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DEVELOPMENT IMPLICATIONS OF CLIMATE CHANGE AND MIGRATION IN THE PACIFIC

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DEVELOPMENT IMPLICATIONS OF CLIMATE CHANGE AND MIGRATION IN THE PACIFIC

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Abstract

In the years to come, climate-related shocks and trends will amplify the challenges and risks of displacement for the people of the Pacific. In this context, this paper analyses the opposite perceptions of the migration process in the Pacific from the main receiving countries in the region (Fiji, Australia and New Zealand). This is explored through a hybrid approach employed in the postulation of a legal framework, which would attempt to create a balance of interest between the migrants and the receiving countries articulated on socio-economic and environmental parameters. Applicable international instruments and relevant measures of international organizations are explored and analysed with a view to resulting gaps and shortcomings.

Keywords

climate change, migration, bottom-up approaches, climate migrants, hybrid law, development

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DEVELOPMENT IMPLICATIONS OF CLIMATE CHANGE AND MIGRATION IN THE PACIFIC

1. BACKGROUND

Migration in the Pacific

Migration has been part of Pacific life for thousands of years and led to the population of this vast ocean area. It has enabled people to move from overcrowded islands, seek refuge from conflicts, and find new sources of sustenance. It is considered a 'way of life'¹ which defines migration as a cultural, social and historical heritage of the Pacific. Naturally, migration patterns started to change and become associated with the Western colonialism that involved the entire Pacific islands. When transport routes were forged between colonising country and islands, this opened the way for travel and, eventually, migration. Tahitians and New Caledonians went to France, American Samoans to America, and Melanesians to Australia. New Zealand was attractive for islanders coming from nearby islands or for islanders with a British colonial history and not so much for those coming from French or American colonies. Polynesians, also known as Kanakas, became recognized in the Pacific for their ability to travel long distances on water with their whaling ships, or canoes which helped them improve their fisheries for livelihoods and revenues.² In the 19th century, missionaries from New Zealand started to school different groups of young Pacific students, mainly in the summer as they were returned in autumn because the winter was 'too cold and too wet for such hot-house plants'³. After the Second World War, Pacific islanders started to migrate more and more to Australia and New Zealand, making these receiving countries the main destination, mainly for labour and education purposes. (e.g.: in 1956, Francis Talasasa became the first Solomon Islander in history to graduate with a Bachelor of Arts degree – from Canterbury University in Auckland).⁴

It is, however, important to note that despite the existence of a traditional tendency toward mobility, the islanders are not an inherently nomadic people. Using the distinction between 'migrants' and 'nomads' offered by Deleuze and Guattari in their seminal study, *A Thousand Plateaus*, the distinction that emerges is based on the pattern of land use and the relationship that the people have to the land they inhabit. Under the sedentary construct, specific areas of land are demarcated creating a definitive system of ownership, and movement across the land involves borders and boundaries. The people belong to a particular place and the land belongs to the people, thus creating a static relationship between the people and the place. The movement of these people occurs only in the intervals between residing within these specific places and is an exception to the norm, arising out of certain circumstances and lasting only for a specific period of time. The people who engage in such movement,

¹ Cosmin Ioan Corendea, "Refugee Law in the Era of Globalization," (2008) *Human Security in Pacific: the Climate Refugees of the Sinking Islands*. 2 (1): 12-19. [Corendea 2008]

² *Idem*.

³ E. S. Armstrong, *The history of the Melanesian mission*. London: Isbister, 1900, at 9.

⁴ Carl Walrond. 'South Pacific peoples - Island groups and recent migration', Te Ara - the Encyclopedia of New Zealand, updated 8-Oct-14, available at: <http://www.TeAra.govt.nz/en/south-pacific-peoples/page-2v> (last access 20.09.2014).

driven by special circumstances, while still maintaining strong ties to their original land, are referred to as migrants.

In contrast, a nomadic order is defined by the distribution of people across the land without definite boundaries or exclusive ownership. The distribution itself therefore takes place through movement, and the relation of the people to the space they inhabit is first and foremost defined by travel and only secondarily through settlement. Those in a nomadic order are not defined by the place they choose to inhabit.⁵

The people of the Pacific Island countries have always had strong ties to the land they inhabited. These ties predate modern legal constructs and are regulated through ancestral customs of ownership. The people and the land are therefore intrinsically linked. Migration is largely an exception fuelled by circumstances such as loss of livelihood or desire for better opportunities within the neighbouring islands. Due to the traditionally porous nature of the boundaries of the Pacific Island countries, this type of migration has always been permitted and in some cases even encouraged. For example, the freedom of movement is a constitutionally guaranteed right within Vanuatu.⁶ Moreover, historically there have been instances of voluntary relocation of large populations across the islands. A part of the population of Vaitupu, an island in present day Tuvalu, voluntarily bought land and settled in the island of Kioa in Fiji.⁷ This choice was made independently and they were not coerced by harsh external factors such as climate change, land scarcity or political duress. The people recognize Kioa as their homeland and Vaitupu as the motherland, identifying as both Fijian and Vaitupuan.⁸ This is a testament to the cultural acceptance of migration as a social norm within the Pacific community.

