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Repairing Domestic Climate Displacement

The Peninsula Principles

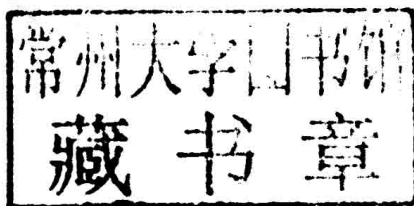
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Repairing Domestic Climate Displacement

Climate change, sometimes thought of as a problem for the future, is already impacting people's lives around the world: families are losing their homes, lands and livelihoods as a result of sea level rise, increased frequency and intensity of storms, drought and other phenomena. Following several years of preparatory work across the globe, legal scholars, judges, UN officials and climate change experts from 11 countries came together to finalise a new normative framework aiming to strengthen the right of climate-displaced persons, households and communities. This resulted in the approval of the Peninsula Principles on Climate Displacement within States in August 2013.

This book provides detailed explanations and interpretations of the Peninsula Principles and includes in-depth discussion of the legal, policy and programmatic efforts needed to uphold the standards and norms embedded in the Principles. The book provides policy-makers with the conceptual understanding necessary to ensure that national-level policies are in place to respond to the climate displacement challenge, as well as a firm sense of the programme-level approaches that can be taken to anticipate, reduce and manage climate displacement. It also provides students and policy advocates with the necessary information to debate and critique responses to climate displacement at different levels.

Drawing together key thinkers in the field, this volume will be of great relevance to scholars, lawyers, legal advisers and policy-makers with an interest in climate change, environmental policy, disaster management and human rights law and policy.

Scott Leckie is the Founder and Director of Displacement Solutions, Visiting Professor at the Australian National University, Canberra and Senior Fellow at Melbourne University Law School, Melbourne, Australia.

Chris Huggins is a member of the Association of American Geographers and is Adjunct Professor at Carleton University, Canada.

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Repairing Domestic Climate Displacement

The Peninsula Principles

Edited by Scott Leckie and Chris Huggins

For climate-displaced persons everywhere past, present, future

Contributors

Simon Bagshaw is a Senior Policy Adviser on protection and displacement at the United Nations Office for the Coordination of Humanitarian Affairs. Prior to this, he worked for three years as a senior research associate in the Office of the Representative of the United Nations Secretary-General on Internally Displaced Persons. He holds a PhD in Law from the European University Institute in Florence.

Robin Bronen lives in Alaska, works as a human rights attorney and has been researching 'climigration', the climate-induced relocation of Alaska Native communities since 2007. Her research has been publicised by CNN, the *Guardian* and others. She is a senior research scientist at the University of Alaska Fairbanks and co-founded and works as the executive director of the Alaska Institute for Justice, a non-governmental organisation that is the only immigration legal service provider in Alaska. It houses a Language Interpreter Center, training bilingual Alaskans to be interpreters, and also is a research and policy institute focused on climate justice issues. The Alaska Bar Association awarded her the 2007 Robert Hickerson Public Service award and the 2012 International Human Rights award. The Federal Bureau of Investigation awarded the Alaska Institute for Justice the 2012 FBI Director's Community Service award for its work with human trafficking victims and the International Soroptimists awarded her the 2012 Advancing the Rights of Women award.

Bruce Burson is a senior member of the New Zealand Immigration and Protection Tribunal. He has written a number of the tribunal's leading judgments, including in relation to natural disasters, climate change and international protection law. He is a Senior Research Associate at the Refugee Law Initiative at the University of London, and is a member of the Consultative Committee of the Nansen Initiative on Cross-Border Disaster-Induced Displacement. He is also a member of the International Law Association Committee on the International Law Implications of Sea-level Rise. He is the editor of *Climate Change and Migration: South Pacific Perspectives* (2009) and is co-editor of *On the*

Borders of Refugee Protection? The Impact of Human Rights Law on Refugee Law: Comparative Practice and Theory (Martinus Nijhoff, 2015).

