

WORKSHOP REPORT

‘RELOCATION IN THE PACIFIC’

UNSW Law Faculty Boardroom, Monday 12 August 2013

Participants: Jane McAdam, Jon Barnett, Bruce Burson (via Skype), John Campbell, John Connell, Beth Ferris, Daniel Fitzpatrick, Rebecca Monson, Kate Purcell, Sarah Williams, Elissa Waters, Fiona Chong

PRESENTATIONS

Jane McAdam welcomed participants, explaining that this workshop was intended to provide an informal forum for researchers working on issues related to relocation in the Pacific to talk about their research. The morning sessions were devoted to short presentations by participants of their work and the afternoon sought to identify trends, gaps and future needs for further work on the area.

John Connell, (Geography, University of Sydney) is particularly interested in the relationship between environmental change and development and has done a lot of work on Tuvalu and Bougainville/Carteret Islands. His research focuses on migration in Pacific Island States (especially on remittances, skilled migrant and guestworkers.) His most recent book, *Islands at Risk? Economies and Environments in Change* (Edward Elgar Cheltenham 2013) looks at the relationship between economic and environmental risk in the Pacific.

John Campbell (Geography, University of Waikato) has been interested in relocation in the Pacific since the 1970s when he worked with two villages (in Fiji and N. Vanuatu) which had been relocated. He is particularly interested in the relationship between relocation and land, and about the question of how many people might have to relocate in the future from deltas, river flood plains and inland areas susceptible to drought. He is interested in identifying the climate drivers of migration the relationship between climate change and livelihoods/habitat/health/ontological security.

Jon Barnett (Geography, University of Melbourne) is presently working on a number of research projects including water management in Shanghai and the impact of sea-level rise in Australia and the consequent need for strategic planning. He is involved in several research projects on Pacific migration and climate change. In Tonga he is finding that climate change has significant effects on health, particularly in informal settlements. He has also looked at the situation in Niue where 80% of the people born on the island no longer live there. He observed that a major cyclone in 2006 had little effect on out-migration from Niue as people who were able to leave had already done so. He raised the issue of the relationship between reductions in population and vulnerability, noting that Niue has lost much of its skilled workforce. Under his ARC Future Fellowship, he is looking at patterns of migration in Tuvalu. His experience in Niue had also led to the observation that the experiences of Tuvaluans in Niue had been difficult. Jon raised questions about ‘thresholds’ of vulnerability, noting that there is a point where an island’s population could become so small that capacity for adaptation is decreased.

Bruce Burson (Consultant in Refugee/Migration Law and Policy) is interested in migration law and policy and how it can be used to respond to population movements resulting from environmental degradation. In New Zealand, environmental degradation and climate change can bring people into existing general refugee and protection frameworks, but he noted that despite of some news reports, New Zealand does not currently have a policy to respond to those displaced by environmental factors (apart from existing protection and humanitarian mechanisms). With Richard Bedford (University of Waikato), he is trying to map out legal regulations and policy in the Pacific with a focus on how migration law affects population movements for environmental reasons, and how resilience might be fostered through migration law and policy. One question he raised was where do you draw the threshold – what level of anticipated harm is needed before people cannot return home? This question led to a broader discussion among participants about preemptive frameworks and thresholds. Jon Barnett suggested that thresholds are less defined by environmental threats than by social changes resulting from environmental hazards (eg when schools close or roads are destroyed). Discussion also focused on the fact that measures taken in the name of climate change adaptation can also produce negative results. Daniel Fitzpatrick noted that when he was working in post-tsunami Aceh and issues of relocation came up, he found a paucity of guidance on how existing resettlement safeguard policies could be adapted to disasters and suggested that a rights-based framework may be too static. In fact, his experience was that relocations were successful when they were negotiated by communities rather than State-driven. Issues of State involvement in relocations also raise questions of political interests and in trust in public authorities. This suggests that guidance on relocations may need to be context-driven rather than universal. What may be most helpful, Daniel argued, is a set of templates that governments can use when faced with particular situations.