Local/International differentiated approach on migration

Although considered to be ‘a way of life’ for Pacific islanders, migration mainly took place among the islands and not extensively to the main destinations mentioned above. Paradoxically, Pacific islanders are well known for their cultural affinity with the land, dependence on agriculture (in Melanesia in particular) and the importance of fisheries. In a study conducted in 2007 in the Pacific on the impact of climate change on customary law and international law, most of the interviewees, when asked about migration as a potential way of addressing climate triggers on their land, *stated that they did not want to migrate*.⁹ In the 2008 Niue Declaration on Climate Change, people of the Pacific expressed their strong desire to keep their social and cultural identity and live in their own countries into the future,

⁵ Gilles Deleuze and Felix Guattari, *A Thousand Plateaus*, trans. Brian Massumi, (London: Athlone Press, 1986), at 380.

⁶ Constitution of Vanuatu, at Article 5(1)(i). [Constitution of Vanuatu]

⁷ Jane McAdam, ‘Historical Cross-Border Relocations in the Pacific: Lessons for Planned Relocations in the Context of Climate Change’ (2014) 49 J Pac Hist 301.

⁸ Teresia K Teaiwa, ‘Rabi and Kioa: Peripheral Minority Communities in Fiji’ in Brij V Lal and Tomasi R Vakatora (eds), *Fiji in Transition: Research Papers of the Fiji Constitution Review Commission* (University of the South Pacific 1997) 132.

⁹ Corendea 2008, *supra* note 1.

where possible.¹⁰ While temporary migration is considered to be a feasible option, in particular when pursuing economic growth, forced migration, displacement or permanent relocation is not the norm, and in some conservative communities even considered taboo.¹¹

Permanent relocation for economic reasons, better opportunities or to escape debilitating conditions in the wake of climate change induced natural disasters, while potentially seen as 'forced migration,' would seem to be the most viable option. This is especially true when punctuated by aspirations of social mobility and the hope of a better life. Further, there is evidence of a cultural acceptance of migration even if it may be forced by economic factors. For example, according to the Kastom Polisi of the Malvatumauri, "[a] man may live on another island only with the agreement of both chiefs concerned."¹² Anecdotal evidence also suggests that the chiefs of Erromango have a "three month policy, whereby they will allow people from the island to go to the towns to look for work for three months."¹³

However, the sentiment of rejecting forced migration as a response to climate triggers is rooted in a controversial historical context of forced migration that was initiated in furtherance of a colonial agenda and even today is reminiscent of the loss of autonomy and independence of the Pacific islanders due to outside interference. This dates back to the 1900s when phosphate deposits discovered on Ocean Island resulted in extensive mining operations being conducted by the U.K., Australia and New Zealand, creating significant impediments to the lives of the Banabans, the original inhabitants of the island.¹⁴ In 1942, the Island of Rabi in Fiji was purchased on behalf of the Banabans as an insurance policy in case the Ocean Island was rendered uninhabitable due to the extensive mining. The occupation of Ocean Island by Japan resulted in the further distribution of Banabans away from their original homeland.¹⁵ At the end of the Second World War, the British thought it best to relocate the Banabans to the Island of Rabi instead of back to Ocean Island.¹⁶ The Banabans, to this day, regard this as an unjust and forced relocation brought on by interference that the international community refused to take responsibility for, drawing similar, if not parallel, ties to the current shirking of responsibility by major international polluters that has resulted in the adverse conditions within the Pacific islands in the wake of climate induced disasters.

¹⁰ The Nansen Initiative consultation on the Pacific, available at: <http://www.nanseninitiative.org/pacific-regional-consultation>.

¹¹ Constitution of Vanuatu, *supra* note 6: Exceptions may be Tuvalu and Kiribati, where according to Smith and McNamara (2014: 11) "there is near universal agreement that it is a question of *when* rather than *if*."

¹² Forsyth, M. (2004). "Beyond Case Law: Kastom and Courts in Vanuatu." Victoria University of Wellington Law Review 35: 427 - 446.

¹³ *Ibid.*

¹⁴ J McAdam & E Ferris, "Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues" (2015) 4:1 Cambridge Journal of International and Comparative Law, available at: http://www.kaldorcentre.unsw.edu.au/sites/default/files/McAdam_cjicl.04.01.137.pdf; J McAdam, "Caught between homelands" *Inside Story* (15 March 2013), available at: https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/http_insidestory.org.pdf. [McAdam 2013]

¹⁵ *Ibid.*

¹⁶ HC Deb 18 December 1975, vol 902, col 1857 (Sir Bernard Braine), referring (at col 1856) to notes of a meeting held in October 1945 between the British colonial authority and representatives of the British Phosphate Commission.

The Banabans, although having managed to integrate to some extent within Fiji, still maintain strong ties with their original culture and identify not as Fijians but as Banabans.¹⁷ In this context, it is interesting to analyse the opposite perceptions of the migration process in the Pacific from the main receiving countries in the region (Fiji, Australia and New Zealand). This will be addressed through a hybrid approach employed in the postulation of a legal framework, which would attempt to create a balance of interests between migrants and receiving countries articulated on a praxis of socio-economic and environmental parameters. The lens of local customs, historical context and interactions between domestic and international interventions is an extremely important tool through which to explore the different facets of climate related migration in the Pacific and the implications it has on structures of development within the region.

