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SHAPING INTERNATIONAL RESPONSES TO  
CLIMATE CHANGE, DISASTERS AND DISPLACEMENT

Pictured: Kiribati, Pacific Islands

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The world is facing the largest number of refugees since World War II – some 21 million people – but disaster-related displacement dwarfs the numbers forced out of their homes by conflict. It’s a trend that’s likely to continue as the impacts of climate change increase, writes **PROFESSOR JANE MCADAM**.

**O**n average, someone is displaced each second by a disaster-related hazard. That’s about 26 million people a year around the world. However, disaster-related displacement already dwarfs the numbers forced out of their homes by conflict, and this trend is likely to continue as the impacts of climate change mean that extreme weather events become more frequent or intense, drought occurs more regularly and for longer, and flooding becomes an annual – rather than a half-decade – occurrence.

In our own region, following Cyclone Pam in Vanuatu almost two years ago, it was estimated that up to 70 per cent of the population was displaced.

Most people, wherever they are displaced by disasters, will not cross international borders – unlike refugees. Most will move within their countries, often from rural to urban areas. Some people, will, however, be forced across international borders, and the law has not evolved to accommodate this.

Evidence shows that most people want to remain in their homes for as long as they can, and return as quickly as possible. But if people cannot live in safety, dignity, and with access to livelihoods, then they may seek to move on.

Legal, policy, technical and scientific interventions, including disaster risk reduction, climate change adaptation and mitigation, development, and migration opportunities, will determine whether, and for how long, people can

remain in their homes, and whether doing so enables them to lead dignified lives or exposes them to risks and increased vulnerability. Identifying the need for a broad, complementary set of policy strategies necessarily affects how international law should be progressively developed in this area.

**The role of the law**

In international law, only a small category of forced migrants are recognised as people whom other countries have an obligation to protect.

Under international human rights law, states have the primary responsibility to promote and protect the human rights of all people within their territory or jurisdiction – both citizens and non-citizens. Where people are displaced within national borders, states’ obligations are clear, and are further clarified by relevant soft law instruments such as the Guiding Principles on Internal Displacement.

The Guiding Principles, adopted in 1998, are recognised as an “important international framework for the protection of internally displaced persons”, addressing people’s needs and rights before, during and after displacement.

The challenge lies in strengthening their implementation in the context of climate change and disasters, and to enhance the capacity of relevant authorities to apply them.

Between 2000 and 2015, there were more than 20 cases in Australia and New Zealand where people from Tuvalu and Kiribati argued that they should receive refugee protection from

climate change impacts, but all failed. The decision-makers explained that the applicants were not “differentially at risk of harm amounting to persecution due to any one of these five grounds”, that “all citizens face[d] the same environmental problems and economic difficulties”, and were “unfortunate victims ... of the forces of nature”.

**The value of human rights law**

In my view, human rights law provides the most scope for protecting people against forcible return to circumstances where they face arbitrary deprivation of life, or cruel, inhuman or degrading treatment.

Progressive development of the principle of non-refoulement – a fundamental principle of international law that forbids states from sending people to places where they risk persecution or other serious harm – could offer some protection. For instance, it is possible that conditions in a disaster-affected area, or an area rendered uninhabitable by the impacts of climate change, may mean that returning someone there would expose them to a real risk of death or cruel, inhuman or degrading treatment.

Perhaps unsurprisingly, the public’s imagination has been captured by the “big” questions – the idea of “climate refugees” or “sinking island nations” – and the assumption that we need new international treaties to address them. It might seem surprising that as an international lawyer, I do not recommend creating a new treaty on so-called “climate refugees” at this point in time. Not only is the concept legally

flawed, it has no appeal in places such as the Pacific because it does not reflect the nature of movement we are likely to see, nor the self-help approach that Pacific islanders advocate.

A new treaty is conceptually problematic, for a start. For instance, why single out “climate change” when we know that the drivers of movement are multicausal? Also, the Refugee Convention is one of the most widely ratified treaties in the world, yet we have more displaced people now than at any time since the Second World War. Treaties must be implemented to be effective, and that requires political will.

For most people, more important interventions will include things such as effective early warning systems for disasters, disaster risk reduction schemes, careful urban planning and sensitive development. This is my key point: much more can be done now that does not require any new international law.

What we need are laws and policies that permit people to remain in their homes, where possible and desirable; to move elsewhere before disaster strikes; and to receive assistance and protection if they are displaced.

### The tools required

Some simple measures that can help avert displacement include ensuring that building codes are implemented and enforced, that land is not overused for unsustainable development, and that better planning laws are put in place. These kinds of legal responses might not be as racy as new treaties, but they can make a considerable difference on the ground.

Firstly, States should enhance disaster risk reduction measures and climate change adaptation to build community resilience. Through the systematic integration of disaster risk reduction measures, people will have a better chance of avoiding displacement if disaster strikes, or being displaced for a much shorter period.

