

Comparative Relocation: Case Study and Analysis of Options for Threatened Island Nations

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I. Introduction

The consequences of climate change threaten serious implications for low-lying Pacific Island communities and nations, such as the Republic of the Marshall Islands. Mass displacement and mandatory relocation are likely to result from rising seawater levels. As such, the aim of this paper is to draw lessons from past relocation efforts in order to develop a set of normative recommendations should the Marshall Islanders be forced to relocate. This paper draws upon a number of case studies, looking at past relocation efforts as well as ongoing and planned implementations. Within each of these case studies, there is valuable insight into the relocation process both generally and specifically with regards to the Marshall Islands.

Though the objective of this paper is to imagine what an ideal relocation program would look like for the Marshall Islands, even the most successful relocations still cannot fully mitigate the psychic and cultural trauma associated with the loss of land.¹ Thus, when this is taken into account, the minimization of preventable harms from relocation is even more critical.

II. The Legal Framework of the Marshall Islands

In order to better understand how to tailor a relocation program towards the specific needs of the Marshall Islands, an understanding of how land and property are treated in the Marshall Islands must first be developed. Substantial literature has been devoted to anthropological and cultural accounts of land in the Marshall Islands, which are wide-ranging and difficult to summarize without oversimplifying the rich cultural. As such, this paper will limit its analysis to the legal framework for property in the Marshall Islands.

A. Property in the Marshall Islands: Land Tenure

The Marshallese property regime has fundamental differences in its conception and understanding of land and property in the Marshall Islands as compared and contrasted to those in Western property regimes. Marshallese property has a customary matrilineal land

¹ See e.g. Stuart Kirsch, Lost Worlds: Environmental Disaster, “Culture Loss,” and the Law, 42 *Current Anthropology* n.2 16 (2001).

tenure system largely based on communal land use, as well as a deep and intimate cultural connection held to the land. These traits have important legal implications for a comparative assessment of the property systems.

Greater than ninety percent of the land on the Islands within the Marshall Islands is held under customary land tenure.² By contrast, private freehold property constitutes less than five percent.³ Under the customary land tenure system, land is divided into plots known as *wetos*.⁴ The *wetos* are held communally and are passed through what is usually a matrilineal arrangement, from generation to generation, in a lineage structure known as a *bwij*.⁵ Land can also be passed through gift in an arrangement known as *kitre*. Significantly, within the *weto* arrangement, rather than having one exclusive holder of rights who exercises complete control and dominion over all aspects of a given parcel of property, there are instead a number of different classes that possess separate and unique interests and rights in the land in a hierarchical ordering based on traditional and historical assignment and structuring. While these rights are exercised independently and individually, there is nevertheless an overriding obligation of cooperation in the course of the labor performed on the *weto* parcels.

B. Legal Regime

Under the Constitutional framework in the Marshall Islands, land tenure disputes are judicially reviewed by the Traditional Rights Court of the Marshall Islands, whose jurisdiction is secured by provisions permitting recourse to customary law under the Constitution.⁶ Thus, the customary hierarchy of rights and privileges to the land are judicially enforceable, reflecting a legal commitment to a traditional land tenure regime.

² See John Campbell, Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land, in *Climate Change and Displacement: Multidisciplinary Perspectives* 62 (Jane McAdam ed., Hart Publishers 2010).

³ See *id.* at 62.

⁴ Ben Boer, *Environmental Law in the South Pacific*, Environmental Policy and Law Paper No. 28 at 164 (1996).

⁵ See *id.*; see also Jon Fraenkel, 37(3) Strategic Registration from Metropolis to Periphery in the Republic of the Marshall Island, *Journal of Pacific History* at 303 (2002); *Lokkon v. Nalap*, 1 MILR (REV.) 69 (1987) (holding that “Marshallese customary pattern provides for matrilineal descent of land rights.”).

⁶ See Republic of Marshall Islands Const. Art. 4, sec. 4.

Given the prevalence of land held in customary land tenure, the majority of property disputes do arise under the Traditional Rights Court. As a procedural matter, the decisions of the Traditional Rights Courts are not binding, but instead must be certified by an appellate court.⁷ The appellate standard of review is based on a clearly erroneous standard with an additional exception that the court's decision must not be contrary to law.⁸ Thus, while the Traditional Rights Court's decisions are not strictly binding, they are nevertheless extended considerable deference by reviewing courts.

Under the traditional legal regime recognized by the Traditional Rights Court, there are up to four different holders of land rights to a given *weto* parcel, each exercising independent and severable rights to the land. These rights are based on membership in a given *jowi*, or clan, as part of the *bwij* lineage. The four sets of traditionally recognized land rights are the *iroijlaplap*, *iroijedrik*, *alap*, and *dri jermal* rights. The relationship between the four holders of rights has been described as reflecting a duty of loyalty from top to bottom, such that the cooperation and mutual benefit is conferred across the board.⁹ In essence, though the holders enjoy divided and independent rights to the land, in accordance with Marshallese customary law, their actions are nevertheless governed by standards grounded in a legal obligation "to show recognition and respect to each other."¹⁰

The *iroijlaplap* rights are vested in the holder of the highest rights to the land, as reflective of the high chief status accorded to the *iroijlaplap*. The *iroijlaplap* is given a high amount of dominion over the given *weto*, as any transfer of land rights is subject to the approval of the *iroijlaplap*. In general, the *iroijlaplap*'s decisions are given substantial weight and deference, based on an informal standard of reasonableness.¹¹ The rights of the *iroijedrik*, or lower chief, are inferior to those of the *iroijlaplap* and are not always

⁷ See *Abija v. Bwijmaron*, 2 MILR 6, 15 (Marsh. Is. Sup. Ct. 1994).

⁸ See *Dribo v. Bondrik*, Supreme Court Case No. 2008-009 at 6-7 (2010).

⁹ See Dirk H.R. Spenneman, *The Ownership of Cultural Resources in the Marshall Islands* at 2 (1990).

¹⁰ *Peter v. Napking*, 2008 MHTRC 1, 1 (2008).

¹¹ See *Limine v. Lainej* 1 T.T.R. 107, 111-112 (1954); see also *Elmo v. Kabua*, 2 MILR 150, 154 (1999).

present in a given parcel of land, as that set of rights is a more recent development, owed in large part to Japanese influence. The *alap* rights are assigned to the senior member of clan, representing the head of the workers. The holder of *alap* rights is responsible for the day-to-day management of the affairs on the *weto*, but their discretion is limited by the *iroij*. Finally, the *dri jermal* rights are given to the workers themselves, with the most senior member of the workers being vested *senior dri jermal* rights. The *dri jermal* rights can be modified or extinguished for good cause by the *iroijlaplap* or the *alap*.

Within the hierarchical framework, there is a distribution of the fruits of labor, such that each of the different holders of rights receives their share of the results, whether it be in the form of agricultural yield or money from rents. In that sense, the failure to adequately distribute the earnings or yields from a *weto* can give rise to the divestment of land rights through traditional enforcement proceedings by the *iroij* and *alap* or through court action.¹²

To bring a claim under the Traditional Rights Court, a plaintiff must challenge title to one of the four separate rights to a given item of property, while also bearing an affirmative duty to make a claim as to who the rightful holders of the challenged land rights are.¹³ Even further, the plaintiff generally must demonstrate that they have exhausted all customary remedies outside of the law, including appeal to the *iroijs*, prior to the initiation of an action before the Traditional Rights Court. If such customary appeals have not been made, the plaintiff must provide a justification for the failure to first pursue such procedures.¹⁴

III. Relocation Case Studies

Having briefly outlined the legal understanding of property in the Marshall Islands, the focus of this paper will now shift to case studies of relocation. The lessons that can be

¹² See Spennerman at 3.

