

**Submission on ‘Resettlement as a Human Rights Issue’**

Special Focus on Climate-Induced Displacement and Cultural Rights

In October 2023, Kristin Hausler and Alina Holzhausen published research focusing on climate-induced displacement of South Pacific Island States and the safeguarding of intangible cultural heritage.[[1]](#footnote-2) The article elaborates on previous findings from a study considering the role of intangible cultural heritage in strengthening climate resilience.[[2]](#footnote-3) The following submission draws on that research, situating climate-induced displacement and its impacts on human rights, in particular on cultural rights, in the wider human rights context of resettlement.

The accelerating rate of climate change impacts such as extreme weather events poses a tremendous threat to human beings around the world.[[3]](#footnote-4) However, because of their particular vulnerability to climate change due to their low-lying territory, South Pacific Island States are highly susceptible to climate change impacts such as sea level rise.[[4]](#footnote-5) Being exposed to not only partial, but also complete submersions of their islands, South Pacific Islanders are facing internal as well as cross-border displacement. Both resettlement processes face a number of human rights challenges; one of these challenges is the access and enjoyment of cultural heritage, which is recognised as a part of cultural rights,[[5]](#footnote-6) and which is key to the survival of cultural identities and thus of cultural diversity.

Considering, firstly, internal climate-induced displacement, international human rights treaties enshrine the obligations of States to respect, protect, and fulfil the human rights of all people under their jurisdiction.[[6]](#footnote-7) As further clarified by soft law instruments such as the UN Guiding Principles on Internal Displacement,[[7]](#footnote-8) internally displaced people (IDPs) continue to enjoy their human rights under these States obligations. While these laws and guidelines exist, the enjoyment of cultural heritage, which was recognised as part of cultural rights, are more difficult before, during, and after internal climate-induced displacement, in particular as access to heritage may be jeopardised.

While the negative impact of climate change on tangible cultural heritage is often evident, in particular when a cultural site is the victim of a disaster, the negative impact of climate change on intangible cultural heritage may be more difficult to ascertain.[[8]](#footnote-9) Indeed, the safeguarding of intangible cultural heritage is foremost dependent on the survival of its bearers. There may, therefore, be a misconception that the relocation of the bearers of intangible cultural heritage is sufficient to ensure the safeguarding of their intangible cultural heritage. However, traditional ways of life in the South Pacific region are often closely tied to specific environments, such as the sea, or to Ancestral lands.[[9]](#footnote-10) The relocation of South Pacific Islanders from their traditional territories, therefore, negatively impacts not only the access to tangible, but also to intangible cultural heritage, and, consequently, the realisation of their cultural rights.

Case studies from communities on Fiji, which have already been internally relocated, underline these impacts. For example, before the relocation to a place uphill from the coast, Korolevu was a village directly located next to the sea, with villagers having been able to use their traditional fishing practices daily.[[10]](#footnote-11) While the new location entails several benefits, such as better shelter from cyclones, the villagers are now limited in accessing their cultural practices due to the distance to the sea.[[11]](#footnote-12) In case of the relocation of the Vunidogoloa village in Cakaudrove, leaving their Ancestral lands behind had a great impact on the villagers’ cultural heritage, who needed to decide whether to disentomb their ancestors and shift their remains to a new burial site.[[12]](#footnote-13)

These resettlement impacts on cultural heritage, and, therefore, cultural rights, are further exacerbated when considering, secondly, climate-induced cross-border displacement. From an international law perspective, the State which is receiving individuals displaced by climate change is still bound by its human rights obligations to respect, protect, and fulfil their human rights, regardless of their citizenship status. However, there exist currently no other, more specific legally binding frameworks, which guarantee climate-displaced individuals a form of protection. For example, the 1951 UN Refugee Convention does not apply to individuals who are displaced because of climate change, as the Convention’s protection mechanism and non-refoulement are mainly built on persecution.[[13]](#footnote-14) This gap in addressing cross-border relocations means that individuals who are losing their homes due to co climate change ‘might fall through the cracks’ when it comes to protection’.[[14]](#footnote-15) In addition, their cultural practices and traditional knowledge is at heightened risk of being lost in the displacement process, which is hugely detrimental for individuals whose ‘culture and cultural heritage is so fundamentally linked with identity and place’.[[15]](#footnote-16)

