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# Climate Change, Migration and 'Disappearing States': The Case of Pacific Island Countries

Policy Report  
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This report aims to contribute towards the attainment of the Sustainable Development Goals (SDGs), with particular focus towards:

- SDG 10 - Reduced Inequalities Partnerships for the Goals: Reduce inequality within and among countries.
- SDG 13 - Climate Action: Take urgent action to combat climate change and its impacts

## Executive Summary

This policy report focuses on climate change and international movement from Pacific island countries (PICs), which face a specific set of challenges in that respect. In the shorter term, climate change is to continue exacerbating preexisting difficulties, making life on the islands increasingly challenging. In the longer term, such countries are at risk of becoming entirely uninhabitable. As a result of rising pressures at home, human mobility in PICs is already being affected in complex and intersecting ways. Some of this movement is and will be across international borders, most of which remains unrecognised and unprotected as of today. In view of this, the present report intends to shed some light on the issues raised by this topic and suggests a series of recommendations on how to possibly address them. To this end, the first section presents the challenges faced by PICs in the context of climate change. In turn, the second section examines the nexus between climate change and international movement, analysing how the former affects human mobility and suggesting a model to visualise and frame the numerous dimensions of current and expected trends. The third section then reviews existing legal options in relation to such movement, exposing where current norms recognise and protect Pacific islanders and where gaps and shortcomings fail to do so. Finally, drawing on all the previous sections, the report concludes with a series of recommendations on how to address such challenges.

## Introduction

With its impacts unevenly distributed across the globe, climate change is acting as yet another multiplier of rising global inequalities, both among and within states. This is so for two reasons. First, it is a matter of pure geography: the effects of climate change are projected heterogeneously on different regions of the world. Second, however, it is a matter of vulnerability: some populations — precisely those who are already the most impoverished globally, and who have contributed less to greenhouse gas emissions historically — are more exposed to climate hazards and have fewer resources to address its consequences. Indeed, as the *realpolitik* of climate negotiations impedes any meaningful transformation and ideologies of growth continue to go truly unchallenged, it is the global poor who are being further deprived, dispossessed and displaced. Climate change thus raises critical issues of justice for the international community; yet these cannot be understood in isolation, but as intersecting with other dimensions of global economic, social and political injustice. Accordingly, scholars have long been debating the grounds for the moral and political responsibility to respond to climate-related damages. Discussions have overwhelmingly pointed to one conclusion: on any plausible account of morality or justice, such responsibility disproportionately falls upon the industrialised nations of the global North and, in particular, on their most wealthy populations and corporations (see for instance Caney 2010; Eckersley 2016; Gardiner 2010; Shue 1999).

Globally, one of the most affected areas by climate change are the Pacific island countries (PICs). This policy report focuses specifically on the low-lying atolls of Kiribati, the Marshall Islands, and Tuvalu, and the island of Nauru, as they all face a similar set of challenges in that respect.<sup>1</sup> In the shorter term, climate change is to continue exacerbating preexisting difficulties, making life on the islands increasingly challenging. In the longer term, such countries are at risk of becoming entirely uninhabitable. As a result of rising pressures at home, human mobility in PICs is already being affected in complex and intersecting ways. Some of this movement is and will be across international borders, most of which remains unrecognised and unprotected as of today.<sup>2</sup>

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<sup>1</sup> In the rest of this report, 'Pacific island countries' (PICs) will be used to designate these four countries in particular.

<sup>2</sup> Although Tokelau also faces similar challenges, it is not included in this study because it is a dependent territory of New Zealand and, hence, does not raise the same legal issues in relation to international movement. Nauru, in turn, is a raised limestone island

In view of this, the present report hopes to shed some light on the issues raised by this topic and suggests a series of recommendations on how to possibly address them. Certainly, significant differences among and within PICs make one-size-fits-all approaches inadequate, and it is up to affected communities themselves to shape responses in their own terms. Nevertheless, given broadly similar contexts, it is suggested that comparable analyses and policy patterns could be relevant to all. To this end, the first section presents the challenges faced by PICs in the context of climate change. In turn, the second section examines the nexus between climate change and international movement, analysing how the former affects human mobility and suggesting a model to visualise and frame the numerous dimensions of current and expected trends. The third section then reviews existing legal options in relation to such movement, exposing where current norms recognise and protect Pacific islanders and where gaps and shortcomings fail to do so. Finally, drawing on all the previous sections, the report concludes with a series of recommendations on how to address such challenges.

