The island of Pelau, in the northern reaches of the Ontong Java atoll, sits just 1-2 metres above sea level and has a population of approximately 700. Image: Beni Knight.

CLIMATE DISPLACEMENT

EZEKIEL SIMPERINGHAM

Ezekiel Simperingham talked with Amy Howden-Chapman over Skype in October 2015. Ezekiel is based in London and is a legal consultant for Displacement Solutions, an organisation that works with climate displaced persons, communities, governments and the United Nations to find rights-based land solutions to climate displacement. An international human rights lawyer, in previous roles he has focused on refugee law, international criminal justice and housing, land and property rights.

The conversation centres on the consequences of language, especially the term ‘climate displaced persons’, as opposed to the more widely used but inaccurate ‘climate refugees’, as well as considering how visual narrative is a tool increasingly used by advocates and climate policy workers. As Ezekiel and Amy are both originally from New Zealand, the conversation inevitably turned to consider the implications of climate change for the Pacific region.
Amy Howden-Chapman
How long have you been working on this issue? And how did you get into it?

Ezekiel Simperingham
Since 2008. My background is international law, specifically refugees and displaced people, and the link between refugees, displaced people and their human rights. To clarify displaced, it means that rather than voluntarily moving, you’re forced to move. For a long time we worked with people who had to leave their houses because of armed conflicts, and then we started working a little bit on development. So for example—the World Bank wants to go into a country and finance a giant dam project, and they try and relocate an entire village: rights for those people. And then in about 2008 our work became about climate change.

AHC
All roads lead to climate change?

ES
I think we just realised that displacement, because of the effects of climate change, was going to dwarf all other forms of displacement. And not only was the scale of the problem, or the crisis, overwhelming, but also the people who are most affected are the poorest, the most marginalised, the most vulnerable. The world had no way of dealing with this issue. As an international lawyer, I could see it was just this massive legal black hole that the people affected fell into. At least if you’re displaced by armed conflict or if you’re a political refugee there’s a framework for dealing with you and for accessing rights and receiving protection, but if you’re displaced because of the effects of climate change, you’re just a nobody.

So at the time there were a lot of different proposals going around, thinking through, what can we do to protect these people?

AHC
And a framework has been developed subsequently, is that correct—a framework that Australia has recently blocked?

ES
There’s an emerging issue around including a ‘climate change displacement coordination facility’ in whatever agreement comes out of the current Paris climate change negotiations. It’s not clear exactly what that facility would do, but at least it would be a recognition that climate displacement is a real issue that requires a real global response, in a coordinated way. But one of the most recent drafts of the Paris agreement dropped all mention of the facility—and a Guardian article revealed that Australia was the driving force behind getting that mechanism excluded.1 Interestingly, that mechanism may be back on the cards now, we’ll have to wait and see.

I think more broadly there have been a lot of proposals for dealing with this issue. From a legal perspective one of the really significant differences is if the displaced people move across an international border, or stay within their own country. A lot of attention has been focused on people who have to leave their home country, or are displaced across an international border. And a lot of people call those people climate refugees. But the Refugee Convention signed in 1951, in the aftermath of World War Two, was designed to protect political refugees in the context of that War. Initially it was just for Europe, and then it was extended to the whole world. But that only affects a very, very limited category of person, and it definitely doesn’t say anything about climate change, natural hazards, or environmental degradation.

A lot of people assume that if you’re displaced because of climate change and you cross a border you can get protection under the Refugee Convention. But in the vast majority of cases you absolutely can’t, and a big reason is because when it was created people just didn’t know about climate change.

AHC
Does the Refugee Convention include economic hardship?

ES
No, it doesn’t. And unfortunately that’s led to the perspective...

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that if you’re fleeing your country and you fit the definition in the Refugee Convention, you’re deserving of protection, but if you’re fleeing your country because of economic hardship you don’t deserve protection. But that’s a false dichotomy. For the Refugee Convention (A) you have to be outside of your country; (B) you have to face persecution and (C) that persecution has to be for a specific reason: race, religion, nationality, membership of a particular social group or political opinion, but nothing about someone’s economic situation.