Bonnie Docherty is a lecturer on law and a senior clinical instructor at the International Human Rights Clinic at Harvard Law School. She has done significant fieldwork, scholarship and teaching in the field of human rights and the environment, focusing on climate change and mining. She also has extensive experience with the negotiation and implementation of treaties, particularly in the field of disarmament. She received her J.D. from Harvard Law School and her A.B. from Harvard University.

Khaled Hassine is a lawyer and housing, land and property (HLP) rights specialist. He has worked on HLP issues for over ten years with HLP NGOs, international organisations and research institutes focusing on property and land management, cadastral/titling systems, forced evictions/relocations, security of tenure, and property restitution mechanisms in post-conflict/-disaster settings, including procedural modalities, as well as climate displacement. He has advised numerous UN peace operations in various regions, including Georgia, Sudan, Yemen and Kosovo, and he is a member of the HLP-Group, a Sub-Working Group of the UN Global Protection Cluster, and of the UNHCR Livelihoods Advisory Board. Together with Scott Leckie, he co-authored the first Commentary on the Pinheiro Principles (UN Principles on Housing and Property Restitution for Refugees and Displaced Persons) (forthcoming).

David Hodgkinson is Special Counsel at the national Australian law firm Clayton Utz, Associate Professor in the Law School at the University of Western Australia, and a director of HodgkinsonJohnston Pty Ltd. He practises in the areas of climate change and aviation.

Chris Huggins is a researcher, lecturer and trainer with more than 15 years experience on land and property rights and displacement issues, especially in Sub-Saharan Africa. He is currently a Non-Resident Research Fellow at the African Centre for Technology Studies (ACTS), which was ranked amongst the top 25 most influential climate change think tanks in the world in 2013. He is also an Adjunct Professor at Carleton University, in Ottawa. He has consulted with UN agencies, bilateral donors, policy think tanks, international non-governmental organisations and for-profit institutions. He co-edited (with Scott Leckie) the handbook on *Conflict and Housing, Land and Property Rights* (Cambridge University Press, 2011) which has been included on the syllabi of several university courses, including the University of Edinburgh, University of Tulsa, and University of Copenhagen.

Scott Leckie is an international human rights lawyer and the Director and Founder of Displacement Solutions (www.displacementsolutions.org),

an international not-for-profit organisation dedicated to resolving cases of forced displacement throughout the world, in particular displacement caused by climate change and conflict. Throughout his 30-year human rights career, he has established several other human rights and political organisations and institutions. He regularly advises several United Nations agencies on various housing, land and property rights issues, and has worked on these questions in 81 countries. He has been active on various international human rights standard-setting initiatives, and was the drafter and driving force behind more than 50 international human rights standards. Scott has written and edited 19 books and over 150 articles and reports on issues including housing rights, economic, social and cultural rights, forced evictions, the right to housing and property restitution for refugees and internally displaced persons and other human rights themes. He lectures frequently and teaches several human rights courses in some of the top 15 law schools around the world, including the world's first law school course on climate change and displacement at the College of Law of the Australian National University and University of Melbourne Law School.

Ezekiel Simperingham is an international lawyer with 12 years of experience providing legal and policy advice on human rights, housing, land and property (HLP), rule of law and displacement (refugee and internally displaced person) issues, and has extensive experience working in conflict- and disaster-affected countries across the globe. Since 2008, he has worked as an international legal consultant for Displacement Solutions, focusing on the design and implementation of legal and policy solutions to situations of displacement globally. He previously worked for the International Commission of Jurists in Bangkok, Thailand, the Office of the High Commissioner for Human Rights in Colombo, Sri Lanka, the International Center for Transitional Justice in New York, USA, the Refugee Status Appeals Authority in Auckland, New Zealand, and the United Nations High Commissioner for Refugees in Canberra, Australia. In 2014, he undertook an emergency deployment as the National Housing, Land and Property Adviser for the Shelter Cluster in the humanitarian response to Typhoon Haiyan in the Philippines. He was awarded a Master of Laws by the New York University School of Law and holds Bachelor of Laws (Hons) and Bachelor of Arts degrees from the University of Auckland, New Zealand. He has authored a number of publications on refugee law, climate change-induced displacement, international criminal justice and HLP.