## 1. Climate Change and Pacific Island Countries

The PICs are particularly affected by climate change for two reasons. First, as a result of the specific **climate challenges** they face, especially when combined with their distinct conditions such as low elevations, limited freshwater resources, and porous soils. Second, due to a set of equally pressing and problematic **background challenges** which, from the outset, leave them more vulnerable to climate change. All of these variables interact in mutually reinforcing ways to **impact different dimensions** of islanders' lives and well-being.

### Climate challenges

Climate science has been posited by some as a 'post-normal science' to account for the uncertainty it presents, the high stakes it involves, and the urgent decisions it requires (Saloranta 2001; Turpenny 2012). In spite of this, there is widespread scientific agreement around some general impacts and trends, both present and future — enough to legitimise urgent calls for action at responsible actors.

For expositional clarity, one way to summarise the many and intertwined climate hazards faced by PICs is as follows (more comprehensive accounts can be found in Barnett & Adger 2003; Nurse et al 2014; Nunn 2009).

- i) *Climate variability*, such as increasingly variable and unpredictable rainfall patterns, with more intense but less frequent rain;
- ii) *Weather extremes*, including increased frequency and/or severity in tropical cyclones, droughts, or floods;
- iii) *Rising temperatures*, both air and sea surface;
- iv) *Sea level rise*, bringing shoreline erosion, permanent inundation, and groundwater salination.

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with high elevations, but is included here because its higher plateau is already uninhabitable due to destructive phosphate mining fostered by the colonial administration in the 20th century.

These climate challenges are already affecting PICs and expected to continue doing so in a relatively gradual manner. However, it should be noted that the evolution of climate change is not linear. In this sense, it has been acknowledged that reaching certain **climate thresholds** could cause abrupt, irreversible changes in climate systems, bringing catastrophic consequences with them (Oppenheimer *et al* 2014).

## Background challenges

As John Campbell (2014) writes, although some of the challenges faced by PICs which leave them more vulnerable to climate change are local in origin, many others are global, with these two contexts being increasingly difficult to disentangle. Growing interaction with external economic, political and sociocultural forces has influenced numerous aspects of the islands' lives and organisation, and continue to do so. Indeed, the many ways in which processes of colonisation and neoliberal globalisation have given rise to, and continuously shape, structural changes and pressures in PICs have been widely documented (Barnett & Campbell 2014; Campbell 2009; Connell 2010; Hau'ofa 2008a; Williams & McDuire-Ra 2018).

To illustrate, some of these challenges may be divided as follows — granted that, in reality, such clear-cut distinctions cannot be made (for more comprehensive accounts, see Barnett & Campbell 2014; Berg *et al* 2015; Campbell 2014; Campbell & Warrick 2014; UNU-EHS 2015):

- (i) *Environmental*: land and coastal degradation; overexploitation of natural 'resources'; land, coastal and freshwater pollution.
- (ii) *Socioeconomic*: growing underemployment, unemployment and poverty, particularly in urban areas; weakened food security; health-related issues.
- (iii) *Demographic*: overpopulation in the urban areas; rapid urbanisation and development of 'squatter' settlements with poor infrastructure, water, and healthcare.

## Climate-related impacts

The climate and background challenges just exposed interact in mutually reinforcing ways to impact numerous aspects of islanders' lives and well-being.<sup>3</sup> These impacts are unevenly distributed within the population along the lines of social vulnerability determined *inter alia* by age, gender or socioeconomic class, with those at the lowest end of the spectrum suffering the worst consequences (Berg *et al* 2015; Elliot & Fagan 2010). They can be summarised into **four main interconnected dimensions**, namely:

- **Livelihoods**: disruption of both subsistence and commercial livelihoods, such as agriculture, fisheries, or tourism;
- **Habitats**: declining living conditions in settlement sites due to deteriorating health, climactic conditions and physical safety;

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<sup>3</sup> It should be noted that not only human lives and well-being are affected in Pacific islands, but also that of other sentient animals. Although this raises a whole set of important issues, they are beyond the scope of this report.

- **Health:** damages to physical and mental health from changing disease vectors, inadequate or insufficient nutrition and water, and emotional or psychosocial stress;
- **Lands:** disappearance of physical sites due to erosion or permanent inundation.