In the case of South Pacific Island States, nations have started to take their own initiatives, such as buying land for resettlement purposes.[[16]](#footnote-17) Bilateral agreements, such as the Australia-Tuvalu Falepili Union Treaty, which will provide pathways to people from Tuvalu facing climate change impacts, are first steps in addressing climate-induced displacement.[[17]](#footnote-18) However, as time to address climate change impacts is running out, the need for an international comprehensive solution addressing climate-induced cross border displacement is becoming urgent. In addition, there is a great need of integrating safeguards for cultural heritage in such solutions ‘for three key reasons: first, to ensure that their right holders are able to continue to enjoy and benefit from their [cultural heritage]; second to achieve more effective and inclusive mitigation and adaptation measures; and third to strengthen the resilience of displaced communities’.[[18]](#footnote-19)

Overall, to safeguard South Pacific Islanders’ cultural heritage, and to guarantee their full access to the enjoyment of cultural rights when it comes to internal and cross-border climate-induced displacement, stronger legislative and policy protections at the international, regional, and domestic level are needed. Initiatives such as the three-year Pacific Climate Change Migration and Human Security Programme (PCCHMS), which is developing a ‘regional rights-based framework on climate change related displacement, migration, and planned relocation through regional, national and community consultations’, are essential to address the (cultural) human rights implications of climate-induced resettlement.[[19]](#footnote-20) Moreover, developing and implementing domestic laws and policies, such as the Fijian Standard Operating Procedures (SOPs) for Planned Relocations which ‘strive to ensure that the community social and cultural structures are not dismantled’, enable both States and non-State actors to prepare for relocation scenarios.[[20]](#footnote-21) Having comprehensive legislative and policy protections at the international, regional, and domestic levels, which include safeguards for cultural heritage, ensure not only that people can maintain their cultural heritage, and, thus, are able to enjoy their cultural rights, but also that people who need to resettle due to climate change retain their cultural identities, supporting their well-being before, during, and after the resettlement, and ensuring continued cultural diversity, a ‘defining characteristic of humanity’ and a ‘a mainspring for sustainable development for communities, peoples and nations’, ‘indispensable for peace and security at the local, national and international levels’.[[21]](#footnote-22)

