

HANDLING CLIMATE DISPLACEMENT

How do we begin to handle the greatest crisis affecting humanity today? Climate change is already causing droughts, flooding and famine, forcing people to leave their livelihoods and communities. In the years to come, millions will find their local areas uninhabitable, as mass displacement of people reaches disastrous levels. *Handling Climate Displacement* explains how climate change has become recognized as a human rights concern, and how human rights are key to managing the crisis. Local authorities and populations increasingly call for guidance in the absence of an internationally recognized framework. Dr. Dr. Khaled Hassine LL.M. uses the Peninsula Principles on Climate Displacement within States, drafted in 2013 by a committee of experts and practitioners, to offer concrete solutions to the impending emergency. Enriched by his experience working with the victims of climate displacement, this book offers an effective framework to deal with the challenges presented by mass displacement while protecting human rights.

Khaled Hassine specializes in international and human rights law and has worked extensively on housing, land and property (HLP) rights and redress mechanisms, as well as on land solutions for climate displaced persons. He has advised UN peace operations, research institutes and NGOs, and he is a member of the HLP Group of the UN Global Protection Cluster and the UNHCR Livelihoods Advisory Board. He was honored with an Academia award for his outstanding contribution to research on HLP rights and mass claims procedures in post-conflict situations. He currently works at the UN Secretariat with the UN Human Rights Office.

Handling Climate Displacement

KHALED HASSINE



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-108-48648-4 — Handling Climate Displacement
Khaled Hassine
Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India
79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108486484

DOI: 10.1017/9781316999264

© Khaled Hassine 2019

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2019

Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

NAMES: Hassine, Khaled, author.

TITLE: Handling climate displacement / Khaled Hassine, United Nations, Geneva.

DESCRIPTION: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, [2019] | Includes index.

IDENTIFIERS: LCCN 2019014846 | ISBN 9781108486484

SUBJECTS: LCSH: Climatic changes – Law and legislation. | Environmental refugees – Legal status, laws, etc. | Forced migration. | United Nations Framework Convention on Climate Change (1992 May 9). Protocols, etc. (2015 December 12) | Environmental law, International. | Greenhouse gas mitigation – Law and legislation. | Human rights.

CLASSIFICATION: LCC K3585.5 .H37 2019 | DDC 341.4/86–dc23

LC record available at <https://lccn.loc.gov/2019014846>

ISBN 978-1-108-48648-4 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Nihil de nobis, sine nobis

We lost our occupation,
which means the confidence
that we are of some use in this world.

We lost our language,
which means the naturalness of reactions,
the simplicity of gestures,
the unaffected expression of feelings. [. . .]

Our identity is changed so frequently
that nobody can find out who we actually are.
[. . .], and that means the rupture of our private lives.
Hannah Arendt, “We Refugees”

Foranid

Contents

<i>Foreword by Md. Arifur Rahman</i>	<i>page</i> xiii
<i>Preface by Scott Leckie</i>	xv
<i>Acknowledgments</i>	xviii
<i>Author's Note</i>	xix
<i>Requiescat in Pace</i>	xx
<i>List of Abbreviations</i>	xxi
Prologue	1
1 Research Framework	3
I Introduction	3
1 Background	3
2 Rationale and Research Question	4
3 Methodology	5
4 Scope	7
5 Terminology and Discourse	7
6 Overview of Research Streams	19
II Climate Displacement Scenarios	20
1 Projections	20
2 Distributional Impact	21
3 Common but Differentiated Responsibility	22
4 Displacement Patterns, Scenarios and Protection Implications	24
2 Connecting the Dots	26
I Human Mobility and the Climate Change Framework	26
1 The Intergovernmental Panel on Climate Change	26
2 United Nations Framework Convention on Climate Change	29
3 The Paris Agreement	31

