

# MIGRATION IS A DEFINITE NO, BUT RATHER A MATTER OF CHOICE| VOICE FROM THE MARGIN

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## Life Beyond Borders

This analysis attempts to examine as to why the Government and the people of Tuvalu continue to argue that migration should not be an option for Tuvalu. To establish the case, it is necessary to do a brief analysis of the socio-cultural context that informs the Government's stance. Subsequently, I will discuss the possible remedies available for Tuvalu should the worst-case scenario arise and the indigenous population has no option but to leave. The matter is sensitive on many counts. There are legal implications for Tuvalu as a sovereign state, its citizens, as well as for the receiving country(ies) faced with the transboundary movement of people. What is more important to show is how research can establish the nexus between the problems Tuvaluans face and the reaction from the international community. What are the merits of existing options for Tuvaluans like the Nansen Climate Passport scheme and the purchasing of lands within the Pacific region? In this research, I intend to outline several possible options (B, C, D) that are now to be examined and evaluated by our policy- makers - mindful that time is of the essence.



**Source:** Author – Vaitupu Island February 2019 during king tide. Internal bubbling from the ground.

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## Daunting Context – a Matter of Survival

Climate change has brought about a great deal of disturbance to our way of life as Tuvaluans. While we continue to engage, and negotiate at the United Nations for a fair and equitable deal on climate change, we have lived with its negative effects for many years and continue to do so. The International Panel on Climate Change (IPCC) Special Report on 1.5 degrees was not welcome by major oil and gas producing countries (such as Saudi Arabia, the United States, Kuwait and Russia), this was a disappointment for Tuvalu.<sup>2</sup> Our country has no mountains and rivers; it comprises only flat lands of no more than 3 meters above the sea. It is prone to a multitude of existential environmental threats.

Other climate-related events like frequent unpredictable cyclones and droughts are serious threats to the very livelihood of Tuvalu and its citizens. The evidence indicates that “the striking features observed rainfall time series and de-trended rainfall time series from four rainfall stations all points towards declining rainfall trends.”<sup>3</sup> We are not only observing rising seas during high tides, but also the bubbling up of seawater from the ground. The de-trended pattern of rainfall will pose a great challenge to the agriculture sector as it will disturb our traditionally stable root crops and livestock, forcing our people to rely heavily on imported foods for survival. One risk in this imposed practice lies in the field of health issues, as people will not choose quality food but the low-cost items. Food safety is no longer an issue; rather, the problem is the availability of food on the shelves.



**Source:** Author – Asau Community Hall flooded during February 2019 King tide, Vaitupu.

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<sup>2</sup> Climate Home News, <https://www.climatechangenews.com/2018/12/08/climate-science-1-5c-erased-un-talks-us-saudis-step/> Published on 8/12/18; accessed on 3/3/19.

<sup>3</sup> Luke Paeniu *et al.*, ‘Rainfall Trends, Drought Frequency and La Nina in Tuvalu: A Small Equatorial Island State in the Pacific Ocean’, *Journal of Environmental & Analytical Toxicology*, Vol 7, Issue 5, 2017, 7.

Cyclones, on the other hand, cause many internal displacements. One example of such happened in March 2015. Tuvalu was badly hit by tropical cyclone Pam, forcing 71 families (40% of the population) of Nui Island to relocate further inland because of severe storm surges that unearthed multiple graves, exposing bones and human remains. 100% of the vegetation - including traditional crops - was affected as the waves seeped through the whole island and lasted for almost a day. Such terrifying situations raise the question of why there is a delay in putting forth a Plan B for Tuvalu, to ensure a full security while worst case scenarios are already being encountered.

### **Why There is No Plan B?**

This section of the article seeks to furnish a cultural analysis and show why the Government of Tuvalu continues to say that migration should not be a matter of policy, rather it must be a personal decision. The Tuvalu Government's position has no plan B: that turn of phrase has become a very familiar claim. It is a stance that is informed by our socio-cultural structures that stem from our way of life, which is centered on communal living where there is no room for individualism in society – and how we value land.