In the *shorter term*, the impacts on these four dimensions are to continue making life on the islands increasingly challenging, for some more than others. However, adequate adaptation strategies adopted by local communities themselves and/or national and international policies can reduce (sometimes perhaps even avoid) associated damages.

In the *longer term*, entire countries could become uninhabitable. In this regard, it has been widely commented and publicised that some Pacific islands will end up submerged as a result of rising sea levels. Yet, as of today, fatalist narratives of ‘sinking islands’ might still be misplaced. Future sea levels depend on emissions scenarios, and the geomorphological response of island systems to certain rates of sea level rise remains unclear.<sup>4</sup> However, the habitability of PICs is at great risk for other reasons. Long before entire countries were submerged, the combined effect of deteriorated livelihood, habitat, health and land conditions could reach a threshold of socioecological collapse. Processes such as the increasing frequency and/or severity of weather extremes, coral bleaching, and the salination of groundwater could eventually make life on the islands simply unsustainable. This notwithstanding, the risk might still be avoided if appropriate decisions are taken. Island futures depend on the levels of mitigation and adaptation achieved by the international community.

## 2. Climate Change and International Migration

### I - Trends

As a result of the challenges described in the previous section, human mobility in PICs is being affected in two directions:

- a) On the one hand, movement is *increasing* for some: rising difficulties are further incentivising some sectors of the population to leave their homes.
- b) On the other hand, movement is *decreasing* for others: by further reducing the resources necessary to move, such difficulties are increasingly leaving other sectors of the population ‘trapped’ at home.

This report focuses on scenario a) and, in particular, on *international migration*. This is not because the problems of trapped populations and internal migration pose less of a challenge; nor because they are unconnected to issues of international movement. It is merely because as a matter of international law they raise a distinct set of issues.

International migration trends from PICs are growing and projected to continue doing so, along existing patterns (Bedford & Bedford 2010; Campbell & Warrick 2014; UNU-EHS 2015; Warner *et al* 2013). Understanding this migration is essential in order to better respond to it and avoid advocating for mechanisms which are not attuned to the reality of such movement — all the more

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<sup>4</sup> For instance, on some accounts, certain rates of sea level rise could cause ocean shore erosion but redeposition of sediment further lagoonward, causing modification or even overall accretion of landmass — although thresholds of resilience could be surpassed at a certain (unknown) point. On this generally see Nurse *et al* 2014; Ford, Kench & Owen 2018; Nunn 2009; Webb & Kench 2010.

so considering the legal gaps and shortcomings in relation to it. This subsection suggests that such international movement is, and will be: (i) multicausal, (ii) domino-like, (iii) unequal, and (iv) varied.

### **(i) Multicausal**

Section 1 showed that the difficulties faced by PICs result from the combination of climate and other background challenges. Accordingly, islanders' decisions to move are shaped by a number of factors from which climate change cannot be isolated (Bello *et al* 2015; Hugo 2010; Kelman *et al* 2015a). Cultural aspects also play a crucial role in influencing (non-)mobility. The extent to which migration is already an adaptation strategy, different interpretations of movement, as well as identity, beliefs and aspirations profoundly shape different communities' decisions to stay or leave in the face of similar conditions, and the way in which such movement is perceived (Farbotko, Lazrus & Stratford 2015; Kelman *et al* 2015a; Lee & Tupai Francis 2009; Lilomaiava-Doktor 2009). Thus, climate change is embedded in complex causalities of sociocultural, economic and environmental change, acting as a multiplier, rather than single determinant, of movement.

This being said, if the PICs became partly or totally uninhabitable due solely (or overwhelmingly) to unavoidable climate impacts, the resulting movement would then constitute a 'pure' instance of climate displacement. Here, climate change would act as a necessary, but also sufficient, condition for movement. For instance this could occur if on certain sites, and beyond any level of possible adaptation, weather extremes were to become so frequent and/or intense so as to make life untenable, complete groundwater and soil salination made life unsustainable, or rising seas caused permanent erosion or flooding.<sup>5</sup>