Influencing socio-economic and environmental dimensions of sustainable development

Correlating the land ties of the Pacific islanders with effects of climate change and recognizable limited land-based resources, the Pacific islands are exposed to both rapid environmental degradation and implicitly socio-economic impacts. Major extreme weather events have in the past led to significant population displacement, and changes in the incidence of extreme events will amplify the challenges and risks of such displacement.¹⁸ According to the United Nations High Commissioner for Refugees (UNHCR), forced displacement in 2015 exceeded 60 million.¹⁹ The International Organization for Migration (IOM) estimates the number of climate change related migrants as between 25 million and 1 billion people by 2050.²⁰ According to a UNDP report from 2012, displacement is inevitable in some places and will invariably exacerbate on-going and emerging tensions in the region, with dispute settlement mechanisms under-resourced to address this emerging challenge.²¹ Moreover, as noted in the UN Secretary General's report on the security implications of climate change, "the possible security implications of climate change need to be examined in the context of pre-existing social, economic and environmental threats, or stresses, which are key factors in the security of individuals, communities and States."²² In the case of the Pacific, climate-related events may trigger violence as a result of exacerbating long-standing underlying causes of conflict, such as social inequities and land-related-economic cultural partialities. For example, in Tarawa, Kiribati, the threats of drought and rising sea levels aggravate the existing developmental strains of unrestrained urbanization, pollution, and subpar sanitation, all of which compromise the ability of the available water and land resources to sustain the communities that are dependent on them.²³ Sustainable Development Goal 13, in its encapsulation of the need and urgency with which climate change and its impacts must be addressed, is an especially

¹⁷ McAdam 2013, *supra* note 14.

¹⁸ IPCC, Fifth Assessment Report 2013.

¹⁹ UN News Centre 2015: Global forced displacement for 2015 on track to break all records, topping 60 million – UN, available at: <http://www.un.org/apps/news/story.asp?NewsID=52859#.V2un26Kt9Q4>. Accessed [23.06.2016]

²⁰ ESCAP, "Climate Change and Migration Issues in the Pacific" (United Nations 2014) available at: <http://www.unescap.org/sites/default/files/Climate-Change-and-Migration-Issues-in-the-Pacific.pdf>.

²¹ A Blondel, "Climate change fuelling resource-based conflicts in the Asia-Pacific" (Asia-Pacific Human Development Report Background Papers Series 2012/12). New York: UNDP.

²² UNSG.

²³ Donovan Storey & Shawn Hunter, "Kiribati: an environmental 'perfect storm,'" (2010) Australian Geographer, 41:2, 167-181.

relevant starting point for the articulation of a development-centric approach to addressing migration in the Pacific. This would be one that seeks to understand local traditions and capacities to formulate the best way to integrate domestic objectives with the global agenda.

In this context, sustainable development, as a “moral concept that seeks to define a ‘fair and just’ development”²⁴ in the Pacific, should not only address imbalances and injustices created by poverty, growing inequalities and environmental damage, but also provide an “ethical framework that could enable national societies to respond to emerging environmental and developmental problems in an equitable manner.”²⁵ Inclusive economic development, social development and environmental protection²⁶ together with the advancement of the rule of law are essential for establishing a positive support to consider local knowledge (*inter* and *intra*-generational) and to address climate change, including migration, in a sustainable way.

2. PACIFIC MIGRATION AND CLIMATE CHANGE

Migration as climate risk management strategy

Human displacement and planned migration are expected to rise globally in coming decades as a consequence of climate change. While most displacement will likely occur inside countries, some people will seek protection and refuge abroad.²⁷ Moreover, at present, there are no provisions under international humanitarian law for people displaced by natural disasters or the effects of climate change to legally enter another country for protection and assistance.²⁸ In a legal analysis of the Pacific challenges due to climate change, it was demonstrated that when a climate change event occurs, the first legal impact would be on human rights law in relation, *lato sensu*, to human rights violations due to climate change, and a subsidiary legal effect would be migration (over 30% of the case studies show that migration is considered as an adaptation strategy).²⁹

There are several case studies currently running in the Pacific where migration (taking the form of relocation) is increasingly taken in consideration as a strategy to address environmental shocks, degradation and climate change. These include:

- Manam Island (Papua New Guinea) due to volcanic eruptions³⁰
- Cateret Islands (Papua New Guinea) due to sea level rise and subsiding land³¹
- Bikini and Rongelap Atolls (Marshall Islands) due to radiation from nuclear tests³²

²⁴ R Welford & R Starkey, “The Earthscan Reader in Business and Sustainable Development,” (2001) Earthscan Publications, cited in Elliot, J. (2013) *An introduction to Sustainable Development*, Routledge, at 24

²⁵ O Langhelle, “Sustainable Development and Social Justice: Expanding the Rawlsian Framework of Global Justice” (2000) *Environmental Values* Vol. 9, No.3, at 296.

²⁶ UN, *The Future We Want* (A/RES/66/288), 11 September 2012, para 10.

²⁷ IPCC, AR5, 2014.

²⁸ *Ibid.*

²⁹ Corendea 2008, *supra* note 1.

³⁰ United Nations High Commissioner for Human Rights, Regional Office for the Pacific, “Protecting the Human Rights of Internally Displaced Persons in Natural Disasters, Challenges in Pacific” http://pacific.ohchr.org/docs/IDP_report.pdf (last accessed: 25.10.2014)

³¹ *Ibid.*, at 15.