So people said, maybe we need to amend the convention to include climate change, but then others said hey refugees are already having a bad enough time as it is, we should just leave the convention alone because if we open that up for discussion then we might lose the protections that already exist. So people said maybe we need to create a new convention entirely, and the general consensus was that there was just zero political willingness to do that.

Then around 2012 the Nanson Initiative, led by Norway and Switzerland, was started. It aims, not to create a new binding international law, but instead a ‘protection agenda’. They’ve just released a document which looks—specifically in the context of people moving across international borders—at what can countries do to protect people in the absence of binding international law. What is there already from other parts of international law that we can piece together? And what are existing practices around the world that are good examples that other countries can follow? But this is just focused on displacement across borders, whereas one of the things we know about climate displacement is actually the vast majority is going to be within countries.

AHC
How is that measured? Or, who is measuring that?

ES
I think there are massive gaps: Who’s measuring displacement, how they are measuring it, and is there a robust scientific approach?

AHC
I know that Boston…
Boston, Miami, New Orleans, New York, they are all really vulnerable. The developing world is starting to think hey maybe we'll be affected. For example there was recently a speech on climate change made by the CEO of the Bank of New Zealand, and he said, already on the Kapiti Coast the effects of sea level rise and climate change are affecting coastal property values. That's people who are in New Zealand and thinking actually maybe this is an issue for me.

Is the Nanson Initiative intended as a precursor to possible binding agreements?

Yeah I think they didn't quite know how it was going to go. In 2011 they had this big workshop in Norway. At that point only Norway and Switzerland, two great humanitarian countries supported it, and everyone else kind of backed off. Three years later I think they've got more support, they've got about nine countries on board. But they're still miles away from consensus or a binding agreement. There's really a lot of resistance to this issue; basically it means if someone who is displaced because of climate change turns up in your country, you should protect them, and they should be able to stay. And people just don't want to commit to that.

Just for my clarification, one example that I know of this in New Zealand (perhaps related to immigration, not refugee status?) was a family coming from Tuvalu, and climate change was mentioned in the case, not as the key factor, but as one of the contributing factors.

That's an interesting case because in the end it wasn't even a contributing factor. There have been quite a lot of cases in New Zealand where people from Pacific Islands asked for protection from the effects of climate change. A lot of them have gone through the refugee process in New Zealand and 100 percent of those people have failed because they can't prove that they are going to be persecuted, as persecution is understood in international law. And, even if they can prove that they're going to be persecuted, they are not differentially at risk because of their political opinion or because of their religion: everyone in the country is at exactly the same risk.

There is the now infamous case of the man from Kiribati who some people claimed to be the world's first climate refugee, and he's just about to be deported from New Zealand because he couldn't meet the definition in the Refugee Convention. In the Tuvalu case—where someone was actually able to stay in New Zealand—the decision maker said you are not entitled to protection under the Refugee Convention for the reasons we've given lots of other people in your situation, but there is another category available in New Zealand. If you're going to be deported and there are compelling humanitarian reasons for not doing so, you can allow that person to stay. So, it's not that you're going to be returned to the effects of climate change, it's that your children have grown up in New Zealand, you've got extensive family here, and so you shouldn't be deported. But the actual decision had nothing to do with climate change. The other interesting thing is that the decision maker said, this is not to say that climate change might not be a compelling consideration in another case, it's just not in this case because there is an easier way to do it.

This is the cross border stuff. Again we know that the vast majority of people are going to stay within their own country—mostly countries that have the least resources and people who have the least ability to cope with displacement. So that's really where our work comes in. Asking governments what are you doing to prepare for this, what are the legal and policy and institutional frameworks, in your country, to deal with displacement?

