

## **The Human Rights Implications of Climate Change**

### **Where Next?**

Scott Leckie<sup>1</sup>

Of all their achievements, the efforts of the 2007 Nobel Peace Prize Laureates - Al Gore and the International Panel on Climate Change - to place the planetary climate change crisis as fully as possible on the international political agendas of virtually every government, international organisation and even growing numbers of private businesses, has well and truly succeeded. The growing chorus of voices working to reduce the effects of climate change - including that of the people of the Maldives and other front line countries in the battle against climate change which have been making the case for action on climate change since at least 1987 when President Gayoom made his now famous first plea for action - have brought ever higher levels of awareness, understanding and, at last, acceptance and consensus that climate change is real, that it is happening already, and that we must do everything possible to reverse, mitigate and adapt to the potentially catastrophic consequences that this environmental tragedy will invariably bring so many of the world's nations and peoples. Beyond so many other reports, one need only scan UNDP's 2007 *Human Development Report* on climate change to see how dire the crisis is that we all face.

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What has been less emphasised to date, however, are the very real and very extensive human rights implications of climate change and the equally real and extensive rights-based solutions that will be increasingly required in coming years, as adaptation becomes ever more necessary. And it is these themes and their remedy that I wish to speak about today. While displacement caused by rising sea levels may be the most obvious and blatant human rights concern when looking at the human rights implications of climate change, our discussion today will not solely explore this question, but will rather seek to outline many of the other human rights concerns, combined with a brief look at the broader international legal issues that also arise in the context of climate change; not from the perspective of despair, but from the angle of solutions.

In examining these linkages, we need to all acknowledge that many elements of climate change represent challenges the likes of which we as a species - *homo sapiens* - may have never before faced. And yet, this crisis also provides opportunities that we must grasp as if our lives depended on it, for they do. I believe strongly that if we combine the *best* that international law, our universal morals and ethics and our shared responsibility can throw at the *worst* climate change scenarios, and ground these deeply in thoughts, questions and answers which themselves derive from the new insights that the awesome nature of climate change will hopefully bring forth in ever growing numbers of people, we may well not only be on the way to solving the climate change crisis, but we may in fact be on the verge - at long last! - of an entirely new, sustainable, peaceful and universally prosperous way of organising our human affairs; a new *Politics of the Whole* that is actually capable of facing the endless global challenges that confront us all. One State alone could never hope to solve climate change. This is a simple and obvious

truth, and if we play our cards right, we may at last live on a planet unified, as one whole, one human race where all understand from their earliest years that life is fragile, life is precious and that if our lives are to have any meaning or significance at all, these must be linked in every way to the lives of all others with whom we share this utterly stupendous sphere in space - Our One Earth.

## **THE HUMAN DIMENSION OF CLIMATE CHANGE**

Before addressing the substantive issues of our discussion today, let me just first say that you will not hear repeated reference to scientific evidence or details of the particularly complex world of statistical models that prove that climate change is not only a threat but a reality. Rather, this talk will deal with the human dimensions of climate change and will be premised on the following facts as they now stand:

**First, Reality** - Climate change is real, indisputable and will, in one way or another, affect every human being alive today and hundreds of millions more who will be born in the coming decades;

**Second, Planning** - The human and ecological consequences of climate change will in all likelihood worsen in coming years long before they get better;

**Third, Preparation** - As a world, as nations, as peoples and as rights-holders, none of us are fully prepared for most of the likely future scenarios, including both climate processes and

climate events, that rising sea levels, crop failures, extreme storms and other environmental failings are likely to bring about;

**Fourth, Adaptation** - While strategies of reduction, prevention and mitigation are all critical and must be massively increased, we need to dramatically improve our approaches to adaptation and begin promptly to theories into real plans, backed by political will, finance and humanitarianism grounded in our shared humanity;

And, finally **fifth, Human Rights** - We need to vigorously support the contention that an integral approach to climate change demands that human rights and adaptation strategies are pursued hand-in-hand, and only in so doing can we hope for the best of all possible outcomes.

Reality -> Planning -> Preparation -> Adaptation -> Human Rights - It is the integration of these five points that will pervade my talk here today.

Nearly everyone now knows that without truly epic policy interventions a horrible global ecological crises will come about due to climate change. Too few are aware and take with sufficient seriousness, however, the human dimension of climate change; the very real human impact that climate change will have and already has had, upon millions upon millions of people throughout the world. The leading role played to date by the Maldives on these issues is to be applauded and, it is hoped that the various processes now underway thanks to the leadership of the Maldives, will bear substantial fruit and result in a series of major new initiatives designed to shine the spotlight on the grievous human consequences of

climate change, which thus far have remained very much on the sidelines of international discussion and debates on these issues.

