

CLIMATE CHANGE DISPLACEMENT IN FIJI: LEGAL LANDSCAPES IN THE FACE OF RISING TIDES

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INTRODUCTION

Anthropogenic climate change is resulting in unprecedented environmental challenges including: global warming; more frequent and catastrophic natural disasters; extreme weather patterns; and rising sea levels.¹ The effects of climate change disproportionately affects communities in low lying island states, many of whom reside in coastal areas and rely on natural resources for their livelihood.² Indeed, communities in the Republic of Fiji ('Fiji') are already experiencing the effects of climate change.³

Responses to climate change involve mitigation and adaptation.⁴ Mitigation refers to actions aiming to limit the magnitude and rate in which the climate is changing, such as the reduction of greenhouse gas ('GHG') emissions.⁵ Adaptation measures, the focus of this study, refer to ways in which people are adjusting to the impacts of climate change.⁶ Exemplary adaptation practices include supportive and empowering community engagement.⁷ Strategies may include plans to adapt *in situ*, or where necessary, relocate to another area.⁸ While temporary relocation has been practiced historically by some island communities in response to changing weather patterns, climate change induced displacement (hereafter referred to as climate displacement), will have a turbulent effect on human movement in the future.⁹ Although projections for the number of people likely to be displaced by climate change vary (with estimates ranging from 200 million, to 1 billion, people globally by 2050),¹⁰ there is

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¹ Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels* (Report, 2018) 177 ('*Global Warming of 1.5°C Special Report*').

² John Campbell and Olivia Warrick, *Climate Change and Migration Issues in the Pacific* (Report, United Nations Economic and Social Commission for Asia and the Pacific, August 2014) 2.

³ Cosmin Corenea, *Migration and Human Rights in the Wake of Climate Change: A Policy Perspective over the Pacific* (Policy Report No 2, United Nations University Institute for Environment and Human Security, September 2017) 30; Kirsten Davies, 'Changing Tides - A South Pacific Study' (2016) 2016(2) *Journal of South Pacific Law* 104, 113.

⁴ Intergovernmental Panel on Climate Change, *Climate Change: The IPCC 1990 and 1992 Assessments* (Report, 1992) 33.

⁵ Intergovernmental Panel on Climate Change, above n 1, 197.

⁶ *Ibid* 183.

⁷ Kirsten Davies, 'The Namele Mechanism: A Methodological Tool to Assist Climate Adaptation' (2019) 10 *Jindal Global Law Review* 91, 92.

⁸ Tammy Tabe, 'Climate Change Migration and Displacement: Learning from Past Relocations in the Pacific' (2019) 8 *Social Sciences* 218, 220.

⁹ Jon Barnett and John Campbell, *Climate Change and Small Island States: Power, Knowledge and the South Pacific* (Taylor & Francis, 2010) 17.

¹⁰ Ilona Millar and Kylie Wilson, 'Towards a Climate Change Displacement Facility' in Benoît Mayer and François Crépeau (eds), *Research Handbook on Climate Change, Migration and the Law* (Edward Elgar

scientific consensus that the problem is severe and will have significant implications, especially for Pacific island populations.¹¹

Key terms in this paper include ‘climate displacement’ and ‘climate change displaced persons’ (‘CCDPs’). Climate displacement refers to forced temporary or permanent relocation in response to the effects of anthropogenic climate change, irrespective of whether the relocation is unplanned, planned or pre-emptive.¹² Climate displacement may occur across international boundaries, or within.¹³ Transboundary CCDPs currently fall in a protection gap in international law,¹⁴ however, research indicates most climate displacement will be internal, rather than cross-border.¹⁵ Consequently, domestic law has a greater role in providing protection and assistance to people at risk of climate displacement.¹⁶

Given the scale of projected climate displacement, it is imperative that legal and policy apparatuses are in place to respond to future developments.¹⁷ This paper focuses on the domestic law response to internal climate displacement in Fiji. In doing so, it addresses the question of how future legal and policy frameworks could evolve to protect CCDPs. Responding to this question, existing legislation and policy approaches will be examined, and the possible role traditional customary law could play in climate displacement law will be considered.

This research evaluates existing and emerging domestic efforts on internal climate displacement in Fiji and investigates future legal pathways. Fiji was chosen as the focus nation for this study because it is highly vulnerable to climate change and appears to be showing leadership in this area.¹⁸ This research is centred on the domestic law of Fiji, but framed in the context of international law, to position this study within the wider legal regime on climate change. Focused on internal displacement, this research does not examine issues relating to transboundary displacement, consequently excluding analysis on Refugee Law and the laws of statelessness. Although gender, religion, and economic empowerment are acknowledged as important factors when considering climate displacement in the South Pacific,¹⁹ an in-depth investigation of these factors is beyond the scope of this study.

This research is significant because:

Publishing Limited, 2017) 420, 421; Sarah Opitz Stapleton et al, *Climate Change, Migration, and Displacement: The Need for a Risk-Informed and Coherent Approach* (Report, November 2017) 10.

¹¹ Campbell and Warrick, above n 2, 6.

¹² Jane McAdam, ‘Refusing “Refuge” in the Pacific: (De)Constructing Climate-Induced Displacement in International Law’ in Etienne Piguet, Antoine Pe’coud and Paul de Guchteneire (eds), *Migration and Climate Change* (Cambridge University Press, 2011) 102, 102 (‘Refusing Refuge in the Pacific’).

¹³ Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press, 2012) 5.

¹⁴ Shweta Jayawardhan, ‘Vulnerability and Climate Change Induced Human Displacement’ (2017) 17 *Consilience: The Journal of Sustainable Development* 103, 104.

¹⁵ McAdam, *Climate Change, Forced Migration, and International Law*, above n 13, 5.

¹⁶ Phil Orchard, *Protecting Internally Displaced Persons: The Role of National Legislation and Policies* (Report, October 2018) 7; Mostafa Mahmud Naser, ‘Protecting Climate Change Induced Displacement in Bangladesh: Legal and Policy Responses’ (Doctorate Thesis, Macquarie University, 2012).

¹⁷ Chaloka Beyani, *Climate Change and Internal Displacement* (Report, Brookings Institute, October 2014) 11.

¹⁸ Dalila Gharbaoui and Julia Blocher, ‘Limits to Adapting to Climate Change through Relocations in Papua-New Guinea and Fiji’ in Walter Leal Filho and Johanna Nalau (eds), *Limits to Climate Change Adaptation* (Springer International Publishing, 2018) 359, 375.

¹⁹ Amanda Rae Bertana, ‘Environmentally Induced Migration in Fiji’ (Doctoral Dissertation, The University of Utah, 2018) 26-28.

- The science is clear; the impacts of climate change will increasingly render localities uninhabitable.²⁰ Scholarship, regarding the legal protection of vulnerable communities in Fiji in the event of climate displacement, is much needed. By highlighting opportunities to improve climate displacement law, better social outcomes for communities in Fiji may be achievable. This research may be useful for academics, lawyers, and policymakers to guide the development of future legal frameworks in Fiji, which may offer lessons learnt for neighbouring States.
- There is a gap in the literature, with very little research analysing domestic law efforts to address internal climate displacement in Fiji. This paper contributes to addressing this gap and is an **original** contribution to the scholarship.
- It will examine both existing and innovative approaches. This includes investigating the role of traditional customary law in climate displacement, which, significantly, may enable domestic legislators and policymakers to develop a broader range of culturally appropriate and viable legal solutions. For example, while traditional customary law is successfully integrated into environmental management law,²¹ inquiry into its potential role in climate displacement law is **novel**.

CLIMATE DISPLACEMENT

We are living in a new geological epoch, termed the ‘Anthropocene’, where humans are the dominant influence on the Earth’s systems.²² This section outlines the landscape of climate displacement in the Anthropocene. It also analyses how international law and academics are responding to climate displacement.

Climate Science and Displacement

Recent climate changes, unprecedented over decades to millennia, are having widespread impacts on human and natural systems.²³ The atmosphere and oceans are warming, sea levels rising, and extreme weather and climate events increasing.²⁴ The Intergovernmental Panel on Climate Change (‘IPCC’) has warned that if these trends continue, long-lasting changes in all components of Earth’s climate system will occur, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems.²⁵ The impact of climate change on human movement, recognised in the IPCC’s first assessment report of 1990, was suggested as possibly

²⁰ McAdam, *Climate Change, Forced Migration, and International Law*, above n 13, 19.

²¹ Erika J Techera, ‘Samoa: Law, Custom and Conservation’ (2006) 10 *New Zealand Journal of Environmental Law* 361, 375.

²² Nicholas Robinson, ‘Beyond Sustainability: Environmental Management for the Anthropocene Epoch’ (2013) 12(3) *Journal of Public Affairs* 181, 181.

²³ Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C Special Report*, above n 1, 53; Intergovernmental Panel on Climate Change, *Climate Change 2021: Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Report, 2021) 6 (‘*Climate Change 2021 Synthesis Report*’);

²⁴ Intergovernmental Panel on Climate Change, *Climate Change 2021 Synthesis Report*, above n 23, 4-5.

²⁵ *Ibid* 20-23.