Beth Ferris (Political Science, Brookings-LSE Project on Internal Displacement) explained that her Project's interest in the issue of relocations in the Pacific is the result of several threads of work, including an interest in the human rights of those affected by natural disasters and climate change, work on development-induced displacement (which seems to offer some lessons for those displaced/relocated as a result of climate change) and the Special Rapporteur on IDPs' interest in climate change. The issue of relocations had come up in the Project's research on Arctic indigenous communities and climate change. As part of the Project's work on natural disasters, a study had recently been completed on the role of regional mechanisms in disaster risk management with field-based case studies on the Pacific and the Caribbean. While the Project does not have in-depth expertise in the Pacific, she would like to ensure that Pacific concerns are raised in global policy discussions.

Daniel Fitzpatrick (Law, ANU) is working on Aceh and the Solomon Islands, rising sea levels and relocations through a four-year ARC Future Fellowship on 'Resilience of Property'. The work on the Solomon Islands is being carried out jointly with Rebecca Monson with the support of an ARC Discovery Grant. Legal frameworks for land law are actually minor factors in relocations in the region. Currently, most relocations are small-scale and occur in customary land areas. While there are not many serious problems when communities move within their customary area, there are more difficulties when people relocate outside their demographic/customary group. The State rarely exercises power of eminent domain; rather most

relocations occur through community-based negotiated agreements rather than through State-directed processes. State authorities have limited capacity to enforce agreements although repeated cultural transactions are used to uphold customary agreements and legal safeguards may be needed. At the national level, private law on land transactions and land markets are particularly important.

Rebecca Monson (Law, ANU) is interested in the intersection between State and customary systems. She has coordinated a collaborative project with Solomon Islander researchers, who prepared a series of case studies of actual and potential relocations by ‘coastal people’ from coastal areas and outlying islands, to areas further inland, which are often occupied by ‘bush people’. Like Daniel, Rebecca noted the general weakness of legal systems in people’s lives (for example, people do not generally use courts to play out political debates or deal with human rights issues). She observed that the church is often more present than the State in the Pacific and gave several examples of church involvement in such debates (eg an old church being deconsecrated to signal the finality of the relocation). Another example raised in the group discussion was the split between those involved in the church-related resettlement scheme from the Carteret Islands and those involved in the State-driven plan. Rebecca also noted that while Polynesian groups seem to migrate relatively permanently, Melanesians seem to use migration in a more temporary fashion—although this may now be changing. She suspects that youth are becoming more involved in climate change issues.

Jane McAdam (Law, UNSW), also an ARC Future Fellow, is looking at the historical experiences of Pacific countries with cross-border relocations. Her interest in this arose from a concern that international policymakers were increasingly putting ‘slow-onset’ issues into the ‘too hard’ basket and focusing their attention instead on sudden-onset disasters, and/or that the relocation of whole Pacific island communities was a viable policy option (without any awareness of past experiences of this). There are four historical examples of which Jane is aware: the relocation of Banabans from Ocean Island to Rabi, Fiji; the relocation of some Vaitupuans to Kioa, Fiji; the relocation of some Gilbertese to the Solomon Islands; and the proposed (but rejected) relocation of Nauruans to Australia. The research is based on interviews and archival documents with a view toward drawing out lessons from these historical experiences for current cases. While immersed in the history of the Banaban case, Jane is also finding that interesting legal questions are surfacing, including issues around political identity, self-determination, citizenship, sovereignty and alternative forms of governance. The views of different generations also offer fascinating insights into understandings of identity and belonging over time. For example, even though relocation to Rabi occurred 70 years ago, Banabans still maintain both their identity as Banabans and interest in developments on Ocean Island by Kiribati.

Kate Purcell (Law, UNSW) is completing her PhD at Cambridge on the implications of geographical change for maritime limits in the law of the sea, especially in the context of climate change. Her research looks at the connection between physical and human geography and the juridical concepts of territorial sovereignty and sovereign rights in the sea. She will build upon this research as a postdoctoral fellow under Jane’s Future Fellowship, focusing on the concept of territory in international law and its connection with statehood. She hopes to develop a genealogy of these concepts through the lens of colonization and decolonization in the Pacific

region, where questions of loss of territory and statehood have been connected with the prospect of loss of habitability and displacement associated with climate change. This study will look at the way in which the international law of territory and the law of the sea have been shaped by colonialism and, in its various forms and varying degrees, decolonization in the Pacific. This may cast new light on the suggestion (in any case contentious as a matter of doctrine) that geographically vulnerable small island States in the region are at risk of losing their territory, maritime entitlements, and statehood by operation of the same laws applied to facts including large-scale migration or relocation.