If we focus solely on the question of forced displacement due to climate change for the moment, estimates range from a global total of 200 million to worst-case scenarios predicting that over one billion people could face the loss of their homes and lands during the coming century. Already, island groups such as the Carteret Islands, Tokelau, Vanuatu and others 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 beginning of what will almost assuredly result in one of the largest global mass migrations in human history. And I need not remind you all here that every one of those forced to migrate due to climate change will require a specific housing, land and property rights solution to their predicament.

And yet, so little has been done to date to address this side of the climate change equation. The IPCC's Fourth Assessment Report simply notes that "...adaptation is occurring now, but on a limited basis".<sup>2</sup> Because the costs increase and the likelihood of adaptive success decreases as the effects of climate change worsen, the time for vigorous attention and resources to appropriately address the required adaptation processes required, cannot be over-emphasised strongly enough. Indeed, Oli Brown is sadly not wrong when he claimed that

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<sup>2</sup> IPCC WGII Fourth Assessment Report (April 2007) *Climate Change 2007: Climate Change Impacts, Adaptation and Vulnerability*.

"There has been a collective, and rather successful, attempt to ignore the scale of the problem".<sup>3</sup>

And this is why the initiative of the Maldives and others to very justifiably insist on greater attention to the human dimension of climate change is so timely and so important, for it is through this emphasis that the inherent links between human rights and climate change also enter the discussion. The inclusion in recent speeches by both the President and Foreign Minister of the Maldives of references to the UN Charter and the central importance of the human rights of all people are equally important steps in the building of momentum, both here and abroad, to achieve international attention and action on this too long-ignored dimension of climate change.

Whether 200 million people are eventually displaced as is most commonly asserted, if it is one billion who lose their homes, lands and most important financial assets as Oxfam has predicted in worst case scenario circumstances, or even if only five million face the spectre of forced migration, one thing we can all be sadly sure of is that the Maldives and several of the Pacific Islands are likely to be the hardest hit. Taking a human rights approach to climate change, grounded as the international human rights regime is, in the principle of *the inherent dignity of the human person*, implies that it is not so much the total numbers of those displaced that matter, but rather the fact that each and 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,

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<sup>3</sup> Oli Brown (2007) "Climate change and forced migration: Observations, projections and implications", Background paper for the *Human Development Report 2007/2008 - Fighting climate change: Human solidarity in a divided world*, Human Development Report Office, Occasional paper 2007/17, UNDP.

if necessary, fulfils their rights as recognised under international human rights law. Everyone, my friends, whose rights are affected by climate change needs to have a way of remedying these denials.

As with all dramatic events in any society, human rights play a direct role within the context of climate change in a myriad of ways. These include the full spectrum of civil, cultural, economic, political and social rights. More specifically, rights such as the right to life, the right to water, the right to freedom of expression, the right to health, the right to food, the right to an adequate standard of living, the right to political participation, the right to information, the right to be free from discrimination, the right to equal treatment, the right to security of the person and a host of other rights will have a direct bearing on a wide cross section of climate change decisions made by Governments and how the consequences of these decisions and the impact of climate change will be felt by individual rights-holders.

If we focus today on the displacement dimensions of climate change<sup>4</sup>, a variety of rights found within the international human rights legal code, which are particularly relevant to the discussion of climate change-induced displacement. These are surely more extensive than is commonly assumed and include:

- The right to adequate housing and rights in housing
- The right to security of tenure
- The right not to be arbitrarily evicted

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<sup>4</sup> Steve Lonergan (1998), "The role of environmental degradation in population displacement", in *Environmental Change and Security Project Report*, Issue 4 (Spring 1998).

- 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
- The right to HLP restitution/compensation following forced displacement
- The right to freedom of movement and to choose one's residence

When combining together all of the entitlements and obligations inherent within this bundle rights or HLP (housing, land and property) rights as they are now commonly referred to, people everywhere are meant to be able to live safely and securely on a piece of land, to reside within an adequate and affordable home with access to all basic services and to feel safe in the knowledge that these attributes of a full life will be fully respected, protected and fulfilled.