‘the gravest effects of climate change’.²⁶ While climate change is early in its anticipated trajectory, this effect is already evident. Displacements due to sudden-onset disasters increased by an average of 24 million per year between 2008 and 2018, three times the figure for displacements from conflict and violence.²⁷ This number is a significant underestimation as it excludes those forcibly displaced by slow-onset processes linked to climate change.²⁸ Attributing climate change as the root cause for displacement is complex and problematic as climate displacement often occurs in conjunction with conflict, economic pressures or other dynamics.²⁹ Further, estimated displacement figures are often speculative, for example, they may apply global environmental data to communities without local empirical studies.³⁰ Nonetheless, scientific evidence clearly indicates that climate change *will* intensify environmental degradation and disasters, which will correlate with increased displacement.³¹

International Law and Climate Displacement

International law related to climate displacement is notable for its paucity.³² While no treaty specifically addresses CCDPs, existing international law instruments are relevant to climate displacement.³³ The United Nations (‘UN’) *Universal Declaration of Human Rights*³⁴ (‘UDHR’) includes the universal rights to life, adequate food, housing and health. While not legally binding, the UDHR carries legal weight as an authoritative interpretation of the *Charter of the United Nations* and is a fundamental component of the world’s human rights legal system.³⁵ Climate displacement may impinge these human rights to life, adequate food, housing and health.³⁶ Additionally, relocation may curtail the realisation of displaced communities’ rights to culture, self-determination and cultural identity enshrined in the *International Covenant on Civil and Political Rights* (‘ICCPR’)³⁷ and the *International*

²⁶ Intergovernmental Panel on Climate Change, *Climate Change: The IPCC 1990 and 1992 Assessments*, above n 4, 103.

²⁷ Internal Displacement Monitoring Centre, *Disaster Displacement: A Global Review 2008-2018* (Thematic Report, May 2019) 6.

²⁸ *Ibid* 11.

²⁹ McAdam, *Climate Change, Forced Migration, and International Law*, above n 13, 15.

³⁰ Rory A Walshe and Charlotte Eloise Stancioff, ‘Small Island Perspectives on Climate Change’ (2018) 13 *Island Studies Journal* 13, 14.

³¹ Beyani, above n 17, 5.

³² Maxine Burkett, ‘International Climate Change Law Perspectives’ in Benoît Mayer and François Crépeau (eds), *Research Handbook on Climate Change, Migration and the Law* (Edward Elgar Publishing Limited, 2017) 190, 190.

³³ United Nations High Commissioner for Refugees, *Mapping of Existing International and Regional Guidance and Tools on Averting, Minimizing, Addressing and Facilitating Durable Solutions to Displacement Related to the Adverse Impacts of Climate Change* (Activity 11.4 Document, Task Force on Displacement, August 2018) 6 (‘*Mapping of International Tools on Climate Change Displacement*’).

³⁴ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) arts 3, 25 (‘UDHR’).

³⁵ Hainian Liu, ‘From the UN Charter and the Universal Declaration of Human Rights to Building a Community with a Shared Future for Human Beings - The Past, Present, and Future of International Human Rights Protection’ (2018) 17(5) *Journal of Human Rights* 465, 466.

³⁶ Mostafa Mahmud Naser and Tanzim Afroz, ‘Human Rights Implications of Climate Change’ (2009) 21(3) *Bond Law Review* 139, 140.

³⁷ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1955, 999 UNTS 171 (entered into force 23 March 1976) art 1 (‘ICCPR’).

Covenant on Economic, Social and Cultural Rights ('ICESCR').³⁸ The UN *Guiding Principles on Internal Displacement*³⁹ outlines the rights and guarantees protecting internally displaced persons ('IDPs') and describes how government actions should incorporate the Principles to prevent and manage internal displacement.⁴⁰ While the Principles are not legally binding, the international community recognises them as authoritative interpretations of the human rights guarantees contained in treaties and customary law.⁴¹ Ferris argues that the Principles should be the primary normative framework for upholding the rights of CCDPs.⁴²

The international legal regime on climate change consisting of the *United Nations Framework Convention on Climate Change*⁴³ ('UNFCCC'), *Kyoto Protocol*⁴⁴ and *Paris Agreement*⁴⁵ does not refer to displacement. Nonetheless, principles it includes such as *Common but Differentiated Responsibilities and Respective Capabilities* (CBDR-RC) offer important concepts relevant to climate displacement. It is worthwhile noting that protection under the *Refugee Convention*⁴⁶ is restricted to transboundary displaced persons facing a well-founded fear of persecution for one of five grounds.⁴⁷ Courts have determined that fleeing from situations impacted by climate change currently falls outside this definition.⁴⁸ However, the UN Human Rights Committee recently held that climate change effects in the future may trigger the *non-refoulement* obligations of sending states contained in the *ICCPR*.⁴⁹

Supplementary to international law, international and regional policy tools address aspects of climate displacement. International documents include the *Global Compact for Safe, Orderly and Regular Migration*,⁵⁰ the *Sendai Framework*,⁵¹ *The Nansen Initiative*,⁵² the

³⁸ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) arts 1, 15, 27 ('ICESCR').

³⁹ United Nations High Commissioner for Refugees, *Guiding Principles on Internal Displacement*, UN Doc ADM 1.1,PRL 12.1, PR00/98/109 (22 July 1998) ('*Guiding Principles on Internal Displacement*').

⁴⁰ United Nations Environment Programme, *Climate Change and Human Rights* (Report, December 2015) 22.

⁴¹ Margaretha Wewerinke-Singh and Tess Van Geelen, 'Protection of Climate Displaced Persons under International Law: A Case Study from Mataso Island, Vanuatu' (2019) 19(2) *Melbourne Journal of International Law* 1, 14.

⁴² Elizabeth Ferris, 'The Relevance of the Guiding Principles on Internal Displacement for the Climate Change-Migration Nexus' in Benoît Mayer and François Crépeau (eds), *Research Handbook on Climate Change, Migration and the Law* (Edward Elgar Publishing Limited, 2017) 108, 108.

⁴³ *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) ('UNFCCC').

⁴⁴ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 16 March 1998, 2303 UNTS 162 (entered into force 16 February 2005) ('*Kyoto Protocol*').

⁴⁵ *Paris Agreement*, opened for signature 16 February 2016, C.N.63.2016 (entered into force 4 November 2016).

⁴⁶ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).

⁴⁷ *Ibid* art 1A(2).

⁴⁸ *Ioane Teitiota v Chief Executive of Ministry of Business, Innovation and Employment* [2014] NZCA 173.

⁴⁹ Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication*, 127th sess, UN Doc CCPR/C/127/D/2728/2016 (7 January 2020).

⁵⁰ United Nations, *The Global Compact for Safe, Orderly and Regular Migration*, UN Doc A/RES/73/195 (11 July 2018) 8 ('GCM').

⁵¹ United Nations Office for Disaster Risk Reduction, *The Sendai Framework for Disaster Risk Reduction 2015-2030*, UN Doc A/RES/69/283 (3 June 2015) 11 ('*Sendai Framework*').

⁵² *The Nansen Initiative: Agenda for the Protection of Cross-Border Displacement in the Context of Disasters and Climate Change* (Protection Agenda Volume I, December 2015) ('*The Nansen Initiative*').

*Peninsula Principles on Climate Displacement Within States*⁵³ ('*Peninsula Principles*') and guidance manuals for law and policymakers for protecting IDPs.⁵⁴ Specific to the South Pacific, UN bodies have issued *Checklists for Integrating Human Rights in Natural Disaster Management in the Pacific*.⁵⁵ Additionally, the Pacific Humanitarian Protection Cluster has published guidance documents for incorporating protection within disaster response, emphasising risks associated with forced displacement.⁵⁶ These tools, however, are voluntary and non-binding, providing no concrete protection for CCDPs.

Internal Climate Displacement

There is consensus that climate change will lead to increased displacement,⁵⁷ yet the global discourse on climate displacement predominantly approaches the issue from a scientific, environmental, political or sociological perspective.⁵⁸ There has been comparatively little rigorous legal analysis of the issue, although the research is steadily growing in this space.⁵⁹ Legal literature to date primarily focuses on transboundary displacement, deliberating the legal status of CCDPs and potential international protections for them.⁶⁰ Academics have focused less on the legal implications of internal displacement, despite the growing body of empirical research suggesting climate-related movement is likely to be predominantly internal, rather than transboundary.⁶¹

Questions regarding proper classification and appropriate terminology for persons displaced by climate change are unresolved.⁶² Various terms used in the literature include 'climate refugees', 'ecological or environmental refugees', 'environmental migrants', 'climate change migrants', and 'environmentally displaced persons'.⁶³ The expression 'climate refugee' is used consistently in the mainstream discourse.⁶⁴ This study, however, rejects the term

⁵³ *The Peninsula Principles on Climate Displacement Within States* (2013) ('*Peninsula Principles*').

⁵⁴ Brookings Institute, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* (October 2008); United Nations High Commissioner for Refugees, Brookings Institute and GeorgeTown University, *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation* (Publication, 7 October 2015) ('*UNHCR Guidance on Planned Relocation*'); United Nations High Commissioner for Refugees, GeorgeTown University and IOM, *A Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change* (Publication, 28 July 2017) ('*UNHCR Planning Relocations Toolbox*').

⁵⁵ Office of the United Nations High Commissioner for Human Rights and United Nations Development Programme, *Checklist For Integrating Human Rights in Natural Disaster Management in the Pacific* (2007).

⁵⁶ *Mapping of International Tools on Climate Change Displacement*, above n 33, 39.

⁵⁷ McAdam, *Climate Change, Forced Migration, and International Law*, above n 13, 4.

⁵⁸ Naser, 'Protecting Climate Change Induced Displacement in Bangladesh: Legal and Policy Responses', above n 16, 11.

⁵⁹ Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C Special Report*, above n 1, 389.

⁶⁰ Thea Philip, 'Climate Change Displacement and Migration: An Analysis of the Current International Legal Regime's Deficiency, Proposed Solutions and a Way Forward for Australia' (2018) 19 *Melbourne Journal of International Law* 1, 13.

⁶¹ McAdam, *Climate Change, Forced Migration, and International Law*, above n 13, 10.

⁶² Mostafa Mahmud Naser, 'Climate Change-Induced Displacement: Definitional Issues and Concerns' (2012) 2 *Chicago-Kent Journal of Environmental and Energy Law* 1, 48.