Sarah Williams (Law, UNSW) has worked on international disaster response law in the EU and UK and on international criminal law. She is particularly interested in cross-border relocation in terms of international criminal law, compensation, procedural mechanisms, the rights of relocated populations and relations between relocated populations and host communities.

DISCUSSION

In the wide-ranging afternoon discussion, many issues were raised, including:

Research gaps:

- The importance and need for further work on triggers and timing. Are there thresholds of vulnerability? To what extent can foreign assistance sustain very small islands (eg Pitcairn Islands)?
- The need for further work on urban communities, including informal settlements. Urbanization can be a response to climate change, but most of the work on the effects of climate change has focused on rural areas.
- The need to identify good practices of relocation in the Pacific and to learn from the region's experience. While there are many different initiatives, there is not much coherence. Could an existing regional mechanism do this? To what extent is this being done?
- The relationship between community-negotiated relocations and national/international legal frameworks.
- The need to look at the effects of climate change on the seas and not just on the land.
- The need to recognize the diversity and complexity of climate change effects in the Pacific. There are 100 populated coral atolls, for example, 80% of which are growing in size.
- The need for further research on sensitivity of livelihoods to climate change and how communities are adapting to the effects of climate change so that we can better understand 'social vulnerability' in the Pacific context.
- The need for further ethnographic studies to determine what the actual drivers of migration are.
- Are there different patterns of migration between Polynesians, Micronesians and Melanesians?
- The relationship between sudden- and slow-onset disasters, and the need for a better understanding of difference kinds of mobility (eg migration, relocation, evacuation, displacement).
- The need to think about the question of what the social consequences would be of a free mobility regime in the region (including Australia and New Zealand, but perhaps pragmatically (on account of numbers), excluding Papua New Guinea).

Other issues to consider:

- The key necessity of information flows to affected communities in discussions of relocations.
- The centrality of consent by affected communities/individuals in any decisions about relocation/migration.
- The importance of recognizing different policy implications between individual decisions to migrate and community decisions to relocate.
- For governments, the 'climate change' agenda means that a lot of money is being channelled into things that are able to be marketed as such, and perhaps not where

interventions would be very helpful (eg putting in non-fossil fuel-based electricity in every village), which in turn would assist things like adaptation, sustainability, etc.

- Some islanders might express a desire to stay as a means of rationalizing the fact that they do not have any way to leave.
- Workshop participants noted the importance of including Pacific islanders in future research workshops and discussions.

Strategies:

- As researchers, a strength is our capacity to gather and collate data and identify best practices, and then make that information accessible (especially to affected communities).
- As researchers, we need to connect better with NGOs in the region that might already be doing some of this work in a more piecemeal fashion.
- Community leadership is very important. To that end, a very useful policy intervention would be funding for training programmes on community adaptation, sustainable development, etc.

CONCLUSION

Participants agreed that the workshop had been a valuable experience and encouraged the organizers to consider holding another large conference on relocations and climate change in the Pacific.

APPENDIX

Agenda

RELOCATION WORKSHOP

UNSW Law Faculty Boardroom, Monday 12 August 2013

- 9.30am Welcome and brief introductions
- 9.40am Each participant to give an overview of his/her research relating to relocation in the Pacific (max 10 mins each), plus questions/discussion
- John Connell
 - John Campbell
 - Jon Barnett
 - Bruce Burson (via Skype)
 - Beth Ferris
- 11.15am Morning tea
- 11.45am Each participant to give an overview of his/her research relating to relocation in the Pacific (max 10 mins each), plus questions/discussion ... cont'd
- Daniel Fitzpatrick
 - Rebecca Monson
 - Jane McAdam
 - Sarah Williams
 - Kate Purcell
- 1.15pm Lunch
- 2.00pm The research agenda: key issues, gaps, needs, challenges/distractions, future directions
(eg the role of climate change – help or hindrance?)
- 3.00pm Policy initiatives relating to relocation and links with research
(eg Nansen Initiative, Peninsula Principles, International Law Association Committee on Sea-Level Rise, International Bar Association on Climate Change and Human Rights, APMEN, etc)
- 3.30pm Opportunities for collaboration and future work
- 4.00pm Close