¹³ See Traditional Rights Court Rules of Procedure, Special Rules of Civil Procedure, Rule 1a(1).

¹⁴ See *id.*, Rule 1a(1)(c)

drawn from these case studies will be instrumental into shaping a relocation program that is amenable to the specific needs of the communities of the Marshall Islands.

A. Past Relocations

The following are examples of large-scale relocation efforts in which sufficient time has elapsed, allowing for analysis of the aftermath of the programs.

1. Chagos Archipelago

The resettlement of the entirety of the Indian Ocean island community on the Chagos Archipelago was a failure with regards to accountability, planning, and foresight. Chagos comprised of seven uninhabited atolls. In 1814, it became a part of the larger UK territory of Mauritius and remained so for nearly 200 years until relocation.¹⁵ The majority of Chagossians were descended from African slaves brought to work on coconut (copra) plantations and resided on three of the atolls in the area, Diego Garcia, Peros Banhos, and Salomon.¹⁶ The Chagossians, though a part of Mauritius, had their own unique culture and dialect, centered around strong community bonds as the *Ilois*, or the Islanders.¹⁷ Eventually, as slavery was outlawed in the British Empire through the Slavery Abolition Act of 1833, the Chagossians were emancipated.¹⁸ With this came the stabilization of a way of life, as by “the mid-20th Century, they were receiving regular salaries in cash and food, as well as small plots of land, housing, education, pensions, vacations, and basic health care.”¹⁹

The first step towards the forced displacement and resettlement of the Chagossians commenced when the British government purchased the Chagos Archipelago from Mauritius, which at that time was a self-governing British territory. The British created the British Indian Ocean Territory (BIOT) on November 8, 1965, effectively severing the

¹⁵ See *R (on the application of Bancoult) (Respondent) v. Secretary of State for Foreign and Commonwealth Affairs*, 2008 WL 4552840 at *1 (Oct. 10, 2008).

¹⁶ See e.g. *Ex parte Bancoult* [2001] Q.B. 1067; *Regina v. Secretary of State* [1995] 2 A.C. 513.

¹⁷ See *R (on the application of Bancoult)*, 2008 WL 4552840 at *1 (Oct. 22, 2008).

¹⁸ See Christian Nauvel, *A Return From Exile in Sight? The Chagossians and their Struggle* 5 NWUJIHR 96, 98 (2006).

¹⁹ David Vine, *The Impoverishment Of Displacement: Models For Documenting Human Rights Abuses And The People Of Diego Garcia*, 13 No. 2 Hum. Rts. Brief 21 (2006).

Archipelago from Mauritius, though it had been linked to Mauritius for the past two centuries.²⁰ The creation of the BIOT was designed to facilitate transfer of the Chagos atolls to the United States military, as the US sought a strategic location from which a military base could be staged.²¹ To this day, the atoll of Diego Garcia remains a US military installation, subject to an agreement between the British and American governments.

From 1967 to 1973, the Chagossians were relocated to Mauritius and the Seychelles islands, where they received little to no resettlement assistance. In fact, no relocation plan had ever been formally developed by the British or American governments, other than the agreement the two governments reached to depopulate the atolls.²² Upon arrival in Mauritius and Seychelles, the Chagossians lacked adequate housing, in part due to damage from cyclones, as well as internal population growth within the destination island.²³ This was in stark contrast to Chagos, where the Chagossians enjoyed guaranteed housing.²⁴ They were forced to find their own housing, often settling for shacks in the slums of the capital of Port Louis, where employment opportunities were scarce in light of an already stagnant job market and a misalignment of skills with the types of labor on Mauritius, whereas in Chagos, there was virtually universal employment working within the agrarian structure of coconut farming.²⁵ Food insecurity was also a serious issue, as the Chagossians no longer had access to the familiar and readily available sources of

²⁰ See David Snoxell, *Anglo/American Complicity in the Removal of the Inhabitants of the Chagos Islands, 1964-73*, 37(1) *Journal of Imperial and Commonwealth History*, 127-134 (2009).

²¹ See *id.* at 127-134.

²² See *Agreement on the Availability for Defence Purposes of the British Indian Ocean Territory*, Dec. 30, 1966, 603 UNTS 273, *as amended by* 1032 UNTS 323 (1976), 2106 UNTS 294 (1999).

²³ See Laura Jeffery, *Forced Displacement, Onward Migration and Reformulations of 'Home' by Chagossians in Crawley, UK*, 36:7 *Journal of Ethnic and Migration Studies* 1099, 1102 (2010).

²⁴ See David Vine, S. Wojciech Sokolowki, and Philip Harvey, "*Dérasiné: The Expulsion and Impoverishment of the Chagossian People [Diego Garcia]*," expert report prepared for American University Washington College of Law and Sheridans Solicitors at 144 (2005).

²⁵ See Jeffery at 1102; See also Vine, et al. at 131.

sustenance they had on Chagos, resulting in malnutrition and near-starvation.²⁶ The Chagossians were also unable to buy food on Mauritius and Seychelles, as they lacked the resources and funds to acquire any from local sources.²⁷

Eventually, after the Mauritian government failed to extend aid, the Chagossians on Mauritius petitioned and received £6,000 each in compensation packages from the British government, an amount greatly insufficient in light of the problems facing the Chagossians on Mauritius.²⁸ As a result of the absence of tangible effort by the British and American governments, “[b]y and large, the Chagossian community has remained marginalised in Mauritius, suffering disproportionately from poor housing and education, and high rates of un- and under-employment, poor mental and physical health, substance abuse, gambling, prostitution and crime.”²⁹ Conditions in Seychelles were equally dismal, if not worse, as the Chagossians are a “marginalized underclass in Mauritius and Seychelles.”³⁰ Even worse, unlike the Chagossians in Mauritius, the Chagossians in Seychelles never received any financial aid whatsoever from the British government.³¹ Statistics further corroborate the serious consequences of the relocation of the Chagossians, as:

Nearly 46 percent of working age Chagossians are unemployed; the median income for Chagossians is approximately \$2.15 per day; 40 percent of Chagossian households do not have indoor plumbing; and 26 percent of Chagossian households operate without any running water. Social findings are equally dismal: 54 percent of Chagossians are illiterate; 85 percent of Chagossians surveyed reported they need more adequate health care; and the substance abuse rate is at least one-in-five among the Chagossian generation born in exile.³²

In essence, relocation has contributed to a bevy of harms, including, but not limited to, “traumatic expulsion, joblessness, economic and social-psychological marginalization, homelessness, landlessness and lost common property, food insecurity and malnutrition, increased morbidity and mortality, sociocultural fragmentation, educational deprivation,

²⁶ *See Vine* at 10.

²⁷ *See id.* at 51.

²⁸ *See id.* at 23; Jeffery at

²⁹ Jeffery at 1103 (internal citations omitted).

³⁰ *Vine* at 1.

³¹ *Id.* at 2.