⁶³ Naser, 'Protecting Climate Change Induced Displacement in Bangladesh: Legal and Policy Responses', above n 16, 35.

⁶⁴ McAdam, *Climate Change, Forced Migration, and International Law*, above n 13, 32.

refugee as it is legally and conceptually inaccurate⁶⁵ and is perceived as offensive by some local communities in the South Pacific.⁶⁶ While the phrase ‘environmental refugee’ has been endorsed by many academics and scholars,⁶⁷ this study is focused specifically on climate change. Consequently, this paper adopts the terms climate displacement and CCDPs.

The South Pacific region is widely discussed in relation to climate displacement, due to the vulnerability arising from its geographical disposition with low-lying islands. However, it is argued that the dominant literature is limited as it largely ignores the perspectives of local communities.⁶⁸ McAdam claims conceptualising the issue as a ‘climate change refugee crisis’ is an alarmist approach, which exacerbates small island vulnerabilities and limits their capacity to define the issue and respond on their terms.⁶⁹ This narrative is also at odds with the lived experiences, perspectives and wishes of communities in the South Pacific. Community consultation conducted in Fiji, Vanuatu and Tuvalu show communities may prefer to adapt *in situ*, and move somewhere within their country as a last resort.⁷⁰

Internal climate displacement presents many challenges to governments and humanitarian actors, including: disaster risk reduction; preventing displacement and minimising its effects; facilitating relocations; and providing durable solutions to climate displacement.⁷¹ Emerging literature identifies issues with relocation as a form of climate change adaptation in South Pacific countries.⁷² Particular problems discussed include: local perceptions of climate change;⁷³ connection to land;⁷⁴ cultural continuity;⁷⁵ institutional barriers and a lack of resources.⁷⁶ Durable solutions to internal climate displacement should address these issues and actively involve CCDPs in the process.⁷⁷ Internal climate

⁶⁵ McAdam, ‘Refusing Refuge in the Pacific’, above n 12, 102.

⁶⁶ Olivia Warrick, ‘Local Voices, Local Choices? Vulnerability to Climate Change and Community- Based Adaptation in Rural Vanuatu’ (Doctoral Dissertation, University of Waikato, 2011) 408.

⁶⁷ Ibid 37.

⁶⁸ Barnett and Campbell, above n 9, 18; McAdam, *Climate Change, Forced Migration, and International Law*, above n 13, 34; Walshe and Stancioff, above n 30, 13.

⁶⁹ McAdam, *Climate Change, Forced Migration, and International Law*, above n 13, 32-33.

⁷⁰ Priyatma Singh et al, ‘Place Attachment and Cultural Barriers to Climate Change Induced Relocation: Lessons from Vunisavisavi Village, Vanua Levu, Fiji’ in Walter Leal Filho (ed), *Managing Climate Change Adaptation in the Pacific Region* (Springer International Publishing, 2020) 27, 32; Nikita Perumal, “‘The Place Where I Live Is Where I Belong’”: Community Perspectives on Climate Change and Climate-Related Migration in the Pacific Island Nation of Vanuatu’ (2018) 13(1) *Island Studies Journal* 45, 51; Katharina Beylerl, Harald Mieg and Eberhard Weber, ‘Comparing Perceived Effects of Climate-Related Environmental Change and Adaptation Strategies for the Pacific Small Island States of Tuvalu, Samoa, and Tonga’ (2018) 13 *Island Studies Journal* 25, 34.

⁷¹ Beyani, above n 17, 10-15.

⁷² Campbell and Warrick, above n 2, 24.

⁷³ Bertana, above n 19, 149.

⁷⁴ Singh et al, above n 70, 29.

⁷⁵ Gil Marvel P Tabucanon, ‘Social and Cultural Protection for Environmentally Displaced Populations: Banaban Minority Rights in Fiji’ (2014) 21 *International Journal on Minority and Group Rights* 25, 46.

⁷⁶ Carola Betzold, ‘Adapting to Climate Change in Small Island Developing States’ (2015) 133(3) *Climatic Change* 481, 484-486.

⁷⁷ Brookings-LSE Project on Internal Displacement, Office of the United Nations High Commissioner for Human Rights and United Nations Office for the Coordination of Humanitarian Affairs, *Regional Workshop on Internal Displacement Caused by Natural Disasters and Climate Change in the Pacific* (Synthesis Report, 4-6 May 2011) 15 (‘*Regional Workshop Report*’).

displacement caused by both sudden and slow-onset environmental disasters presents serious challenges to Pacific Island countries.

Domestic Law and Internal Climate Displacement

States have the primary responsibility to provide protection and assistance to people at risk of climate displacement.⁷⁸ This obligation involves empowering, supporting and working collaboratively with at-risk communities to adapt to changing environments. In some instances, this involves assistance with food and water security, for example, when traditional crops are failing due to climate change.⁷⁹ Alternatively, it may involve improving drainage and building infrastructure on higher ground in response to sea inundation.⁸⁰ Where adapting *in situ* is no longer possible, governments should support communities to leave, assisting them to find durable solutions to their displacement. Relocation should be a last resort and should endeavour to preserve the cultural and social cohesion in the resettled communities.⁸¹ While climate displacement is unavoidable for some communities, responses to this issue are not a substitute for establishing adequate adaptation and mitigation strategies.

Legal and policy mechanisms responding to climate displacement are necessary to plan and facilitate relocations.⁸² Such mechanisms must ensure the observation of human rights throughout all stages of relocation.⁸³ Additionally, preventative measures, such as adaptation strategies and disaster risk reduction, require legislative apparatus and a whole-of-government approach.⁸⁴ Despite the serious risks posed to South Pacific countries, climate displacement is not sufficiently addressed in national legal frameworks.⁸⁵ While the UN *Guiding Principles on Internal Displacement*⁸⁶ provides soft-law protection for IDPs, States have been encouraged by the UN General Assembly to develop and implement domestic legislation and policies for climate displacement.⁸⁷ Given the current instances of climate displacement and future scientific forecasts, legal and policy apparatuses must be in place to sufficiently respond to climate displacement.

⁷⁸ *Guiding Principles on Internal Displacement*, above n 39, art 3(1).

⁷⁹ Mark Baker-Jones et al, *Climate Change Adaptation: Guided by the Law* (Report, DLA Piper, August 2013) 21.

⁸⁰ *Ibid* 25.

⁸¹ *Regional Workshop Report*, above n 77, 17.

⁸² Beyani, above n 17, 11; Jane McAdam and Elizabeth Ferris, 'Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues' (2015) 4 *Cambridge Journal of International and Comparative Law* 137, 151.

⁸³ Orchard, above n 16, 7.

⁸⁴ *The Nansen Initiative*, above n 52, 29-30.

⁸⁵ *Regional Workshop Report*, above n 77, 17.

⁸⁶ *Guiding Principles on Internal Displacement*, above n 39.

⁸⁷ United Nations General Assembly, *Protection of and assistance to internally displaced persons*, GA Res 62/153, UN GAOR, 3rd Comm, 62nd sess, Agenda Item 70(b), UN Doc A/RES/62/153 (6 March 2008) 4.

THE LAW, CLIMATE DISPLACEMENT AND FIJI

Fiji is highly susceptible to the risks and effects of climate change.⁸⁸ This section discusses how climate displacement is affecting Fiji. It also considers the Government's response to this issue, including the extent to which it engages with international law and Fiji's domestic law response to climate displacement.

Climate Change and Displacement in Fiji

Fiji's population, about 900,000, inhabit approximately 110 of its 332 islands.⁸⁹ With an oceanic tropical marine climate, Fiji is exposed to significant environmental risks intensified by climate change. Variation in climate trends are already evident.⁹⁰ Since 1961, Fiji's Meteorological Services have recorded increases in minimum and maximum air temperatures, sea surface temperatures, and mean sea levels.⁹¹ These increases are disproportionately higher than the global average. For example, Fiji has recorded a 6-millimetre sea level increase per year since 1993,⁹² double the global mean value.⁹³ Above average impacts are consistently found across the South Pacific. Paradoxically, these nations have contributed negligibly to climate change yet will suffer the most impact. As Ban Ki-Moon, former UN Secretary-General, commented in relation to the moral dimensions of climate change, '[t]hose who suffer first and worst did least to cause it'.⁹⁴ This is certainly true of Fiji, whose national emissions currently account for approximately 0.04 percent of global emissions.⁹⁵

Future projected changes in Fiji's climate include: increased average temperatures; accelerated sea-level rise; inland and coastal floods; saltwater intrusion; droughts; increased episodes of extreme heat and increased frequency and intensity of tropical cyclones.⁹⁶ The Fijian Government recognises the consequences of such environmental changes, including threats to the livelihoods of the Fijian people, increased poverty and spread of disease.⁹⁷ These events will also affect the already stressed marine, freshwater and terrestrial ecosystems.⁹⁸ Additionally, such changes will severely impact Fiji's economy and potentially curtail

⁸⁸ Baker-Jones et al, above n 79, 28.

⁸⁹ Government of the Republic of Fiji, *Climate Vulnerability Assessment - Making Fiji Climate Resilient* (October 2017) 19 ('*Climate Vulnerability Assessment*').

⁹⁰ Karen E McNamara and Helene Jacot Des Combes, 'Planning for Community Relocations Due to Climate Change in Fiji' (2015) 6 *International Journal of Disaster Risk Science* 315, 315.

⁹¹ Government of the Republic of Fiji, *National Climate Change Policy* (2012) 4 ('*National Climate Change Policy 2012*').

⁹² Government of the Republic of Fiji, 'How Fiji is Affected by Climate Change' (2017) <https://cop23.com.fj/fiji-and-the-pacific/how-fiji-is-affected-by-climate-change> (Accessed 9 November 2021).