Indeed, the normative framework enshrining these rights is considerable, constantly evolving and ever expanding. Combining the sentiments of the Universal Declaration on Human Rights, the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights and a range of other treaties, together with a vast array of equally important instruments and interpretive standards such as the UN Committee on Economic, Social and Cultural Rights General Comment No. 4 on the Right to Adequate Housing, General Comment No. 7 on Forced Evictions and General Comment No. 15 on the Right to Water and the UN's Guiding Principles on the Rights of Internally Displaced Persons, the UN 'Pinheiro' Principles on Housing and Property Restitution for Refugees and Displaced Persons and many others, leads us to a very considerable body of international human rights laws and standards which can be used

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 due to displacement. This is, in effect, the good news to share with you today: Everyone, everywhere possesses a body of HLP rights and every Government in every State is obliged to ensure the protection and enforcement of these rights. Of this, there is no doubt.

However - and here begins the bad news - 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 hundreds of millions of rights-holders throughout the world who remain as far as ever from enjoying their legitimate HLP rights, we can quickly surmise that solving the HLP consequences of climate change is going to be far from a simple task. Indeed, the prospects of this are truly daunting, and will require leadership, commitment and creativity the likes of which the world has all too rarely seen in recent decades. And this is where the necessity of adaptation and human rights must converge and together build a stronger and more vibrant response than we have witnessed to date.

Ladies and gentlemen,

We need all recall that our planet, the people of our 191 nations *already* faces a severe, massive and dramatic global housing crisis. Well over one billion people - one in every six human beings alive today - live out their lives in one of the more than 250,000 slums that dot every corner of our planet. If recent predications hold true, as they almost surely will, we can expect two billion or more slum dwellers by 2030. This tragic and yet solvable crisis bodes

extremely worryingly for the displacement to come as a result of climate change. If Governments - as I have said before - which already have legal obligations to ensure access to adequate and affordable housing for everyone have all too often failed in achieving these objectives, and if ordinary citizens in Egypt, India, Botswana, Dili, Belgrade, Detroit and everywhere else are increasingly less likely to be able to afford safe, secure and decent homes in accordance with their rights, how can we possibly expect that things will suddenly improve for climate change forced migrants, simply because the nature of their displacement and their misery may be of a different, more environmentally-based source?

Beyond the global housing crisis - which policy-makers, States, the UN and the donor community continues to effectively ignore - let us now point our minds towards the mass of humanity which has faced forced displacement in past decades; displacement caused by conflict, by investor greed, by poorly-planned development, by disasters, earthquakes, floods, tsunamis and beyond. Millions upon millions of people have lost their homes and lands due to these events and, sadly, far too few have seen either their rights respected in the process or a slow, gradual improvement in their housing and living conditions once the circumstances leading to their displacement have ended or altered. This we also need to remember, and place at the forefront of human rights-based strategies to address the displacement dimensions of climate change. Whether we are speaking about dam displacement in China, conflict displacement in Bosnia, discriminatory displacement in Israel or tsunami displacement in Sri Lanka, the track record of most countries in treating victims of displacement as rights-holders, in particular HLP rights holders, is very, very poor. Yes, there are some positive highlights that we can focus on - the growing recognition of the right of refugees and displaced persons, for instance, to return to their

original homes and the realization by growing numbers of international agencies that displacement (often labelled as involuntary resettlement) should be a last policy option rather than the first one, and others - but overall the situation and the perspectives taken by too many actors remains alarming and constitutes yet another serious obstacle which must be taken into account in developing rights-based responses to the human dimension of climate change.

## **HOUSING, LAND AND PROPERTY RIGHTS AND CLIMATE CHANGE**

Natural, manmade and environmental disasters including earthquakes (e.g. Pakistan, 2005), tsunamis (e.g. Asia, 2004), storms and floods (e.g. New Orleans, 2005) and others always result in the destruction of housing that invariably result in the large-scale displacement of people from their homes, lands and properties. In many settings, those displaced return home once conditions so permit, and quickly begin the long and difficult task of rebuilding their former lives. All too often, however, in other cases the displaced are arbitrarily and/or unlawfully prevented from returning to and recovering their homes, and/or otherwise involuntarily relocated to resettlement sites despite their wishes to return home. This problem was particularly prevalent following the 2004 Asian tsunami where thousands of those displaced in Sri Lanka, Aceh and in New Orleans 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. All of this will have a bearing on the search for solutions to climate change.