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1. Kristin Hausler and Alina Holzhausen, ‘Safeguarding Intangible Cultural Heritage in Climate Displacement: Lessons from the South Pacific’ (2023) 28 [Art Antiquity and Law](https://ial.uk.com/product/art-antiquity-and-law-2023-annual-subscription-hard-copy-copy/) 175. [↑](#footnote-ref-2)
2. Petra Butler, Kristin Hausler, Alina Holzhausen and Berenika Drazeweska in Eva U Wagner (ed), ‘[Intangible Cultural Heritage within the Laws and Policies of South Pacific Small Island States in the Climate Crisis: Towards a More Resilient and Inclusive Approach’](https://periscopekasaustralia.com.au/papers/special-edition-2023/) (2023). [↑](#footnote-ref-3)
3. See for example the latest report from the Intergovernmental Panel on Climate Change (IPCC), [‘Synthesis Report of the Sixth Assessment Report’](https://www.ipcc.ch/ar6-syr/) (2023). [↑](#footnote-ref-4)
4. Secretariat of the Pacific Regional Environment Programme (SPREP), ‘[Factsheet Pacific Climate Change](https://www.sprep.org/attachments/Publications/FactSheet/pacificclimate.pdf)’ (2008). [↑](#footnote-ref-5)
5. Human Rights Council (HRC), ‘Report of the independent expert in the field of cultural rights, Farida Shaheed’ (21 March 2011) [UN Doc A/HRC/17/38](https://documents.un.org/doc/undoc/gen/g11/122/04/pdf/g1112204.pdf?token=HKZpl0HIsG5cjO6jp2&fe=true). [↑](#footnote-ref-6)
6. For example, Article 2(1) of the [International Covenant on Civil and Political Rights](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights) (ICCPR). [↑](#footnote-ref-7)
7. UN Guiding Principles on Internal Displacement (11 February 1988) [UN Doc E/CN.4/1998/53/Add.2](https://www.refworld.org/docid/3c3da07f7.html). [↑](#footnote-ref-8)
8. See the [BIICL submission](https://www.ohchr.org/en/calls-for-input/2022/call-inputs-report-cultural-rights-and-migration) to the Report on cultural rights and migration. [↑](#footnote-ref-9)
9. Butler, Hausler, Holzhausen and Drazeweska (n 2). [↑](#footnote-ref-10)
10. Hausler and Holzhausen (n 1); See also Nithin Coca, ‘[Balancing climate, culture, and community: Fiji’s relocation challenge](https://devex.shorthandstories.com/balancing-climate-culture-and-community-fijis-relocation-challenge/index.html)’ (11 March 2021). [↑](#footnote-ref-11)
11. ibid. [↑](#footnote-ref-12)
12. Hausler and Holzhausen (n 1); See also Dhrishna Charan, Manpreet Kaur and Priyatma Singh, ‘[Customary Land and Climate Change Induced Relocation – A Case Study of Vunidogoloa Village, Vanua Levu, Fiji](https://www.researchgate.net/publication/313409575_Customary_Land_and_Climate_Change_Induced_Relocation-A_Case_Study_of_Vunidogoloa_Village_Vanua_Levu_Fiji)’ ch. 2 in Walter Leal Filho (ed), *Climate Change Adaptation in Pacific Countries* (Springer 2017). [↑](#footnote-ref-13)
13. Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137. [↑](#footnote-ref-14)
14. UN, ‘[“Intolerable tide” of people displaced by climate change: UN expert](https://www.ohchr.org/en/press-releases/2022/06/intolerable-tide-people-displaced-climate-change-un-expert)’ (23 June 2022). [↑](#footnote-ref-15)
15. See interview contribution from Professor Jane McAdam (Kaldor Centre for International Refugee Law, UNSW Sydney) on 27 September 2022, conducted as part of the research by Butler, Hausler, Holzhausen and Drazeweska (n 2), p.17. [↑](#footnote-ref-16)
16. Butler, Hausler, Holzhausen and Drazeweska (n 2) mention that Kiribati has bought land from Fiji, p.17. [↑](#footnote-ref-17)
17. Australian Government Department of Foreign Affairs and Trade, ‘[Australia-Tuvalu Falepili Union treaty](https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty)’; Jane McAdam, ‘[Australia’s offer of climate migration to Tuvalu residents is groundbreaking – and could be a lifeline across the Pacific](https://www.unsw.edu.au/newsroom/news/2023/11/australia-s-offer-of-climate-migration-to-tuvalu-residents-is-gr)’ (13 November 2023). [↑](#footnote-ref-18)
18. Hausler and Holzhausen (n 1). [↑](#footnote-ref-19)
19. Economic and Social Commission for Asia and the Pacific, ‘[Regional Dialogue on the Draft Pacific Climate Mobility Framework](https://www.unescap.org/events/2023/regional-dialogue-draft-pacific-climate-mobility-framework)’ (13-14 July 2023). [↑](#footnote-ref-20)
20. [Standard Operating Procedures for Planned Relocation in the Republic of Fiji](https://www.preventionweb.net/media/89580/download?startDownload=true) (March 2023). [↑](#footnote-ref-21)
21. UNESCO Convention on Protection and Promotion of the Diversity of Cultural Expressions 2005, Preamble. [↑](#footnote-ref-22)