Foreword

The displacement of people gives rise to acute human rights issues, whether the cause is natural disaster, war or resource development. Various international texts offer guidance as to how such issues can and should be addressed. Until now, however, no set of principles has applied specifically to the displacement of people within states due to climate change. The Peninsula Principles address that subject.

As explained in this introductory book of essays, the normative foundation of the Peninsula Principles is international human rights law, particularly the two international human rights covenants – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Drawing on the general content of the human rights relating to home, land and property, the Principles offer considered and comprehensive guidance as to how states and their agencies can effectively meet their obligations to prevent displacement due to climate change and deal in a rights-sensitive manner with its consequences.

In so doing, the Peninsula Principles draw on the now established tradition of principle-making in international law, particularly human rights law. Numerous examples exist of principles being developed through mechanisms that bring together the combined knowledge of international scholars, experts and practitioners. Such principles can provide authoritative guidance in the application and interpretation of human rights standards by states, judiciaries and others. Time should prove the Peninsula Principles to be a welcome addition to this body of soft law.

Particular features of the phenomenon of internal displacement of people due to climate change make the Peninsula Principles especially welcome. History has shown that such displacement has a profoundly negative impact on the lives of individuals, families and (more usually) whole communities. History has also shown that most of this impact is felt by people displaced within states. There is much action that states can – and under international law must – take to prevent or deal rights-sensitively with this problem. States can look to the Peninsula Principles as a framework for that action.

Although a powerful case can be made for the adoption of an international convention dealing specifically with the displacement of people due to climate change (internally or externally), we do not yet have such a convention. Consequently, the two covenants and other general sources of human rights law must carry the immense normative load that is generated by this pressing contemporary problem. It seems very likely that judicial institutions will have to interpret and develop such general standards in a way that meets these particular demands. Like analogous principles in other fields, the Peninsula Principles should prove to be a valuable source in that process.

Justice Kevin Bell
Supreme Court of Victoria
Melbourne, Australia

Preface

Displacement Solutions (DS)¹ believes that the time for concerted action to prevent and resolve climate displacement is upon us, and has been for some time. In Bangladesh, the Solomon Islands, Kiribati, Panama, the US state of Alaska, Myanmar, Vietnam, Tuvalu and beyond, millions of people are facing and experiencing displacement as a result of climate change. DS has seen the human face of climate displacement up close in more than a dozen such countries, and our work to draw attention to the plight of the growing number of individuals, households or communities under threat has – out of necessity – expanded considerably since we began working on these issues in 2007.

Our work in the frontline states affected by climate displacement has revealed to us time and time again that research carried out by the Intergovernmental Panel on Climate Change (IPCC) reports, the Stern Review and many other studies on the extent to which climate change – including rising sea levels, heavier floods, more frequent and severe storms, drought and desertification – will cause large-scale population movements are often too future-focused, for climate displacement is *already happening today*. This novel form of displacement presents an urgent problem and challenging conundrum for affected communities, governments and the broader international community.

With a view to assisting these groups to better address the climate displacement dilemmas facing them, DS has dedicated most of 2011–2013 to building the foundations for a new normative framework to address climate displacement within States. Teams of DS experts spent countless hours reviewing the climate displacement literature; examining virtually all policy and legal documents dealing with climate displacement; travelling throughout the world to meet with government officials, academics, communities and those working in the field; and attending and presenting at climate displacement seminars and conferences. A solid six-month period was then spent drafting, re-drafting and re-drafting again and again (there were some 30 pre-final drafts of what became the new standard) and seeking expert inputs into the text. We placed an advanced text on the DS website and asked the public for

comments, and many useful contributions were received from people from all corners of the planet.

Then, in mid-August 2013, representatives from Australia, New Zealand, Bangladesh, the Netherlands, Switzerland, the United Kingdom, Germany, Egypt, Tunisia and the United States came together in Red Hill, Victoria, Australia, and shared their backgrounds and expertise in international law, human rights and refugee law, forced migration, environmental change and United Nations policy creation to strengthen, stand behind and approve what became the Peninsula Principles on Climate Displacement within States (the Principles), which we believe is the first formal policy document of its kind in the world.