An interesting aspect of this for me, something which I think you've covered to some extent in your work, is the differentiation between individuals and families who might be seeking refugee status or displaced person's status, and entire communities or societies that are affected—and the difference in planning that is required between those two scales.
I think that’s interesting because every other form of displacement or refugee protection is premised on the individual’s circumstances. It’s almost like providing surrogate protection to the individual because their own country has failed them, and often that’s people fleeing armed conflict, or a political refugee who has been targeted because they’re a member of an opposition political group, or someone who has been targeted on the basis of their religion. But climate change is different because we’ve got this benefit of hindsight already: we know what areas are at risk, we know what kind of effects are going to hit there, and so for the first time in this area in which I work, we can preempt what’s going to happen, rather than just being reactionary all the time.

So you’re saying a political uprising, or a conflict, or a genocide, is a lot harder to predict than what the effects of climate change are going to be, given the modelling we can do with the knowledge we currently have.

Yeah that’s right. You normally don’t get a lot of notice. You might get a day or two, but in the past there was often no way of predicting what was going to cause mass displacement. Now we’re already talking about how in Bangladesh alone 30 million people are going to have to leave their homes because of sea level rise, as currently projected. So we need to start thinking—where are those people going to go? The answer is they’re going to stay in Bangladesh. It’s saying to the government have you got any plan for these 30 million people who are going to be on the move? Such foresight is...a weird benefit.

As this journal partly comes out of New Zealand we’re interested in the Pacific, but as far as your work goes, it seems like Bangladesh is a key area, and then the Pacific. What geographic regions do people in your area, or you, find yourself focusing on?

I work a lot in Bangladesh, I coordinate a project there. But as an organisation we work a lot in the Pacific, particularly in Kiribati and Tuvalu.

In the future I’m going to be working more in the Solomon Islands. It’s an interesting situation there because quantitatively less people are going to be affected there than somewhere like Bangladesh, but their response is quite developed. There is already quite an advanced conversation happening there about how to adapt to the effects of climate change. These effects are very real, they’re happening now, and they are asking what can we do to change the way we live, invest in infrastructure; what can we do to protect ourselves? There is a bunch of things that they can do, but, particularly in the really outlying islands and coral atolls, they have concluded that no amount of adaptation can protect those communities; they have to relocate to somewhere else in the Solomon Islands.

I know that Kiribati has bought land in Fiji, is that something that they’re considering?

The thing is, for Kiribati, they don’t have anywhere to go: it’s one to two metres above sea level, the whole country, while in the Solomon Islands they can go somewhere else within the islands. But there is a lot of conflict over land—that’s what their historical civil war was caused by.

Ontong Java is 400 kilometres away from the capital; it’s a tiny coral atoll and everyone there is Polynesian, and the proposal is to move them to a Melanesian area. And they’re saying, we just don’t want to go there, because basically we can’t get on with Melanesian people and they can’t get on with us and it just won’t work if we turn up there. We’ve lived on these beautiful coral atolls, they’re weird and isolated, but that’s our life, and you’re trying to move us to this semi mountainous region on the mainland. We just don’t want to go.
It’s also incredibly complicated because 87 percent of land in the Solomon Islands is owned at the tribal level or under customary law, meaning the state doesn’t really have any control over the land. So if you want to move all these people from the outside islands, the state has to negotiate with, for example, the Melanesian community on Malaita and say have you got any land that you want to give or sell to these people coming here? They will either say, no, or they’ll say, here is some rubbish land at a ridiculous price.

Whereas in Kiribati the questions are as big as, if everyone leaves Kiribati what happens to Kiribati? What happens to your language, your culture, your way of life? What passport do you get—a Fijian passport? From an international legal perspective there is no way of dealing with those questions, because we’ve never had to deal with them before. There has never been a state that has literally disappeared, like Atlantas.

AHC
Ahhhhh, you’re giving me weird conceptual despair.

ES
I think the Pacific Islands are a really really interesting challenge.

AHC
Are you finding that there are models of negotiation and governance that are transportable between these different nations, or is the Solomon Islands’ situation so specific because of tribal land holdings and customary issues that in different Pacific Islands and Bangladesh for example there are no equivalences?

ES
There is a lot of context specificity, and there are so many ways you can approach this issue. In some ways it’s a humanitarian crisis. What do you do with people when they’re displaced? How do you make sure they have shelter and food and water?