### **(ii) Domino-like**

Globally, and so too in PICs, most climate-related movement is expected to be internal and, in many cases, it is this initial step which then sets the stage for international movement (Campbell & Warrick 2014; UNU-EHS 2015). In PICs people are increasingly moving from rural to urban areas and from outer to central atolls for a variety of reasons (Barnett & Campbell 2014; Berg *et al* 2015; Campbell 2014; Campbell & Warrick 2014; UNU-EHS 2015). However, this is not a sustainable strategy, as local ecosocial systems are already overwhelmed in the urban or central areas, with growing populations placing ever more pressure on already limited resources and existing problems (see section 1). Thus, in many cases this generates a domino-like effect whereby urban residents are further incentivised to leave the islands (Campbell & Warrick 2014; McAdam 2012, ch.1; UNU-EHS 2015). Initially, this movement often takes the legal form of 'labour' or 'study' migration, involving the most privileged members of those communities who are able to make use of restrictive, and oftentimes elitist, legal channels — a reality which might then misleadingly be perceived as so-called 'economic' migration.

### **(iii) Unequal**

International movement from PICs is unevenly distributed on three dimensions. *First*, in relation to who leaves. Because moving requires resources, it is precisely those sectors of the population with fewer assets, who are the most impacted by climate-related challenges, that have the potential to stay trapped at home, where opportunities for them are scarce and they may suffer deprivation — at

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<sup>5</sup> Although in relation to this last point it should be mentioned that human modification of some islands (i.e., through land reclamation or coastal disruption) could also play an important role in shaping the response to erosion. On some accounts, islands that have been subject to substantial human modification are said to be inherently more vulnerable to erosion than those that have not: see Ford, Kench & Owen 2018; Nurse *et al* 2014.

least, until they have no other option but to leave, even knowing that the consequences of doing so could also be appalling (McLeman, Schade & Faist 2016; UNU-EHS 2015; Warner *et al* 2013). Moreover, in some societies kinship hierarchies or gender roles in the household may also determine who moves and who stays (Campbell & Warrick 2014; Hugo 2010).

*Second*, in relation to agency. Migration scholars have widely reported that movement should be understood on a continuum from voluntary to forced, with the extremes rarely ever taking place in practice. Nonetheless, those who have some (but limited) resources and few opportunities at home have a more limited migratory agency and are more prone to forced migration (Kelman *et al* 2015; McLeman, Schade & Faist 2016; Warner *et al* 2013). Conversely, as resources increase, so do opportunities and the freedom to choose between alternatives, with movements tending to a more induced-like nature (*ibid.*).

*Third*, in relation to the outcomes. For those with scarce assets, opportunities at the destination will usually also be fewer and could leave them even less well-off, whereas those with more resources have more benefits to draw from moving (*ibid.*). Although all migrant groups are vulnerable to discrimination and marginalisation, the former might be so to an ever greater extent, and more likely to end up living in contexts of poverty.

#### (iv) **Varied**

Although the imagery of rapid and massive flight is sometimes evoked by discourses on climate refugees, it is expected that the majority of international movement from PICs will come in a gradual form, in accordance with existing trends (Bedford & Bedford 2010; Campbell & Warrick 2014; UNU-EHS 2015; Warner *et al* 2013). However, if the climate thresholds mentioned in section 1 were to be reached, causing abrupt, irreversible changes in climate (and hence socioecological) systems, associated mobility trends would be affected in similar ways. Gradual patterns could thus potentially be coupled with peaks of accelerated or sudden movements.

Furthermore, when they do move, not all islanders employ one type of discrete, linear and permanent movement — a representation which occasionally underlies Western conceptions of migration. Whereas some do move permanently, others do so temporarily or indefinitely, and yet others engage in circular types of movement. In this sense it has been argued that migration should not be understood as a single event, but as a dynamic and fluid process in which the motivations and intentions to stay or leave, as well as the temporalities of movement, constantly evolve (Lee & Tupai 2009; Quan Bautista 2010; Robertson 2014).

## **II - A Model**

Building on the multiple dimensions just exposed, this subsection suggests a model to visualise and frame international movement from PICs over time. It is suggested that one way of doing so is to view it as consisting of broadly three stages transitioning into each along a continuum, with each involving predominantly (if not only) one type of movement. The model is introduced in order to facilitate understanding of this movement but, in so doing, necessarily remains approximate. It cannot fully accommodate the complexity and variety of movements at every given stage, nor the uncertainty of future patterns and the dynamic character of mobility decisions. Moreover, it reflects what is expected considering certain climate estimations and existing adaptation trends (see section 1), which can be altered. Building on the multiple dimensions just exposed, this subsection proposes a model to frame international movement from PICs over time.