The Principles provide a comprehensive normative framework, based on principles of international law, human rights obligations and good practice, within which the rights of climate-displaced persons within States can be addressed. The Principles set out protection and assistance provisions, consistent with the UN Guiding Principles on Internal Displacement (upon which they build and contextualise), to be applied to climate-displaced persons.

The foundations of the Principles include the following:

- While climate displacement can involve both internal and cross-border displacement, most displacement will likely occur within State borders.
- Climate-displaced persons have a right to remain in their homes and retain connections to the land on which they live for as long as possible.
- Those who may be displaced have a right to move safely and to relocate within their national borders over time.
- Climate displacement, if not properly planned for and managed, may give rise to tensions and instability within States.
- Because climate change is a global problem, States should (upon request by affected States) provide adequate and appropriate support for mitigation, adaptation, relocation and protection measures, and provide assistance to climate-displaced persons.
- The international community has humanitarian, social, cultural, financial and security interests in addressing the problem of climate displacement in a timely, coordinated and targeted manner.
- There has been no significant coordinated response by States to address climate displacement, whether temporary or permanent in nature.
- Neither the United Nations Framework Convention on Climate Change (UNFCCC) nor its Kyoto Protocol either contemplates or addresses the issue of climate displacement.
- There is a need for a globally applicable normative framework to provide a coherent and principled approach for the collaborative provision of pre-emptive assistance to those who may be displaced by the effects of climate change, as well as remedial assistance to those who have been so displaced, and legal protections for both.

The Principles are divided into four operative parts: (a) general obligations; (b) climate displacement preparation and planning; (c) displacement; and (d) post-displacement and return.

General obligations include those pertaining to the prevention and avoidance of conditions that might lead to climate displacement; provision of adaptation assistance and protection measures; national implementation measures; and international cooperation and assistance.

Climate displacement preparation and planning includes climate displacement risk management; participation by and consent from affected individuals, households and communities regarding such preparation and planning; land identification, habitability and use; development of laws and policies for loss suffered and damage incurred in the context of climate displacement; and development and strengthening of institutional frameworks to support and facilitate the provision of assistance and protection.

Displacement requires state-based assistance to those climate-displaced persons who have not been relocated, including housing and livelihood matters and remedies and compensation.

Post-displacement and return sets out a framework for the process of return in the event that displacement is temporary and return to homes, lands or places of habitual residence is possible.

The Principles can now be practically applied in efforts designed to improve the prospects for climate-displaced persons, households and communities. They set out a framework for the collaborative provision of pre-emptive adaptation assistance, preparation and planning – and, if necessary, relocation, together with post-displacement matters and possible return to homes – *before* islands and coastlines are under water, *before* global warming worsens, and *before* glaciers melt and retreat even further than they already have.

Governments, international organisations and threatened communities can begin today to apply the Peninsula Principles to concrete situations where people are already facing or experiencing climate displacement. Importantly, the Principles take the correct view that communities are expected to play a fundamental role in organising themselves and outlining their future needs with regard to any looming – or ever-present – climate displacement threat. Communities need to organise themselves, come forward with their claims, and outline what the corresponding obligations of States are, based on existing human rights laws, to protect and respect the rights of those affected by climate displacement.

We know with increasing precision where climate displacement is already taking place or will take place, which people and how many are likely to be affected, and at least some of the – often land-based – solutions required to prevent and repair climate displacement. Thus, we now find ourselves at a juncture between theory and reality, between what could be and what clearly is. The Principles provide everyone concerned about the rights of climate-displaced persons, households and communities

with a clear and consistent soft law basis for the practical actions required of us.

We, therefore, call upon all international agencies, governments (both national and local), communities, climate justice advocates and ordinary citizens to look carefully at the prospect of climate displacement wherever you live or work and try to apply the Principles as part of an effective strategy to treat climate-displaced persons, households and communities as the rights-holders that they so clearly are. Let us all work together towards this realistic and worthy objective, for together we can protect the rights of climate-displaced persons and resolve climate displacement the world over.