³² *Vine* at 23; *See also Vine, et al* at 125-130, 135-142 .

and ethnic discrimination.”³³ The social effects of relocation are especially striking, as life in Chagos was marked by collectivity, communalism, and a sense of unity and solidarity, due to both social linkages and geographic proximity.³⁴ However, the homogenous social and geographic structure was altered as a result of relocation, leading to the fracturing of social connections. The conditions of relocation and serious issues facing the relocated Chagossians resulted in a realignment of social values and priorities, such that “responsibility to the community had been replaced with individuals acting in their own best interests.”³⁵ In essence, the relocation and its effects contributed to a fading sense of community, a loss of mutual identity, and isolation.

Several attempts to seek legal redress were undertaken by the displaced Chagossians, including suits filed in both British and American courts.³⁶ The suits were initiated by Chagossians in Mauritius and Seychelles, seeking the right to return to Chagos, as well as other judicial remedies. They alleged that the two governments had conspired to forcibly remove residents and prevent their return, while depriving them of essential and fundamental rights. In both British and American courts, the ultimate resolution of the litigation was dismissal based on some form of nonjusticiability issue. In the litigation in the United States in *Bancoult v. McNamara*, the Court of Appeals for the D.C. Circuit dismissed the claims as nonjusticiable political questions relating to national security.³⁷ Similarly, the claims in British courts were essentially dismissed due to royal prerogative, thus precluding any right of action against the government.³⁸

In light of the controversy surrounding the lawsuits and the subsequent dismissal in British courts, in 2002 the UK granted citizenship to the displaced Chagossians and to second-generation Chagossians born in Mauritius and Seychelles.³⁹ From a comparative assessment across a number of measures, Chagossians in the UK are better off than those

³³ Vine, et al. at 268.

³⁴ Jeffery at 1108.

³⁵ Jeffery at 1105.

³⁶ See *Ex parte Bancoult*, [2001] Q.B. 1067; see also *Bancoult v. McNamara*, 445 F.3d 427 (D.C. Cir. 2006).

³⁷ See *Bancoult*, 445 F.3d 427 at 436-437 (D.C. Cir. 2006).

³⁸ See *R (on the application of Bancoult)*, 2008 WL 4552840 (Oct. 22, 2008).

³⁹ See Jeffery at 1103

on Mauritius or Seychelles.⁴⁰ Nevertheless, they face many of the same issues, including racism, unemployment, and alienation, while still bearing the same psychological trauma associated with displacement and loss of land.⁴¹

While the British government did offer some limited restitution in allowing first and second generation Chagossians to emigrate to the UK, the US and UK continue to refuse to allow any repatriation back to Chagos. In December of 2010, a number of US diplomatic cables were leaked. Among the correspondence was communication between the US and British governments regarding the creation of a marine reserve in the area surrounding the Chagos Archipelago. The primary purpose of that reserve was to “assure that U.S. interests were safeguarded and the strategic value of BIOT was upheld.” The cable also quotes a British official who “asserted that establishing a marine park would, in effect, put paid to resettlement claims of the archipelago's former residents.” Further, the official was states, “‘We do not regret the removal of the population,’ since removal was necessary for the BIOT to fulfill its strategic purpose.”⁴² The two governments continue to show little regard for the plight of the Chagossians in light of their strategic interest in the Chagos Archipelago.

Ultimately, the case of the relocation of the Chagossians to Mauritius and Seychelles reinforces the critical importance of a well-effectuated plan that ensures the preservation of elements crucial to a society’s wellbeing are maintained during the relocation process. The failure of the British and American governments to develop and implement an effective and well-contemplated relocation plan has resulted in severe harm to the Chagossians that has yet to be abated, though the move to grant British citizenship to relocated Chagossians has improved living conditions somewhat. Similarly, the lack of a reasonable response on the part of the governments of Mauritius and Seychelles to take appropriate measures to ensure that the Chagossians would be able to receive basic care and essential services also contributed to a serious degradation of living standards.

⁴⁰ See Jeffery at 1104-1114.

⁴¹ See *id.* at 1106.

⁴² US embassy cables: Foreign Office does not regret evicting Chagos islanders, *The Guardian*, (Dec. 2, 2010), <http://www.guardian.co.uk/world/us-embassy-cables-documents/207149>.

Finally, the unavailability of a judicial remedy due to justiciability issues has prevented the displaced Chagossians from obtaining relief through litigation, thus leaving them with very little in the form of remedy and restitution.

2. Banaba Island

The mass relocation of the entire community of the island of Banaba, now a part of the Republic of Kiribati, to Rabi Island in Fiji provides a cogent example of the consequences of an entire island population relocating and resettling internationally. The Banabans were forced to relocate en masse in 1945 as a result of the consequences of phosphate mining by the British Phosphate Commission (BPC). The mining left much of the island uninhabitable due to the significant degradation of land. This in turn essentially destroyed the subsistence economy of the Banabans, compromising their food security and way of life. The relocation itself was facilitated by the BPC, which arranged for the purchase of Rabi Island for the purpose of resettling the Banabans.

Prior to relocation to Rabi, the Banabans held land in private lineal titles, as “[a]ll land on Banaba was held in strict individual holdings governed by traditional custom so as to protect the rights and interests of the owner’s descendants.”⁴³ As such, an intimate connection was held to land plots, as they reflected a personal and private stake in the given parcel of land that extended beyond mere individual ownership.

The Island of Rabi itself is held in freehold by the Banabans, such that they maintain full land rights to the land on the island. Rabi itself is considerably larger than Banaba. This created a unique situation when the land rights were transferred from Banaba to Rabi, as the decision was made to assign both private plots and to hold some land communally, reflecting a deviation from the traditional system of complete private ownership.⁴⁴

Though the validity of the Fijian Constitution has been in a state of flux following its revocation in 2009, its text nevertheless reflects an entrenchment of Banaban customary land rights on Rabi. For example, there is an explicit recognition and acceptance of the

⁴³ Dominic Noel Collins, *Forced Migration and Resettlement in the Pacific: Development of a Model addressing the Resettlement of Forced Migrants in the Pacific Islands Region from Analysis of the Banaban and Bikinian Cases* at 77 (2009).

⁴⁴ *See id.* at 76-77.

inalienability of Banaban land tied to customary land use, as the Constitution notes the legality of “restriction[s] on the alienation of land or fishing rights held ... in accordance with Banaban custom.”⁴⁵ Furthermore, statutory enactments with Constitutional recognition guarantee Banaban internal self-governance through an elected council and provide for an independent judiciary based on Banaban law and customs.⁴⁶

With regards to social and cultural maintenance and internal efforts, the Banabans on Rabi made deliberate efforts to retain traditional Banaban culture and social strictures in light of relocation. Instrumental to this was the leadership, as “[t]he Banaban elders were diligent in upholding of their cultural and ethnic identity even after the relocation to Rabi ... to ensure that these important cultural practices were respected and preserved for future generations.”⁴⁷ In many respects, the community tried to seamlessly replicate their old lives. For example, on arriving at Rabi, the Banabans decided to name the new settlements after the ones they had left behind, thus creating some sense of continuity despite the upheaval and loss of culturally meaningful lands.⁴⁸

Yet, despite the entrenchment of protections for the Banaban minorities within Fiji, as well as deliberate internal efforts to maintain their culture and way of life, Banabans “remain[] one of Fiji’s most disadvantaged and politically marginalised communities.”⁴⁹ A number of factors may have contributed to this suboptimal outcome. First, the efforts by the Banaban people to retain a distinct cultural identity, as well as the Fijian response may have played a significant role, as the Banabans have been “largely excluded from the mainstream developmental process,” such that they “barely feature in government

⁴⁵ Fiji Const., § 38(8)(b).