- Banaba Islands (Kiribati) due to phosphate mining³³
- Ontong Java, Sikiana and Malaitan human-made atolls (Solomon Islands) due to sea level rise³⁴
- Vunidogoloa Village (Vanua Levu, Fiji), Koroalau and Narikoso Villages (Kadavu, Fiji) inland due to sea level rise and inundation events³⁵

In the case of Fiji, in February 2014, the Fijian Government relocated the community of *Vunidogoloa Village* located in the Northern part of Fiji. This followed a participatory community decision to relocate many years prior, and a request to the government for assistance with the relocation in 2007. This is the first of many villages seeking assistance under the country's Climate Change Programme, a programme run jointly with the Secretariat of the Pacific Community and GIZ. The village relocated 2km inland (still within the community's own land boundary) because the existing village compound would flood during high tides as a result of coastal erosion due to a seawall that had long since become inadequate. This relocation project was estimated to have cost about FJ\$879,000. In total, 130 people were relocated and 30 houses were built in the new site. Neighbours stayed with neighbours, and the community provided timber for the re-building to help defray costs. Other organisations also provided assistance, including the ILO, which provided pineapple seedlings, and the Department of Fisheries, which provided fish ponds – all to help kick-start new livelihood opportunities. Similar relocation plans were marked for *Narikoso village* in the southern part of Fiji and some 34 other villages.³⁶

Temporary, perpetual and permanent migration related to environmental degradation

Climate-related shocks and trends that can cause population displacement in Pacific include:

- More intense and/or more unpredictable extreme weather events
- Slow-onset processes and events such as increasing temperatures and drought, which affect agricultural production and access to clean water;
- Rising sea levels which can render coastal areas increasingly difficult places to live and work; small atolls will be especially affected
- Degradation of land and competition over natural resources can challenge institutions' ability to manage relations over shared resources, leading to rivalry and, in turn, migration³⁷.

³² Jack Niedenthal, *A Short History of the People of Bikini Atoll* (2010), available at:

<http://www.bikiniatoll.com/history.html>.

³³ J McAdam, "Relocation Across Borders: A Prescient Warning in the Pacific" (2013) *Brookings Institutes*

<http://www.brookings.edu/research/opinions/2013/03/15-climate-change-mcadam>

³⁴ E Osifelo, "Our Island's Survival," (2010) available at:

http://climatechange.thinkaboutit.eu/think4/post/our_islands_survival.html (last time accessed: 25.10.2014)

³⁵ United Nations Office for the Coordination of Humanitarian Affairs, *The Pacific, Fiji: Building resilience in the face of climate change* <http://www.unocha.org/rop/top-stories/fiji-building-resilience-face-climate-change#> (last time accessed: 08.10.2014).

³⁶ *Ibid*, at 20.

³⁷ International Federation of Red Cross, "Migration" available at:

<http://www.ifrc.org/Global/Documents/Secretariat/201410/Mobility-and-climate-change.pdf>.

In 2014, Kiribati President Anote Tong announced that Kiribati had purchased a piece of land in Vanua Levu (Fiji) for AUD\$ 9.3million from a church. The Government of Kiribati allowed tenants that were there to harvest their food crops when the crops were ready and before they could move in. The land in Vanua Levu has been used for agriculture and currently there is timber worth a few hundred thousand dollars so the land is suitable, “it’s much more suitable than our atoll islands.”³⁸

This institutional decision would establish secure land rights (and, implicitly, migration opportunities, although not officially declared) for the people of Kiribati, significantly boosting economic activity, leading to greater land productivity, preservation efforts and food security³⁹. Further, as climate change and environmental deterioration are existential threats to the health and wellbeing of all, especially the poorest and most marginalized groups⁴⁰, Kiribati could start their own economic programs addressing the needs of people whose land is not productive anymore due to beach mining, soil erosion, salinization, etc.

Pacific migrants as agents of change

Due to the cultural link Pacific islanders have to the land and sea, and the concept of land as part of their culture and identity – in particular the older generations who have their hereditary ties to the sea and the land of their surrounding village⁴¹ – it is difficult to transfer a positive perception of the migration process and create a social impact that is transformative and beneficial for the community. While voluntary migration and/or temporary migration represent a less emotional process, displacement or relocation are perceived as insecure and sometimes unacceptable changes, which many people are not ready to accept. However, migration is generally accepted as constructive when the change it brings is perceived as positive and when the migrants are able to transfer cultural and social knowledge. While migration is sometimes associated with loss of cultural identity or violent conflict in the host communities, migrants are more generally perceived as agents of change due to the rich heritage they contribute to the development of the new adopting community from their destination areas.⁴²

3. PACIFIC MIGRATION AND INTERNATIONAL PERSPECTIVES

International initiatives

The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP): The Sub-Regional Office for the Pacific is the sub-regional platform that provides a link between the work of ESCAP and the needs of the Pacific island developing States in their efforts to achieve sustainable development. Established in 1984, the ESCAP Sub-Regional Office for the Pacific is based in Suva, Fiji. The Office promotes regional cooperation and knowledge sharing, provides technical assistance and advisory services on economic and social policies, and conducts research on issues relevant to Pacific

³⁸ PACNEWS.

³⁹ A Garland et al, “Global Urban Poverty: Setting the Agenda” (2007) Woodrow Wilson International Centre for Scholars, available at: <https://www.wilsoncenter.org/sites/default/files/GlobalPoverty.pdf>.

⁴⁰ IPCC, 5AR, Working Group I.

⁴¹ McAdam 2013, *supra* note 14.