4	Climate Change and the Human Mobility Framework	32
5	Intermediate Remarks	36
II	Climate Change and Human Rights: The Path of Convergence	36
1	Pioneering the Nexus: Ksentini Reports	36
2	The Right to Be Cold and Not Displaced: The Inuit Petition	43
3	Landmark Recognition: The Malé Declaration	45
III	Mobilizing the United Nations Human Rights Machinery	48
1	Sparking the Discussions: 2009 High Commissioner's Report	48
2	Climate Change on the Human Rights Council's Agenda	50
3	The Human Rights Machinery in Action: The Social Forum	55
4	Instilling Independent Expertise into the Debate	56
IV	The Road to Paris	61
1	Creating Momentum	61
2	The Paris Agreement: Recognizing Human Rights Obligations	63
V	Intermediate Remarks	65
3	Protection Challenges and Policy Options	66
I	Normative Framework and Protection Challenges	66
II	Existing Frameworks and Policy Options	70
1	Guiding Principles on Internal Displacement	70
2	The Pinheiro Principles	71
3	From the Global Guiding Framework to the Nansen Initiative	76
III	Intermediate Remarks	83
4	A Framework for Handling Climate Displacement: The Peninsula Principles	85
I	Introductory Remarks	85
II	Background	90
1	Process of Genesis	90
2	Drafting History	91
III	Nature and Structure of the Peninsula Principles	92
1	Phenotypic Placement	92
2	Basic Tenets	92
3	Structure of the Principles	94
IV	Scope of Application	95
1	Rationale	95
2	Complementing the Nomenclature	95
3	Restatement of International Norms and Law	96
V	General Obligations under the Peninsula Principles	98
1	Prevention and Avoidance	98
2	National Implementation Measures	102
3	International Cooperation and Assistance	103

Contents

xi

VI	Human Rights Imperatives	106
1	Systematic Footing	106
2	Nondiscrimination and Equality	109
VII	Prevention Commanding Relocation	112
1	Nonpareils of the Peninsula Principles	113
2	Participatory Governance	120
3	Adequate Consultation	122
VIII	Protection and Assistance throughout the Displacement Cycle	124
1	Housing, Land and Livelihood	124
2	Budget and Funding	126
3	On-site Mediation and Grievance Procedures	126
IX	Return of Climate Displaced Persons	127
1	Legal Foundation	127
2	Voluntariness of Return	128
3	Return in Safety and with Dignity	129
X	Operationalizing and Applying the Peninsula Principles	130
1	Operational Dexterity	130
2	Emerging Practice	131
XI	Implementation: Impact and Impediments	137
	Conclusion	140
	<i>Bibliography</i>	147
	<i>Annex</i>	174
	Final Text: Peninsula Principles on Climate Displacement within States	174
	Meeting Draft: The Peninsula Principles on Climate Displacement	185
	Public Consultation Draft: The Peninsula Principles on Climate Change Displacement	198
	<i>Index</i>	212

Foreword

Climate change is one of the greatest challenges facing the world today. The individuals and communities displaced from their homes and lands as a result of climate change are the human face of this tragedy. Bangladesh, for instance, suffers from regular natural hazards, including floods, tropical cyclones, storm surges and droughts as one of the most vulnerable countries in the world. These hazards are already leading to the loss and destruction of housing, land and property, the loss of livelihoods and widespread displacement across the country. Every year, tens of thousands of people across the country are already losing their homes to rising sea levels, violent tropical cyclones, devastating floods and other impacts of climate change. Climate change in Bangladesh has started what may become the largest mass displacement and migration in human history. Of Bangladesh's sixty-four districts, twenty-six coastal and mainland districts are already producing climate displacement. The country will have to face the challenge of mass displacement, both internally and externally, due to climate change as the country is not yet adequately prepared in providing permanent rights-based solutions through relocation to such a large number of climate displaced people.

Young Power in Social Action (YPSA) and Displacement Solutions have been jointly implementing the Bangladesh Housing, Land and Property Rights Initiative to raise the profile of the climate displacement issue in the country since 2011. Through the Initiative, YPSA and Displacement Solutions have developed an in-depth understanding of climate displacement through consultations with climate displaced persons and through extensive travel across Bangladesh, including fact-finding and research visits to virtually all the climate affected districts throughout the country. The Initiative has achieved a number of considerable successes, including comprehensive training sessions to over 5,000 civil society representatives and government officials on the housing, land and property rights of climate displaced persons, as well as research and publications, and advocacy and lobbying with local, regional and national government officials on the need to respond to climate displacement in a rights-based framework.