Our society functions under the power of *aliki* (chiefs) who decide what is best for the community. In Vaitupu (an island in Tuvalu), a man is qualified to speak in the *falekaupule* (traditional meeting place) on the condition that he has or represents a *mataniu*,<sup>4</sup> This traditional concept of *mataniu* directly links us to land, land is sacred and, in the Pacific countries, land “tends to have meanings to those who ‘belong’ to or are ‘part of it’ that are often difficult to encapsulate in English or other colonial languages.”<sup>5</sup> There are many Tuvaluan words that describe land – *fenua*, *fanua*, *laukele*, *manafa*, *potu*, *nuku* and *tia*. The word *fanua* in its literal meaning is equivalent to the word *placenta*,<sup>6</sup> which is spelt slightly different from the word *fenua*, but with parallel meaning.”<sup>7</sup> It is through cultural practices that are reflected in our languages that we are culturally bonded to the land: this bond is not easily disregarded. This land is the same land in which our ancestors are laid to rest; if we are to leave, we must take them with us.

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<sup>4</sup> *Mataniu* – literally means ‘coconut’s face’. Contextually, it refers to a man who has been appointed to be the head of the family; he takes on a special role in serving their *aliki* (chiefs) and takes care of all family lands and *pulaka* pits. Personal conversation with Talia M. Salasopa at Vaitupu, 18/2/19.

<sup>5</sup> John Campbell, ‘Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land’, in Jane McAdam, ed, *Climate Change and Displacement: Multidisciplinary Perspectives*, 2010, 60.

<sup>6</sup> The coconut will always be the tree planted on top of the placenta, which is called *niu-fakamauganiu*, or *tena inu*, meaning that this coconut will provide drinks for the child – a source of life. The placenta is normally buried but the umbilical cords will either be buried or thrown into the sea. This custom is done with a wish that, when the child grows up, the child will become a good fisherman or a good planter. Note that the Samoans also use the same word to refer to the placenta and land. See Ama’amalele Tofaeono, *Eco-theology: Aiga- The Household of life*, (Freimund-Druckerei: Neuendettelsau, 2009), 181. In the Fijian Context, the umbilical cord of a boy will be buried while that of the girls will be thrown to the ocean, which signifies their connection to the Ocean. See, Josefa Mairara, ‘The Floating Coconut: A Contextual Approach to Methodist Mission in Fiji,’ in *Asia Journal of Theology*, Vol.21, Number 2, October 2007, 187.

<sup>7</sup> Tapugao Falefou, *Toku Tia: Tuvalu and the Impacts of Climate Change*, PhD Dissertation, Waikato University, 2017, 144

The *moana* (the sea) also plays a vital role in our lives. We have always considered ourselves to be a people of the ocean or Oceanians. Our main diet is fish; a meal without *mea ota* (raw fish) is not a Tuvaluan meal! The seashores are looked upon as playing fields for our young ones. They play freely and unsupervised; there are no life guards to watch over them; they know how to live with the sea. We are a ‘seawater people’. That is why moving to much larger countries, especially those that are landlocked, is so unbearable. We need to be next to the sea, which is a source of living for us.,

## **The Nexus Between Migration and Relocation**

It is important to revisit the emergence of a shift in migration policy since the 1980s to the present. As a nation struggling to grow after gaining political autonomy, employing all our returning graduate students from overseas was not possible. The Tuvaluan Prime Minister of that time declared that

[w]e want them to come back, but certainly we cannot have everybody, even if they are graduates. There will come a time when we can only take back a portion of our population. The rest – we will have to assist them in obtaining employment overseas and we need to prepare people for when the time comes.<sup>8</sup>

The downfall of the Nauru phosphate industry in the 1990s triggered the return home of several Tuvaluans who worked in the industry. The Government viewed this combination of events as an aggravating factor in the drift towards an overcrowding problem Tuvalu will face in time. Consequently, the Government “consistently sought migration opportunities to Australia to relieve pressure from overcrowding.”<sup>9</sup> As of that time, migration was not linked to climate change.<sup>10</sup> In 2000, a shift in emphasis took place. Jane McAdam noted that “the background of overcrowding, resources constraints, and other socio-economic pressures was entirely overlooked in the new ‘climate-induced displacement’ narrative. This was not merely misrepresentation by the media, but a shift in emphasis by Tuvalu itself.”<sup>11</sup>