⁴⁶ See Banaban Settlement Act; Banaban Lands Act

⁴⁷ Ken Raobeia Sigrah and Stacey King, Cultural Identity of Banabans, Islands of the World VIII International Conference: Changing Islands – Changing Worlds at 905 (2004).

⁴⁸ See Collins at 10-11.

⁴⁹ Jon Fraenkel, Minority Rights in Fiji and the Solomon Islands: Reinforcing Constitutional Protections, Establishing Land Rights and Overcoming Poverty at *12 (2003).

policies and programmes.”⁵⁰ It thus appears that the Banabans’ desire for cultural homogeneity and independence has provided the Fijian government with a mandate to exclude them from affirmative action and positive discrimination regimes that were intended to benefit disadvantaged ethnic groups and minorities.⁵¹

Second, the Fijian government withheld generalized development funds and aid from the Banabans, as justified, in their view, by the existence of the Banaban Trust Fund.⁵² The Trust Fund was established in the wake of litigation against the British Phosphate Commission that commenced in 1965. The ensuing settlement resulted in the creation of a \$10million AUD fund for the displaced Banabans. Yet these funds are inadequate in light of the structural deficiencies that resulted from relocation. Even further, fiscal irresponsibility in the management of the Fund has resulted in the underfunding of many programs and community needs. Finally, reliance on the Trust Fund itself may have contributed to psychological harm, as “decades of dependency have harmed [the Banaban community’s] morale and resourcefulness.”⁵³

Thus, the case of the Banabans in Fiji and their present situation provides some important insight into international relocation generally. The Banabans were proactive in maintaining social and cultural structures that had existed on Banaba, while the Fijian government was also willing to accommodate the Banaban customary land system and incorporated constitutional protections for traditional, customary land use and rights. In that respect, the difference in property regimes never presented a serious issue, as customary land rights were protected and entrenched. Nevertheless, more than half a century since their relocation, the Banabans are an isolated and underprivileged minority, due in part to internal mismanagement and misallocation of development funds, but also due to inadequate external remedies and a lack of accountability from the nations that brought about the relocation. Furthermore, social policies by the Fijian government have been excessively exclusionary, failing to take into account the totality of circumstances

⁵⁰ Satendra Prasad, Jone Dakuvula, and Darryn Snell, *Economic Development, Democracy and Ethnic Conflict in the Fiji Islands* at 6 (2002).

⁵¹ *See id.* at 6.

⁵² *See id.* at 6.

⁵³ *See id.* at 6.

involving the Banaban people. Finally, as mentioned above, the unavoidable harms associated with loss of familiar and culturally significant land simply cannot be ignored, especially given the Banabans' close relationship to their ancestral land.

3. Bikini Atoll

From 1946 to 1958, 67 nuclear tests were performed in the Marshall Islands as part of a test program known as Operation Crossroads.⁵⁴ 23 of these tests were conducted at Bikini Atoll, including the largest of the tests, the so-called Castle Bravo test, more than one thousand times more power than the nuclear bombs dropped on Hiroshima and Nagasaki. Throughout that period of time, the Marshall Islands were considered a UN Trust Territory under the care of the United States. The Bravo test was conducted despite meteorological reports indicating that radiation would spread to nearby islands due to high winds. The result was

As a result of the nuclear tests, residents of Bikini Atoll were forced to relocate, first to Rongerik, then to Kwajalein, with the majority eventually ending up on Kili Island. The Bikinians on Rongerik and Kili were forced onto unfamiliar islands and left to fend for themselves, with no aid extended.⁵⁵ Because they lacked any familiarity with the flora and fauna, the Bikinians' food security was severely compromised, leaving them on the brink of starvation.⁵⁶ The geography of Kili was significantly different from that of Bikini. As an island rather than an atoll, Kili is only one-sixth of the size of Bikini. Further, Kili lacks protected coves and lagoons, subjecting the residents to severe environmental conditions and foreclosing the ability to safely fish in the coastal waters.⁵⁷

⁵⁴ See Davor Fevec, *The Marshall Islands Nuclear Claims Tribunal: The Claims Of The Enewetak People*, 35 *Denv. J. Int'l L. & Pol'y* 221 (Winter 2006).

⁵⁵ Zohl dé Ishtar, *Poisoned Lives, Contaminated Lands: Marshall Islanders Are Paying A High Price For The United States Nuclear Arsenal*, 2 *Seattle J. for Soc. Just.* 287, 290 (2004).

⁵⁶ See Jack Niedenthal, *A history of the people of Bikini following nuclear weapons testing in the Marshall Islands: with recollections and views of elders of Bikini Atoll*, 73(1) *J. Health Phys.* 28 (1997).

⁵⁷ See Ediberto Roman, *Membership Denied: Subordination and Subjugation under United States Expansionism*, 39 *San Diego L. Rev.* 437, 509 (2002); *see also* Ishtar at 290.

In 1968, the Bikinians received clearance by the US government to return to the Atoll, after being told that radiation had abated. However, serious health problems emerged in the Bikinians who chose to return, as radiation levels were so high that it led “United States scientists to conclude that the people likely had ingested the largest amounts of radiation of any known population.”⁵⁸ After these revelations emerged, the Bikinians again were forced off the Atoll.⁵⁹ A 1979 study by the Interior Department concluded that Bikini Atoll would not be habitable for at least thirty to sixty years.⁶⁰ Thus, as it stands today, the Bikinians have been alienated from their culturally important ancestral lands,

In December of 1954, in the wake of the Bravo test, the United States offered compensation to the Bikinians on Kili, totaling \$25,000 in cash and a \$300,000 trust fund, amounting to a payout of about \$15 per person yearly. The 1983 Compact of Free Association brought about some additional compensation connected to the relocation under §177 of that agreement. Under the terms of the COFA, several remedies and services were offered to the relocated islanders, including a number of different health plans, as well as the creation of the Nuclear Claims Tribunal and the establishment of a trust fund for the Bikinians, which totaled approximately US\$150 million.⁶¹

The Department of Energy provides healthcare for the 174 individuals who were identified as directly affected by the Bravo Test,⁶² while the Four Atolls Health Care Program provides more general health services. Yet the implementation of these programs have been met with criticism, as the Department of Energy program is seen as overly under-inclusive given the wide spread of harm from the fallout from the Bravo

⁵⁸ See *People of Bikini, ex rel. Kili/Bikini/Ejit Local Gov. Council v. U.S.*, 77 Fed.Cl. 744 (Fed.Cl. Aug 02, 2007).

⁵⁹ See Hyun S. Lee, *Post Trusteeship Accountability: Case of PCB Contamination on the Marshall Islands*, 26 *Denv. J. Int'l L & Pol'y* 399, 406 (1998).

⁶⁰ See *People of Bikini*, 77 Fed. Cl. at 751.

⁶¹ See Lisa Tabassi, *The Nuclear Test Ban: Lex Lata or De Lege Ferenda*, 14 *Journal of Conflict & Security Law* 309, 344 (2009).

⁶² See John C. Babione, *Mission Accomplished? Fifty-Four Years of Suffering for the People of the Marshall Islands and the Latest Round of Endless Reconciliation*, 11 *Ind. Int'l & Comp. L. Rev.* 115 at 132 (2000).