The Sendai Framework on Disaster Risk

**In recent years, at least 50 states have received or refrained from returning people home in the aftermath of a disaster, but responses have been ad hoc and uncertain. More systematic and predicable responses need to be created.**



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Reduction 2015–30 notes the importance of creating “public policies ... aimed at addressing the issues of prevention ... of human settlements in disaster risk zones”, and calls for the promotion of “transboundary cooperation ... to build resilience and reduce disaster risk, including ... displacement risk”.

Secondly, providing timely support and assistance is also key. We know from studies of floods in Bangladesh that when people receive prompt and adequate assistance, they are more likely to stay and rebuild than to move on in search of work to survive. By contrast, a year after Typhoon Haiyan struck the Philippines, tens of thousands of people remained displaced because the authorities said it was unsafe for them to go home, but could not offer them any alternative. That is the kind of situation that is likely to see people try to move on themselves, in precarious circumstances.

Thirdly, regardless of what mitigation or adaptation strategies are put in place, some displacement is inevitable. States should ensure there are appropriate laws and policies in place to address the needs of internally displaced people, who will comprise the vast majority of displaced people. They should create more predictable humanitarian and temporary stay arrangements, especially in regions where disaster-related displacement is common (e.g. Central America). For instance, some states already enable temporary stay for foreigners caught abroad when a disaster occurs back in their home country.

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Fourthly, movement away from affected areas can itself be a type of adaptation. States should boost voluntary migration opportunities so that people may move in anticipation of future harm.

### The need for safe migration schemes

The Australian Government has acknowledged that the promotion of safe and well managed migration schemes are “a key part of building resilience”. This could include giving people from affected countries preferential access to existing migration categories (e.g. skills, family, education), by prioritising them or by waiving some of the usual requirements; establishing training programs in areas of need, thus giving people the skills they need to migrate for labour reasons; creating special visa categories for people living in particular regions; or establishing bilateral or regional free movement agreements.

In the Pacific, more permanent migration might enable a smaller population to remain at home for longer, given that population pressure places strain on scarce resources. Labour mobility can foster remittances (and reduce reliance on foreign aid), facilitate and knowledge circulation and skills transfer, and foster positive development in communities of origin. Many migration experts argue that these benefits – individual and structural – counter concerns about “brain drain”.

Already, targeted work and education schemes (for both temporary and permanent movement) permit small numbers of Pacific islanders to move to Australia and New Zealand annually. A good example is the innovative scheme that Australia ran with Kiribati between 2006 to 2014. It enabled almost 90 students from Kiribati to train as nurses at Griffith University in Australia. On graduation, they were eligible to apply for an 18-month temporary graduate visa (subclass 485), which increased their chances of

subsequent employer sponsorship for a permanent visa.

This program simultaneously responded to Kiribati’s rapid population growth and youth unemployment rates; a nursing skills shortage in Australia (and globally); and provided a livelihood diversification strategy. If graduates returned home, they took valuable skills with them.

An ongoing program is New Zealand’s Pacific Access Category, which provides permanent residence annually to 250 citizens from Fiji, 250 from Tonga, 75 from Tuvalu, and 75 from Kiribati. Eligibility depends on a person having an offer of ongoing and sustainable employment in New Zealand, a minimum level of English, a minimum income, and meeting health and character requirements. This scheme is well-known in the Pacific and is generally regarded positively, although evidence shows that migrants often face significant financial pressures because of the considerable role they take on to support new arrivals from their community (increased weekly costs of 30 to 60 per cent, in some cases).

In terms of temporary migration, in the past decade Australia and New Zealand have provided seasonal work visas for about 70,000 Pacific Islanders.

While the schemes have not been perfect, they are viewed as a win-win for employers, workers and their families. The New Zealand scheme has been hailed internationally as a “best practice” circular migration program.

A report released last month by the Menzies Research Centre, a conservative body, recommended that opportunities for Pacific labour migration be increased, noting that Pacific Islanders had integrated well into Australia and had made a

substantial economic contribution in regional areas.

Similarly, findings by the Lowy Institute late last year revealed that allowing just 1 per cent of Pacific Islanders to work in Australia would bring them three times more than what Australia gives in aid. This would mean accepting about 2,850 people a year.

The importance of “self-help” mechanisms cannot be overstated. For instance, the bilateral Trans-Tasman Travel Arrangement between Australia and New Zealand enabled 3,600 New Zealanders to move to Australia after the Christchurch earthquakes in 2010 and 2011. Although the agreement was never envisaged as a disaster-response tool, it provided a ready-made self-help mechanism that let people take charge of their own lives, rather than requiring government intervention. Certainly not everybody moved – again reflecting the fact that people have different tolerance thresholds and support networks. Anecdotal evidence suggests many families have moved back now that the situation has stabilised.

Finally, planned relocations can help people to move out of dangerous areas in advance, or to resettle in safer areas after a disaster if returning home is not possible. For the past 50 years, most planned relocations have occurred within countries, in the context of development projects, and many have led to impoverishment and discontent.

Relocation is a complex and fraught process, requiring in-depth consultation and planning to avoid greater vulnerability and impoverishment.

Future human catastrophes are not inevitable. The action – or inaction – of governments will determine whether we see even greater suffering or manageable people movements. **LSJ**