Overtaken by the shadow of ‘climate-induced displacement’, Hon Teleke Peleti during COP6 (2000) stated that “[t]his concern is so serious for our people, that the Cabinet, in which I am a member has been exploring the possibility of buying land in a near-by country, in case we become refugees due to the impacts of climate change.”<sup>12</sup> By way of contrast to this call, in 2008 and 2009, the Tuvaluan Prime Minister Apisai Ielemia asserted that:

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<sup>8</sup> Citing remarks in *Pacific Report* (4 April 1994) 4 in Connell, John and John P Lea, *Urbanisation in the Island Pacific: Towards Sustainable Development* (Routledge, 2002). Cited in Jane McAdam, *Climate Change, Forced Migration, and International Law*, 2012,31

<sup>9</sup> McAdam, 2012, 31

<sup>10</sup> McAdam argued that “Although the Prime Minister first highlighted Tuvalu’s vulnerability to climate change in 1990 at the second World Climate Conference, stating that the meeting ‘could make the difference between Tuvalu’s imminent demise and its continued existence, climate change was not linked to migration. McAdam, 2012, 31.

<sup>11</sup> *Ibid*, 31

<sup>12</sup> Statement by the Hon. Teleke P. Lauti, COP6 (The Hague, November, 2000), cited in UNFCC, *Climate Change: Small Island Developing States* (Climate Change Secretariat, 2005), 13. Cited in McAdam, 2012, 144.

[w]hile Tuvalu faces an uncertain future because of climate change, it is our view that Tuvaluans will remain in Tuvalu. We will fight to keep our country, our culture and our way of living. We are not considering any migration scheme. We believe if the right actions are taken to address climate change, Tuvalu will survive.<sup>13</sup>

Moreover, Hon. Sopoaga in his role as the Foreign Affairs Permanent Secretary, was afraid that if the country's very existence is questioned, there is a risk: such a policy may generate the view that adaptation is pointless and could also impact negatively on foreign aid.<sup>14</sup> The fate of the nation must not be determined by foreign aid or a political agenda; it must be determined by a concern for the safety of the nation.

These discussions were carried out at the political level; there has never been a consultation with communities as to whether there should be a plan B. The line needs to be drawn very clearly and distinctively between migration and relocation when it comes to the climate narrative. The International Organization for Migration defines migration as

[t]he movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.<sup>15</sup>

This definition clearly contends that migration is an activity undertaken by individuals and households<sup>16</sup>, either internally or externally. It does not require any approval from a larger group, nor from the community. In other words, migration is a matter of individual movement. On the contrary, relocation is defined by John Campbell in the following manner:

Relocation is the permanent (or long-term) movement of a community (or a significant part of it) from one location to another, in which important characteristics of the original community, including its social structures, legal and political systems, cultural characteristics and worldviews, are retained; the community stays together at the destination in a social form that is similar to the community of origin.<sup>17</sup>

Both definitions establish the nexus between each other and draw some common elements out of the two. Relocation possesses distinct elements and characteristics: it retains people's social and cultural structures and, more importantly, it is an organized movement of people done in a facilitative way. It requires lots of preparation in a very timely manner to ensure that their rights and aspirations are well-recognized and respected by the receiving country(ies). Given the present circumstances, confronting Tuvalu with this option – and the need to find an alternate way - should be a potential plan B.

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<sup>13</sup> Ibid, 35

<sup>14</sup> Ibid, 34

<sup>15</sup> International Organization for Migration, <https://www.iom.int/key-migration-terms> Accessed date, 22/2/19

<sup>16</sup> Tapugao, 238

<sup>17</sup> John Campbell, 'Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land, in Climate Change and Displacement: Multidisciplinary Perspectives', Cited McAdam, 2010, 58-59.



## Climate Induced Migration and the International Law

International law recognizes only a very small class of forced migrants as people whom other countries have an obligation to protect: they are ‘refugees’, stateless persons, and those eligible for complementary protection.<sup>18</sup> In the absence of any international law that accommodates people displaced by climate change, the Prime Minister of Tuvalu, Rt Hon. Enele S. Sopoaga, has emphasized that the “current refugee regime does not adequately protect those forced to leave their homes by the impacts of climate change.” He proposed a United Nations resolution to establish a legal process to protect the human rights and lives of those displaced by climate change.<sup>19</sup> This matter is a priority for the Government of Tuvalu to ensure that when the time comes, we are fully protected and safe.