But it’s also a development issue, and the United Nations Development Program, which Helen Clark is the leader of, names natural disasters as one of the greatest threats to development
worldwide. And it’s also a security issue: NATO has just released a report linking climate change with security. For small island states like Kiribati and Tuvalu it’s an existential crisis.

But as we see it, even though there is a lot of specificity, the best way to address this issue is through a human rights framework. It’s not just an issue of humanitarian response, like having a response in place if something happens; governments now have a responsibility to protect their own people against this happening. They have a responsibility to make sure that people can continue to live their lives in safety and dignity and are protected against hazards. And if they are displaced—bearing in mind that adaptation is not infinite and there is no way that every country is going to be able to protect every community against displacement – asking how can we allow this community to rebuild their lives? And to really make sure that all of their human rights are protected.

AHC
So if a country was failing to protect the human rights of their citizens, is the UN convention on human rights the enforcing body?

ES
Human rights enforcement is 180 million people’s PHD topic! And for good reason because although these states have signed up to binding conventions, of which there are many, if they’re not respecting the human rights of their population there is no clear international enforcement. In fact what we often find is that domestic measures are more effective than international measures. For example in Bangladesh we’re saying to the communities themselves, hey you aren’t just passive victims in this, you’re the holder of human rights, your communities have rights and the government has a duty to protect those rights, so you need to make sure they are being enforced. And the way to do that is to be aware of your rights and the government’s obligation to protect them, and also to be aware of what measures of enforcement are there in your country. Maybe there is a constitution; in Bangladesh there is, and it protects many of these international human rights. We work with groups of lawyers and trainee judges there. We’re asking if they want to take a public interest case in the Supreme Court of Bangladesh to protect people’s rights. We also do a lot of work with journalists, to say come and meet with local communities and see what their needs are, from a human rights perspective, and that puts pressure on the government to act.

AHC
I suppose that’s one of the issues that intersects with our Distance Plan project: how do you create visual understanding around these issues. So you do see working with media as part of the way your organisation functions?

ES
Absolutely, I think it’s critically important; this is a new kind of challenge. I don’t think we can just release a human rights report and then try and get the UN to say something about it and think that’s enough. I think we have to have a new approach.

AHC
I’ve seen in some of your reports this term—framing the ‘causation conundrum’—I was thinking about that in relation to representation of the Syrian Crisis, because I know there has been some analysis that suggests the crisis was caused, or at least exacerbated by the drought there and the widespread crop failures it caused, which necessitated many farming families moving to the cities. It may be a contributing factor, but not the only

2. “Disasters caused by natural hazards are now among the greatest threats to long-term development worldwide. Over the last 20 years, they have killed 1.3 million people, affected 4.4 billion, and caused over US$ 2 trillion in economic losses. Not only do disasters cause suffering, they also undermine the fight against poverty.” Foreword by Helen Clark, Administrator, UNDP and Bekele Gelata, Secretary-General, IFRC in UNDP and IFRC, Effective law and regulation for disaster risk reduction: a multi-country report, 17 June 2014 available at: http://www.undp.org/content/dam/undp/library/crisis%20prevention/UNDP_CPR_DRR_fullreport2013.pdf.


4. “Drawing one of the strongest links yet between global warming and human conflict, researchers said Monday that an extreme drought in Syria between 2006 and 2009 was most likely due to climate change, and that the drought was a factor in the violent uprising that began there in 2011”, writes Henry Fountain in ‘Researchers link Syrian conflict to a drought made worse by climate change’, The New York Times, 2 March 2015. See also Thomas L. Friedman, ‘WikiLeaks, Drought and Syria’, The New York Times, 21 January 2014.
factor in that crisis. Do you think it’s important that issues like that be framed more in terms of climate change?

ES

Sometimes I think the opposite. Sometimes I think that climate change is a massive distraction, unhelpful to developing a response, and really if someone is impacted by a natural hazard or they just can’t use their land anymore because there is too much salt water infiltrating it, we should just ask what can we do to help those people. Practically, if someone is affected by drought, or if a whole country goes underwater because of sea level rise, what can we do to help? But at the same time climate change is a necessary part of the conversation because it’s telling us that all of these things are going to become worse, and so the response also needs to be structural. Ad hoc responses won’t be enough.