In **initial stages** in which livelihood, habitat and health opportunities are decreasing at home, the majority of international movement is to involve more induced-like patterns. Initially, those who leave are expected to be those who are able to make use of restricted migration schemes, who have greater resources to embark on international movement, and greater agency to choose. This stage may involve different types of mobility, including permanent, temporary and circular forms. Rather than a failure, this type of movement may be interpreted as one strategy among others contributing to the well-being of island communities. Indeed this reflects local approaches, as the mobile histories and narratives of the Pacific show that mobility has long been — and is still — viewed as a *positive adaptation strategy* for many communities (Farbotko, Lazrus & Stratford 2015; Hau'ofa 2008b; Kelman *et al* 2015a; Lee & Tupai Francis 2009).

In **later stages**, more of those who move might do so in a more forced-like manner as a result of ever more degraded livelihood, habitat and health conditions, and perhaps also uninhabitable lands. With pressures growing and the option of remaining at home turning less sustainable, more sectors of the population might be pushed to consider migration in search of better opportunities — including, increasingly, those for whom it is more costly and may bring fewer benefits to do so, but for whom *in situ* alternatives are scarce. Accordingly, this movement would shift from representing a positive adaptation strategy to functioning as a mere *coping mechanism*, involving a loss for those who leave. In addition, these stages could progressively involve more permanent forms of migration, at a time when some of the earlier migrants might also cease to consider the option of return.

Finally, in more **advanced stages**, livelihood, habitat, health or land conditions could be disrupted in such severe ways that PICs support life only for a very small proportion of the population, or eventually no one at all. A crucial challenge here would be to identify the *socioecological thresholds* at which a country could be considered uninhabitable for a community. This is not a straightforward issue, as these would not only be influenced by objective dimensions, but also cultural and behavioural ones. Two points are worth mentioning here:

- First, in relation to the definition of such thresholds, it is the cultural context of each community that would establish the different points at which life can no longer be considered viable or dignifying on certain lands for each of them. Certainly this is a value-laden issue which connects to cultural interpretations and understandings of a good life, identity, community or land.
- Second, the risk of islands becoming uninhabitable in the future might alter present behaviour in ways that increase such risk. Different studies have shown that discourses constructing some areas as uninhabitable in the future can work to divert outside funds (on which PICs are highly reliant) resulting in a lack of development (Marino & Lazrus 2015); to incite unsustainable resource use undermining possible adaptation (Barnett 2017; Barnett & Adger 2003); or to increase and reify anticipated migration (Barnett & McMichael 2018). Thus, discourses of risk can operate to silence alternative futures for the islands, channeling different actors' behaviour in one direction and becoming effectively materialised in realities which themselves produce abandonment. The possibility of PICs becoming uninhabitable should be acted upon, especially in view of the traumatic effects that community relocations have had in the past, and all the more so given the meaning of land for Pacific populations (Campbell 2010; Ferris & McAdam 2015; Tabucanon 2012). However, the issue should be approached with caution, as unproblematised or fatalist narratives of 'sinking islands' or 'disappearing states' could be destructive or self-fulfilling.



### 3. Legal Gaps and Shortcomings

Having explored how climate change affects international movement in PICs, one of the questions that emerges is which options are and will be available for populations along this process. In particular, this report is concerned with the legal recognition and protection of Pacific islanders, but surely many other dimensions are relevant with regards to their movement.

Although PICs have some of the highest potentials for international movement, they also have the fewest options available to them, with migration demand being greater than opportunities (Campbell & Warrick 2014; UNU-EHS 2015). On the basis of the model suggested in the previous section, it is easier to visualise where existing norms could support the international movement of islanders or where legal gaps and shortcomings could fail to do so. Hence, this section will review such options following the model's structure, underlining their limitations in terms of recognition and protection.<sup>6</sup>

#### 1 - Initial Stages

Initial stages involving movement as a response to growing difficulties at home would be framed, legally, in terms of so-called '**regular**' migration, leaving it up to state discretion whether or not migratory channels are developed. For Pacific islanders, this option currently involves two main pathways:

- (a) First, access to established **labour, study or family migration schemes**;
- (b) Second, **agreements of free association** enabling lawful migration.