There is much doubt that the international community will respond positively to our proposal. Countries like the EU and the UK are not inclined to accept our proposal as it will open floodgates for millions of those who are qualified to be called climate victims. The proposal for the protection of those who are affected by climate change is not, after all, confined to Tuvalu alone. It crosses borders. Under such circumstances, international legal protection is developed and discussed primarily for climate-induced migration caused by natural disasters and acute emergencies. It barely considers that climate-induced migration should ideally be based on a voluntary, early, and self-determined decision.<sup>20</sup>

Dealing with international laws makes it important to discuss the term ‘climate change refugees’: where does such talk fit into the discussion? The 1951 Refugee Convention relating to the Status of Refugees, read in conjunction with its 1967 Protocol defines refugees as:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>21</sup>

McAdam points out two major obstacles that make it difficult for people displaced by the impacts of climate change to be regarded as ‘refugees’ within the meaning of the convention. First, it applies to those who have crossed international borders and, secondly, it is difficult to characterize ‘climate change’ as persecution - although she found the argument to be unconvincing because ‘persecution entails violation of human rights.’<sup>22</sup> There have been a number of cases in Australia and New Zealand where people from Tuvalu and Kiribati have sought litigation arguing that they should receive refugee protection on the basis of climate change: no case has been

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<sup>18</sup> Jane McAdam, Climate Change Displacement and International Law – Side Event to the High Commissioner’s Dialogue on Protection Challenges, Geneva, 2010, <https://www.refworld.org/pdfid/4d95a1532.pdf> Accessed 28/2/19. See also, McAdam, 2012, 1.

<sup>19</sup> General Assembly of the United Nations, <https://gadebate.un.org/en/72/tuvalu>, 21 September, 2017. Accessed date, 29/2/19.

<sup>20</sup> German Advisory Council on Global Change, *Just & In-Time Climate Policy Four Initiatives for a Fair Transformation*, Climate Policy Paper no. 9, August 2018, 26.

<sup>21</sup> Refugee Convention, (n 12), Article 1A(2).

<sup>22</sup> Jane McAdam, ‘The Relevance of International Refugee Law’, 42-3

successful.<sup>23</sup> Clearly, the court did not want to set a precedent. There is another side to this business: none of us from the Pacific wants to be labelled as a ‘climate change refugee’ as it takes away the essence of having the pride of being a Pacific Islander. Anote Tong, the former President of Kiribati, expressed this sentiment: “when you talk about refugees – climate refugees – you’re putting the stigma on the victims, not the offenders.”<sup>24</sup> During the Climate Change Induced migration workshop hosted by Tuvalu Associations of NGOs in partnership with Unitarian Universalist Service Committee (USCC), participants preferred the term “climate forced displacement” over the term “climate forced migrants” as the latter carries the stigma of being a migrant.

Of equal complexity and ambiguity in matters of international law is the question of “statehood”. What happens if a state is subject to its entire disappearance? To qualify as a state, it is required under international law as provided for in Article 1 of the Montevideo Convention on the Rights and Duties of States, to have the following: (1) a defined territory, (2) a permanent population, (3) government and (4) a capacity to enter international relations. Tuvalu is obviously on the verge of losing these fundamental principles that qualifies us to be called a State. Iakoba Taea Italeli who is the present Governor General of Tuvalu asked the question in his thesis, “whether such a State [like Tuvalu] could continue to exist as a State if its total land area is covered by sea or so much of it that it cannot sustain sufficient population to have an economic life of its own?”<sup>25</sup> There is no international law that exists to provide sufficient answers when an island is completely submerged.