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 IDPs should have the right to voluntary return (housing, land and property restitution), without discrimination, to the homes from which they were displaced. The fact that *in situ* rehousing efforts have proven the most efficient and effective means of providing relief to victims in other post-disaster settings is clear. International standards now support the rights of disaster-affected populations to return to and recover their former homes and lands should they so wish. Many now appreciate that measures should be taken to remove any discriminatory inheritance and property ownership laws that may prevent the equitable transfer of property to survivors, particularly women and girls, and should ensure that women and girls do not suffer direct or indirect discrimination as a result of the relief and reconstruction efforts and that all reconstruction efforts take fully into account the needs of especially vulnerable or marginalised groups including ethnic minorities, children, the elderly, the disabled, the chronically ill and households headed by single parents or children.

Similarly, post-disaster practitioners need to be on the lookout for common housing, land and property-linked problems that plague many such settings, such as:

- The active prevention of return and land grabbing by public officials or organised criminals (sometimes supported by laws adopted primarily for this purpose);

- Severely under-resourced and poorly coordinated housing/shelter provision programmes;
- The lack of community participation in the reconstruction process and failure of the authorities to realise that housing reconstruction can often be the most long-term element of any recovery process and the need to guard against loss of interest by those supporting these endeavours;
- The tolerance of active discrimination against women, particularly in terms of inheritance rights to housing, land and property;
- The limitation of rights, derogations by governments from human rights obligations, as well as the imposition of states of emergency; and
- Violations of the full range of economic, social and cultural rights, freedom of movement, the right to life, equality of treatment and protection from discrimination, minority and indigenous peoples rights and others.

In a more positive vein, there is growing 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.

But climate change-induced displacement threatens to make these better-known displacement outcomes of disaster appear meagre and easily manageable. The spectre of

permanent, non-reversible displacement caused by climate change and rising sea levels is a phenomenon that has yet to truly sink into the collective minds of States and their peoples. Only now getting the widespread media attention it deserves, despite warning signs going back decades, climate change-induced displacement will almost assuredly become *the* most dramatic displacement disaster - *ever*. If current trends continue, and sea levels rise as anticipated, literally hundreds of millions of people will face permanent displacement during the next century. Gore's book *An Inconvenient Truth* speaks, for instance, of 20 million people being displaced in Beijing alone, with an additional 60 million forced to move in Kolkatta and in neighbouring Bangladesh. The global economic and social consequences of this mass exodus to higher ground, and frequently to higher countries in the form of mass refugee flows, which will affect developed and developing countries alike, will be one of history's great upheavals with the crushing potential to create unimaginable instability and chaos.

## **HUMAN RIGHTS OPTIONS FOR INDIVIDUALS FORCIBLY DISPLACED BY CLIMATE CHANGE**

Bearing all of what I've just noted in mind, if we turn now to the question of the real options for those who do become forcibly displaced by climate change in coming years, we need more than ever to bridge the gap between past practice as it relates to displacement and new forms of practice, in particular as these relate to adaptation, that are deeply grounded in human rights and guided by the best practices around the world. If all of these and more features of an effective rights-based response to climate change-induced displacement are encouraged to

flourish, we may then generate **solutions** to the emerging crisis that show humanity's brightest sides. If we fail, we will all go down together.

So, in essence we are faced with two key issues here. Firstly, how can we better understand the individual HLP rights dimensions of climate change, and secondly, what are the key macro-level issues we need to address in the context of huge portions of existing sovereign nations being lost to the sea?

First, displacement due to climate change is likely to manifest in essentially five primary ways. These are:

1. TEMPORARY DISPLACEMENT (TD) - People who for generally short periods of time are temporarily displaced due to a climate event such as a hurricane, flood, storm surge or tsunami but who are able to return to their homes once the event has ceased;

2. PERMANENT LOCAL DISPLACEMENT (PLD) - People who are displaced locally, but on a permanent basis due to irreversible changes to their living environment, in particular sea-level rise, coastal inundation and the lack of clean water and increasingly frequent storm surges. This form of displacement implies that localised displacement solutions will be available to this group of forced migrants, such as higher ground in the same locality;

3. PERMANENT INTERNAL DISPLACEMENT (PID) - People who are displaced inside the border of their country, but far enough away from their places of original residence that return is

unlikely or impossible. This would concern a family displaced from one region of a country to another region in country, for instance, from a coastline to an inland town or city.

4. PERMANENT REGIONAL DISPLACEMENT (PRD) - People for whom displacement solutions within their own countries are non-existent or inaccessible and who migrate to nearby countries willing to offer permanent protection. This would involve, for instance, a citizen of Vanuatu or Tokelau migrating on a permanent basis to New Zealand.

