recognises the injustice inherent in the disproportionate impact of climate change on those who have contributed least to the problem. In addressing the issue of climate displacement we see the need to embed climate justice in both immediate and long term strategies. People whose displacement is contributed to by climate change factors are amongst the most vulnerable; their human rights are not fulfilled and their existence as a group in need of special protection is often not recognised. The Foundation supports a climate justice approach that brings together climate change, human rights and development to provide holistic protections to those displaced or at risk of displacement by the impacts climate change. Moreover the principles of climate justice inform the way in which the challenge should be dealt with, including a response that shares burdens fairly and equitably between countries; noting that the countries dealing with climate displacement the most have contributed least to its cause.

Responding to climate displacement is complex and requires multifaceted strategy. A climate justice approach which links climate change, development and human rights provides a useful framework to guide this response. While the international community has engaged in developing some responses, these need to be linked, built upon and expanded. Populations that have been displaced as a result of climate change as well as populations who are at a high risk of displacement need to be identified and engaged to develop strategies and deliver rights protections relevant to their situation. By developing response mechanisms now the international community will lessen the impact of future population movement due to climate change through building best practice, understanding the needs of the displaced and crafting resilient solutions for populations who need to move.

Climate displaced people have rights; countries already have commitments to respect them. The issue remains in the identification of key gaps and the agreement by countries and the international community to address them within existing international frameworks.

However as part of this process there also needs to be acknowledgement of the problem. Progress has been made, including UNFCCC resolutions which have acknowledged the need for more work, engagement from the Human Rights Council and its special procedures and the conclusion of the Nansen Initiative with an 'Agenda for the protection of cross-border displaced persons in the context of disaster and climate change'. None of these represent a truly cohesive strategy to engage with the issue of climate displacement. A clear declaration of the issue at a representative international fora, and a pledge to undertake the work required to address it is a necessary first step to galvanise action in this area.

As we learn to cope with a world which has already irrevocably warmed, and which our most optimistic targets say will warm by 1.5°C over pre-industrial levels, we must do so with a focus on the principles of climate justice. Climate displacement requires us to address the burdens together, respect human rights including the right to development, ensure responses are participatory, transparent and accountable acknowledging that some of the most vulnerable are women and girls, and engage populations to educate them on their rights. Countries' response must reach for the most vulnerable first. Many of the tools to deal with the rights of those displaced by climate change are already available, they are the Conventions that underlie the human rights regime.

Countries need to engage vulnerable communities and support their right to sustainable development and include it in their adaptation planning. The Sustainable Development Goals highlight climate as a central theme for the 2030 targets. In doing so they demonstrate the need to mainstream climate considerations throughout development pathways. Climate displaced people need special attention in ensuring that their development respects their rights of self-determination, a decent standard of living and to their cultural heritage. Countries need to take these into account when developing adaptation or loss and damage strategies that include displacement, as well as when they engage already displaced populations to develop long term solutions.

Through recognition of the issue as well as an understanding of the rights gaps at hand, countries can develop a tool kit that demonstrates pathways for successfully managing climate displacement. Collection of best practice and lessons learned will help capacity build other countries dealing with the issue and lead to sustainable and respectful migration solutions.

Finally, the most fundamental action that countries can take to protect the rights of people at risk of climate displacement is to limit the impact of climate change as much as possible and thereby reduce the threat to populations in high risk areas. This is the responsibility of all countries, and was affirmed in the Paris Agreement's commitment to keeping temperatures at well below 2°C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5°C above preindustrial levels.

# Recognising the Rights of Climate Displaced People – What has been Achieved to Date?

In 1990 the Intergovernmental Panel on Climate Change (IPCC) reported that migration and resettlement may be the most threatening short term effects of climate change on human settlements.<sup>17</sup> This has been expanded upon and added to in subsequent IPCC reports with the fifth annual assessment report noting that ‘vulnerability is inversely correlated with mobility, leading to those being most exposed and vulnerable to the impacts of climate change having the least capability to migrate’.<sup>18</sup> They have identified that people may move for varied reasons including:

- loss of housing (because of river or sea flooding or mudslides)
- loss of living resources (like water, energy and food supply or employment affected by climate change)
- loss of social and cultural resources (loss of cultural properties, neighbourhood or community networks, particularly in the case of a devastating flood).