In terms of the Syrian conflict, I think what’s happening there is that the left wing is trying to motivate right wing politicians who are sceptical about climate change. What they’re not sceptical about is ISIS and international terrorism. So maybe if we start drawing links between climate change and security then you and your constituencies are going to start caring as well.

In terms of the causation conundrum, a lot of time attention and energy is spent on it, and I don’t think it’s particularly helpful. What we need to do is start helping countries where the impacts are already great to deal with the problem, rather than debating the nuances of were they displaced by climate change or weren’t they; was it a normal storm or a climate change storm? It’s often suggested that these people have an element of choice in the matter; maybe it’s just a voluntary migration decision to move to the slums of Dhaka? But if you can’t farm your land because it’s destroyed by salt water, there’s not really an element of choice in that.

Because people can’t really think clearly about climate change, or about climate displacement, I think we need different ways of representing it, and of thinking about it. That’s why I think art is critical as a way of initiating discussion and thought, outside of endless scientific reports and human rights analyses and policy documents, which is where a lot of energy is going at the moment. The Intergovernmental Panel on Climate Change recently released its Fifth Assessment report, and it’s hundreds and hundreds and hundreds of pages of very boring scientific analysis. Maybe if an artist can transform that into something that people can understand, and it provokes them to think about that in a different way, then that is critical.

AHC

Amy Balkin, a colleague, whose work I think deals very smartly with these issues, did make a work that addressed this very difficulty—how we as a community go about collectively absorbing the vast amount of scientific information presented in those reports. She organised a public readings of the IPCC Fourth Assessment Report.5

ES

(Laughter) That’s funny, I like that.

AHC

It’s her way of showing that these reports exist, and people are really interested in them, but how do you absorb information? You absorb it when someone is telling it to you, and you’re sitting in a group and you can discuss it afterwards.

ES

I met one of the authors of one of the chapters of the report that deals with displacement and human security, and they said, you shouldn’t pay too much attention to the summary, because it is a negotiated text that governments agree to. Whereas the actual report is what the science says. And I was like okay, interesting recommendation, but really who’s not just reading the summary, have you seen how big your report is? Even the summary takes 12 hours to read out.

5 The work titled Reading the IPCC Fourth Assessment Report on Climate Change (2009) is described by Balkin. “While the Intergovernmental Panel on Climate Change (IPCC) reports are revealing documents about the current science and geopolitics of climate change, their length makes them unlikely to be consumed beyond specific readerships. Reading the IPCC... attempts to make these documents more public through a participatory public reading. Self-volunteered readers took part in a three-day attempt to read the entire third volume of the Fourth Assessment Report, the 800 page Climate Change 2007: Mitigation. Over 50 volunteer readers participated in the reading.” See:http://tomorrowmorning.net/ipccreading
AHC
I suppose it’s a question for all of us. Where we put our energy on these issues.

ES
We do a lot of work with photojournalists, or just photographers, because it is really a visual thing. We work with Kadir Van Lo-huizen⁶ a lot and he’s come to Bangladesh a number of times, and contributed photographs to a New York Times article that we helped facilitate. A journalist came to Bangladesh and travelled around with some of our partners there, and wrote this article and used Kadir’s photographs. And at a lot of meetings I’ve had with American government officials and other people I’ve met in Bangladesh, they’ve said that that article and those photographs were really influential in their thinking about this issue.⁷ And those are people who are already in Bangladesh. Just because you’re stationed in Bangladesh as a foreign diplomat, it doesn’t mean that you get to these remote places that are the most affected. Often you just sit in Dhaka in your compound. I think that photography has been a really important tool for us.