5. PERMANENT INTER-CONTINENTAL DISPLACEMENT (PICD) - People for whom no national or regional displacement solutions are available, and who are able to receive the protection of another State in another continent, such as a Maldivian who migrates to London.

There may be more sub-categories of displacement groups that are likely to emerge due to the climate crisis, but the essence of the nature of climate change-induced displacement should be clear from these five categories. Each of them, of course, has different policy and legal implications for Governments, the people concerned and whatever international agencies there may be assigned to assist climate change forced migrants to find durable solutions to their plight. Such responses, which can perhaps most usefully be understood in terms of short- and long-term options, have very important ramifications for those affected and for those involved in ameliorating the displacement crisis caused by climate change.

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 would be grounded more comprehensively within an HLP rights framework and would involve the remedies such as the provision of alternative homes and lands, compensation, access to new livelihoods, and other policy measures, based hopefully on the lessons learned of previous efforts around the world at permanent resettlement.

Problematically - very problematically, indeed - is the record of treatment thus far faced by those who have arguably already have been displaced due to climate change. As has often and appropriately been reiterated, it is not the poor who are the first to migrate from situations of crisis. Rather, the poor are most likely - as always - to be the most vulnerable victims of climate displacement given their frequent inability to migrate in the event this becomes necessary, due to financial and other limitations they may face. The poor are always the ones left behind. Will we allow this again to occur in the context of climate change?

Of the four most well-known cases of what are seen as climate change related displacements - The Carteret Islands in Papua New Guinea, Lateu village in Vanuatu, Shishmaref village on Sarichef island in Alaska (US) and Lohachara island in the Hooghly river in India<sup>5</sup>, none have very successfully resettled those displaced, and in all instances many, many human rights of those affected are clearly not subject to full compliance. If there was ever a warning sign staring us all in the face, it is the consequences already faced by a very minute fraction of the world's likely forced migrant population - those already displaced due to climate change. We need to do better than this, my friends. Much, much better.

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<sup>5</sup> Supra, Oli Brown, 16.

If instances of permanent displacement are carried out without sufficient attention, State intervention and the resources required to do it properly, the human impact of climate change will be far worse than anyone could possibly wish. Not only will the impact upon local economies be dramatic, but severe asset losses, combined with dramatic increases in the world's slum and urban populations, the loss of life and livelihood, health declines and severe crisis within the HLP sector, will all contribute to making the problems worse long before they become better. As a start, we need to recall that the typical costs associated with involuntary resettlement in development contexts will apply, and that these are very expensive and equally resource-intensive. As much as resettlement has often failed over the past decades, the situation is likely to be even worse as a result of climate change.

So, what then can we do to improve the human rights prospects of those affected by climate change and what specific areas of concern demand greater attention by all of us; citizens, States and the international community. The list of possible actions is long, and here I will restrict myself to five areas where we might wish to put our attention in the near term to build the capacity to better address the human rights implications of climate change:

## **FIVE PRACTICAL RECOMMENDATIONS FOR FURTHER CONSIDERATION**

### **1. The Need for Adequate *Domestic* Institutional Frameworks to Protect the Rights of Forced Climate Migrants**

Are those who are displaced due to climate change refugees as they are sometimes called? Are they migrants? Are they internally displaced people? Are they evictees? Or do they fall into another category all together? These questions may seem pedantic or simply irrelevant to some given the obvious crisis conditions already being unleashed by climate change. But defining climate change-induced displaced persons will have a large bearing yet two more additional crucial questions, namely: Which domestic institutions within States are responsible for ensuring that the rights of climate change evictees, and which international institution(s) should be responsible for assisting these victims of global warming, or rather which are interested and capable of doing so?

When we speak about human rights, including the rights of those displaced by climate change, we need first to have clarity about which public institutions within affected countries are legally, or at least politically, responsible for resolving their plight. In determining this, forced migrants can reasonably be expected to ask several very straightforward questions:

- Where do I turn for assistance? On which door do I knock for relief and remedy?
- What rights do I have to a new home or new land?
- How long will I be homeless?
- What laws and rules are in place organising my rights?
- Am I entitled to compensation or reparations?

In far too few countries - I would even venture to say in virtually none, in fact - can these and related questions easily and adequately be quickly answered by the public authorities. This is

not to condemn, but rather to simply point out that good planning, good institutional frameworks, good laws and good policies are all required if we are to successfully adapt to the climate change challenges that confront us. Human rights law and the growing number of judicial decisions on HLP rights, in particular, (See the *Grootboom Case* in South Africa in 2000, for instance) inform us that planning, that seemingly most innocuous dimension of governance is, in fact, one of the most important roles any responsible government can play in taking HLP and other rights seriously.