Our greatest fear has to do with what if Tuvalu disappears. Who will have ownership of this Exclusive Economic Zone (EEZ)? Can Tuvaluans relocate and still have ownership of their EEZ and airspace? Or is it an issue that needs to be determined by powerful countries? For Simon Kofe, “the question really is whether the principle of continuity can be applied to Tuvalu, if it loses its territory remains to be seen. The lack of precedent in such cases leaves the matter open for interpretation with States ultimately deciding whether or not to recognize the sovereignty of such States.”<sup>26</sup>

### **Proposed Options B,C,D...**

Having a proposed plan B does not mean we are leaving Tuvalu behind; it simply means we are preparing ourselves well ahead of time. A plan B is not enough; Tuvalu should explore all different kinds of options that suits best our context. Therefore, plan C and D must also be envisaged and included in the discussions. It is not surprising for small Pacific Island states like Tuvalu that those who decide our fate have the power and the resources: they are making decisions while they live in a state of relative safety and with the benefit of what is being called climate privilege. Now,

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<sup>23</sup> Jane McAdam, ‘Climate Change Displacement and International Law, Side Event to the High Commissioner’s Dialogue on Protection Challenges 8 December 2010, Palais des Nations, Geneva, 3. See McAdam, 2012,43.

<sup>24</sup> Ibid, 41

<sup>25</sup> Iakoba Taea Italeli, *The Legal Aspects of Sea Level Rise on Maritime Boundaries Pertaining to Low-Lying Coastal and Island States: An Island Perspective*, LLM Thesis, International Maritime Law Institute, Malta, 2001. 41

<sup>26</sup> Simon Kofe, *The Legal Implications of Climate Change on the Statehood of Tuvalu*, LLM Thesis, International Maritime Law Institute, Malta, 2014, 16.

they must surely listen to the voices of those who live in communities that have the very least resources to respond to the negative impacts of climate change and rising sea levels. It is well documented in the IPCC Special Report on 1.5°C that the

[s]ea level rise will continue beyond 2100 even if global warming is limited to 1.5°C...increasing warming amplifies the exposure of small islands, low-lying coastal areas and deltas to the risks associated with sea level rise for many human and ecological systems, including increased saltwater intrusion, flooding and damage to infrastructure...<sup>27</sup>

Myers predicts that there may be as many as 200 million people affected due to disruptions of monsoon systems and other rainfall regimes, by droughts of unprecedented severity and duration, and by sea-level rise and coastal flooding.<sup>28</sup> The climate sciences are telling us that we need to prepare ourselves. “Plan B is an essential strategy and we should start planning now to enable us Tuvaluans to secure our sovereignty, properties, marine resources, EEZ etc in adequate time to ensure no gap is left before Plan B is implemented,” says one of my informants who wants to remain unnamed due to the sensitivity of the issue.

For the time being the most ideal plan to be considered as plan B would be the purchasing of land in the neighbouring countries as a long-term strategy in case all other remedies are exhausted. The 110 *matai* of the island of Vaitupu bought Kioa Island in Fiji in 1947 long before the climate change regime took over, it was seen by the people of Vaitupu at that time as an investment, not as a long-term adaptation measure. It is a plan that came into existence 70 years ago. This long-term preparation resonates with President Anote Tong’s words:

We want to begin that [the migration process] now, and do it over the next twenty, thirty or forty years, rather than merely, in fifty to sixty years time, simply come looking for somewhere to settle our one hundred thousand people because they can no longer live in Kiribati, because they will either be dead or drowned. We begin the process now, it’s a win-win for all and very painless, but I think if we come as refugees, in fifty to sixty years time, I think they would become a football to be kicked around,<sup>29</sup>

As part of this long planning and contemplation, the Government of Kiribati purchased 5,460 acres of prime Fijian land for the sum of \$9.3 million.<sup>30</sup> Although this purchase was viewed as an economic investment, in the eyes of many, it is a plan B for their people when the time is coming to have no choice but to leave Kiribati. Recently, the Government of Fiji has offered Tuvalu land, which Tuvalu diplomatically acknowledges, but Tuvalu remains firm on its stance. Mr. Aunese Simati, Tuvalu former Ambassador to the UN, pointed out, “If we do that, it is almost

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<sup>27</sup> Intergovernmental Panel on Climate Change (IPCC) *Global Warming of 1.5 °C, An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, IPCC, Switzerland, 2018. 9-10

<sup>28</sup> Norman Myers, ‘Environmental Refugees: An Emergent Security Issue, Session III – Environment and Migration’ 13<sup>th</sup> Economic Forum, Prague, 23-27 May 2005,1.