⁹³ John Church et al, 'Sea Level Change' in TF Stocker et al (eds), *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2013) 1137, 1148.

⁹⁴ Ba Ki-Moon, 'Remarks' (Speech delivered at the Workshop on the Moral Dimensions of Climate Change and Sustainable Development "Protect the Earth, Dignify Humanity", Vatican City, 28 April 2015).

⁹⁵ Government of the Republic of Fiji, *National Climate Change Policy 2018-2030* (2019) 62 ('*National Climate Change Policy 2018-2030*').

⁹⁶ Baker-Jones et al, above n 79, 28; *National Climate Change Policy 2012*, above n 91, 7.

⁹⁷ *Climate Vulnerability Assessment*, above n 89, 22.

⁹⁸ *National Climate Change Policy 2012*, above n 91, 1.

development goals.⁹⁹ Increased frequency and intensity of cyclones would be particularly damaging, exemplified by Tropical Cyclone Winston in 2016, which caused damages amounting to F\$2 billion, 20 percent of Fiji's GDP.¹⁰⁰

The Fijian government recognises climate change and displacement as a priority issue for human and national security.¹⁰¹ Historically, in some locations, the sea has gradually encroached on the land, requiring community adaptation. However, recent impacts of anthropogenic climate change resulting in rapid sea-level rise and climatic changes, have forced some communities to move significantly inland or relocate entirely.¹⁰² For example, in 2012, members of the Tukuraki Village in Viti Levu were permanently displaced after a landslide triggered by heavy rain hit their village.¹⁰³ The first documented climate change induced relocation of an entire community occurred in 2013. The rural village of Vunidogoloa became uninhabitable due to coastal erosion, frequent storm surges and flooding.¹⁰⁴ Although the villagers made several attempts to adapt by building a seawall, raising houses, and moving slightly inland, they were unable to sustain their livelihoods.¹⁰⁵ Relocation may be the last resort, but it is likely to become the reality for many coastal villages facing similar circumstances.¹⁰⁶ The Government of Fiji has identified over 830 at-risk communities, of which more than 45 are recommended for relocation.¹⁰⁷ Work is occurring with communities and international agencies to initiate relocation plans and take preliminary steps, such as moving infrastructure to less vulnerable areas.¹⁰⁸ Undoubtedly, climate displacement will profoundly affect the Fijian way of life in the future.

International Law, Fiji and Displacement

Fiji has ratified international law and endorsed international policies relevant to climate change and displacement. As discussed above, climate displacement may impinge on human rights. Fiji, having ratified the *ICCPR*¹⁰⁹ and *ICESCR*,¹¹⁰ is obliged to protect the human rights of its citizens.¹¹¹ The *Constitution of the Republic of Fiji*¹¹² ('*Constitution*') enshrines most of the

⁹⁹ *Climate Vulnerability Assessment*, above n 89, 23.

¹⁰⁰ Ibid 19; Naohiro Nakamura and Yoko Kanemasu, 'Traditional Knowledge, Social Capital, and Community Response to a Disaster: Resilience of Remote Communities in Fiji after a Severe Climatic Event' (2020) 20(23) *Regional Environmental Change* 22, 22.

¹⁰¹ *National Climate Change Policy 2018-2030*, above n 99, 52.

¹⁰² Singh et al, above n 70, 28.

¹⁰³ Government of the Republic of Fiji, *Displacement Guidelines in the Context of Climate Change and Disasters* (2019) 1 ('*Displacement Guidelines*').

¹⁰⁴ Bertana, above n 19, 31.

¹⁰⁵ Singh et al, above n 70, 36.

¹⁰⁶ Dhrishna Charan, Manpreet Kaur and Priyatma Singh, 'Customary Land and Climate Change Induced Relocation – A Case Study of Vunidogoloa Village, Vanua Levu, Fiji' in Walter Leal Filho (ed), *Climate Change Adaptation in Pacific Countries* (Springer, 2017) 19, 20.

¹⁰⁷ Ibid 21; Government of the Republic of Fiji, 'How Fiji is Affected by Climate Change', above n 92.

¹⁰⁸ Charan, above n 106, 28.

¹⁰⁹ *ICCPR*, above n 37.

¹¹⁰ *ICESCR*, above n 38.

¹¹¹ Office of the High Commissioner for Human Rights, 'Ratification Status for Fiji'

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=60&Lang=EN (Accessed 9 November 2021).

¹¹² *Constitution of the Republic of Fiji* (2013).

rights at-risk of infringement from climate displacement contained in international law, however omits community rights, such as the right to culture and self-determination. Despite this, the rights guaranteed in the *Constitution* provide fundamental protections for CCDPs, including rights of redress before the High Court if they consider their human rights contravened.¹¹³ While Fiji has signed the UN *Guiding Principles on Internal Displacement*,¹¹⁴ no supplementary legislation has been ratified, as yet, to give them force. Fiji is committed to addressing the drivers and impacts of climate change, indicated by its ratification of the *UNFCCC*,¹¹⁵ the *Kyoto Protocol*¹¹⁶ and the *Paris Agreement*.¹¹⁷ Notably, Fiji was the first country to formally ratify the *Paris Agreement*.¹¹⁸ Under this international law regime, Fiji submits extensive national reports.¹¹⁹ The Government has also utilised non-binding international instruments. Fiji endorsed the *Global Compact for Safe, Orderly and Regular Migration*¹²⁰ both as a Member State of the UN, and as the representative for the Pacific Small Island Developing States.¹²¹ Endorsing the *Sendai Framework*,¹²² the Government has committed to better understanding and mitigating the impacts of climate change and natural hazards.¹²³ Additionally, Fiji has adopted aspects of *The Nansen Initiative*¹²⁴ and the *Peninsula Principles*¹²⁵ in its domestic policies.¹²⁶

Fiji also seeks to advance climate change and displacement issues in the global community.¹²⁷ In the international arena, Fiji hosts high-level delegations from UN bodies focused on the impact of climate change, such as the Conference of Parties (‘COP’) 23 for the *Paris Agreement* in 2017.¹²⁸ Fiji has assumed a leading role among South Pacific nations, facilitating regional cooperation and working with development partners to build capacity and identify priority action areas.¹²⁹ Specific to climate displacement, Fiji hosts regional workshops and stakeholder meetings on displacement caused by disaster and climate change in the Pacific.¹³⁰ Fiji’s leadership in this space demonstrates its commitment to address the

¹¹³ Ibid s 44(1).

¹¹⁴ *Guiding Principles on Internal Displacement*, above n 39.

¹¹⁵ *UNFCCC*, above n 43.

¹¹⁶ *Kyoto Protocol*, above n 44.

¹¹⁷ *Paris Agreement*, above n 45.

¹¹⁸ *National Climate Change Policy 2018-2030*, above n 95, 85.

¹¹⁹ Ibid 85.

¹²⁰ *GCM*, above n 50.

¹²¹ UN Department of Public Information, *General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants*, GA/12113 (2018)<https://www.un.org/press/en/2018/ga12113.doc.htm> (Accessed 9 November 2021).

¹²² *Sendai Framework*, above n 51.

¹²³ Government of the Republic of Fiji, ‘Climate Vulnerability Assessment - Making Fiji Climate Resilient’, above n 81, 23.

¹²⁴ *The Nansen Initiative*, above n 52.

¹²⁵ *Peninsula Principles*, above n 53.

¹²⁶ *Planned Relocation Guidelines* (2018) 20.

¹²⁷ *National Climate Change Policy 2018-2030*, above n 95, 52.

¹²⁸ Government of the Republic of Fiji, ‘How Fiji is Affected by Climate Change’, above n 92.

¹²⁹ United Nations Office for Disaster Risk Reduction, *Disaster Risk Reduction in the Republic of Fiji* (Status Report, July 2019) 21.

¹³⁰ *Regional Workshop Report*, above n 77, 1; International Organization for Migration, Platform on Disaster Displacement and Internal Displacement Monitoring Centre, *Stakeholder Meeting on Climate Change and Disaster Displacement in the Pacific* (Concept Note and Agenda, 27-28 March 2019) 1.

interrelated challenges that climate change and displacement pose to vulnerable nations and their citizens.

Fiji's Domestic Law and Policies on Climate Displacement

Within the last decade, Fiji has adopted cohesive institutional frameworks with respect to climate change.¹³¹ Fiji's initial *National Climate Change Policy*¹³² adopted in 2012, solidified the importance of climate change at the national level and helped to mainstream the country's response at different levels and sectors.¹³³ According to Baker-Jones and colleagues, before its introduction, administrating and coordinating matters relating to climate change was slow and challenging.¹³⁴ These scholars claim the policy's importance cannot be overstated, providing a clearly defined position, facilitating coordination, and articulating national directions.¹³⁵ The initial policy only briefly discussed climate displacement, recognising its environmental and psychosocial impacts.¹³⁶ The updated *National Climate Change Policy 2018-2030*,¹³⁷ however, establishes human mobility as a priority social and national security issue. The policy confirms that legal frameworks, policies and strategies to manage climate displacement are needed 'to protect human rights and reduce long term risks'.¹³⁸

To date, some climate displacement related policies, including the *Displacement Guidelines in the Context of Climate Change and Disasters*¹³⁹ ('*Displacement Guidelines*') and the *Planned Relocation Guidelines*¹⁴⁰ have been adopted. The *Planned Relocation Guidelines* provides a framework of procedures to guide stakeholders through planned relocation processes.¹⁴¹ The guidelines adopt a pre-emptive approach focussing on: community perceptions and needs; livelihood restoration and diversification; the conservation of traditions and cultural identities; and the protection of human rights.¹⁴² Particular emphasis is placed on consent and continuous meaningful engagement of communities throughout planned relocation processes, especially regarding decision-making, site selection, forming and implementing the relocation plan, and in post-relocation monitoring and support.¹⁴³ Weight is also placed on relocation being a last resort, considered '**ONLY** when all adaptation options have been exhausted'.¹⁴⁴ Bertana found National government workers reported that the guidelines were developed after the Vunidogoloa relocation, which reinforced the need for a structured policy dictating a formal process.¹⁴⁵ The *Planned Relocation Guidelines* are designed to be read

¹³¹ Baker-Jones et al, above n 79, 31.