In 2009, the International Organisation for Migration released a detailed study called ‘Migration Environment and Climate Change: Assessing the Evidence’ which noted that ‘upholding and developing international and national human rights obligations is a vital element in the global response to the migratory impacts of climate change’<sup>19</sup>.

The 2010 Cancun Adaptation Framework tasked Parties to:

‘enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels’.<sup>20</sup>

<sup>17</sup> Intergovernmental Panel On Climate Change (1990) *First Assessment Report Working Group II: Impacts Assessment of Climate Change* p187 Cambridge University Press, Cambridge

<sup>18</sup> Adger, W.N., J.M. Pulhin, J. Barnett, G.D. Dabelko, G.K. Hovelsrud, M. Levy, Ú. Oswald Spring, and C.H. Vogel, 2014: *Human security*. In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, P767

<sup>19</sup> Laczo, F and Aghazarm, C (ed) (2009) *Migration Environment and Climate Change: Assessing the Evidence* P433. International Organisation for Migration, Geneva

<sup>20</sup> United Nations Framework Convention on Climate Change (UNFCCC), Decision 1/CP.16 Paragraph 14 (f)

The UNFCCC continued this work at the 2012 Doha Conference of the Parties where parties acknowledged the need for further work on the impacts of climate change and how they are affecting patterns of migration, displacement and human mobility.<sup>21</sup>

In 2011 a report from the Special Rapporteur on the rights of internally displaced persons was released on climate change and internally displaced persons which stated that ‘effective responses to the human rights challenges related to climate change-induced internal displacement will require the international community to move beyond the traditional humanitarian assistance and reactive governance models.’<sup>22</sup> Subsequently, in 2012 the Special Rapporteur on the human rights of migrants noted that ‘the effects of climate change will likely play a significant and increasingly determinative role in international migration’ in a similar report which dealt with the intersection between their mandate and climate change.<sup>23</sup>

The Nansen Initiative, a state-led, bottom-up consultative process intended to identify effective practices and build consensus on key principles in relation to people displaced in the context of disasters and climate change, concluded at the end of 2015. The Nansen Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change was released in October 2015 and offers a list of best practices and recommendations for dealing with cross-border climate and disaster displacement. The work of the Nansen Initiative will continue under the new banner of the Platform on Disaster Displacement with a new chair and will need the continued support of participant countries as well as a widening of membership.

Most recently the Paris Agreement adopted in 2015 agrees to the establishment of a taskforce to ‘develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change’.<sup>24</sup> The taskforce is to be established by the Executive Committee of the Warsaw International Mechanism for Loss and Damage.

<sup>21</sup> 3/CP.18 Paragraph 7(a)(vi)

<sup>22</sup> General Assembly (2011), *Report of the Special Rapporteur on the human rights of internally displaced people*, A/66/285

<sup>23</sup> General Assembly (2012), *Report of the Special Rapporteur on the human rights of migrants*, A/67/299

<sup>24</sup> UNFCCC 1/CP.21 Paragraph 50





Flood victims wading to rescue boats, Makalanga Malawi. The effects of climate change have exacerbated flooding in Malawi and will continue to do so. Floods are an example of forced displacement caused by climate change related natural disasters.

Photo: Arjan van de Merwe/UNDP



# Filling the Gaps Through International Cooperation

For the international community to respond effectively to current and future mobility as a result of climate change there is a clear need to address the current gaps in knowledge, approaches and commitment.

## **Increase Understanding of Climate Displacement and the Risks it Poses to Human Rights**

The effects of climate change are already being felt, and populations have already started to move in order to cope with various climate related changes. There has however been a mixed and limited response by the international community to the issue and a lack of acknowledgement of the challenges faced by climate displaced people and the effects that legal and policy gaps have on them.

It is imperative to amplify the voices of climate displaced people and to build and carry the narrative of people in this marginalised and vulnerable segment of societies. Their stories need to be recognised and their experiences collated. Through a process of bridging the divide between communities displaced or threatened with displacement by climate change and the international community, a narrative encouraging change to international architecture and management systems for displacement can be developed.