To solve these problems in line with a rights-based approach, YPSA, as a civil society organization representative of Bangladesh, actively participated in developing the Peninsula Principles on Climate Displacement within States (2013), outlining the rights of people and communities who lose their homes, land and livelihoods due to the effects of climate change. These Peninsula 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 can be addressed. They address climate displacement within a State and not cross-border climate displacement. This framework sets out protection and assistance principles, consistent with the United Nations Guiding Principles on Internal Displacement, to be applied to climate displaced persons.

As a result of successful advocacy at different levels by YPSA and other like-minded organizations, the Bangladeshi government has already incorporated the displacement issue in many relevant documents and drafted a strategy titled National Strategy on the Management of Disaster and Climate Induced Internal Displacement under the Comprehensive Disaster Management Programme (CDMP II) of the Ministry of Disaster Management and Relief. The strategy broadly addresses the many rights-based solutions in line with the Peninsula Principles.

This study conducted by my friend Khaled Hassine comprehensively analyzed existing international principles, including the Peninsula Principles, to ascertain rights-based solutions to climate displacement in the absence of an internationally agreed framework. I am confident that this book will greatly contribute to ensuring rights-based solutions to climate displacement and that the world will increasingly understand the true dimensions of climate displacement, where it occurs and the immense human suffering inevitably associated with this growing phenomenon.

Md. Arifur Rahman
Chief Executive
Young Power in Social Action
Bangladesh

Preface

Though still far too underappreciated and taken for granted by many, the international legal order – in particular the human rights elements thereof – is surely one of the most profound advancements of the post-World War II period. The system may remain overly easy to evade for violators and difficult to enforce by victims, allowing grotesque human rights criminals to live carefree lives of almost assured impunity, but despite its flaws, human rights law has fundamentally altered the world for the better in nothing less than extraordinary ways. As this legal domain has evolved over the decades, its corpus of law has expanded into areas that simply were not envisaged at the time our global human rights era commenced in 1945. Two of these domains – housing, land and property rights, and rights relating to the environment – have developed more than most, due in part to growing assaults on these rights just about everywhere. And it is the merger of these two areas in the manifestation of climate displacement that is addressed in this remarkable book by the dedicated international lawyer and human rights advocate Dr. Khaled Hassine.

The consequences of human-generated climate change on this solitary planet we all share commenced with the onset of the Industrial Revolution more than 200 years ago. Since that time, while our economies have grown, technology has progressed and many human comforts have increased, the lasting impacts of the economic choices we as humanity have chosen for the past two centuries may have improved many things, but in the process have instigated forces that are now rapidly destroying the very basis of life on the place we all share: Earth. Without even considering the more than hundred species that become extinct *every single day*, the millions of acres of primary forests decimated each year, the tens of millions of people who die annually from pollution, the plasticization of our oceans and the countless other so-called externalities of the global marketplace, the effects of burning nonrenewable fossil fuels upon the climate of our world has been staggering. As CO₂ levels in the atmosphere continue to climb, and as average global temperature levels head skyward, the sea level has begun

to rise and will continue to rise even if every country were to comply fully with the terms of the 2015 Paris Climate Agreement.

And these effects on humans are horrendous. I have seen it with my own eyes so many times, in so many places, that each passing day without more concerted action to support these victims sends shivers down my spine. We live in a world where the institutions, states and powers still fail to see and act adequately in response to the human misery directly caused by climate change. Yes, the United Nations and its agencies are slowly grasping the scale of this crisis, and many governments, particularly those most heavily affected, are starting to do something, but we are still nowhere near having the laws and procedures in place that we need to fully protect the rights of climate change's victims, in particular those displaced because of it.

The norms and principles are there, for instance in the form of the Peninsula Principles on Climate Displacement within States (2013), which I had the honor to work on developing together with the author of this book, but standards such as these are still yet to sufficiently develop into concrete actions everywhere they are needed. The Peninsula Principles have inspired national climate policies in Bangladesh, Fiji, Panama, the Solomon Islands and elsewhere, have been addressed by the United Nations and are the subject of numerous books and reports, but in real terms their core promise to climate displaced persons everywhere that no one should end up homeless or landless because of enduring climate displacement remains unfulfilled.

And yet the basic parameters of what needs to be done in all states affected, if human rights are to guide this process, are crystal clear, not always easy or cheap, but invariably doable *everywhere*. For if we believe that a future of more and worse slums is one to look forward to, then we do nothing. We effectively say to the climate displaced: "You are free to move. You are on your own. Good luck finding a new home." Is this really the best we can do to address one of the world's largest and rapidly growing problems? Are we really ready to accept that some of the world's already most vulnerable people are to again be left to their own devices and simply accept that people literally losing everything, including their land, is the price we pay for economic growth and skewed, inequitable prosperity?