In fact, one could argue quite convincingly that adherence to the most important human rights treaties, laws and principles obliges States to plan appropriately. Indeed, human rights laws require States not only to plan, but to carefully diagnose domestic human rights challenges, develop laws and policies adequate to address these and to ensure that remedies of various sorts are available to individuals and communities unable to or prevented from enjoying the full array of human rights protections.

A number of governments have already started. Just last month, local councils, in Australia were instructed by the new Labor Government 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.

## **2. The Need for Adequate *International* Institutional Frameworks to Protect the Rights of Forced Climate Migrants**

The aching lack of a specific international institutional framework with a recognised mandate to protect the rights of forced climate migrants has been the subject of a growing global debate on how to ensure that forced migrants no longer fall through the cracks of the international protection and/or humanitarian regimes.<sup>6</sup> Some, including the UN Special Rapporteur on the Right to Food, Jean Ziegler, and others, have suggested that the 1951 UN Refugee Convention and its 1967 Protocol be structurally revised with a view to expanding the UN High Commissioner for Refugees' (UNHCR) mandate to include assistance and protection to forced climate migrants.

Extending the coverage provided within the Refugee Convention, however, is far from assured, and reluctance both within UNHCR and in particular from donors that support it to make the giant institutional leap towards providing structural assistance to forced climate migrants is considerable. At the same time, would it truly be wise to attempt to build a new global institution to be in charge of climate migrants or to allow other existing international organisations concerned with migration or other issues which do not necessarily ground their work in human rights norms, to bear responsibility for the huge and long-term tasks associated with protecting the basic rights of forced climate migrants? I should think not.

Rather, I believe the time has come for States and UNHCR to begin systematically to examine the implications of incorporating these issues into both their legal mandate and their

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<sup>6</sup> "So far there is no home for forced climate migrants in the international community, both literally and figuratively". See: Supra, Oli Brown.

day-to-day operations. In doing so, UNHCR would surely work closely with States, other UN and international agencies, with NGOs and the migrants themselves in pursuing *solutions*. And yet while there is surely some support both within UNHCR and outside the organisation for doing so, convincing donors and the leadership of UNHCR to embrace these challenges will be a major undertaking, which by all means is not assured of success. If the history of UNHCR involvement in IDP issues is anything to go by, it could take years before forced climate migrants find a home within UNHCR, and a delay such as this simply won't do. UNHCR is the right institution to protect forced climate migrants, but to do so it must act now, together with donors, to broaden its mandate in a rapid and fully resourced manner. Changing the 1951 might not work, but suggesting a new Protocol to the Convention may well yield results.

### **3. Facilitating the Evolution of International Law**

Another useful step that should be pursued is the development of a comprehensive international standard on the rights of forced climate migrants. Several recent initiatives have made important contributions to the thinking required to pursue a new standard. The Declaration of the Fourteenth SAARC Summit called for adaptation initiatives and programmes; cooperation and early forecasting, warning and monitoring; and sharing of knowledge on consequences of climate change for pursuing a climate resilient development in South Asia. In a more targeted manner, the Malé Declaration on the Human Dimension of Global Climate Change, adopted on 14 November 2007, makes frequent reference to human rights principles, including the fundamental right to an environment capable of supporting human society and the full enjoyment

of human rights. This Declaration urges participants at the Bali Conference of the Parties of the UN Framework Convention on Climate Change pay greater attention to the human dimension of climate change. It also seeks the increased engagement of the UN Office of the High Commissioner for Human Rights on climate change issues.

The Government of the Maldives is currently engaged in efforts in Geneva to see through the passage of a resolution by the UN Human Rights Council on human rights and climate change that, if approved, will request a formal study on these issues to be carried out by OHCHR in 2008, which will then be discussed in March 2009. This will be an important first step and hopefully symbolise the beginning of a much more intensive and long-term process whereby all of the UN's various agencies are drawn ever deeper into the climate change discussion, and far more important than that, encourage the development of the strategies and capacities required to assist Governments which are unable on their own to secure all of the various HLP rights promised to dwellers everywhere.

One important outcome of the expanded attention to the human rights implications of climate change would be the adoption of a new international standard on these issues. Texts such as those developed in recent months - the Malé Declaration and others - provide a useful starting point for further work in this regard. Such a standard, or perhaps even a composite group of standards which together will constitute international principles on the relationship of climate change and human rights, can - if formulated properly - be of considerable assistance to national Governments seeking guidance on addressing these challenges, as well as to the international community and individual rights-holders in determining where rights and responsibilities begin.

