

May 2015

Land, disasters and mobility in the South Pacific

Daniel Fitzpatrick

The adaptive characteristics of customary land systems deserve greater recognition in disaster or climate change policy frameworks.

Policy frameworks on disasters and human mobility tend to focus on the role of governments in responding to displacement and on state-based mechanisms for facilitating relocation. However, Pacific states face a number of governance constraints in responding to disaster-related human mobility, not least of which is the fact that more than 80% of land in most Pacific countries is classified as customary land, that is, is held by local groups.

There is a reluctance by Pacific governments to select customary land as a site for planned resettlement, or temporary shelter for IDPs, due to fears of conflict with customary claimants, or uncertainty as to the identification of customary owners. Most Pacific states prefer to select state land as sites for temporary shelter or planned resettlement in order to avoid the necessity for agreements with a customary landholding group. Yet this reluctance substantially limits the amount of land available for resettlement. Site selection by the state based on the legal status of land may preclude the potential for alternatives where the people concerned prefer family- or kin-based pathways of migration. Movement within the land of a customary group is far less likely to raise land issues than movement beyond the boundaries of customary territory. Relatively successful examples of movement within a customary territory include the inland resettlement of Samoan families after the 2009 tsunami, and the recent resettlement of the Narikoso community in Fiji as a result of coastal erosion. At the same time, customary land management has the potential to marginalise internally displaced persons who do not have kinship links to the local landholding group.

The legal rules that mandate an intermediary role for the state in formal dealings over customary land often fail to reflect the thin administrative capacity of most Pacific

states, particularly in terms of resolving land conflicts, and have the potential to undermine the adaptive capacity of customary land systems to reach direct agreement with displaced persons. Besides, the selection of state-owned land does not remove the need for consultation with local communities and for measures to reduce the risks of conflict with local communities. Where the state must act as an intermediary in transfers of rights to customary land, procedures to ensure informed consent to voluntary acquisition of land by the state are important in order to reduce the potential for later contestation over land provided for resettlement. In addition, voluntary agreements to acquire land for resettlement should be registered in state systems of land administration.

Historical pathways for adaptive migration deserve greater recognition in state guidelines for resettlement. One example is the Papua New Guinea guidelines for the relocation of Carteret Islanders, which establish criteria for priority assistance that include the ability to relocate to areas held or owned by relatives through the maternal line. The adaptive characteristics of customary land systems deserve greater recognition in disaster or climate change policy frameworks.

Daniel Fitzpatrick daniel.fitzpatrick@anu.edu.au is a Professor at the Australian National University College of Law. <http://law.anu.edu.au>

This article is based on a review of land, human mobility and natural disasters in the South Pacific commissioned by the Nansen Initiative after the Pacific Regional Consultation on 'Human Mobility, Natural Disasters and Climate Change in the Pacific' in 2013. www2.nanseninitiative.org/pacific-consultations-intergovernmental/ The author is grateful for Future Fellowship funding assistance from the Australian Research Council (FT110101065).