Beni Knight is another photographer we work with and he just went to Ontong Java Atoll, that place I mentioned before, in the Solomon Islands. He had to take a freight boat to get there, which only goes once a month, and because there was a cyclone when he was out there he missed the ride back, so he had to stay out there for two months. He took some amazing images. Some of them ended up in a Guardian article that talks about the Climate Displacement Coordination Facility.⁸

I was saying to him you must have some really unique information about how people are living and what their options are in terms of climate change. And he was saying, I think I’m the only person in the world who’s not from there who has that information. There is no government official in the Solomons who’s hopping on that boat. And so he feels he has this awesome responsibility now to do something about it.

AHC
I’ve been interviewing the biologist Richard Primack who is looking at changes in the Boston area,⁹ and he has the view that the publicity of the issue is a major part of his job. He’s a conservation biologist and this is not what he signed up for—he thought he would be looking at specimens—but realises that in the duration of his career his role has changed from studying something to studying something and promoting his findings to a general public. And it’s interesting that as a lawyer you’ve found that as well.

ES
And the challenge is, yes you have to publicise this issue but how do you deal with that responsibly? You can’t just take photos of a flood in Bangladesh and say, look at climate change. It’s almost impossible to link a specific environmental event with climate change. Yes, climate change is going to make flooding worse, but you can’t just go take a bunch of photos of a flood and say look at these climate refugees. Also, the issue of numbers is massive. How many people are going to be affected? We just don’t have a 100 percent accurate way of counting climate displaced people. Actually, we often don’t even agree on who should be counted. But even with those complications there are these widely publicised numbers of hundreds of millions of people or even a recent study that suggests two billion people will be displaced this century.

It’s hard because people don’t usually care about these issues until it’s too late, when people are already displaced. It often takes a major disaster for people to start caring, or thinking maybe we should get some laws or policies in place to deal with this. Like after Typhoon Haiyan in the Philippines, or after New Orleans, that’s also when you see global support pour in. But what we are trying to emphasise is that we know these things are

⁶ See http://www.lohuizen.net/
⁹ Richard Primack’s work investigates the impact of climate change on the flowering and leafing out times of plants, the spring arrival of birds and the flight times of insects in Massachusetts and beyond. He is the author of Walden Warming: Climate Change Comes to Thoreau’s Wood (Chicago: Chicago University Press, 2015) http://press.uchicago.edu/ucp/books/book/chicago/ W/bo8829988.html
going to happen, to a large extent we know where they’re going to happen, and so people and governments have a real responsibility to do something about it now. It’s almost like you want to stand around screaming, “hey two billion climate refugees” or “1.5 trillion dollars in economic loss” or “waves of refugees and terrorists from Syria,” just to get people’s attention...

AHC

That’s one of the roles I think art has historically been effective in: dealing with a precision around language. Artists helped bring feminist ideas into the mainstream. Art was part of the discussion that said, hey every institution has to look at the way it uses gendered language, and by extension every institution has to consider if it’s reproducing sexism. That was a model for precision around how we use language.

Related to that, I was reading coverage of remarks the Micronesian president had presented to the UN, and he talks about climate change as an issue of potential genocide to Oceanic peoples. I think it’s interesting to consider whether those words should be used, what tenor of language is most effective, and doesn’t just antagonise the situation. Even differences in the definitions you end up using matter, like between internal displacement and displacement across borders. Should we be trying to promote a broader understanding of different terms?

ES

The more you focus on the nuances the more boring it gets and the less people care. There has been a really big discussion in our sector about the term ‘climate refugees’ because a lot of people say it. Barack Obama says it, Joe Biden says it. And a lot of people in our sector are like, hey, that legally incorrect, they’re not refugees. There is a very specific protection mechanism for refugees and they don’t fit in it, so to say climate refugees is not only legally wrong, but might actually have a side effect of decreasing protection for existing refugees. So we need to be really care-

10  “I speak as an islander who has walked the shores of many atoll islands, where there was once sandy beaches and coconut trees”. Peter Christian, President of Micronesia, told the UN assembly. “Now there are none. I am told this will continue. We must become more cohesive in our actions to bring a useful conclusion to help mitigate the threat of sinking islands and prevent the potential genocide of Oceanic peoples and cultures.” Oliver Milman, ‘UN drops plan to help move climate-change affected people’, The Guardian, 6 October 2015.