Test, while the Four Atolls Program has been criticized for its lack of funding and resources.⁶³

Additionally, the remedies accorded by the Nuclear Claims Tribunal have been assailed as drastically insufficient given the actual monetary award rewarded under the Tribunal. In 2001, after five years of litigation, the Tribunal issued an award for the Bikinians totaling over US\$563 million. This amount based upon past and future deprivations of use of Bikini Atoll, restoration costs due to radiation, and the hardships incurred as a result of the relocation. Yet, the reward was severely constrained by the lack of money in the Trust Fund, which has been drained from its initial \$150 million amount to less than \$2 million today.⁶⁴ As a result, the great majority of the payments from the award have not actually been dispersed to the Bikinians.

In response, a number of Bikinian community groups filed a complaint in the United States Court of Federal Claims, alleging a number of violations, including a breach of fiduciary duty, a Fifth Amendment takings claim, and breach of implied contract.⁶⁵ However, these complaints were dismissed as nonjusticiable under the political questions doctrine, as well as for procedural issues including the tolling of the statute of limitations.⁶⁶ A certiorari petition to the Supreme Court was denied in 2010, leaving the Bikinians with no legal recourse in US courts to secure their funds.⁶⁷

4. The Maldives – Dhuvaafaru

The 2004 earthquake and tsunami that devastated countries along the Indian Ocean resulted in mass displacement and mandated relocation for many residents of affected countries. Within the islands comprising the nation of the Maldives, there was considerable internal displacement, as low-lying islands and atolls were inundated and in some cases, completely destroyed. One such community was the Kandholhudhoo Island

⁶³ See *id.* at 131-140.

⁶⁴ See *People of Bikini*, 77 Fed.Cl. at 764.

⁶⁵ See *id.* at 744.

⁶⁶ See *id.* at

⁶⁷ See *People of Bikini v. U.S.*, 130 S.Ct. 2340 (2010).

on the Raa Atoll.⁶⁸ The community on Kandholhudhoo was displaced and eventually, entirely relocated to the uninhabited nearby island of Dhuvaafaru, also on Raa Atoll. This particular case is an example of a relocation effort that has been hailed as extremely successful, providing a model for community-based relocation.⁶⁹

The 2004 tsunami displaced approximately 4,000 members of the Kandholhudhoo community, necessitating a temporary relocation to the surrounding islands in the Raa Atoll, with most people ending up on Ungoofaru Island. Providing international assistance in locating temporary housing, as well as permanent resettlement, were a number of international and intergovernmental organizations. Included among those organizations were the United States Agency for International Development, and most prominently, the International Federation of Red Cross and Red Crescent Societies (IFRC). The IFRC worked directly with the Maldives government to provide aid and assistance with the construction of over 600 homes.⁷⁰ Other international relief groups provided further monetary assistance, as relocation funds totaled a sum of approximately US\$45 million, with US\$32 million coming from the IFRC.⁷¹

Given that the entire island of Kandholhudhoo was rendered completely uninhabitable by the tsunami, resettlement was the only tenable option. The Maldives government's National Disaster Management Centre was responsible for locating possible relocation sites based a number of factors, ultimately deciding on the uninhabited island of

⁶⁸ See International Federation of Red Cross and Red Crescent Societies, *Community Participation in rebuilding in the Maldives at *5 (2007)*, available at http://www.recoveryplatform.org/assets/publication/community_participation_in_rebuilding_Maldives.pdf

⁶⁹ See e.g. Peter Beaumont, Ben Doherty, Randeep Ramesh, and Dan Chung, *After the 2004 Tsunami: Rebuilding Lives, Salvaging Communities*, *The Guardian*, (Dec. 23, 2004) available at <http://www.guardian.co.uk/world/2009/dec/23/2004-tsunami-five-years-on>

⁷⁰ See *Community Participation; see also Kandholhudhoo Island Case Study, Expert Roundtable – Maldives Case Study, The Implications of Climate Change in South Asia at 2 (2010)*.

⁷¹ See *United Nations in Action, Maldives: Safer Islands*, (transcript from broadcast May 2010); see also Marie Saleem and Shahaama A. Sattar, *Tsunami Recovery and Restoration in the Maldives – Lessons Learned at 17. (2010)*.

Dhuvaafaru.⁷² Dhuvaafaru was chosen due to in part due to its geographic features, including a reef that would provide protection from future tsunamis, as well as input from the community, as reestablishing the community on Dhuvaafaru would allow the entire Kandholhudhoo community to remain together.⁷³

The initial relocation effort was marked by dissatisfaction and conflict, as the IFRC noted that during the period of temporary housing, there was considerable tension between the relocated residents of Kandholhudhoo and the host islanders, as well as with the IFRC and other international organizations.⁷⁴ Issues included disputes over housing, food, and distribution of limited resources. Much of the hostility was fueled by the lack of centralized crisis and displacement management, as originally, “government offices on each island were mandated to manage the needs of the displaced populations. The officials, mainly local chiefs and their assistants, had no prior experience of such a situation and had not received any special training in how to handle it.”⁷⁵ This contributed to feelings of frustration, uncertainty, and resentment on the part of the displaced community that were further complicated by a variety of issues regarding community participation. First, the local communities were not accustomed to being directly involved in decision-making, tending to instead defer to government to fill that role. Further, the international organizations themselves lacked some of the requisite skills to successfully manage and implement a plan based largely on community participation. Finally, local government also had misgivings about community participation and did not always maintain an open dialogue with the displaced community.⁷⁶

Thus, within the permanent resettlement and relocation plan, a deliberate emphasis was placed on community involvement within the process at large, as the intent was to drive the reconstruction and relocation effort by centering on transparent and community-based techniques, aiming for inclusive, consensus-driven policies that would resolve the

⁷² See Community Participation at *2.

⁷³ See id. at *2.

⁷⁴ See id at *4.

⁷⁵ Id. at *4.

⁷⁶ See id. at *4.

disputes. The Maldives government implemented a Community Involvement Plan with support from the IFRC and other groups, devising a variety of means to reach out to the Kandholhudhoo residents and keep them integrated in the process as more than just observers, but decision-makers as well. Community input was collected through a variety of means, including visual aids in the form of photographs and videos of the site and construction plans, organized visits to the relocation site, informal meetings and visits, and a telephone hotline to field comments. These techniques allayed many of the doubts and concerns of the community by providing them with detailed information and close interactions with aid and development workers. Furthermore, the process of the determination of eligibility of benefits and aid were conducted not only by the IFRC as an outside agency, but also integrated the Kandholhudhoo chief and his assistants, allowing for increased local-level participation in the rebuilding process, while also establishing valuable linkages in the form of social interaction and partnerships that built trust and friendship.⁷⁷

Ultimately, five years after relocation, the displaced residents of Kandholhudhoo finally moved into their new community on Dhuvaafaru, where infrastructure and essential services have been successfully integrated and continuity restored.⁷⁸ The results of the deliberate community-centered rebuilding by the Maldives government and the IFRC at Dhuvaafaru have been described as “rewriting the rules of how best to respond to a major disaster: by empowering its victims to reconstruct their lives rather than imposing aid upon them.”⁷⁹ Indeed, the success of the Dhuvaafaru project instilled trust in the government’s ability to provide adequate relocation, prompting more communities to seek out government aid based on the Dhuvaafaru model.⁸⁰ In that sense, the rebuilding and relocation effort have provided a model for recovery from which valuable lessons can be derived. The IFRC, upon reflecting on the project, presented a number of observations as to what makes a relocation project successful. These included: (1) the importance of a well-rounded approach to rehabilitation that not only on physical

⁷⁷ See *id.* at *7.