¹³² *National Climate Change Policy 2012*, above n 91.

¹³³ Baker-Jones et al, above n 79, 31.

¹³⁴ See *ibid.*

¹³⁵ *Ibid* 31.

¹³⁶ *National Climate Change Policy 2012*, above n 91, 54.

¹³⁷ *National Climate Change Policy 2018-2030*, above n 95.

¹³⁸ *Ibid* 54.

¹³⁹ *Displacement Guidelines*, above n 103.

¹⁴⁰ *Planned Relocation Guidelines*, above n 126.

¹⁴¹ *Ibid* 5.

¹⁴² *Ibid* 8-9.

¹⁴³ *Ibid* 9.

¹⁴⁴ *Ibid* 7 (emphasis in original).

¹⁴⁵ Bertana, above n 19, 12.

alongside *Standard Operating Procedures* ('SOPs'), however, the SOPs are still being developed.¹⁴⁶ The *Displacement Guidelines* provide complementary support to the people at risk of, or affected by, displacement in the context of climate change and disasters.¹⁴⁷ While displacement is not a State-led process, the Government has the primary duty to optimise the phases of displacement and minimise any negative impacts of movement. The guidelines contain: preventative measures, such as building capacity and reducing vulnerability; procedures to navigate the displacement process; and strategies to assist post-displacement by working towards durable solutions that enable full social and economic recovery, either through sustainable return to the place of origin, or relocating per the *Planned Relocation Guidelines*.¹⁴⁸

Recent legislative developments concerning climate displacement include the enactment of the *Climate Relocation of Communities Trust Fund Act 2019*¹⁴⁹ ('*Trust Fund Act*') and the *Climate Change Act 2021* ('*Climate Change Act*'), not yet in force.¹⁵⁰ The *Trust Fund Act* created the world's first relocation fund to finance and support planned relocation of communities in Fiji adversely affected by climate change.¹⁵¹ The Act channels money to research, vulnerability assessments, land-scoping exercises, and initiatives ensuring infrastructure and support for relocated communities.¹⁵² The trust is partially funded by Fiji's Environment and Climate Adaptation Levy, but otherwise relies on donor contributions.¹⁵³ The *Climate Change Act* aims to comprehensively enshrine Fiji's domestic response to climate change.¹⁵⁴ Part 12 of the *Climate Change Act* addresses climate displacement and relocation. Once in force, the Act will, amongst other things: establish a taskforce for relocation;¹⁵⁵ outline the procedure for updating policies;¹⁵⁶ delegate responsibility for relocating and supporting at-risk communities to the Minister, with support of the taskforce;¹⁵⁷ provide a framework for undertaking relocation including minimum standards of protection for CCDP¹⁵⁸ and a clear decision-making process;¹⁵⁹ and allow the Trust Fund to be used for the purposes in Part 12.¹⁶⁰ Notably, the *Climate Change Act* requires all *National Adaptation Plan* measures to be exhausted and the full free and prior informed consent of individuals or communities to be

¹⁴⁶ *Planned Relocation Guidelines*, above n 126, 3.

¹⁴⁷ *Displacement Guidelines*, above n 103, 3.

¹⁴⁸ *Ibid* 13-18.

¹⁴⁹ *Climate Relocation of Communities Trust Fund Act 2019* (The Republic of Fiji) ('*Trust Fund Act*').

¹⁵⁰ *Climate Change Act 2021* (The Republic of Fiji) ('*Climate Change Act*').

¹⁵¹ Government of the Republic of Fiji, *Parliamentary Debates*, 21 June 2019, 2376 (Aiyaz Sayed-Khaiyum, Attorney-General) ('*Parliamentary Debates 21 June 2019*').

¹⁵² *Trust Fund Act*, above n 149, s 4(b).

¹⁵³ Government of the Republic of Fiji, '*Parliamentary Debates 21 June 2019*', above n 151, 2376 (Aiyaz Sayed-Khaiyum, Attorney-General).

¹⁵⁴ Government of the Republic of Fiji, *Parliamentary Debates*, 7 August 2019, 2623 (Aiyaz Sayed-Khaiyum, Attorney-General) ('*Parliamentary Debates 7 August 2019*'); James Sloan and Marita Manley, 'Fiji's proposed Climate Change law is extraordinary, wide-ranging and open for consultation', *Ocean Law Bulletins* (2019) <http://www.sas.com.fj/ocean-law-bulletins/fijis-proposed-climate-change-law-is-extraordinary-wide-ranging-and-open-for-consultation> (Accessed 9 November 2021).

¹⁵⁵ *Climate Change Act*, above n 150, s 75.

¹⁵⁶ *Ibid* s 76.

¹⁵⁷ *Ibid* s 77(1).

¹⁵⁸ *Ibid* s 77.

¹⁵⁹ *Ibid* ss 77(2)-(4).

¹⁶⁰ *Ibid* s 78.

obtained before any relocation.¹⁶¹ It also requires the Minister to consult the affected communities/person ‘in the spirit of Talanoa’, defined in section 2 as the ‘process of inclusive, participatory and transparent dialogue with the purpose of sharing stories, building empathy and making wise decisions for the collective good’.¹⁶² The Honourable Aiyaz Sayed-Khaiyum first informed Parliament about the planned legislation in his Ministerial Statement in August 2019, intending to introduce the Climate Change Bill¹⁶³ by September 2019 for enactment into law ‘before COP25 in Chile in December [2019]’.¹⁶⁴ However, the *Climate Change Act* was not adopted until 23 September 2021, after several drafts and consultation phases. The Act will come into force on the commencement date that the Minister publishes in the Gazette, currently unknown. Finally, the *Natural Disaster Management Act 1998*¹⁶⁵ is relevant for sudden climate displacement situations, providing authorities with special powers such as the power to forcibly evacuate people if it is in their own interest.¹⁶⁶

There is a paucity of literature on climate displacement in law and policy in Fiji. Notable exceptions discussed above include: a dissertation on environmentally induced migration in Fiji that discusses the *Planned Relocation Guidelines*;¹⁶⁷ a research project by the UN University Institute for Environment and Human Security (‘UNU-EHS’) on human rights and migration issues in Fiji and Vanuatu,¹⁶⁸ and a legal report on climate adaptation using Fiji and Samoa as case studies.¹⁶⁹ A search of the literature did not locate any scholarship analysing the *Trust Fund Act* or the *Climate Change Act*. However, Parliamentary Hansard and Ministerial Statements offer important commentary on these legislative developments.¹⁷⁰ There is an evident gap in the literature regarding research analysing domestic law efforts and opportunities to address internal climate displacement in Fiji, to which this paper contributes.

CLIMATE DISPLACEMENT AND TRADITIONAL CUSTOMARY LAW

The Fijian legal system, like many South Pacific nations, applies both traditional customary law (‘TCL’) and State law, as affirmed by the Fijian High Court in *State v Native Lands Appeals Tribunal*.¹⁷¹ While TCL is no longer formally recognised as a general source of law in the *Constitution*,¹⁷² it remains in common practice, particularly in rural localities inhabited by the *iTaukei* (Indigenous Melanesian Fijians),¹⁷³ who constitute the majority of the Fijian

¹⁶¹ Ibid ss 77(1)(d)-(e).

¹⁶² Ibid ss 2, 77(2).

¹⁶³ Climate Change Bill 2019 (The Republic of Fiji).

¹⁶⁴ Government of the Republic of Fiji, ‘Parliamentary Debates 7 August 2019’, above n 154, 2623 (Aiyaz Sayed-Khaiyum, Attorney-General).

¹⁶⁵ *Natural Disaster Management Act 1998* (The Republic of Fiji).

¹⁶⁶ Ibid s 25(1).

¹⁶⁷ Bertana, above n 19.

¹⁶⁸ Corendea, above n 3.

¹⁶⁹ Baker-Jones et al, above n 79.

¹⁷⁰ Government of the Republic of Fiji, ‘Parliamentary Debates 7 August 2019’, above n 154, 2632 (Aiyaz Sayed-Khaiyum, Attorney-General).

¹⁷¹ [2009] FJHC 164; HBJ 2 of 2009L (14 August 2009).

¹⁷² *Constitution of the Republic of Fiji* (2013).

¹⁷³ Baker-Jones et al, above n 79, 34.

population.¹⁷⁴ TCL in Fiji is consequently an important consideration in climate displacement challenges. This section discusses the operation of TCL in Fiji and consider its relationship with climate displacement and relocation.

Traditional Customs and Customary Law in Fiji

TCL refers to the rules and systems practised by First Peoples localities, developed over time from the customary norms of a particular group.¹⁷⁵ These customary norms are not uniform and monolithic: each community possesses diverse customs and rules.¹⁷⁶ They are also difficult to identify as they are passed through oral tradition and, unlike State law, are ambiguous, informal, and fluid.¹⁷⁷ Not all customs are necessarily customary law. Approaches to characterising TCL vary, but most typically refer to ‘an established pattern within a community which is seen by the community itself as having a binding quality’.¹⁷⁸ In a conventional legal sense, for custom to become customary law, it must be incorporated into State law, or the State law must recognise the body administering the customary law, for example, Chief councils.¹⁷⁹ The intermingling of TCL with State law is a challenging endeavour which has been tackled differently by countries in the Pacific.