Scott Leckie and Chris Huggins

Note

- 1 www.displacementsolutions.org.

Acknowledgements

The process leading up to the development of the Peninsula Principles has been a fascinating one made possible by the collective efforts of scores of people across the planet who all care passionately about the displacement that is already being generated because of climate change. All of us who work on this issue in the field have witnessed climate displacement in its rawest forms: the embarrassed smile of a father unable to provide a safe home for his family as sea levels rise around them; the glint of hope in the eyes of children who know something is wrong, but precisely what it is still baffles them, even as it becomes ever more clear to those adults around them; and the worrying looks of gradual despair we have seen in the eyes of well-meaning, honest and caring politicians (yes, they still exist in the world!) as they contemplate the immense challenges facing them in the era of climate change.

Displacement Solutions has been engaged in the issue of climate displacement since our founding in 2006 and since then has continually expanded our attention to this problem in an ever-growing array of countries in virtually every corner of the world. We have tried to tackle these challenges head on and have consistently taken a rights-based and solutions-based approach towards this expanding crisis, whether in Bangladesh or Tuvalu, or Alaska, Panama or Myanmar and beyond. The more we worked on these issues, the more it became clear that besides the problem-solving work we engaged in, the research, the meetings with officials and communities and countless visits to field locations in numerous countries, the idea of a new global rights framework on the question of climate displacement would be an endeavour worth pursuing, notwithstanding how difficult it might be, and one that would assist climate-displaced communities and their governments to find viable ways to address what had previously often been seen as a problem so large that it was effectively without solution.

As our awareness of the problem grew and as our work expanded, I received a synchronistic phone call from Professor David Hodgkinson who had embarked on an effort to achieve the adoption by the international community of a new convention elaborating the rights of climate-displaced

people. He had called to see if I would be interested in joining forces. After a very lengthy and infinitely pleasant conversation, I let David know that I would certainly be on board, but that there would be no way that I could dedicate the years in the UN headquarters in Geneva needed to achieve the finalisation of such an ambitious new multilateral treaty. After having run myself ragged at the UN between 1988 and 2005, drafting and then pursuing the approval of scores of new legal texts, after becoming a father and moving to far-off coastal Australia, I was out of steam for such things, and had already decided that I would leave such work to the newcomers to the human rights scene. As time went on, I continued to offer strategic advice on the convention to David and his group even as it became increasingly clear that vital political support required for such an effort was simply not forthcoming. Similarly, while several UN agencies clearly sought to expand their mandates, albeit only marginally, to address the displacement consequences of climate change, it also became clear that most donor States were simply not interested in such expanded mandates. Nevertheless, some of the more reasonable States, particularly Switzerland and Norway, clearly wanted to do something, and with those sentiments decisions were made to establish what became the Nansen Initiative which was put into place to explore the development of a protection agenda to deal more effectively with the gaps in international law on cross-border movements of people due to disasters, climate change and other environmental factors. Since 2012, the NI has carried out some excellent work in generating greater understanding of these types of cross-border movements. It concluded its important work in 2015.

All of these factors taken together, combined with our growing climate displacement work in the field, then, led to the establishment by DS of our Climate Displacement Law Project (CDLP) in 2012. This formed part of the DS Climate Change and Displacement Initiative which has been in place since 2007 when our solution-oriented approaches to this question began in earnest. The CDLP thus became a vehicle by which we could seek to bring the best and brightest climate displacement minds, UN officials, judges, lawyers, jurists, NGO leaders and community-level practitioners among them, together in a common effort to develop a new normative framework, driven from the bottom up. We would consult the world at large, visit every climate displacement hotspot across the globe, read every article, book and analysis ever written on climate displacement, and gauge existing policy, law and practice the world over to determine how best to approach the growing problem of people losing their homes and lands because of climate change. And this is precisely what we did throughout most of 2011, 2012 and 2013, a 1,000-day process that eventually resulted in the text that this book is all about, the Peninsula Principles on Climate Displacement within States.

As I noted above, this process involved countless people in places too many to mention here, but one person above all others made this process