⁷⁸ See *Tsunami Recovery Program*, American Red Cross at 2-3.

⁷⁹ *Beaumont, et al.*

⁸⁰ See *UN In Action*.

rebuilding, but on emotional, social, and psychological recovery, (2) ensuring that a sense of security and stability is achieved as soon as possible, (3) gauging and maintaining community expectations about the relocation process, (4) working within the existing community structure, (5) ensuring an open dialogue between displaced communities and the host communities that take them in, thus allowing grievances to be aired and bonds to be built.⁸¹

While the methods employed in the Dhuvaafaru relocation provide significant insight into the value of community-oriented programs as a means of resolving disputes and alleviating tension within the process, it nevertheless warrants mentioning that a number of other factors that cannot be understated also contributed to the success, including the availability of a significant amount of relief funds from international relief organizations, the presence of an adequate and uninhabited relocation site, and other factors external to the relocation plan itself.

B. Current and Proposed Relocations

1. Alaska – Kivalina

Kivalina is a federally recognized Alaskan Native Village with approximately 400 Inupiat Eskimo residents in 70 homes. The residents of the Kivalina engage in a traditional subsistence lifestyle through hunting and fishing on the coast, with whaling as the dominant activity. As such, their livelihoods are dependent on a close proximity to the coast. The Kivalina subsistence rights are protected through their federal recognition as Inupiat Eskimos, thus permitting them access to those resources. The distribution of those resources is managed through a communal arrangement in accordance with Inupiat tradition.

As a coastal island community, Kivalina has been threatened by erosion for years. In fact, as early as 1953, residents had considered relocation through a referendum.⁸² Yet, rising sea levels have accelerated the threat of erosion. In 2006, a voluntary temporary

⁸¹ See Community Participation at *12-13.

⁸² See City of Kivalina: Relocation (2007), <http://www.kivalinacity.com/kivalinarelocation.html>

relocation was implemented as a large storm system threatened to flood the island. That same year, the city was designated a flood disaster area by the state of Alaska.

In response to continual and worsening erosion, the city developed a committee devoted to long-term relocation, the Kivalina Relocation Planning Committee. In addition to local resources, a number of state and federal agencies have become involved in the process as well, including NOAA and FEMA, which developed the Kivalina Local Hazards Mitigation Plan. Additionally, the United States Army Corps of Engineers (ACE) drafted a master plan for relocation after concluding that neither inaction nor improvements to the village itself would remedy the problems.⁸³ This came after a 2006 effort by ACE to reinforce a seawall, only to see it damaged immediately after the improvements were made. After identifying a number of potential relocation sites, the ACE developed an estimate as to the costs of relocation, finding that relocation expenses would range from \$95 to \$400 million.⁸⁴ Further ACE studies suggested that Kivalina itself would only be habitable for 10 to 15 years, putting the impetus on immediate action.⁸⁵ In light of the ACE report, the village sued a number of energy companies, seeking monetary damages connected to the relocation.⁸⁶ Nevertheless, the suit was dismissed in the District Court for the Northern District of California based on nonjusticiability under the political questions doctrine and due to lack of subject matter jurisdiction. An appeal to the Ninth Circuit is currently pending.

Because Kivalina is an Inupiat community that is largely reliant on whaling, any relocation must remain in close proximity to the shore. The relocation in general raises concerns about food security, as well as culture loss stemming from the separation from tribal land. It remains to be seen how the relocation will accommodate such needs, while also guaranteeing the safety of the residents against the continued threats of climate change.

⁸³ See Executive Summary, Kivalina Relocation Master Plan, U.S. Army Corps of Engineers, Alaska District (2006).

⁸⁴ See *id.*

⁸⁵ See U.S. Army Corps of Engineers Alaska District, Alaska baseline erosion assessment: Study findings and technical report, (2009).

⁸⁶ See *Kivalina v. Exxon-Mobil Corp., et al.*, 663 F.Supp.2d 863 (N.D. Cal. 2009).

2. Vanuatu

The South Pacific island nation of Vanuatu is among the earliest and most vocal advocates for climate change protection, as it spearheaded efforts in the early 1990's to raise awareness before the United Nations, as part of the Alliance of Small Island States. Geographically, Vanuatu is an archipelago containing a number of islands in its chain, with two larger islands holding the majority of the population.

Vanuatu's status as a small, low-lying island nation justifies its concern with climate change. The effects of rising sea levels have already being felt on Vanuatu, where flooding has forced some villages to permanently relocate. The village of Lateu, with a population of about 100 people, was labeled by some as the first instance of forced relocation due to climate change.⁸⁷ The residents of Lateu moved their entire village inland, so as to avoid flood hazards and eroding land. That relocation received significant international attention and international aid groups, religious organizations, and the Canadian government gave considerable aid towards the relocation.⁸⁸

However, the impact of sea level rise and climate change in general has now spread across Vanuatu, threatening the livelihoods of many. This is in part due to the economic structure in Vanuatu as largely comprising small-scale subsistence agriculture and fishing.⁸⁹ Changes in climate patterns have affected crop growth and fishing prospects, while rising sea levels have compromised the availability of fresh drinking water. Erosion has also threatened coastal land and prompted relocations, as noted above.

Vanuatu is a member of a number of organizations and groups focused on resolving climate change issues. These include the Pacific Adaptation to Climate Change Project

⁸⁷ See United Nations Environmental Programme, Pacific Island Villagers First Climate Change Refugees (2005), available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=459&ArticleID=5066&l=en>.

⁸⁸ See Peter Boehm, Global Warming: Devastation of an Atoll, *The Independent*, Aug. 30, 2006, available at <http://www.commondreams.org/headlines06/0830-07.htm>

⁸⁹ See An Assessment of the Impact of Climate Change on Agriculture and Food Security in the Pacific: A Case Study in the Marshall Islands and Vanuatu, available at www.fao.org/fileadmin/user_upload/.../CStudies-Marshall-Vanuatu.pdf

(PACC), which was implemented by the United Nations Development Programme. The PACC's mission is limited to three specific goals, food production and security, coastal management, and water resource management.⁹⁰ Essentially, the PACC's mission is to analyze and assess the present situation in thirteen Pacific Islands, while developing strategies to help the communities adapt in the key areas noted above.

Vanuatu is also a member of the Global Climate Change Alliance, a partnership between the European Union and a number of developing countries. The GCCA has identified five primary goals, adaptation, reducing emissions from deforestation and degradation, facilitating clean development programs, reducing disaster risk, and integrating climate change strategies with broader anti-poverty efforts.⁹¹ The European Union has committed €90 million towards climate change relocation, as part of the GCCA.⁹² All of this is intended to bear results leading up to negotiations for an international climate change regime under the United Nations Framework Convention on Climate Change, while also helping specific nations with priority adaptation and mitigation based on impending threats from climate change in the interim.⁹³

Despite Vanuatu's active membership in international organizations dedicated to climate change, domestic critics have denounced the internal policies for identifying priority sites for relocation, asserting that relocation needs span far wider than the limited set of sites identified by the government.⁹⁴

⁹⁰ See Pacific Adaptation to Climate Change, http://www.sprep.org/climate_change/PACC/country.htm (last visited May 12, 2011).