However, as of today these options only serve to recognise a limited number of movements. Some schemes (*a*) are accessible only for very small (typically privileged) sectors of a country's population. They usually provide only a limited number of visas, while other barriers effectively constrain access for many people. These include financial limitations such as high application fees, language requirements, or technical difficulties including complex application processes (Ash & Campbell 2015). Furthermore, pathway *b* which enables the movement of all sectors of the population is not currently available for all PICs: only the Marshall Islands can count on it through their Compact of Free Association (CFA) with the United States.

In terms of protection, both pathways are also limited. Many labour or study-based schemes (*a*) are strictly temporary. In addition to the obvious temporal limitations, an additional challenge is that temporary labour schemes — which typically involve 'low-skilled' migration — have been reported to leave workers particularly vulnerable to exploitation and marginalisation (Bedford et al 2017; Brickenstein 2015; Straehle 2012; Wickramasekara 2011). In turn, the CFA (*b*) contains no guarantee of obtaining permanent residence, something which, in practice, could leave the Marshallese in similar conditions of vulnerability (US Department of Homeland Security 2011).

#### 2 - Later Stages

As difficulties increase at home and more international movements turn to a forced-like nature, the majority of islanders would have few legal options available to them. Indeed, the global regime contains a huge protection gap and, as of today, only a very small category of forced migrants is recognised by international law. Potential options include the following:

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<sup>6</sup> Given length constraints, and in view of the type of movement that is expected from PICs (see section 2), this report does not analyse legal options for International temporary relocation or protection connected to sudden-onset disasters.

(a) First, islanders could migrate using ‘**regular**’ schemes, but only insofar as visas they can (effectively) access are still available. Furthermore, the aforementioned protection limitations would be particularly acute here if movement were increasingly of a more permanent nature or earlier migrants wished to remain (see 1).

(b) Second, the categories of **international protection**, which consist of two schemes:

(i) **Asylum** offered to individuals qualifying as refugees. Given the current definition in international law established by the Geneva Convention, which is based on a condition of persecution, it is virtually impossible that this category could be available to Pacific islanders at any point of the process, including advanced stages (Convention Relating to the Status of Refugees 1951). For this to be the case, very creative legal interpretation would have to argue that they have been persecuted by the international community, as different actors have continued to emit greenhouse gases in full awareness of the consequences on these communities (Lopez 2007; Höing & Razzaque 2012). This will ultimately depend on how the relevant institutions interpret such a reality but, so far, attempts at obtaining refugee status by Pacific islanders have failed (McAdam 2012, ch.2).

Although some regional systems have expanded the Geneva definition, they would also most probably be inapplicable here. The OAU Convention in Africa (1969) and the Cartagena Declaration in Latin America (1984) include, respectively, “external aggression, occupation, foreign domination or events seriously *disturbing public order*” and “generalised violence, foreign aggression, internal conflicts, *massive violation of human rights* or other circumstances which have seriously *disturbed public order*” [emphases added]. Regarding disturbances in public order, current interpretation connects this requirement to disaster-like scenarios, in particular those related to violent outbreaks or riots, which do not resonate with the reality of movement in this case (Mandal 2005; McAdam 2011). In contrast, massive violations of human rights as established in the Cartagena Declaration could potentially provide a hook for Pacific islanders. However, its utility would be limited: first, it would apply only in very critical conditions, given that thresholds of harm have been set extremely high; and second, it is a logistically implausible option (*ibid.*).

(ii) **Complementary protection (CP)** applies to persons not qualifying as refugees, but whom the international system nonetheless considers to deserve some sort of protection.<sup>7</sup> In international law, CP takes the form of human rights-based *non-refoulement*. In theory, such obligation should extend to all human rights. So far, however, it has only been clearly recognised for the right to life and the right not to be tortured or subjected to cruel, inhuman or degrading treatment, with violations of other human rights currently involving a “balancing test” between the interests of the individual and the state (Mandal 2005; McAdam 2011; UNHCR 2007). Here again, in view of the extremely high standards of harm established by current definitions and interpretations, timing would be crucial in determining whether or not CP is available to islanders. It is only in very critically adverse conditions that such rights would be considered to be sufficiently compromised.

Here too a number of regional systems have expanded eligibility criteria for CP. Some regulations now include situations such as armed conflict in the country of origin, other human rights concerns, ‘compassionate’ or ‘humanitarian’ reasons, or even practical obstacles to removal. Yet, here too remarkably stringent requirements have developed in practice, leaving most of such schemes available to islanders only in very detrimental situations (Mandal 2005; McAdam 2011).