⁴² Corendea 2008, *supra* note 1.

island developing States members. The guiding mission of the Office is to focus on supporting Pacific island developing countries in their efforts to achieve the Sustainable Development Goals (SDGs) through as called for in the internationally agreed Mauritius Strategy for the Sustainable Development of Small Island Developing States (SIDS). It covers Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, as well as American Samoa, the Cook Islands, French Polynesia, Guam, New Caledonia, Niue and the Northern Mariana Islands as associate members. It focuses on the following priority areas, as mandated by the ESCAP Commission: the Sustainable Development Agenda, Green Economy, National Sustainable Development Strategies, Statistics, Social Inclusion and Climate Change and Migration⁴³. In 2015, ESCAP and the United Nations University Institute for Environment and Human Security (UNU-EHS) conducted a large (over 6,800 individuals representing over 850 households) and national representative household survey research project which emphasized the migratory tendency of the Pacific islanders in regards to climate change. It found that more than 70 per cent of households in Kiribati and Tuvalu and 35 per cent of households in Nauru reported family members would migrate if climate stressors, such as droughts, sea-level rise or floods, worsened. However, only about a quarter of households have the financial means to support migration, leaving many households “trapped” in worsening environmental conditions.⁴⁴

Launched in October 2012 by the Governments of Switzerland and Norway (and concluded in October 2015), **the Nansen Initiative** is a state-led, bottom-up consultative process intended to build consensus on the development of a protection agenda addressing the needs of people displaced across international borders by natural hazards, including the effects of climate change. To begin the process, in 2013-2014 five (sub-) regional consultations took place in regions that are severely affected by natural hazards and climate change (Pacific, Central America, Greater Horn of Africa, South East Asia and South Asia). These consultations brought together representatives from states, international organizations, NGOs, civil society, think-tanks, organisations and others key actors working on issues related to displacement and natural hazards, including climate change. The outcomes of the (sub-) regional consultations were compiled in preparation for a global consultative meeting which took place last year, when state representatives and experts from around the world discussed the envisaged protection agenda for cross-border displacement in the context of natural hazards and climate change.⁴⁵

The 2013 Consultation Meeting for the Pacific region, in Rarotonga, Cook Islands, yielded recommendations at the community, national, regional and international level, including, but not limited to:

At the community level: to strengthen the resilience of communities through risk assessments, disaster preparedness measures, disaster risk reduction measures, and development interventions; prepare,

⁴³ The United Nations Economic and Social Commission for Asia and the Pacific, “Sub regional Office of the Pacific” available at: <http://www.unescap.org/subregional-office/pacific>.

⁴⁴ United Nations University Institute for Environment and Human Security, “Key Findings: Climate Impact” available at: http://i.unu.edu/media/ehs.unu.edu/news/11747/RZ_Pacific_EHS_ESCAP_151201.pdf (last accessed 28.12.2015)

⁴⁵ Nansen Initiative, available at: www.nanseninitiative.org.

through consultation, education, and awareness raising, at-risk communities as well as potential host communities for the prospect of population movements, and what this entails; ensure that, in the context of planned relocation and displacement, affected communities are informed, consulted and able to participate actively in relevant decisions and their implementation; ensure that basic services, adequate housing, and access to livelihoods without discrimination are available for relocated people in the receiving community; and ensure that adequate mechanisms and/or safeguards are in place to prevent and solve conflicts over land and resources due to factors such as cultural diversity or population growth.⁴⁶

At the national level: to integrate voluntary migration, forced displacement, and planned relocation within national laws and policies, such as National Adaptation Plans, Joint National Action Plans, and National Disaster Management Plans; continue to strengthen and deepen education, training and upskilling of Pacific islanders, including through qualification and accreditation alignment, so that they can migrate with dignity if they choose to do so; strengthen national capacities to identify and address the assistance and protection needs of particularly vulnerable persons among those affected by natural disasters and climate change; take measures such as land audits, demarcation of uncontested boundaries and community land mapping to facilitate the identification of land when people need to be temporarily or permanently moved, within their own country or abroad; and encourage review of existing citizenship laws to ensure that they allow for dual nationality as a measure to help safeguard the cultural identity of those who move abroad. This helps to sustain ties to countries of origin and allows for the possibility of circular migration where appropriate.⁴⁷

At the regional level: to continue the regional dialogue on voluntary migration, forced displacement and planned relocation; integrate consideration of voluntary migration, forced displacement, and planned relocation within on-going regional processes, such as the Pacific Plan Review and the revision of other relevant regional frameworks; develop appropriate normative frameworks to address the protection needs of displaced or relocated populations, including temporary protection schemes or template agreements, which take into account lessons from past experience and incorporate existing good practices from the Pacific countries; and encourage regional agencies and national governments to continue to identify gaps in knowledge and collect relevant data.⁴⁸

At the international level: to ensure that the Pacific region maintains a strong voice in international fora, while also respecting and reflecting the diversity in the region; ensure that donor priorities are better aligned with regional and national priorities; encourage discussions regarding resources being made available within the framework of existing or new international financial mechanisms to cover costs and

⁴⁶ Nansen Initiative, “Human Mobility, Natural Disasters and Climate Change in the Pacific: Summary of Conclusions” (21-23 May 2013) available at: https://www.nanseninitiative.org/wp-content/uploads/2015/06/300615_FINAL_SUMMARY_OF_CONCLUSIONS_PACIFIC_REGIONAL_CONSULTATION.pdf [NI Conclusions]; Nansen Initiative, “Human Mobility, Natural Disasters and Climate Change in the Pacific: Outcome Report” (21-23 May 2013) available at: https://www.nanseninitiative.org/wp-content/uploads/2015/07/OR_Human_Mobility_Natural_Disasters_and_Climate_Change_in_the_Pacific.pdf [NI Outcome Document].

⁴⁷ *Ibid*, NI Outcome Document at 7-8.