⁹¹ See Global Climate Change Alliance: Priority Areas, http://www.gcca.eu/pages/30_2-Priority-areas.html (last visited May 12, 2011).

⁹² See Leigh Phillips, EU Pledges €90m in Climate Funds for Pacific Island States, *The Guardian*, March 1, 2011, available at <http://www.guardian.co.uk/environment/2011/mar/01/eu-climate-funds-pacific-islands>.

⁹³ See Global Climate Change Alliance: Background and Objectives, http://www.gcca.eu/pages/14_2-Background-and-Objectives.html (last visited May 12, 2011).

⁹⁴ See Makili Challenges Relocation Plan, *Vanuatu Today News*, Mar. 18, 2011, available at <http://vanuatutodaynews.com/?p=126>

Vanuatu has pinned much of its hopes on an international resolution to climate change, focusing on international linkages and consensus-building programs. It remains to be seen whether a comprehensive agreement on climate change will move forward and provide a remedy for Vanuatu and other island nations immediately threatened by climate change.

3. Carteret Islands – Papua New Guinea

The Carteret Islands are among the most low-lying of islands in the Pacific. As such, environmental threats pose a particularly pertinent and real danger. This danger was realized in 2005, when 2,600 islanders were forced to evacuate to the larger main island of Bougainville due to flooding, leading a UN report by the Secretary General to label them as the “first low-lying islands to evacuate their population because of climate change.”⁹⁵ Yet, while the 2005 relocation was only temporary, it is a likely precursor to a much more serious threat. In fact, reports suggest that by 2015, the Carteret Islands will be entirely inundated and underwater.⁹⁶

In response to the reemerging threat of climate change, the Carterets Council of Elders formed a community-based organization in 2006 designed to develop a permanent relocation plan for resettlement in Bougainville within a 10-year timeframe. The organization was named Tulele Peisa, meaning “sailing the waves on our own,” reflecting a commitment to community-based relocation based on civic empowerment and independent initiative.

Tulele Peisa, in conjunction with the Catholic Church in Bougainville, developed a plan it called the Carterets Integrated Relocation Plan, which has set forth foundational goals, a step-by-step process-based schedule, and identified potential areas of concern and future needs. The primary mission, as stated in the Plan, is the relocation of 1,700 Carterets islanders to the Bougainville mainland, where three different host communities have been located in the villages of Tinputz, Tearouki, and Mabiri. The organization’s

⁹⁵ United Nations High Commissioner for Refugees, Climate change and its possible security implications, Report of the Secretary General, A/64/350 at 20 (Sept. 11 2009).

⁹⁶ Brooke Havard, Seeking Protection: Recognition of Environmentally Displaced Persons Under International Human Rights Law, 18 Vill. Envtl. L.J. 65, 73 (2007).

goals include a desire to ensure that the displaced community collectively retains their cultural identity as Carteret Islanders, as well as collaborative and cooperative efforts with the host communities to ensure that land, infrastructure, and employment opportunities are available. Among the specific programs are trade-based training in various fields,

Among the difficulties identified by the Tulele Peisa is the land situation in Bougainville, as almost 96% of land is held customarily, with less than 3% held by the government.⁹⁷ As such, one immediate problem exists in finding suitable land. Given the nature of land held in Bougainville, much time has been spent negotiating with holders of customary land rights and securing proper title to the land, as such efforts commenced in 2007.⁹⁸ Yet the majority of land secured has been provided by the Catholic Church, which has donated approximately 80 hectares of land. Despite its contributions, the grand total needed is approximately 1500, or about 5 per family, representing a huge disparity. The serious inability to acquire land will hamper the relocation to a near-fatal degree if it persists. Notwithstanding the problems with the property system at large, another obstacle that has presented itself is the lack of sources of funding, as very little aid has been extended to fund the relocation in general. Indeed, the majority of relocation funds have again come from the Catholic Church, while the Bougainville government was only able to provide \$800,000 in funding.⁹⁹ Non-governmental organizations have provided some aid, but again, their contributions are not nearly enough to meet the needs of the relocation effort as it stands today.

While the relocation has yet to be finalized, several lessons can be taken away from the case of the Carteret Islands and the Tulele Peisa. Obviously, the resourcefulness and proactive approach to relocation taken by the community cannot be understated, as

⁹⁷ Climate Change Displaced Persons And Housing, Land And Property Rights Preliminary Strategies For Rights-Based Planning And Programming To Resolve Climate-Induced Displacement (Displacement Solutions, Geneva, Switzerland), December 2009, at 18.

⁹⁸ Volker Boege, Challenges and Pitfalls of Resettlement Measures: Experiences in the Pacific Region, Bielefeld: COMCAD Working Papers No. 102 at 16 (2011).

⁹⁹ *See id.* at 11, 16.

“people from the Carterets have not waited for the state and others to come to their assistance, but have taken their fate into their own hands and in doing so have shown tremendous capabilities and ingenuity. This demonstrates that people have agency of their own.”¹⁰⁰ Nevertheless, the mere fact that the community has taken initiative is not sufficient, as “[l]ocal agency, however, should not be used as an excuse for the passivity of state institutions in [Papua New Guinea] and of those who are responsible for the plight of the islanders at the international level in the first place.”¹⁰¹ In that respect, community action in the form of the Tulele Peisa alone cannot bear the burden of relocation, as both the larger Papua New Guinea government and international actors must play a much larger role. The lack of funding and inability to locate suitable relocation lands demonstrates this point significantly. Thus, while it is certainly encouraging that the Carteret community had the foresight to develop a detailed and elaborated plan of action, the implementation has yet to be seen and a number of issues still stand to be resolved.

IV. General Lessons and Recommendations

The case studies above offer insight into relocation efforts largely specific to the particular circumstances in each community. Nevertheless, a number of broader themes can be extracted from the particular relocation examples, providing useful insight and consideration for the Marshall Islands.

A. Legal Protections for Property

The extension of legal property protections to relocated communities can take form in a number of ways. One such way is through the preservation of traditional customary law. Preserving customary law eases some of the uncertainty associated with property issues, but more importantly, also preserves social structure and community linkages.

The provisions that entrench customary law within the Fijian Constitution protect Banaban traditional property rights and serve as a useful model for the Marshall Islands. Much of the land in the Marshall Islands is held in a traditional, customary fashion with

¹⁰⁰ Id. at 16.

¹⁰¹ Id. at 16.

the full force of law protecting such claims. The Marshallese Constitution recognizes customary property law and has a Traditional Rights Court for adjudicating disputes that may arise. Given the fact that customary property law is so deeply entrenched and institutionalized as a legal matter, it makes sense that the system be preserved to maintain continuity and familiar legal treatment once relocation is completed. This will ensure that disputes that arise out of land rights will be adjudicated in the same consistent manner as prior to relocation. Furthermore, the maintenance of the Marshallese system through legal entitlements will ensure that the social structure of the society remains intact, given the fact that much of the social organization in the Marshall Islands has been centered on a communal, clan-based structure.

B. Housing

One of the most pressing concerns in any relocation is ensuring that housing is available for the displaced community, in both a temporary and permanent context. Temporary housing is essential in the immediate aftermath of displacement, as it reduces the immediate traumatic impact of relocation and offers Permanent housing is critical in the effort to normalize life after relocation, providing stability and long-term reengagement with the land.