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<sup>7</sup> As such, complementary protection is not a legal term of art, since it is not defined in any international instrument. It is used to describe the variety of mechanisms put in place by international, regional or national law to grant protection to individuals falling outside the scope of the Geneva Convention. Thus, its nomenclature may vary from one legal system to another.

Furthermore, if or when available, CP would provide islanders only limited protection. Although some regional or national systems equate CP to the protection (in theory) offered to refugees through the institution of asylum, most limit it to *non-refoulement*, along with the respect of basic human rights which, according to international law, is owed to all non-nationals within a state's jurisdiction (*ibid.*). Yet none of this guarantees anything in terms of citizenship or permanent residence, for instance, something which could leave islanders in vulnerable positions, especially if movement were increasingly of a more permanent nature or earlier migrants wished to remain.

### 3 - Advanced Stages

A scenario in which islands are (quasi) uninhabitable would raise hitherto novel problems that the global regime is currently ill-equipped to address, and pose serious legal and ethical challenges to the international community. Three options could potentially be available to Pacific islanders here:

- (a) First, **'regular' migration** pathways, but only insofar as visas they can (effectively) access are still available, which would most likely not be the case at this point (see 1).
- (b) Second, **complementary protection** (see 2.b.ii.). Presumably, the exceptional nature of this scenario would meet the stringent thresholds of harm needed to qualify. All things considered, it is reasonable to assume that at least some states would recognise the plight of islanders as worthy of CP, at a bare minimum.
- (c) Third, **statelessness**, which is the legal status granted to persons who are not considered nationals by any state under the operation of its law (Convention Relating to the Status of Stateless Persons 1954). As such, being stateless does not protect against *refoulement* nor against penalties for illegal entry (UNHCR 2014). Hence, it would technically not serve as a pathway for legal *entry* into another state.

Even if islanders were to find themselves inside the territory of another state, either because they migrated lawfully before or because they are able to enter via another pathway, the category of statelessness would most likely be inapplicable to them. Islanders would cease to be considered nationals by the operation of their state's laws if and when such states became extinct. Yet as of today it is unclear at what point in time and for which reason this would be the case. This situation is unprecedented in the history of the modern state, and international norms on state extinction have been devised for contexts of succession, not physical uninhabitability (Park 2011). According to contemporary legal doctrine, as based on the Montevideo Convention, the requirements for statehood are a permanent population, a defined territory, a government and the capacity to enter into relations with other states. However, given the strong presumption of state continuity in international law, legal scholars have argued that the loss of one of these elements, or partial loss of them all, would not directly translate into the disappearance of a state as a matter of law (Kälin 2010; McAdam 2012, ch.5; Park 2011; Rayfuse 2009).

Thus, unless other arrangements are made, PICs could continue to be recognised even if the majority of their population had migrated out, territories were significantly degraded or uninhabitable, and governments weak due to limited capacity. As a result, islanders would become *de facto*, but not *de jure*, stateless — a situation that states are encouraged, but have no obligation, to respond to in international law (UNHCR 2014).

In any case, at this stage in particular any of the previous options (*a*, *b*, *c*) would provide insufficient protection, were any of them finally to apply. There are two reasons for this:

- First, the protection limitations of 'regular' pathways (*a*) and CP (*b*) previously exposed in points 1 and 2 would be particularly acute here, in a situation in which there is simply no place

to return to. Islanders could be left in a perpetual legal limbo. Likewise, the status of statelessness (*c*) guarantees its holders a set of rights within host states which are similar but inferior to those of refugees, admittedly equally inadequate for the case at hand.

- Second, there is a specific additional concern in this case. These types of *individualised* migration or protection mechanisms would fail to address other crucial issues here at stake, which have been expressed as very real concerns by many islanders themselves; namely, the loss of a collective cultural and political identity which would come with the uninhabitability of PICs (Bello *et al* 2015; Campbell & Warrick 2014; Farbotko 2010; Farbotko, Lazrus & Stratford 2015; Mortreux & Barnett 2009). Indeed, numerous ethicists and political philosophers have already made the case that, as a matter of justice, islanders *as a community* would have a legitimate claim to recreate their own state somewhere else, should they wish to do so (Angell 2017; Dietrich & Wündisch 2015; Kolers 2012; Nine 2010; Ödalen 2014). Other possible community-based schemes could involve *en masse* relocation to a host state with protected group rights (see McAdam 2012, ch.5); partial autonomy within another state, in the form of a confederation (see Soons 1990; Caron 1990) or of self-governance in free association (see McAdam 2012, ch.5); or a deterritorialised state (see Burkett 2011; Ödalen 2014; Rayfuse 2009).