⁴⁸ *Ibid*.

investments related to displacement and planned relocation, and to compensate for loss of community ties, land, and cultural assets; and encourage states and relevant international organizations to develop appropriate normative frameworks to address the protection needs of displaced or relocated populations.⁴⁹

Pacific Access Category is an economic program, part of New Zealand's Immigration system, which provides 75 migrants from the Pacific (Tonga, Tuvalu, Kiribati) per year, with an evidence of job offer, the ability to migrate to New Zealand in addition to standard family and skilled migration channels. The criterion of acceptance is restricted to people between the age of 18 and 45, with no criminal record, minimum English and suitable for work. There is a random ballot (visa lottery) used to select 75 migrants out of more than 200 applications per year.⁵⁰ Although the program in essence is a labour migration scheme, it was for many years considered an economic program addressing climate change needs of the Pacific islanders.⁵¹

Another small scale labour-related scheme which also may be considered in the line of the climate change impacts in the Pacific and even seen as a potential-sending-community – potential-receiving-community collaboration program is the **Kiribati Australia Nursing Initiative**, which aims to improve employment prospects and increase labour mobility by helping I-Kiribati youth gain internationally-recognised nursing qualifications. The Initiative provides scholarships to I-Kiribati to study for a Bachelor of Nursing in Australia. The four-year program commences with an intensive 16-week Academic Preparation Program in Kiribati, which focuses on developing English language skills to a minimum proficiency level while including components on mathematics, writing, research, study skills and Australian culture. Upon successful completion of the program in Kiribati, students then undertake a 16-week Nursing Diploma Preparation Program at an Australian university. Eligible students then progress to an 18-month Diploma in Nursing; and may then continue on to the additional 24-month Bachelor of Nursing program.⁵²

The Australian Seasonal Worker Program helps contribute to the economic development of participating countries, while also offering Australian employers in the horticulture industry the ability to employ workers from eight selected Pacific Island countries and Timor-Leste when they cannot find enough local labour to satisfy seasonal demand. The programme also contributes to the economic development of the participating countries,⁵³ including Timor-Leste, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. It offers a reliable, returning workforce to Australian employers and seasonal workers can undertake varied roles in the horticulture industry. Seasonal workers also have the opportunity to participate in valuable basic training opportunities funded by the Australian Government through the Add-on Skills Training programme.⁵⁴

⁴⁹ *Ibid.*

⁵⁰ Corendea, Cosmin Ioan. 2008. "Refugee Law in the Era of Globalization", *Human Security in Pacific: the Climate Refugees of the Sinking Islands*. 2 (1): 12-19.

⁵¹ *Ibid.*, at 23.

⁵² Kiribati Australia Nursing Initiative <http://aid.dfat.gov.au/countries/pacific/kiribati/Pages/initiative-nursing.aspx>.

⁵³ Australian Government Department of Employment <http://employment.gov.au/countries-participating-seasonal-worker-program>.

⁵⁴ Australian Government, Department of Employment <http://employment.gov.au/seasonal-worker-program>.

Applicability of international policies in the Pacific

A study conducted between 2007 and 2009 showed that a top-down approach is not sustainable in the Pacific, and that a bottom-up, people-centred agenda would be more suitable when addressing climate change issues, including migration.⁵⁵ Furthermore, there is insufficient awareness of the role that international institutions play in the distribution of resources, in services and at key junctures of the adaptation to climate change processes in the Pacific. Moreover, the absence of any meaningful targets and indicators on human rights, gender and democratic governance significantly reduce the impact of international institutions. Another reason for not reaching the desired impact of different projects intended to be implemented in the Pacific is that projects lack robust research when considering local needs and priorities.

This gap in the research conducted in the Pacific is visible before the start of the project and it intensifies, reflecting on operational reliability of the project, when implementing (maladaptation) and contributing, *inter alia*, to irregular migration. For example, the World Bank is currently conducting some major infrastructure projects in Kiribati. *The Road Rehabilitation Project* aims to improve the condition of South Tarawa's main road network and to help strengthen road financing and maintenance capacity. There are three components to the project.⁵⁶ The first component is infrastructure improvements. This component consists of the main civil work activities to be undertaken on the South Tarawa road infrastructure including the reconstruction and rehabilitation of paved roads on South Tarawa, and rehabilitation of Betio causeway. The second component of the project is road sector reform. This component helps to strengthen the road sector and ultimately aims to lead to more sustainable main road infrastructure in South Tarawa.⁵⁷ The third component of the project has creative gender implications and local adaptive communication strategies⁵⁸ (e.g., women involved in the project flag and secure the construction of the road; safety bill boards in local language), which followed from research applying a bottom-up approach. The protective concrete walls which are to be built to protect the road from sea level rise (on the ocean side) would, however, impact the environment in a negative way, affecting the mangroves adaptation project which was implemented by the UNDP a few years ago.⁵⁹

Another World Bank project that is currently running in Kiribati is named *The Pacific Aviation Investment for East Asia and Pacific* project. It aims to improve operational safety and oversight of international air transport infrastructure. This regional project was prepared covering the Republic of Kiribati, Kingdom of Tonga, and Tuvalu.⁶⁰ Kiribati, in particular, will include construction of a new airport building and land strip. There is a clear need of a new airport in Kiribati and Tuvalu (which is still using a former US Army

⁵⁵ Corendea 2008, *supra* note 1.

⁵⁶ World Bank, "Kiribati Road Rehabilitation Project" available at: <http://www.worldbank.org/projects/P122151/kiribati-road-rehabilitation-project?lang=en>.

⁵⁷ *Ibid*, at 31.

⁵⁸ *Ibid*.

⁵⁹ World Bank, "Kiribati Adaptation Project" available at: <http://www.worldbank.org/projects/P078290/kiribati-adaptation-project?lang=en>.

