

University of New South Wales Law Research Series

**SUBMISSION 40 - INQUIRY INTO
STRENGTHENING AUSTRALIA'S
RELATIONSHIPS WITH COUNTRIES IN
THE PACIFIC REGION**

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Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021
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Canberra ACT 2600

23 June 2020

Dear Committee Secretary,

As the Director of the Andrew & Renata Kaldor Centre for International Refugee Law at UNSW Sydney, I am pleased to provide a short submission to the **Inquiry into strengthening Australia's relationships with countries in the Pacific region**.

The Kaldor Centre is the world's leading research centre dedicated to the study of international refugee law. The Centre was established in October 2013 to undertake rigorous research to support the development of legal, sustainable and humane solutions for displaced people, and to contribute to public policy involving the most pressing displacement issues in Australia, the Asia-Pacific region and the world.

One of the Kaldor Centre's areas of expertise is mobility in the context of climate change and disasters, particularly in the context of the Pacific. This submission focuses on how mobility must remain a core element of Australia's engagement and initiatives with the Pacific if the long-term stability, security and prosperity of the region is to be enhanced.

If I can provide you with any further information, please do not hesitate to contact me at

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Yours sincerely,

Professor Jane McAdam
Director of the Kaldor Centre for International Refugee Law, UNSW Sydney

1. The adverse impacts of disasters and climate change are prompting millions of people around the world to move. Some people are evacuated or displaced; others migrate in search of better conditions; while others are relocated permanently to safer areas. Without international land borders, Australia does not directly bear witness to the displacement impacts of disasters in our own region. But king tides, cyclones, drought and flooding continue to displace our Pacific neighbours, and the capacity of certain countries to sustain themselves over the longer-term raises existential questions for states like Kiribati and Tuvalu.
2. Climate change is a 'threat multiplier'¹ that compounds existing stressors (such as poverty, resource scarcity, poor-quality land and existing displacement).² The recent intersection in the Pacific of Cyclone Harold – a high-intensity extreme weather event, consistent with climate change – with the COVID-19 global pandemic was an example of the perfect storm. However resilient people may be, there is a tipping point when their capacity becomes overwhelmed.
3. Climate change also exacerbates the frequency and/or severity of certain sudden-onset disasters, such as cyclones, and contributes to slower-onset processes, such as drought and sea-level rise. Sudden and slow processes also interact: for instance, the impacts of drought may be felt through more immediate triggers, such as food insecurity becoming a famine.³
4. Australia cannot afford to ignore the fact internal and cross-border displacement in the Pacific is likely to increase as disasters intensify and become more frequent. Preventative measures taken now, such as mitigation, adaptation and disaster risk reduction, along with proactive measures, such as enhanced mobility, could significantly reduce the risk of future displacement – as well as economic, social and human costs and suffering. The UN Office for Disaster Risk Reduction has estimated that there could be a 60-fold return for each dollar spent on preparing for disasters.⁴
5. Most Pacific Islanders want to remain in their homes for as long as possible.⁵ At the same time, there is widespread recognition that planning for mobility is necessary and that '[f]ailing to do so will be like burying our heads in the sand'.⁶ Even so, Pacific perspectives on the role of migration in responding to the impacts of climate change vary, depending in part on the underlying development, economic and environmental challenges facing each country and existing options for movement.
6. Most displacement in the Pacific is temporary and internal, but it is recurring with increasing regularity. For instance, it was estimated that 70 per cent of Vanuatu's

¹ This was recognised by the UN Security Council in an open debate on 'Addressing the impacts of climate-related disasters on international peace and security', tabled by the Dominican Republic in January 2019: 'Climate Change Recognized as "Threat Multiplier", UN Security Council Debates Its Impacts on Peace', *UN News* (25 January 2019) <<https://news.un.org/en/story/2019/01/1031322>>.

² IDMC, *Global Report on Internal Displacement 2017* (2017) 11.

³ Jane McAdam, Bruce Burson, Walter Kälin, and Sanjula Weerasinghe, *International Law and Sea-Level Rise: Forced Migration and Human Rights*, FNI Report 1/2016 (Fridtjof Nansen Institute and Kaldor Centre for International Refugee Law 2016) para 53.

⁴ UNISDR, *Global Assessment Report on Disaster Risk Reduction 2015* (UN 2015) ix. See also Bapon SHM Fakhruddin and Lauren Schick, 'Benefits of Economic Assessment of Cyclone Early Warning Systems: A Case Study on Cyclone Evan in Samoa' (2019) 2 *Progress in Disaster Science* 1000346, 6 and references there.

⁵ Nansen Initiative on Disaster-Induced Cross-Border Displacement, *Human Mobility, Natural Disasters and Climate Change in the Pacific: Outcome Report* (Pacific Regional Consultation, May 2013)

⁶ 'Chairperson's Summary' in *ibid*, 24.

population was displaced by Cyclone Pam in 2015,⁷ and a third of the population by Cyclone Harold in April 2020,⁸ just five years later.