It will be equally important to determine precisely which form such a new standard might take. Some have suggested simply amending the Refugee Convention as I noted earlier. Others have proposed additional options including treaties and other binding law. If we look at the experience of the past decade as it relates to the treatment of all displacement issues by the international community, at least as far as new standards are concerned, clearly there has been an overwhelming preference for developing new soft law standards (guidelines, guiding principles, basic principles, general comments and so forth) rather than entrenching rights of this nature - which in many respects are HLP rights - into new binding treaties. If we take the question of internal displacement, for instance, which is very relevant to the climate change debate, we can see that the UN's Guiding Principles on the Rights of Internally Displaced Persons (1998), the UN 'Pinheiro' Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) and the Inter-Agency Standing Committee's Operational Guidelines on Human Rights and Natural Disasters (2006) are all of immense importance and assistance, but none are as legally strong as proponents of the rights IDPs may wish. At the same time, it must be reiterated that these and similar text do achieve results are greater than their drafters may have ever envisaged.

Understanding this, therefore, we could perhaps choose two routes of action. One could be the creation of a new standard, similar to those adopted during the past ten years. This process can be achieved reasonably rapidly without the type of resources and political anxiety that so often accompanies the treaty-making process. In fact, achieving recognition of such a standard - let's call it the UN's *Human Rights Guidelines On Climate Change* - could be quite prompt and if

the resources and interest are apparent there would be no reason why such a standard couldn't be approved either in Copenhagen at the next climate talks in 2009 or by the UN General Assembly or UN Human Rights Council even sooner than that. A second option - a new treaty - could certainly also be a possibility, though this will demand time, effort and resources of a significantly higher order.

#### **4. Augmenting the Global Adaptation Fund**

Beyond new institutional frameworks and new standards, there can be no doubt that much more needs to be done to augment the Global Adaptation Fund that was recently established during the Bali meetings. At that meeting, the Maldives recommended that the Fund should start at US\$ 10 billion and grow to US\$ 50 billion per year. Unfortunately, it seems that seed funding of only roughly US\$ 25 million was provided in Bali for this: A mere shortfall of US\$ 9.75 billion!

US\$ 10 or 50 billion may seem like massive sums, and indeed they are for they show better than many other examples what the costs of climate change are likely to be. At the same time, if we compare these sums to the US\$ 2 trillion that has been spent on a war the whole world opposed in Iraq, and which was fought over access to the very resources that are primarily responsible for climate change, we can see that in that light, US\$ 50 billion doesn't seem at all unreasonable.

Because climate change will test the very concept of Government control over and management of territory and because it will very likely lead to the prospect of multiple State failures, with the burden of displacement falling disproportionately on the poorest of the poor who can never afford proper forms of mitigation or adaptation, now is not the time for the wealthy world to be stingy or cheap. We need to recall that the sentiments of international law are closer to the view that requires the protection of victims of climate change as may be thought. One standard, for instance, clearly indicates that "*Victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere*".<sup>7</sup> It is clearly time to may this principle a reality.

## **5. Land Banking and Expropriation as a Fundamental Domestic Remedies**

Finally, Governments throughout the world should be encouraged to review Public and holdings and domestic legislation as it relates to questions of expropriation of land. It is widely agreed that climate change-induced displacement, among other things, will put immense pressure on cities and the slums that surround them. Indeed, without appropriate adaptation measures, the world's slums will grow at a far faster rate, and in turn create health, social, economic and other crises far worse than many would now predict. To assist in reducing these pressures, Government's everywhere should begin identifying unused land for possible future use to resettle people and their communities should this become necessary. This is a complex issue with innumerable dimensions, but few Governments are structurally unable to at least begin the

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<sup>7</sup> *General Comment No. 4* (right to adequate housing) (1991), UN Committee on Economic, Social and Cultural Rights, para. 8(e).

land identification process as a part of the planning process relating to the challenges of climate change.

## **CONCLUSIONS**

And to close, I'd like to take you back to the beginning of this presentation and recall again the 2007 Nobel Peace Prize and how it was awarded to those fighting against climate change and the global warming crisis that is already upon us. That the urgency of climate change has been recognised by the Nobel Committee is surely a great feat, but on this we cannot rest for history has all too often shown that the causes associated with the awarding of the Nobel Peace Prize do not at all necessarily improve once this prestigious award has been bestowed. We need only recall the tragic circumstances now facing Aung Sang Suu Kyi in Burma, the continued failure to find a just and viable peace in the Middle East or the recent clashes in Kenya to see that this Prize is important but never enough to make the differences the world requires.