<sup>29</sup> President Anote Tong of Kiribati, cited in Duncan Wilson, ‘Climate Change: Nobody is Immune’ (Islands Business, 2008) <[http://www.islandbusiness.com/islands\\_business/index\\_dynamic](http://www.islandbusiness.com/islands_business/index_dynamic). Accessed date, 29/2/19.

<sup>30</sup> Wolfgang Kempf, *Climate Change and the Imagining of Migration: Emerging Discourses on Kiribati’s Land Purchase in Fiji*, 2018, 239.



like we are giving up but that is just one perspective; that is how we see it. Buying out and moving out of our land—that is an option, but it is an option for a person, not for the whole nation.”<sup>31</sup> Purchasing lands as a plan B in the region does not harm a nation: the prospect of waking up in the morning to find that half the population has been washed away by the sea, however, is unbearable. It triggers questions like who is to be blamed? And why?

### Plan C

The *Nansen Climate Passport Scheme* can be seen as plan C. The Climate Passport proposed by the German Advisory Council on Global Change (GACGC) stems from the Nansen Passport issued by the League of Nations to stateless refugees between 1922 and– 1938. The concepts may ideally have several elements in common, but differ in nature and application. The Climate Passport proposal is a “people-oriented, liberal tool for making this dignified migration option possible. It supplements the few non-binding programmes and declarations on the protection and support of migrants by adding an urgently needed binding protection option that makes legal migration possible.”<sup>32</sup> The proposed elements that reflect the dignity of the climate passport is outlined below:

1. This in no way undermines the urgent need for climate-change-mitigation measures or the sovereignty of the island states, because the climate passport would be established and financed not instead of, but concomitantly with climate-change-mitigation and physical adaptation measures.
2. Affected individuals should be able to decide freely whether and when they would like to migrate using safe and early migration options. In this case, the decision to migrate would thus not be suddenly forced on them or taken with no alternative, but would, in a best-case scenario, be one of a number of adaptation options.
3. The WBGU recommends identifying individual (groups of) island states that are objectively threatened by the potential loss of their territory with the help of a scientific commission and using the expertise of the Intergovernmental Panel on Climate Change (IPCC). Their inhabitants would then be entitled to a climate passport without any complex, individual testing.
4. The climate passport would serve as a kind of ‘beacon of humanity’, counteracting the current moral race to the bottom in the treatment of migrants. As a cornerstone of a just & in-time transformation, it can help implement the Agenda 2030 and not leave anyone behind, despite existential loss and destruction.<sup>33</sup>

This proposal could be a model that Tuvalu should seriously consider lobbying during the Pacific Island Leaders Forum this year (2019). It is desirable to obtain the agreement of our neighbouring Pacific island states like Australia, New Zealand, Fiji and Papua New Guinea, Samoa and others. I believe that this approach would be the best inter-island approach in responding to slow-onset events such as the rising sea level.

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<sup>31</sup> ‘Rising Tides: An Interview with Aunese and Sunema Simati’, *Journal of International Affairs*, Spring/Summer 2015, Vol. 68, No. 2, 263

<sup>32</sup> German Advisory Council on Global Change, 26.

<sup>33</sup> *Ibid*, 28,30

## **Nation *Ex-Situ* as Option D**

To save submerging territorial States, Burkett initiated the “nation *ex-situ*” concept as a mechanism to preserve and promote the interest of such states. The proponent defines *ex-situ* nationhood as a status that allows for the continued existence of a sovereign state, afforded all the rights and benefits of sovereignty amongst the family of states, in perpetuity.<sup>34</sup>

This concept emanated from the UN Political Trusteeship system that was established in 1945 under the UN Charter. The intention behind its application has been diverted away from its first context. In particular the Trusteeship system is focused more on the administration and supervision of de-territorialized states: it is applied to ones that (1) were placed under the mandate system; (2) were controlled by the defeated powers of world war 2; (3) were brought under the system voluntarily by the States responsible for their administration.<sup>35</sup> It also promoted the political, economic and social advancement of such states, their development in terms of self-government and self-determination, and encouraged respect for fundamental rights and freedoms and the recognition of the interdependence of peoples of the world.<sup>36</sup>

The concept of the nation *ex-situ* basically serves to maintain self-government and self-determination of the de-territorialized state. Such a mechanism requires an authority or government to be elected by the registered voters of the de-territorialized state to act as trustee of the assets of the state and to represent the interests of that state on the international plane.<sup>37</sup> The creation of such an entity to represent a de-territorialized state triggers the introduction of a new international legal framework (law) that would have the authority to cater on behalf of a diffused populous. This kind of arrangement is a prospective option for Tuvalu in terms of gearing up for the worst-case scenario because of the devastating impacts of climate change on its very existence as a territorial State.