As such, one clear case to draw from is the Chagos relocation. In the course of the Chagossian relocation from Chagos to Mauritius and Seychelles, no efforts were taken to ensure that adequate housing would be available for the displaced Chagossians. The host communities in Mauritius and Seychelles were already overpopulated and had a shortage of housing due to cyclone damage. Alternatively, the Dhuvaafaru plan is an example of an approach towards housing that is measured and patient. The displaced community on Kandholhudhoo was not moved to their relocation site until it was assured that adequate housing would be available for all families. While construction was ongoing, there were sufficient temporary accommodations and there was open dialogue about the construction process, thus reducing the potential for tension between the groups involved in the relocation.

Given the traumatic nature of mass displacement, it is essential that those orchestrating the relocation have a clear plan in mind with regards to housing. It is simply unacceptable to implement a relocation program that fails to provide adequate housing, whether temporary or permanent. Thus, the relocation program for the Marshall Islands must ensure that temporary and permanent housing are extremely high priorities. The physical movement of communities simply cannot occur until housing is secured. In that respect, the expectations of those displaced must be managed so as to avoid frustration and anxiety about possible delays or uncertainty as to the progress of securing housing.

C. Community Participation

A theme present in a number of the case studies listed above is active community participation through independent organizations or in conjunction with larger national or international groups. Yet the origins of the community-based activities vary significantly, offering important lessons based on the origins of the community-led action.

The Dhuvaafaru relocation provides an ideal model for a relocation program, as it stresses community input and active engagement between the displaced community and other groups, including international organizations, government agencies, and host communities. Importantly, the Dhuvaafaru model was not borne out of external apathy or community frustration with outside aid. Instead, the Dhuvaafaru relocation functions as a model of collaboration between international organizations and local community groups. Conversely, models like the Tulele Peisa in the Carteret Islands present a relocation program spearheaded by an internal community group, largely due to the unwillingness or inability of external actors to shoulder some or any of the burden. The result in the Carteret Islands is a lack of funding and resources that have stymied the relocation effort, despite the dedication shown by local community organizations.

Ultimately, community participation in the potential relocation of the Marshall Islands will be important. Yet that alone is not sufficient. For a truly successful relocation, the Marshallese community must not only organize as a community to have their collective voices heard, but must also be able to realistically deal with issues that arise on a broader level. In that respect, community organization must not simply give rise to a forum for

internal discussion, but must also generate effective and tangible results. Given the wide scope of a potential relocation in the Marshall Islands, it seems unrealistic to expect such results absent international engagement and assistance. In that respect, the Marshall Islands must secure international commitments and engage with intergovernmental and nongovernmental organizations, so as to avoid an isolated and undermanned relocation program.

D. Judicial Remedies

Many of the communities faced with relocation have appealed to judicial bodies for relief, seeking. Nevertheless, the majority of these suits have been dismissed, leaving the communities without legal recourse. This does not mean that the suits were necessarily in vain, however. Legal action can bring about public awareness and attention to the crises facing communities threatened with relocation.

For example, though the suit brought by the Chagossians against the British government was dismissed in court, the residual controversy forced the government into action. The result was the grant of British citizenship to qualifying Chagossians on Mauritius and Seychelles. Similarly, though no judicial remedy was accorded, the Banabans secured a trust fund through settlement proceedings with the British Phosphate Commission that has allowed for the financing of some essential services to the Banabans on Rabi.

In that respect, should the Marshall Islands pursue litigation, it must be kept in mind that the decision rendered by the court is not the only relevant outcome from the suit. Appeals to public opinion and generation of publicity can bring about alternative forms of remedy for the Marshall Islands as well.

E. Poverty Alleviation and Employment

A common thread among a number of the relocation case studies above is the issue of impoverishment. Directly connected to this is the issue of unemployment upon relocation. There are a number of contributing factors highlighted by the case studies, as well as examples of mitigating techniques employed.

One obvious cause of poverty is simply a distortion of resource allocation. Such resource distortion can occur due to internal misappropriation of funds, such as mismanagement of community funds, as was one of the precipitating factors in the impoverishment of the Banaban community on Rabi. Alternatively, such a distortion can come about as a result of inadequate aid from domestic or international parties, leaving the relocated community underfunded and impoverished. Finally, unemployment obviously induces poverty through the inability to earn wages or make a living generally.

One form of unemployment observed in a number of case studies stems from a mismatch between a displaced community's skills and economic structure with that of the host destination. This was especially evident in the relocation of the Chagossians to Seychelles and Mauritius. As coconut farmers enjoying near universal employment, the Chagossians encountered substantial problems upon relocation to the economically depressed sites they were sent to. Without any sort of preparation for the adjustment necessitated by their relocation, the Chagossians were even worse off in an already suboptimal setting.

To alleviate such concerns in relocation, pre-relocation training programs, such as those emphasized by the Tulele Peisa in the Carteret Islands, seem to be a promising solution. The organization has been working with host communities to develop training programs designed to help Carteret Islanders adapt their skills to better match the economy in the Bougainville host communities.

Thus, once a host location is identified for the Marshall Islands, there must be a plan in place to ensure that there will be an appropriate linkage between skills and economic opportunities, thus avoiding the serious repercussions of unemployment. The Tulele Peisa model is just one potential way to accomplish this end. It is also possible that the Marshall Islands will relocate to a geographically similar area with a comparable economic system. In that respect, the learning curve for employment will be far less steep. Regardless of the circumstance or specific details of a given relocation plan, there simply must be a nexus between labor skills and available employment opportunities.

F. Food Security

A number of the case studies for relocation present issues connected to food security. Food security can be compromised for any number of factors, but in a relocation context, ecological shifts are particularly troublesome. This is especially troublesome for subsistence communities. Their traditional techniques refined from generations of experience become effectively useless when dealing with different terrain, flora, and fauna.

For example, in the Bikini Atoll relocation, food insecurity arose as the result of ecological and structural differences between the Atoll and the relocation sites on Kili and Rongerik. Not only were the animals and plants different on Kili, but the geography also effectively precluded the Bikinians from engaging in crucial subsistence activities, such as fishing. The lack of sheltered bay or lagoon meant that traditional methods of fishing were completely ineffective.

The same concerns with food security may arise for the Inupiat community in Kivalina, as their economic base is grounded in whaling and fishing. However, the Army of Corps of Engineers has expressed concern about erosion threats at a number of proposed relocation sites that could facilitate their subsistence fishing.

Any proposed relocation must be able to ensure food security for the displaced community. Part of guaranteeing food security for the Marshallese community must involve adaptation to the ecology of the relocation site. This will potentially be a difficult task to facilitate, given the reliance on familiarity with the local ecology on the Marshall Islands, as derived from generational and ancestral knowledge. In addition to adapting to local terrain, another potentially critical element in food security is providing monetary support if a host site already features a local economy where food can be acquired.

V. Conclusion

As stated in the introduction to this paper, the harms stemming from displacement and relocation cannot be fully contemplated or measured from an ex ante perspective. There are simply too many unique variables and individualized situations to account for in a

particular relocation program. This paper, while limited in scope to a select subset of relocation efforts across the globe, has identified common linkages between the cases studied. It is the hope that the recommendations offered in this paper will be considered in the event that relocation becomes necessary, as it is imperative that the identifiable and preventable harms be mitigated to the full extent possible.