⁶⁰ World Bank, "Pacific Aviation Investment - Kiribati" available at: <http://www.worldbank.org/projects/P128938/pacific-aviation-investment-kiribati?lang=en>.

Base for its Funafuti Airport); however, research proves that the lack of sanitation and fresh water are more urgent needs to address than constructing a new airport. Very recently, a change to this bottom-up approach was considered by the European Union and the Secretariat of the Pacific Community (SPC) and, based on local information, a new project will focus on improving sanitation and safe water.⁶¹

It is thus important to ensure that while setting the target of the SDG 13, the local contexts and realities should be taken into consideration before aiming for too high a standard. The effort to attain an international standard should not result in the formulation of inequitable mechanisms which, in the race to achieve results, causes further loss and damage for larger portions of the populations while only enabling and empowering a minority with the capacity to attain this target. Therefore, while attempting to align the Pacific with the international mandate it is important not to lose sight of the realities within the islands and the culture and traditions of the communities that inhabit them.

The Pacific within an international context

For policy frameworks related to climate change, natural resources management and environmental protection in the Pacific to have their intended impact, they must be accompanied by implementation strategies, financial support, strong leadership and efforts to strengthen the capacity of responsible institutions.⁶² Migration, as a subsidiary effect of climate change, also requires cross-sectoral collaboration between the Pacific communities and international institutions. The migration patterns in the Pacific due to climate change are already affecting other States, such as Australia and New Zealand.⁶³ So far, few preventive measures were taken in this regard (e.g., there is no legal frameworks) and more adaptive or humanitarian considerations, addressing the problem of migration in the Pacific are also lacking. In this regard, Pacific migration does not represent a template fitting the international standards for migration, mainly due to its distinctive context and inevitable conversion into displacement or planned relocation.

4. GAP ANALYSIS FOR DEVELOPING COOPERATION

There is a current wave of financial support to Pacific islands in their endeavours to address climate change. Most of the leading financial institutions are running development or adaptation projects in the region and most of the international institutions interested in the Pacific are working towards addressing climate change triggers and impacts. These projects usually do not own a good insight, based on local information and empirical research, of the Pacific peoples' needs. The end-users of climate change projects, particularly women, the poor, and the marginalized, are often unaware of projects' benefits and their access to different services and protection. They are unable to secure their

⁶¹ Radio New Zealand, "Kiribati signs sanitation deal" (5 November 2015), available at:

<http://www.radionz.co.nz/international/pacific-news/258643/kiribati-signs-sanitation-deal>.

⁶² H Mehlum et al, "Institutions and the Resource Curse," *The economic Journal*, vol. 116, at 1:20.

⁶³ R. Bedford, "Population movement in the Pacific: A perspective on future prospects," (2012) Department of Labour, NZ, available at: <http://www.dol.govt.nz/publications/research/population-movement-pacific-perspective-future-prospects/index.asp>.

entitlements because of opaque practices, financial impediments, linguistic and cultural differences, and other adaptation barriers. Before initiating and implementing development projects or contributing financially to adaptation projects in the Pacific, international institutions should become familiar with the cultural, societal and legal threads of the area and consider the bottom-up approach as a feasible and efficient method of applying and transferring knowledge into the region (e.g., if customary (unwritten) laws of the Pacific States and land (property) rights are not properly understood before the start of the project, this could negatively impact the course of the project and its outcomes).

5. CONCLUSIONS AND WAY FORWARD

As land ownership issues are often a central concern when looking at durable solutions for migration, secure tenure through legal reforms (rule of law) would be a necessary condition to effectively address migration. Rule of law would straighten land laws and policies to drive transparency and participation and would steer responsible and equitable investments in economic, social and environmental priorities. Such legal provisions should build the capacity of local institutions to efficiently respond when addressing the use of land, and empower individuals and groups to claim their rights, including rights to resources and services, and demand responsibility.

Local governments and authorities have the core responsibility for addressing and finding solutions to migration in line with local culture and needs, as well as international standards. At the same time, in the Pacific, where sea level rise could lead to unprecedented state disappearances with permanent international repercussions, international donors and organizations working with development and humanitarian relief also bear a responsibility for avoiding protracted displacement, forced returns that put at risk the lives and health of women, men and children, potential conflict between the migrants and host communities and within migrants communities, inadequate housing and insecurity of tenure, and a lack of access to livelihood opportunities and basic services, such as health and education⁶⁴. Preventive measures require planning, capacity and resources, achievable only through ‘bottom-up’ disaster risk reduction programmes and mechanisms to respond in line with the local culture and international standards.

In this context, SDG 13, “Take urgent action to combat climate change and its impacts”⁶⁵, should create a space for focusing on the challenges confronting the Pacific islanders and lead to a truly transformative approach. The migration process in the Pacific should also be implicitly addressed, in a local ‘bottom-up’ context, placing climate-induced migrant at the core of the problem and to be considered at the national and regional level when developing policy and designing actions around migration due to climate change.

Moreover, the recent outcome of the UNFCCC Conference of Parties (COP) 21, the Paris Agreement, touches poorly on migration and its effects, but strongly on development impacts in relation to climate change. It recognizes ‘migrants’ rights’ and mentions displacement in the context of loss and damage, a

⁶⁴ United Nations High Commissioner for Human Rights, Regional Office for the Pacific, “Protecting the Human Rights of Internally Displaced Persons in Natural Disasters, Challenges in Pacific http://pacific.ohchr.org/docs/IDP_report.pdf (last accessed: 25.10.2014).