The international community can learn from the people that climate displacement affects most to produce better responses and outcomes for future populations that will need to move, and manage adaptation strategies to prevent displacement, where possible. Additionally, stakeholders and actors need to be encouraged to take further efforts, including research, on areas of particular vulnerability to ensure that communities at risk are supported. This should include the capture and recording of their cultural heritage, their input into relocation and physical infrastructure and their participation in the planning of relocation where that displacement is required and inevitable.

The Foundation believes that platforms must be developed for voices and stories of climate displaced people to be heard. We can accomplish this through existing mechanisms; in the UNFCCC through the forthcoming Taskforce on Displacement, at the Human Rights Council through a Panel Discussion on Climate Change and Human Mobility and through a general effort by countries to incorporate community consultation when undertaking displacement as an adaptation solution.

### **Developing a Climate Justice Framework to Protect the Rights of Climate Displaced People**

Although covered by international human rights law, the rights obligations owed to people displaced by climate change are routinely not met. Additionally where a climate displaced person or population seeks refuge across an international border there is no recognised category that allows them freedom of entry or stay.

While there has been some action at the international level to resolve these issues, it has been limited in scope and participation. The Foundation believes that recognition of the Nansen Initiative's Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change by the full international community is an important first step toward developing an equitable framework for the protection of climate displaced people.

The Foundation believes that stakeholders and countries need to convene and build a more ambitious approach to dealing with this issue that fills critical gaps that are denying or not fulfilling the rights owed to climate displaced people. By utilising the Principles of Climate Justice the pathway is clear:

- **Ensure that Decisions on Climate Change are Participatory, Transparent and Accountable**

Engaging climate displaced people in building a framework for action will be critical to ensuring that responses are appropriate and prioritise the needs of the most vulnerable.

- **Harness the Transformative Power of Education for Climate Stewardship**

Working with identified at-risk communities to build their resilience and capacity to undertake migration with dignity when and if required.

- **Highlight Gender Equality and Equity**

Women are at the forefront of living with the reality of the injustices caused by climate change, and climate displacement is no different. They are critically aware of the importance of climate justice in contributing to the right to development being recognised and can play a vital role as agents of change within their communities.

- **Respect and Protect Human Rights**

Any framework must include human rights at its core.

- **Share Benefits and Burdens Equitably**

In many cases the countries that are most at risk, or are currently experiencing climate displacement are those that have contributed least to climate change as an issue. There needs to be a recognition that this is a global problem and requires a global solution.

- **Support the Right to Development**

The right to development is inherent in the issue of climate displacement. Climate displaced people frequently lose access to their livelihoods and a decent standard of living. They may have moved away from infrastructure that was critical to their sustainable development. The recognition of their continued right to develop is critical in ensuring that they can do so with dignity.

- **Use Effective Partnerships to Secure Climate Justice**

Partnering between local and national administrations, international mechanisms and community based stakeholders will allow for effective sharing of capacities and lessons learned and provide better outcomes for all.

The effects of climate change disproportionately affect women and girls, whose capacity to cope is reduced due to inequalities that are already present. A drought in 2006 caused the displacement of many in Kenya who were unable to rely on their crops for subsistence. Climate Change will exacerbate the effects and regularity of such droughts leading to further displacement in the future.

Photo: (c) Beatrice Spadacini/CARE



# Conclusions

A number of actions should be undertaken at the international level to apply the Principles of Climate Justice to what is already an exacerbated humanitarian phenomenon:

- **Increase the Understanding of the Issue**
  - Commission and support further reporting and data collection on those who have been displaced and those who are threatened with displacement
  - Engage these communities to identify priorities for action when addressing displacement issues.
- **Amplify the Voices of Climate Displaced People, to Create an Understanding at the International Level of the Need to Protect their Rights**
- **Develop a Climate Justice Framework for Action**
  - Bring together experts and actors engaged in the work that has been achieved in this area and those affected by climate displacement to build further solutions and narratives for change
  - Bridge gaps in the international frameworks, particularly between the key climate change, human rights and displacement bodies to establish effective focal points for action
  - Amplify the voices of countries that will be chiefly affected by climate displacement and support them to engage the international community on this issue.





■ [www.mrfcj.org](http://www.mrfcj.org)