Before Fiji’s colonisation, community-level governance systems and TCL presided, but these were modified and eroded by the British colonisers.¹⁸⁰ Following a military coup in 1987, Fiji’s reinstated *Constitution*¹⁸¹ gave primary legal effect to Fijian customary law.¹⁸² However, the *Constitution Amendment Act 1997*¹⁸³ repealed the relevant section of the *Constitution*, meaning TCL is no longer a general source of law.¹⁸⁴ Nonetheless, it remains the predominant system practised in *iTaukei* villages and is incorporated into the official law for particular areas, such as customary land tenure and environmental management. For example, the applicable law under the *Native Lands Act 1978*¹⁸⁵ is exclusively Fijian customary law, with the Native Lands Commission holding jurisdiction for resolving disputes and ascertaining the rightful and hereditary property of native owners.¹⁸⁶ As held by the Fijian High Court, the State and

¹⁷⁴ Minority Rights Group International, ‘World Directory of Minorities and Indigenous Peoples - Fiji Islands’ (2017) <https://www.refworld.org/docid/4954ce3e53.html> (Accessed 9 November 2021).

¹⁷⁵ Techera, above n 21, 281.

¹⁷⁶ Jennifer Corrin, ‘The Status of Customary Law in Fiji Islands After the Constitutional Amendment Act 1997’ (2000) 4 *Journal of South Pacific Law* 1, [3.1].

¹⁷⁷ Bertana, above n 19, 62; Corendea, above n 3, 44.

¹⁷⁸ World Intellectual Property Organization, *Customary Law, Traditional Knowledge and Intellectual Property: An Outline of the Issues* (Discussion Paper, 2013) 2.

¹⁷⁹ Kirsten Davies, ‘Ancient and New Legal Landscapes: Customary Law and Climate Change, a Vanuatu Case Study’ (2016) 18 *Asia Pacific Journal of Environmental Law* 43, 45 (‘Ancient and New Legal Landscapes’); Grant Follett, ‘Defining the Formless: Customary Law in the Pacific’ (2014) 39(2) *Alternative Law Journal* 125, 126).

¹⁸⁰ Pepe Clarke and Stacy D Jupiter, ‘Law, Custom and Community-Based Natural Resource Management in Kubulau District (Fiji)’ (2010) 37 *Environmental Conservation* 98, 98.

¹⁸¹ *Constitution of the Sovereign Democratic Republic of Fiji* (1990).

¹⁸² *Ibid* s 100(3); Corrin, above n 176, [1].

¹⁸³ *Constitution Amendment Act 1997* (The Republic of Fiji).

¹⁸⁴ Corrin, above n 176, [1].

¹⁸⁵ *Native Lands Act 1978* (The Republic of Fiji).

¹⁸⁶ *Ibid* s 4.

customary law systems are designed to complement rather than compete with each other.¹⁸⁷ However, many communities choose to continue functioning under TCL with little regard for the official State law.¹⁸⁸

TCL remains predominant in land tenure and village decision-making. Prior to colonisation, all Fijian land was owned according to TCL.¹⁸⁹ Land was held communally and exchanged between Chiefs, who were the only ones allowed to authorise land transactions.¹⁹⁰ Colonisation brought with it the notion of fixed boundaries. While the quasi-traditional land tenure structure that emerged was developed in consultation with Chiefs, it relied heavily on Western conceptions of private property ownership.¹⁹¹ Today, approximately 88 percent of land is customarily-based Native Land where TCL presides over land transactions.¹⁹² However, colonial mechanisms have complicated and restricted how contemporary land tenure systems operate.¹⁹³ State law has also attempted to restrict customary decision-making. Traditionally, Chiefs made all village decisions.¹⁹⁴ In recent years however, the Government has reformed the traditional hierarchy to redistribute decision-making power.¹⁹⁵ Despite these reforms, villagers are unlikely to deviate from traditional leadership for fear of social repercussions.¹⁹⁶ According to Bertana, tradition serves as a ‘coercion mechanism’¹⁹⁷ for people to act and vote in a way that aligns with the interests of traditional leaders. Research undertaken by the UNU-EHS supports this assertion.¹⁹⁸ It is evident that TCL profoundly influences the operation and very fabric of Fijian society, particularly in *iTaukei* communities.

Traditional Customary Law and Climate Displacement

TCL and local communities’ intimate connection to land presents a labyrinth of issues for climate displacement and relocation.¹⁹⁹ Fijian culture involves an inextricable relationship between land, community, spirituality, and identity. For the *iTaukei*, land is much more than a resource, with islanders possessing an inherent and spiritual attachment to their land.²⁰⁰ *Vanua* is the Fijian term used to refer to the all-encompassing connection between land, soil, ancestors, and people.²⁰¹ According to Dr Ravuvu, the concept of *vanua* means the ‘living soul or human

¹⁸⁷ *State v Native Lands Appeals Tribunal* [2009] FJHC 164; HBJ 2 of 2009L (14 August 2009) [50].

¹⁸⁸ Corendea, above n 3, 36.

¹⁸⁹ Bertana, above n 19, 62.

¹⁹⁰ Mele ET Rakai, IC Ezigbalike and IP Williamson, ‘Traditional Land Tenure Issues for LIS in Fiji’ (1995) 33(258) *Survey Review* 247, 249.

¹⁹¹ Bertana, above n 19, 64.

¹⁹² Rakai, Ezigbalike and Williamson, above n 190) 254; Gharbaoui and Blocher, above n 18, 365; Singh et al, above n 70, 28.

¹⁹³ Bertana, above n 19, 65; Charan, Kaur and Singh, above n 106, 24.

¹⁹⁴ Patrick D Nunn et al, ‘Beyond the Core: Community Governance for Climate-Change Adaptation in Peripheral Parts of Pacific Island Countries’ (2014) 14 *Regional Environmental Change* 221, 228.

¹⁹⁵ Bertana, above n 19, 40-41.

¹⁹⁶ *Ibid* 41.

¹⁹⁷ *Ibid*.

¹⁹⁸ Corendea, above n 3, 25.

¹⁹⁹ Amy Louise Constable, ‘Climate Change and Migration in the Pacific: Options for Tuvalu and the Marshall Islands’ (2017) 17(4) *Regional Environmental Change* 1029, 1033.

²⁰⁰ Charan, Kaur and Singh, above n 106, 23.

²⁰¹ Singh et al, above n 70, 33; Bertana, above n 19, 36.

manifestation of the physical environment which the members have since claimed to belong to them and to which they also belong'.²⁰² As such, land is considered an inseparable, extension of the self which provides both livelihoods, and traditional and spiritual well-being.²⁰³ Attachment to place and a sense of belonging are closely linked for communities still governed by chiefly systems.²⁰⁴ In fact, access to land at all is dependent on membership to a specific clan in many *iTaukei* communities.²⁰⁵

While TCL in Fiji is discussed in the literature,²⁰⁶ its relationship to climate change has only recently been considered.²⁰⁷ Several scholars have recognised that climate displacement will likely cause enormous upheaval in cultural and spiritual life from severed connections with land.²⁰⁸ Further, traditional customs and TCL affect perceptions of climate change, decisions to relocate, Native Land tenure, and community integration and cohesion; all significant aspects of climate displacement.²⁰⁹ Traditional beliefs and leaders heavily influence local perceptions of climate displacement and decisions to relocate. For example, some villagers in Vunisavisavi firmly believe that they must remain in their ancestral land to fulfil their obligation to the *vanua*, and customary punishment would ensue if they relocated before their village was completely inundated.²¹⁰ Notably, sentiments against relocation are not universal. For example, case studies indicate that younger generations are more willing to move, while elders are strongly resistant.²¹¹ Opinions also vary between communities. While relocated villagers from Vunidogoloa described detachment from customary land as a heartbreaking, emotionally disturbing experience,²¹² the inhabitants of Narikoso who were opposed to moving did not cite emotional attachment, but rather logistical issues with moving.²¹³ This reveals that each community and relocation process is unique, requiring a tailored approach to tackling climate displacement issues. Traditional and cultural obligations to the *vanua* and Chiefs are acknowledged barriers to relocation for many *iTaukei* communities and according to Singh et al, 'unless these are integrated at the onset of any relocation effort, there is minimal guarantee of success'.²¹⁴

The prevalence of Native Land and TCL in Fiji creates challenges for responding to climate displacement. Land is already a common source of conflict in Fiji, particularly between the *iTaukei* and minority populations.²¹⁵ Relocation outside traditional customary land is likely

²⁰² Asesela Ravuvu, *The Fijian Way of Life* (Institute of Pacific Studies of the University of the South Pacific, 1983) 76.

²⁰³ Charan, Kaur and Singh, above n 106, 20, 23.

²⁰⁴ Singh et al, above n 70, 34.

²⁰⁵ Charan, Kaur and Singh, above n 106, 20; Dan Orcherton, David Mitchell and Darryn McEvoy, 'Perceptions of Climate Vulnerability, Tenure Security and Resettlement Priorities: Insights from Lami Town, Fiji Islands' (2017) 48(2) *Australian Geographer* 235, 246.

²⁰⁶ Rakai, Ezigbalike and Williamson, above n 190, 248.

²⁰⁷ Singh et al, above n 70, 27.

²⁰⁸ Ibid, above n 70, 35; Corendea, above n 3, 15; *Regional Workshop Report*, above n 77, 8; Charan, Kaur and Singh, above n 106, 25; Gharbaoui and Blocher, above n 18, 360.

²⁰⁹ Gharbaoui and Blocher, above n 18, 374.

²¹⁰ Charan, Kaur and Singh, above n 106, 27.