## Conclusions and Recommendations

In light of the issues analysed throughout the report, this final section concludes by suggesting a series of recommendations. In the context of climate change, three sets of obligations arise for the international community. The first is **mitigation**, which includes actions undertaken to limit the magnitude of climate change. The second is **adaptation**, and is used here in a broad sense to refer to all those strategies adopted to respond to climate-related challenges in order to minimise or if possible avoid associated damages. Insofar as some damages are unavoidable, however, a third set of obligations involves **compensation** for such harms. In line with this report's focus, the following recommendations will centre around adaptation measures.

A) **Mitigation** is a responsibility shared collectively by the international community, albeit to different degrees. To be sure, insofar as various climate impacts are already unavoidable, responding to associated damages is crucial, but this should not shift attention away from the basic obligation to avoid additional impacts. The ultimate goal is not to adapt to climate damages, but to change the very nature of the global environmental order so as to avoid such damages. In this sense, achieving meaningful mitigation could require looking beyond the current market-based mechanisms of green capitalism, such as cap-and-trade systems, and aiming at more radical changes. Underlying ideologies of economic growth, accumulation, and consumerism should be seriously problematised and reoriented, along with deeper transformations in global socioeconomic and environmental structures.

B) **Adaptation** obligations, as it was pointed out in the introduction, disproportionately fall upon the industrialised nations of the global North and, in particular, on their most wealthy populations and corporations.

- In relation to **international mobility**, the following points are relevant:
  - **In situ adaptation** is essential in order to guarantee the right to stay. Policies should be implemented to ensure that local communities continue to live lives they value in safety and dignity at home, thus diminishing forced displacement.

- Insofar as they take place, all types of movement should be **recognised** and **protected**. It has been acknowledged that not doing so does not stop people from migrating, but simply leaves them more vulnerable to human smuggling and trafficking, exploitation, deprivation and marginalisation, which all involve gross violations of internationally recognised human rights. In view of the **gaps and shortcomings** exposed in section 3, policies should be developed to:
    - **Expand pathways for the recognition** of movement. This could involve more labour, study or family visas as well as broadening eligibility criteria for international protection. However, the aim should be to establish **open borders** for all PICs, in line with the CFA.
    - **Eliminate effective barriers** to migration by loosening application requirements and addressing financial constraints. In this sense, adaptation funds should be made available to cover migration-related expenses and should be additional to, rather than rebranded, preexisting aid.
    - **Strengthen the legal protection** of migrants, recognising that adaptation obligations do not end with formal entry. This requires effectively safeguarding human rights in accordance with international law, as well as expanding the list of rights granted to islanders.
    - Promote **awareness-raising and education** programs for receiving communities, as well as **intercultural dialogue**, in order to avoid racism and xenophobia and associated discrimination and marginalisation of islanders.
  - As exposed throughout this report, the issue of PICs becoming uninhabitable and the associated **community relocation** is a contentious one for many reasons. Accordingly, policies and discourses around it should be cautious. Three points are relevant here:
    - The primary obligation of the international community is to guarantee islanders' **right to retain their home**. This requires accomplishing radical mitigation goals as well as successful adaptation strategies in order to avoid reaching socioecological limits to habitation.
    - At the same time, this situation creates an opportunity for affected communities to **plan in advance** for a potential relocation. This is of utmost importance given the traumatic effects that it could have, especially if not planned for adequately by communities themselves. Possible schemes include those presented in section 3.3.
    - The eventuality of this future scenario could be taken into account to **shape 'initial' and 'later' stages of international movement** (see section 2.II). All members of one community could be given the option of moving to the same location during those stages, should they wish to do so. This would ensure that, by the time PICs became uninhabitable, islanders were not dispersed among various countries according to migration quotas, making it all the more difficult to effectively maintain their cultural and political ties.
- C) Insofar as some types of movement and community relocation involve a loss for those displaced, actors responsible for adaptation would incur in further **compensation** obligations.

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