An option that guarantees the application of the principle of continuity is alluded to by Simon Kofe the former Senior Magistrate of Tuvalu. Here, the principle of the continuity refers to the capacity to qualify to be regarded as a state. Most importantly, it is an option that can continue to maintain Tuvalu’s entitlements to its vast maritime zones, as it needs a form of entity to hold its zones and resources in trust for the people. An arrangement of this sort (nation *ex-situ*) maintains and preserves the practicing of our traditional cultural values in a foreign land.

### **It All Depends on Leadership and “Political Will”**

So much depends on ‘political will’: it plays a vital role in relation to Tuvalu’s stance and policies on climate change. This is clearly propounded in the historical

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<sup>34</sup> Maxine Burkett, ‘The Nation *Ex-Situ*: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era, *Climate Law*’, 2, 345–374 DOI 10.3233/CL-2011-040 IOS Press, 2011

<sup>35</sup> Article 77 of the UN Charter.

<sup>36</sup> Article 76(c) of the UN Charter.

<sup>37</sup> Rosemary Rayfuse, ‘Sea Level Rise and Maritime Zones, Preserving the Maritime Entitlements of “Disappearing” States’” in Michael Gerrard, (ed.); *Threatened Islands Nations: Legal Implications of Rising Seas and a Changing Climate*, (New York: Cambridge University Press, 2013), 11. See Kofe, 26

development of migration and relocation issues discussed above. The introduction of the New Zealand Pacific Access Category (PAC) scheme in 2002, offered for the first time a formal migration opportunity for permanent or long-term migration of Tuvaluans. The PAC scheme allows 75 Tuvaluans per year to apply for permanent residence to work and live in New Zealand, provided they meet the scheme's conditions.<sup>38</sup> Despite the scheme being highly economically motivated, however, it will eventually assist in the advancement of New Zealand's economy. Sunema asserts that, "it is important to note that the PAC scheme could act as an escape route, now and in the future, for Tuvaluans who fear the effects of the *warming war* that Tuvalu is currently experiencing."<sup>39</sup> For the past seventeen years there have been approximately 1,275 Tuvaluans who left Tuvalu for New Zealand, exclusive of the large number of overstayers. Once again it is a matter of choice for the individual and does not respond to any concepts of climate justice. Climate justice means that all people affected of climate change should be able to move to New Zealand or any other high polluting country and not only those who are valuable asset to an industrialized countries economy.

This article outlines some of the possible options out there but it does intend to dissent from the national stance of the government. It challenges us to look beyond the horizon. It does not mean that we are giving up on our islands - our God given land, no! We need to prepare for the worst. Saving Tuvalu is an indication of hope and identity, that wherever we go, wherever we are, we have what we call 'home – Tuvalu.' Being labelled as 'climate refugees' is a not for us Tuvaluans: nor do we wish to become second-class citizens in another country. Dr. Tapugao Falefou sum's up very eloquently how we feel towards our *fenua*:

As I attended climate change regional meetings and international conferences, discussions on the issue of migration and possible relocation of low-lying communities touched my heart deeply. Resonating unmistakably in my mind was my father's utterance of taking care of our piece of land, as it is my obligation. I knew that it is my duty as the custodian and guardian of our land – the land that has been well protected by my father and forefathers – to do something.<sup>40</sup>

Our special bond with our land and sea cannot be dismantled, and this what makes it difficult for us to leave Tuvalu. This article, nevertheless, forces us to explore various options to ensure that we are ready to face the worst scenario of life.

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This paper was presented to the Green Party at the German Parliament in March 2019

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<sup>38</sup> Sunema Simati, *The Effect of Migration on Development in Tuvalu: A Case Study of PAC Migrants and their Families*, MPhil Thesis, Massey University, 2009. ii

<sup>39</sup> *Ibid*, 50

<sup>40</sup> Falefou, 86.