²¹¹ Bertana, above n 19, 188; Singh et al, above n 70, 34; Charan, Kaur and Singh, above n 106, 24.

²¹² Charan, Kaur and Singh, above n 106, 26.

²¹³ Bertana, above n 19, 159.

²¹⁴ Singh et al, above n 70, 35.

²¹⁵ Gharbaoui and Blocher, above n 18, 150.

to be fraught with land tenure issues which may continue for generations.²¹⁶ To date, climate displacement relocations undertaken in Fiji have been within the same customary boundaries, so ownership issues have been avoided.²¹⁷ However, this will not be the case for all future relocations. As all decisions regarding *iTaukei* land are presided over by traditional leaders with collective input from the clan, TCL is a crucial consideration for relocation.²¹⁸ Customary law also strongly influences how CCDPs are welcomed and integrated into a community.²¹⁹ Research by the UNU-EHS reveals 37 percent of Fijians felt that '[a]ccording to custom, outsiders from different islands are welcome on my island',²²⁰ while 42 percent disagreed. Tensions between migrant and host communities over land and cultural differences may be long-lasting and could escalate to violence.²²¹ To avoid this, resettlement efforts must provide tenure security for all parties and emphasise active participation with affected communities.²²²

Traditional Customary Law and Environmental Management

In rural Fiji, the long-established and culturally ingrained system of customary environmental management continues to function.²²³ However, unlike other areas of traditional custom, community-based natural resource management is incorporated formally into Fijian law through the *Environment Management Act 2005*.²²⁴ This has allowed the cultural system of environmental management to become enforceable within State law, which works in conjunction with cultural pressures of compliance.²²⁵ Samoa has gone further by creating locally made fishery by-laws that are enforceable by the local village authorities.²²⁶ Combining customary practices with contemporary fishery management principles has been an effective conservation tool in Samoa.²²⁷ In Fiji however, there is conspicuous disconnect between top-down Government and bottom-up community approaches.²²⁸ Effective environmental resource management is likely to require hybrid governance models which combine local practices with contemporary scientific knowledge.²²⁹ Arguably, such a hybrid approach could be adapted to contemporary issues surrounding internal displacement. Blending bottom-up TCL approaches with Government law mechanisms may enable a more effective, tailored and culturally viable method for tackling climate displacement issues.

²¹⁶ John Campbell, 'Climate-Change Migration in the Pacific' (2014) 26 *The Contemporary Pacific* 1, 14.

²¹⁷ Singh et al, above n 70, 36-37; Celia McMichael, Manasa Katonivualiku and Teresia Powell, 'Planned Relocation and Everyday Agency in Low-Lying Coastal Villages in Fiji' (2019) 185(3) *Geographical Journal* 325, 332.

²¹⁸ Singh et al, above n 70, 29.

²¹⁹ Corendea, above n 3, 15.

²²⁰ Ibid 17.

²²¹ Campbell, above n 216, 15; Orcherton, Mitchell and McEvoy, above n 205, 242.

²²² Orcherton, Mitchell and McEvoy, above n 205) 235.

²²³ Nunn et al, above n 194, 228.

²²⁴ *Environment Management Act 2005* (The Republic of Fiji).

²²⁵ Victoria Sutton, 'Fiji: Climate Change, Tradition and Vanua' in Elizabeth Ann Kronk and Randall S Abate (eds), *Climate Change and Indigenous Peoples* (Edward Elgar Publishing, 2013) 363, 364.

²²⁶ Techera, above n 21, 375.

²²⁷ Kirsten Davies, 'The Climate-Conflict-Food Security Nexus: Pacific Marine Ecosystems' (2019) 58 *Toda Peace Institute* 1, 11.

²²⁸ Nunn et al, above n 194, 229.

²²⁹ Clarke and Jupiter, above n 180, 105.

CURRENT AND FUTURE RESPONSES

The paper thus far has highlighted the serious challenges that climate displacement presents to communities in Fiji and the Government's response to these issues. This section critically evaluates Fiji's existing and emerging efforts to address climate displacement and discusses potential future frameworks. This will include an exploration of incorporating TCL into State law.

Fiji's Domestic Response to Climate Displacement

Fiji's current climate displacement guidelines are an important procedural framework and contain essential protections for CCDPs. According to McAdam and Ferris, guidelines for climate displacement should include the following principles:²³⁰

1. Involuntary relocation should be avoided where possible;
2. The scale of displacement should be minimised;
3. Relocation should be based on meaningful consultation with those affected; and
4. Once resettled, displaced persons should be assisted to improve their living standards and livelihoods to, at a minimum, the levels they enjoyed before displacement.

Fiji's *Planned Relocation Guidelines*²³¹ contain all of the aforementioned principles,²³² while its *Displacement Guidelines*²³³ contain the first three.²³⁴ The UN Refugee Agency ('UNHCR') provides guidance on the necessary legal, policy and institutional frameworks for planned relocations.²³⁵ Fiji's *Planned Relocation Guidelines* lacks many of the UNHCR's requirements, including: providing a legal basis and institutional framework for undertaking planned relocation; outlining procedures for making planned relocation decisions and how to receive technical assistance; providing an accountability regime including access to grievance review; adopting a cross-sectorial approach; and ensuring adequate funding mechanisms.²³⁶ Another criticism for the guideline's content is that they adopt a human rights-based approach, which may not be suitable for *iTaukei* communities. As Corendea explains, traditional societies in the Pacific place the highest importance on collective rights, and these deeply embedded cultural beliefs make it difficult for local communities to embrace international human rights standards.²³⁷ Ultimately, Fiji's national policies on climate displacement contain the fundamental general principles, but lack clear mechanisms and key features necessary in climate displacement legal and policy frameworks.

The creation of the guidelines and Fiji's relocation process, in practice, are also potentially problematic. Despite both the *Planned Relocation Guidelines* and the *Displacement*

²³⁰ McAdam and Ferris, above n 82, 152.

²³¹ *Planned Relocation Guidelines*, above n 126.

²³² *Ibid* 5, 12, 14

²³³ *Displacement Guidelines*, above n 103.

²³⁴ *Ibid* 3, 10, 13.

²³⁵ *UNHCR Guidance on Planned Relocation*, above n 54.

²³⁶ *Ibid* 15.

²³⁷ Corendea, above n 3, 36.

Guidelines stating that affected communities were consulted during their formation,²³⁸ McNamara, Des Combes, Gharbaoui and Blocher claim that they were developed devoid of community consultation.²³⁹ The relocations of Vunidogoloa and Narikoso highlight deficiencies in Fiji's relocation process. Bertana notes that villagers in Vunidogoloa 'lost all autonomy over their households and villages',²⁴⁰ which led to undesirable outcomes. For example, the layout of the village deviated from customary arrangements, meaning elders could not access the church which, in turn, 'negatively impacted the elders' psychological well-being and their role in the village'.²⁴¹ Additionally, two years after supposed completion, infrastructure remained unfinished, with some projects abandoned due to funding shortages.²⁴² In Narikoso, financial constraints have halted the relocation efforts that began in 2012, despite promises from government officials.²⁴³ The failure of the Narikoso relocation triggered external stakeholders to disagree with the creation of the *Planned Relocation Guidelines* because it 'treated relocation as the first option',²⁴⁴ rather than the last. While these examples were before the release of the *Planned Relocation Guidelines*, they were State-led processes and many of the relocation characteristics align with the tenets of the guidelines.²⁴⁵

Fiji's *Climate Change Act*²⁴⁶ presents an opportunity to build upon the guidelines and rectify existing problems. The Act fulfils many of the remaining UNHCR requirements that the *Planned Relocation Guidelines* excluded. Namely, providing a legal basis, institutional framework and clear procedures for undertaking planned relocation;²⁴⁷ ensuring funding mechanisms;²⁴⁸ and adopting a cross-sectorial approach. As noted by Naser, recognising CCDPs as a separate category of human movement allows international climate finance to be used directly for their benefit.²⁴⁹ Fiji's *Climate Change Act* in conjunction with its *Trust Fund Act*²⁵⁰ does precisely that, and might be the mechanisms that enable Fiji to avoid repetitions of Narikoso. A key challenge in addressing internal climate displacement in domestic law is that migration, climate change and development often have separate legal, institutional and policy frameworks.²⁵¹ Discrete frameworks present difficulties in streamlining and integrating legislation on climate displacement.²⁵² The *Climate Change Act* amalgamates domestic law on climate change, climate displacement, disasters and development, which should improve integration and coherence between disparate legal and policy frameworks. The *Climate Change Act* also appears to place greater emphasis on consultation and consent when approaching climate displacement and relocation. It requires the Minister to consult 'Talanoa'

²³⁸ *Planned Relocation Guidelines*, above n 126, 6; *Displacement Guidelines*, above n 103, 8.

²³⁹ McNamara and Des Combes, above n 90, 318; Gharbaoui and Blocher, above n 18, 375.

²⁴⁰ Bertana, above n 19, 74-75.

²⁴¹ *Ibid* 77.

²⁴² *Ibid* 82.

²⁴³ *Ibid* 109; Singh et al, above n 70, 37.

²⁴⁴ Bertana, above n 19, 134-135.

²⁴⁵ *Ibid* 14-15.

²⁴⁶ *Climate Change Act*, above n 150.

²⁴⁷ *Ibid* s 77.

²⁴⁸ *Ibid* s 78.

²⁴⁹ Naser, 'Protecting Climate Change Induced Displacement in Bangladesh: Legal and Policy Responses', above n 16, 307.

²⁵⁰ *Trust Fund Act 2019*, above n 149.

²⁵¹ Campbell and Warrick, above n 2, 30.