A better life for all, my friends, will only come about through our collective efforts, from our never-ending dedication to reversing climate change, to planning properly, to applying the law as it surely must be applied, and by ultimately channelling the common sentiments of humanity felt by so many as a result of climate change into a direction that not only preserves, but improves, emboldens and enlightens the entire human family in the process. Despair will get us nowhere and leave us with nothing. Diligence, fortitude and open minds will ensure a brighter future for the Maldives, for the Pacific nations and for all of the hundreds of millions of people

throughout the world whose human rights are threatened as much by climate change as by any other abuse a human rights violator could ever hope to muster.

When someone is threatened with the loss of their homes and lands due to climate change, we need to be realistic and acknowledge that we are not speaking solely about circumstances such as those facing the Maldives. Indeed, only a small fraction of likely future displacement will occur in small island States, with the vast majority of eventual displacement set to occur along vulnerable coastlines, and in inland areas that are increasingly made inhospitable due to steadily worsening climate events such as droughts, floods and storms. None of this in any way detracts, of course, from the fact that small island nations remain - under human rights laws - responsible for securing the rights (including HLP rights) of all individual citizens and lawful residents within their territory within *the maximum of their available resources*, and that the international community, in turn, has **responsibilities to protect** when States are no longer willing or capable of protecting basic rights, including HLP rights. What is unique and particularly tragic with respect to small island nations, is the unimaginable prospect not only of displacement on a massive scale, but the possibility that entire nations may become completely incapable of sustaining populations, and in some dire instances, may eventually cease to exist all together. This is surely humanity's greatest tragedy, a preventable wrong the likes of which simply must shake all of us to the core of our very being.

To grapple successfully with climate change and the wrath which Mother Earth has no other option than employing on our ever so finite planet, we need to become better people, better citizens of the world, better humanitarians and, above all, kinder, wiser and selfless human

beings who realise that when one suffers we all suffer. This shared spirit - what some have called our World Soul - may seem a strange notion to place within a discussion of human rights. Yet, my friends, when any and all of us truly take the time to *look*, and then finally to *see*, we will all realise - notwithstanding whatever religion we may practice, whatever culture from which we stem and whatever food we eat, musical tastes we may have or financial security we may or may not possess - that not only is "no man is an island" as John Donne once said so long ago, but in fact, *we are all islands*, and thus we are all Maldivians. We are all indelibly tied together with one another, sharing a common fate, a shared destiny that only all us - together - can make a positive one if we all work together to get there.

The best-selling book *The Road* by Cormac McCarthy sketches a tragic but moving tale of a father and son, alive in a dark and cold post-apocalyptic world, traversing the remains of a road in what is ultimately a fruitless search for the warmth of the seashore. This book and many other books and films in recent years - *Oryx & Crake*, *A Scientific Romance*, *I am Legend*, *Code 46* and others - each in their own way depict future world's where all that we modern human beings hold dear have been decimated beyond recognition. As difficult as such stories may be to bear, they serve a vital social purpose for they force us to imagine future worldly scenarios that no one alive today would ever choose to live in. These tales are nothing short of painful signposts of the horrific futures that may await us if we allow it to be so. Such sagas will shake you awake, and hopefully spur all of us to action; for such narratives remind us of the *possible* that only becomes the *probable* when we collectively let it be so. They remind us that that climate change may yet bring despair, anguish, human suffering, economic calamities on unimaginable scales, but only if we allow it to be so.

Using the doom of climate change as a spur to action for a better planet, another world, where the short-sided and selfish excesses of past decades and centuries are never again repeated, where we shift the nature of politics and governance from isolated nationalistic, short-term time spans to global, sustainable, long-term modes of thinking and arrangement, and where all who are affected by climate change - particularly those who will be displaced - are afforded rights and remedies that protect them, provide them with housing, land and property options consistent with their rights and ensure them the lives and livelihoods that the essence of human rights and the laws and principles that comprise them, have bestowed upon them by virtue of their very humanity, their very essence of being human beings sharing our wounded world. In July 2007, President Gayoom very rightly pointed out that "the greatest tragedy of climate change is that we have not yet invented a politics to respond to the warnings of our scientists". The time for this new politics, this new beginning is surely, surely upon us. And it starts with human rights.

Thank you all very much.

Malé, 7 March 2008