⁶⁵ Sustainable Development Knowledge Platform, available at: <http://sustainabledevelopment.un.org>.

very sensitive and political topic within the climate change negotiations, but addresses (sustainable) development in different segments of the new agreement (see Article 6 of the Agreement).⁶⁶ The Paris Agreement does, however, not place mobility as a main theme of discussion and implicitly does not relate to the effects of development on migration patterns or the impact of migration on the developing structures of the new receiving communities.

A considerable effort was made on the part of the Advisory Group on Climate Change and Human Mobility to integrate the issue within the Agreement. An earlier draft of the Agreement also included: a climate change displacement coordination facility which would provide “organized migration and planned relocation,” including a form of compensation to the people escaping rising sea levels, extreme weather conditions and income shocks due to inconsistent agricultural harvests. However, this was removed in a revised draft as Australia opposed the institution of such a facility.⁶⁷ The issue lies in the legal and regulatory challenges that need to be overcome in efficiently accommodating climate migrants. There is no universal definition that can be used to identify persons forced to relocate due to climate change as environmental factors are not recognized as a ground for seeking asylum under the Refugee Convention.

This was expounded upon by the Supreme Court of New Zealand, which in the case of *Loane Teitiota*, a Kiribati native seeking asylum in New Zealand, dismissed the contention that the danger of climate change amounts to persecution as defined by the Convention.⁶⁸ The Immigration and Protection Tribunal acknowledged the negative impact of factors such as environmental events, slow onset processes, population growth, urbanization and limited infrastructure development on the carrying capacity of the land tribunal but dismissed Mr. Teitiota’s appeal on the ground that he had undertaken “a voluntary adaptive migration,” and therefore his migration to New Zealand could not be perceived as forced.⁶⁹

The concept of persecution as a prerequisite for refugee status was restricted to involve either the failure of a state to control the commission of human rights violations by its own agents or the failure to reduce the risk of harm being perpetrated by non-state actors.⁷⁰ The Supreme Court acknowledged the possibility of future recognition of environmental degradation as a form of persecution within the Refugee Convention or protected person jurisdiction.⁷¹ However, at present it concluded that international law still requires meeting the legal criteria set out in the Refugee Convention, which in the context of New Zealand jurisprudence requires “a real chance of a sustained or systemic violation of a core human right demonstrative of a failure of state protection which has sufficient nexus to a convention ground.”⁷² Further, the environmental conditions faced were not seen to be so severe as to jeopardize the life and dignity of the appellant and it had not been implied that the government of Kiribati had failed to take adequate steps to protect the appellant from harm.⁷³

⁶⁶ United Nations Framework Convention on Climate Change, FCCC/CP/2015/L.9/ev.1, available at: <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf> (last accessed 28.12.2015).

⁶⁷ Oliver Milman, “UN drops plan to help move climate-change affected people” *the Guardian* (7 October 2015), available at: <https://www.theguardian.com/environment/2015/oct/07/un-drops-plan-to-create-group-to-relocate-climate-change-affected-people>.

⁶⁸ *AF (Kiribati)* [2013] NZIPT 800413 (25 June 2013).

⁶⁹ *AF (Kiribati)* [2013] NZIPT 800413 at para 39, 49.

⁷⁰ *Ibid*, at para 54.

⁷¹ *Ibid* at para 55.

⁷² *Ibid* at para 65.

⁷³ *Ibid* at para 75, 97.

The High Court agreed with the findings of the Tribunal stating that “a ‘sociological’ refugee or person seeking to better his or her life by escaping the perceived results of climate change is not a person to whom Article 1A (2) of the Refugee Convention applies.”⁷⁴ The Court of Appeal upheld the decision of the High Court.⁷⁵ The Supreme Court reiterated this view and held that the appellant did not face any significant harm and the government of Kiribati had not failed in its obligation to protect its citizens from the effects of environmental degradation.⁷⁶ The Court was, however, explicit in its statement that the decision in this particular case “should not be taken as ruling out that possibility in an appropriate case.”⁷⁷

Prior to this case, there were numerous cases in 2002 that involved claims from appellants from Tuvalu seeking refugee status in New Zealand due to various environmental factors, including “inundation, coastal erosion, and salinization of the water table, combined with factors at the individual and household levels.”⁷⁸ However, these were dismissed by the New Zealand Refugee Status Appellate Authority, due to the indiscriminate nature of these events and processes having no concrete nexus to a ground under the Refugee Convention. A similar view was taken by the Australian Refugee Review Tribunal in its decision to declining a refugee visa to an applicant from Kiribati.⁷⁹

The lack of a distinguished international/regional instrument for the protection of cross-border climate migrants has thus been a significant obstacle to the acceptance of persecution from climate change as a valid ground for the determination of refugee status by domestic governments. The gap in international law in addressing such migrants has had significant implications on their ability to find refuge despite not having the capacity to adapt to the climate change event taking place within their own country. The significant regulatory gap in the constitution of a robust framework for enabling the protection of climate migrants must therefore be addressed as soon as possible to facilitate a process for the protection of individuals seeking to establish a more durable future in the wake of the debilitating impacts of climate change.

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⁷⁴ *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2013] NZHC 3125 (26 November 2013).

⁷⁵ *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZCA 173 (8 May 2014), at para 21.

⁷⁶ *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107 (20 July 2015)

⁷⁷ *Ibid* at para 13.

⁷⁸ *AF (Kiribati)* [2013] NZIPT 800413, at [67].

⁷⁹ 0907346 [2009] RRTA 1168, at [54].

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