²⁵² *Ibid* 30; Baker-Jones et al, above n 79, 9.

style,²⁵³ which is particularly important as it provides a platform where traditional communities can share their feelings about relocation.²⁵⁴

Despite significant advancements in the *Climate Change Act*, it has several shortcomings. The proposed legislation contains no information regarding how CCDPs should initiate a planned relocation or receive technical assistance from the State. It also provides no accountability mechanism or access to impartial and equitable forums for grievance, review, conflict resolution, or redress throughout relocations. These are crucial requirements for legal climate displacement frameworks, according to the UNHCR.²⁵⁵ State accountability and dispute resolution are particularly important to ensure the rights of CCDPs are upheld and legal recourse is available if needed.²⁵⁶ It is also arguable that the *Climate Change Act* focuses on planned relocation and does not adequately address the nuances of sudden-onset displacement, including evacuations and temporary settlements. The most significant failing of the *Climate Change Act*, however, is the exclusion of TCL and traditional decision-makers, which is discussed below. Nevertheless, the *Climate Change Act* is an unparalleled legislative development that provides clear, legal procedures for responding to climate displacement and undertaking relocation.

Future Legal Frameworks to Address Climate Displacement

Traditional customs and customary law present unique challenges and opportunities in relation to climate displacement. This paper argues that climate displacement legal, policy and institutional frameworks should include both State-based laws and mechanisms, *and* customary ones. A hybrid approach could honour local culture and foster higher levels of engagement with local communities and their leaders, leading to more viable and culturally appropriate solutions. Current domestic efforts responding to climate displacement do not include TCL, contrary to recommendations in international instruments such as *The Nansen Initiative*.²⁵⁷ While the *Climate Change Act* requires Talanoa consultation with affected communities, the process should focus on empowerment and community-led **decisions**, rather than consultations. Bertana argues that public participation in environmental governance creates an ‘illusion of inclusiveness, while silencing discussions on power’.²⁵⁸ In her view, dictating the participation methods available for CCDPs ‘reinforces already existing hierarchies’.²⁵⁹ This paper has demonstrated that a lack of local involvement in relocation decisions leads to undesirable outcomes.²⁶⁰ Additionally, as customary land plays a fundamental role in Fijian life, relocation must be navigated carefully.²⁶¹ Applying top-down approaches increases the risk of spiritual detachment from *vanua* and conflict over land.²⁶²

²⁵³ *Climate Change Act*, above n 150, ss 2, 77(2); see Section 3.3 for an explanation of ‘Talanoa’.

²⁵⁴ Nakamura and Kanemasu, above n 100, 23; Bertana, above n 19, 114.

²⁵⁵ *UNHCR Guidance on Planned Relocation*, above n 54, 15.

²⁵⁶ McAdam and Ferris, above n 82, 165.

²⁵⁷ *The Nansen Initiative*, above n 52, 25; McAdam and Ferris, above n 82, 161.

²⁵⁸ Bertana, above n 19, 71.

²⁵⁹ *Ibid* 80.

²⁶⁰ See Section 5.1 for a discussion of this issue.

²⁶¹ Charan, Kaur and Singh, above n 106, 27.

²⁶² Orchardton, Mitchell and McEvoy, above n 205, 369.

Loss of culture is unavoidable unless customary land tenure is considered early in the planned relocation process.²⁶³

Consequently, traditional customs, laws and leaders must be placed at the forefront of climate displacement processes. As Gharbaoui and Blocher posit, customary authorities and institutions are legitimate governance actors.²⁶⁴ This is particularly evident in Native Land tenure and decision-making, two crucial aspects of climate displacement. In times of environmental crises, Chiefs are usually the ones to coordinate and make decisions.²⁶⁵ Chiefs are also responsible for land transactions and strongly influence village life and decision-making.²⁶⁶ As such, traditional channels, with the support of the Government, may provide positive relocation outcomes that minimise conflict and spiritual detachment.²⁶⁷ Including TCL may also provide opportunities for traditional clan-based systems to resolve climate displacement disputes.²⁶⁸ Furthermore, traditional knowledge may assist in responding to the legal, policy and management challenges presented by climate displacement.²⁶⁹ Traditional knowledge renders communities more resilient and is vital for climate adaptation – or where relocation is essential – finding suitable relocation sites that can sustain livelihoods.²⁷⁰ Cosmin argues that a harmonised system that embraces traditional knowledge, customs and law would constitute a ‘decisive step towards the protection of rights’.²⁷¹ A hybrid co-management approach to climate displacement would arguably lead to more equitable, durable solutions that integrate traditional custom, knowledge and perceptions of rights.

A potential framework to incorporate TCL is the creation of by-laws which blend local *iTaukei* knowledge, customs and laws with State law, as has been adopted in Samoa for environmental management. Such by-laws would ensure the protection of cultural heritage and the long-term success of displacement solutions, by employing the ‘much-needed sensitivity’²⁷² of traditional leadership and governance structures. An argument against the inclusion of TCL in domestic legislation is that by recognising traditional custom in a State-law framework, State law ‘invariably limits the reach of custom’.²⁷³ While this is a valid point, it does not justify the exclusion of TCL, as there are clear benefits to its inclusion. Instead, it means that such a mechanism must be meticulously prepared in consultation with all the relevant stakeholders, including: government bodies; Chiefs; religious leaders; community residents; and local community specialists.²⁷⁴ As a newly adopted piece of legislation, there is opportunity to amend the *Climate Change Act* to include TCL, along with the accountability and dispute resolution mechanisms required in the UNHCR guidelines. This would ensure that

²⁶³ Gharbaoui and Blocher, above n 18, 375.

²⁶⁴ Ibid 362.

²⁶⁵ Baker-Jones et al, above n 79, 34.

²⁶⁶ Charan, Kaur and Singh, above n 106, 20, 24.

²⁶⁷ Gharbaoui and Blocher, above n 18, 361.

²⁶⁸ *UNHCR Planning Relocations Toolbox*, above n 54, 41.

²⁶⁹ Davies, ‘Ancient and New Legal Landscapes’, above n 179, 66.

²⁷⁰ Nakamura and Kanemasu, above n 100, 23; Singh et al, above n 70, 39; Charan, Kaur and Singh, above n 106, 30; Gharbaoui and Blocher, above n 18, 376.

²⁷¹ Corendea, above n 3, 27.

²⁷² Gharbaoui and Blocher, above n 18, 376.

²⁷³ Follett, above n 179, 128.

²⁷⁴ Charan, Kaur and Singh, above n 106, 30-31.

Fiji's domestic law provides sufficient operational mechanisms and adequately includes traditional knowledge and TCL, meaning climate displacement and relocation processes would more effectively empower communities and reflect their wishes.

CONCLUSION

Climate change is the defining issue of the twenty-first century, impacting the Earth in unprecedented scope and scale.²⁷⁵ Climate displacement is predicted by the IPCC to be the gravest effect of climate change, disrupting human life and movement worldwide.²⁷⁶ This paper has illustrated the severe threat that climate change poses to the land, livelihoods and homes of communities in the South Pacific, through the case study of Fiji. Given that climate displacement will primarily be internal, national laws, policies and institutions are imperative to protect CCDPs and facilitate relocation.

Fiji is showing leadership in developing national frameworks relating to climate displacement.²⁷⁷ Fiji is described as a 'rare example'²⁷⁸ of a country that has created guidelines for planned relocation, and its recent *Climate Change Act* is novel in the South Pacific.²⁷⁹ However, this paper has demonstrated that the nuances created by traditional customary law pose significant obstacles to State-based relocation approaches. The urgency presented by climate displacement requires transitioning to a new legal paradigm. This paper has argued that Fiji's current legal response to climate displacement would be more effective if informed by the ancient knowledge, laws and customs of the *iTaukei* people, and the empowerment of their perspectives.

In Fiji, where traditional customary law is the predominant legal system practised in rural localities, negotiating with traditional leaders to create climate displacement by-laws is likely to have the best prospects for success. Such by-laws could be modelled on those developed in Samoa for environmental management. This hybrid approach would appropriately honour traditional custom and foster higher levels of engagement with local communities and their leaders, leading to more viable and culturally suitable solutions. Additionally, accountability, grievance review and dispute resolution mechanisms should be built into the *Climate Change Act* to ensure climate displacement processes are fair, equitable and respectful of human rights.

The intended, or unintended, effects of Fiji's climate displacement laws and policies may not be revealed for years to come. Ongoing research into the operation and effectiveness of climate displacement frameworks is essential. Further scholarship considering the impact of climate displacement and the law in relation to gender, economic empowerment and religion is also warranted. Importantly, research surrounding climate displacement in the South Pacific

²⁷⁵ Intergovernmental Panel on Climate Change, *Climate Change 2021 Synthesis Report*, above n 1, .

²⁷⁶ Intergovernmental Panel on Climate Change, *Climate Change: The IPCC 1990 and 1992 Assessments*, above n 4, 103; Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C Special Report*, above n 1, 245.

²⁷⁷ Gharbaoui and Blocher, above n 18, 375.

²⁷⁸ McAdam and Ferris, above n 82, 139.

²⁷⁹ Sloan and Manley, above n 155.

should be conducted in a way that empowers local communities, values traditional knowledge and does not downplay islander adaptability and resilience. As stated by Sylvia Lopez-Ekra, the IOM Ghana Chief of Mission:

*Migration is often misperceived as the failure to adapt to a changing environment. It is, however, one of the main coping and survival mechanisms that is available to those affected by environmental degradation and climate change.*²⁸⁰

²⁸⁰ Joy Paone, 'IOM Ghana and Embassy of France Host Workshop on Migration and Climate Change for Policymakers' (2017) <https://www.iom.int/news/iom-ghana-and-embassy-france-host-workshop-migration-and-climate-change-policymakers> (Accessed 9 November 2021).