I know that for people like Khaled Hassine, myself and millions upon millions of others, we are not ready to accept that view. We believe that law, and human rights laws in particular, must form the basis for preventing and resolving climate displacement, and that only through rights-based, planned, people-driven and adequately resourced programs will climate displacement be sufficiently addressed. We have the resources needed to do this. We have the land needed to do this. We have the field-tested experience to do this. Now we need the political will to do so.

This book provides the depth, the arguments and the analysis we need to build this political will into a powerful force grounded in law that will assist in constructing a global coalition of states, organizations and civil society, that yields new laws and fully financed policies that protect now and forever the hundreds of millions of people who stand to lose their homes and lands because of the economic choices we have collectively made.

Scott Leckie
Founder and Director
Displacement Solutions

Acknowledgments

I am immensely indebted to Professor Dr. Otmar Höll, who, without any hesitation, assumed the supervision of my research project on handling climate displacement. Due to his long-standing experience working at the intersection of research and politics he was best placed to assess this applied research project. I would like to thank him for his openness and guidance. My sincere gratitude also goes to Professor Dr. Helmut Kramer as his support was indispensable in finalizing this project. Finally, I am tremendously grateful to Professor DDr. Ingrid Schütz-Müller, who accompanied and encouraged this project for many years. He fortified my belief that “*academic research and practical experience are . . . two sides of the same coin.*”¹

My friend Scott Leckie brought me on board as part of the team of experts who endorsed the Peninsula Principles on Climate Displacement within States. Like him, I had first specialized in housing, land and property rights and later developed a keen interest in addressing the gap of climate displacement. The fact that the Peninsula Principles emerged through a push from grassroots organizations enticed me to analyze them in more depth from an academic angle, trying to join theory and practice. While, through my involvement, I certainly have views about the Peninsula Principles, I approached this research open-mindedly without intransigent preconceived ideas about its outcome. This research was about letting the scientific argument take place, and collecting and analyzing evidence that would confirm or refute my own judgment.

My gratitude goes to all the experts – and friends indeed – who unconditionally shared with me their firsthand experience in dealing with climate displaced communities and their invaluable insight.

Family was indispensable in this endeavor; *Anidleaninaf* my constant source of inspiration.

¹ I. Schütz-Müller, *Excursions to UN Headquarters and Specialized Agencies: Report on Experiences*, 2009, p. 106.

Author's Note

The views expressed in this publication are those of the author and do not necessarily reflect the views of the United Nations Secretariat or any other organization the author was previously affiliated with (ST/IC/2006/30, paras. 7 and 8).

Requiescat in Pace

Prof. DDr. Ingrid Schütz-Müller

*Ein Leben für die Internationalität
A life for internationality*

IN MEMORIAM

With the passing of Ingrid Schütz-Müller, we lost an outstanding, admired scholar and inspirational figure who knew that human beings acting together could make the world a better place. He dedicated his life to this belief. He was convinced that the academia and actors have to close ranks, come together and exchange. He provided the – still – much needed space and supported research at the frontiers of knowledge. He encouraged applied research as well as the development of innovative approaches and concrete solution pathways. He embodied the ideas he worked for, continued to motivate and inspire generations of inquiring minds and, thus, created an esprit for international dialogue, thought and creativity in Vienna.

Abbreviations

ARA-JPD	Applied Research Association on Justice, Peace and Development
CAF	Cancún Adaptation Framework
CESCR	Committee on Economic, Social and Cultural Rights
cf.	confer
COP	Conference of the Parties
ECOSOC	United Nations Economic and Social Council
et al.	et alia
et subseq.	et subsequent
e.g.	exempli gratia
i.e.	id est
IASC	Inter-Agency Standing Committee
ibid.	ibidem
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	internally displaced persons
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
n.d.	no date
NGO	nongovernmental organization
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
SIDS	Small Island Developing States
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees

UNISDR	United Nations International Strategy for Disaster Risk Reduction
viz.	videlicet
YPSA	Young Power in Social Action
WIM	Warsaw International Mechanism