

Human rights implications

Scott Leckie

An integrated approach to climate change demands that human rights and adaptation strategies are pursued hand-in-hand.

Taking a human rights approach to climate change, grounded in the principle of the inherent dignity of the human person, implies that it

order that people everywhere are able to live safely and securely on a piece of land, to reside within an adequate and affordable home with access to all basic services and to feel safe in the knowledge that these rights will be fully respected, protected and fulfilled.

Indeed, the normative framework enshrining these rights is considerable, constantly evolving and ever expanding. A very considerable body of international human rights laws and standards exists which can be used

Millions upon millions of people have lost their homes and lands due to conflict or because of investor greed, poorly planned development and natural disasters such as earthquakes, floods and tsunamis. Sadly, far too few have seen either their rights respected or benefitted from a slow, gradual improvement in their housing and living conditions once the circumstances leading to their displacement have ended or altered. This should be a reminder for us to prioritise human rights-based strategies to address the displacement dimensions of climate change. The track record of most countries in treating victims of displacement as rights-holders, in particular HLP rights-holders, is very poor.

In many disaster settings, those who have been displaced return home once conditions permit and quickly begin the long and difficult task of rebuilding their former lives. In other cases, the displaced are arbitrarily and/or unlawfully prevented from returning to and recovering their homes. They may be relocated involuntarily to resettlement sites despite their wishes to return home. Thousands of those displaced in Sri Lanka and Aceh following the 2004 Asian tsunami are still physically prevented from returning home, despite their clear wishes to do so.

While considerable efforts have been made to address displacement and return in the context of conflict, only recently have practitioners begun to explore the vital links between displacement, natural and environmental disasters and durable solutions to displacement, all within a rights-based framework.

HLP good practice

A number of important lessons appear to be increasingly recognised by those working in post-disaster contexts. For instance, best practice indicates that all displaced persons should have the right to voluntary return without discrimination,

is not only the total numbers of those displaced that matter. Every single person who is forced from their home, against their will, must have a remedy available to them which respects their rights, protects their rights and, if necessary, fulfils their rights as recognised under international human rights law.

The rights found within the international human rights legal code which are particularly relevant to the discussion of climate change-induced displacement include the right to adequate housing and rights in housing; the right to security of tenure; the right not to be arbitrarily evicted; the right to land and rights in land; the right to property and the peaceful enjoyment of possessions; the right to privacy and respect for the home; the right to security of the person, freedom of movement and choice of residence; and housing, land and property (HLP) restitution and/or compensation following forced displacement. All of these entitlements and obligations are in

by governments to build the legal, policy and institutional frameworks required to ensure that any rights related to climate change, particularly those related to durable solutions to displacement, are fully respected, protected and fulfilled. However, when we look at the performance of states and the international community over the past 60 years of the human rights experiment and when we listen to the voices of the millions of rights-holders throughout the world who remain as far as ever from enjoying their legitimate HLP rights, it is clear that solving the HLP consequences of climate change will be a far from simple task.



Discussing post-tsunami reconstruction in Tagaule, one of three submerged villages on Nias Island, Indonesia.



Consulting with community leaders on building plans to ensure that houses to be built will fit the villagers' way of life. Aceh, Indonesia, 2005.

to the homes from which they were displaced. In situ re-housing efforts have proven to be the most efficient and effective means of providing relief to victims in other post-disaster settings. International standards now support the rights of disaster-affected populations to return to and recover their former homes and lands should they so wish. Those involved in facilitating such return need to work to:

- remove any discriminatory inheritance and property ownership laws that may prevent the equitable transfer of property to survivors, particularly women and girls, and ensure that women and girls do not suffer direct or indirect discrimination as a result of the relief and reconstruction efforts
- ensure that all reconstruction efforts take fully into account the needs of especially vulnerable or marginalised groups including ethnic minorities, children, the elderly, the disabled, the chronically ill and households headed by single parents or children
- avoid the active prevention of return and land-grabbing by public officials or criminal networks
- ensure properly resourced and well-coordinated housing/shelter provision programmes
- encourage full community participation in the reconstruction process
- help local authorities to realise that housing reconstruction can often be the most long-term element of any recovery process and to plan accordingly.

Fortunately there is greater understanding that relocation or resettlement should only occur as a last resort, and only after all possible alternatives have been thoroughly explored. When resettlement is the only option available and all other avenues have been considered, there is growing acceptance of the principle that permanent relocation should never result in homelessness and that alternative accommodation, which complies with international

human rights standards on adequate housing, should be provided to everyone as a matter of rights.

However, climate change-induced displacement is likely to present new and greater challenges. The impact and consequences of permanent, non-reversible displacement caused by climate change and rising sea levels have yet to be fully grasped by states and their peoples. Already, island groups such as the Carteret Islands, Tokelau and Vanuatu have begun to permanently resettle people because of land lost to rising seas and salinisation of fresh water supplies. Clearly, these and other cases are only the small beginnings of what is predicted to be the largest global mass migration in human history.

Short-term policy responses, of course, would be similar to those already in place following many conflicts and disasters, and consist largely of shelter programmes, forced migrant camps and settlements, and other short-term measures. Long-term policy responses should be grounded more comprehensively within an HLP rights framework, involving remedies such as the provision of alternative homes and lands, compensation and access to new livelihoods, based – one would hope – on lessons learned about permanent resettlement from previous efforts around the world.

Conclusions

Given the challenges presented by current and future climate change-induced displacement, there is a pressing need to:

- develop adequate domestic institutional frameworks: in February 2008, for example, local councils in Australia were instructed to carry out comprehensive climate change planning exercises in all communities threatened by inundation. This and other such examples could act as good models for other nations wishing to successfully mitigate and adapt to the climate changes ahead.
- develop adequate international institutional frameworks: states and UNHCR need to systematically examine the implications of incorporating these

issues into both their legal mandate and their day-to-day operations.

- facilitate the evolution of international law: changing the 1951 Convention might not work but a new Protocol to the Convention may well yield results. One important outcome of the expanded attention to the human rights implications of climate change could be the adoption of a new international standard on these issues. Such a standard, or perhaps even a composite group of standards which together would constitute international principles on the relationship of climate change and human rights, could be of considerable assistance to national governments seeking guidance on addressing these challenges.
- augment the Global Adaptation Fund: established during the Bali meetings in 2007, this Fund faces a shortfall of at least US\$9.75 billion. Now is not the time for the wealthy world to be stingy.
- develop rights-based measures of land expropriation and invest in land banking: governments throughout the world should be encouraged to review domestic legislation as it relates to questions of expropriation of land. Climate change-induced displacement will put immense pressure on cities and the slums that surround them. Governments should identify unused land for possible future use to resettle people and their communities should this become necessary.

Scott Leckie (director@displacementsolutions.org) is Director and Founder Displacement Solutions (www.displacementsolutions.org).

Displacement Solutions (DS) manages a Global HLP Rights Expert Registry in order to provide assistance – expertise, tools and human resources – on the full spectrum of housing, land and property rights issues in post-conflict and post-disaster situations. For more information, see www.displacementsolutions.org