7. In many respects, Pacific governments are already well ahead of Australia in planning for displacement. Both Fiji and Vanuatu have developed guidelines on internal displacement in the context of climate change and disasters to assist the government and other stakeholders 'to address and reduce vulnerabilities associated with displacement', and to consider 'sustainable solutions to prevent and minimize the drivers of displacement on the affected communities in relation to climate change and disaster-associated events'.⁹ Fiji has also created national guidelines on internal planned relocation and established a Climate Relocation and Displaced Peoples Trust Fund for Communities and Infrastructure,¹⁰ which is seed-funded by a percentage of Fiji's Environment and Climate Adaptation Levy.¹¹ A number of communities have already been relocated from areas highly susceptible to disasters where continued settlement is unsafe and unsustainable.

Why Australia needs to act

8. No matter what mitigation or adaptation strategies are put in place now, some displacement is inevitable.¹² However, we can 'flatten the curve' and reduce the potential scale of displacement if we act now.
9. In 2012, Switzerland and Norway created the first intergovernmental body dedicated to the study of climate change, disasters and displacement: the Nansen Initiative on Disaster-Induced Cross-Border Displacement. It was superseded in 2016 by the Platform on Disaster Displacement. Australia has been on the Steering Group of both organisations since their inception. In 2015, Australia was one of 109 governments that endorsed the Nansen Initiative's Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change. This non-binding document outlined the normative gaps in addressing displacement, migration and planned relocation, as well as a range of effective practices that states could incorporate into their own laws and policies.¹³
10. The Protection Agenda set out a toolbox of strategies to manage the risks of future displacement and build resilience within affected communities. The underlying rationale was that people should be enabled to stay at home when this is what they desire and it is safe for them to do so, but that it is also important to provide options for them to move before disasters strike (rather than responding only once people flee).
11. Its core recommendations were that states should:

⁷ Matthew Dornan, 'Vanuatu after Cyclone Pam: The Economic Impact', Devpolicy Blog (10 April 2015) <<http://devpolicy.org/vanuatu-after-cyclone-pam-the-economic-impact-20150410/>>; '70 Percent of Vanuatu's Population Displaced: Official', Pacific Islands News Association (16 March 2015) <<http://www.pina.com.fj/?p=pacnews&m=read&o=20970140535507a1fd8c02ba24b812>>.

⁸ Jane McAdam, 'The Twin Calamities of Climate Change and COVID-19', Kaldor Centre COVID-19 Watch blog (7 May 2020) <<https://www.kaldorcentre.unsw.edu.au/publication/twin-calamities-climate-change-and-covid-19>>.

⁹ Republic of Fiji, *Displacement Guidelines in the context of Climate Change and Disasters* (2019) 3; Government of Vanuatu, 'National Policy on Climate Change and Disaster-Induced Displacement' (2018).

¹⁰ Climate Relocation of Communities Trust Fund Act 2019 <<http://www.parliament.gov.fj/wp-content/uploads/2019/07/Act-21-Climate-Relocation-of-Communities-Trust-Fund.pdf>>.

¹¹ Ibid, s 12; see also 'Official Launch of Fiji's Climate Relocation and Displaced Peoples Trust Fund for Communities and Infrastructure' (24 September 2019) <<https://reliefweb.int/report/fiji/official-launch-fiji-s-climate-relocation-and-displaced-peoples-trust-fund-communities>>.

¹² Government Office for Science (UK), *Foresight: Migration and Global Environmental Change* (2011) 9–10.

¹³ Nansen Initiative on Disaster-Induced Cross-Border Displacement, 'Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change' (2015) vols 1 and 2.

- integrate mobility into disaster risk reduction and climate change adaptation strategies;¹⁴
- ensure that the needs of internally displaced persons are addressed by relevant laws;¹⁵
- review and develop humanitarian protection mechanisms for (at least temporary) admission and stay;¹⁶
- enhance migration opportunities as a positive form of adaptation;¹⁷ and
- consider the use of planned relocation as a preventative or remedial measure.¹⁸

12. Australia endorsed the Protection Agenda, noting in particular that:

Building disaster response capacities, and strengthening resilience within countries, is critical. In the Pacific, Australia is working with our small island neighbours to climate-proof new investments and ensure that development impacts are lasting. Promoting safe and well managed migration schemes, such as the already mentioned Seasonal Worker Programme, is also a key part of building resilience.¹⁹

13. Australia should now build systematically on these commitments, making 'links across environmental, migration, humanitarian, security, and development sectors, to achieve workable, flexible and differentiated responses to this challenge'.²⁰ Targeted policy interventions by Australia across these areas could reduce the risk and extent of future displacement linked to the impacts of disasters and climate change in the Pacific.

14. There is no need to reinvent the wheel. The Australian-endorsed toolbox set out in the Nansen Initiative's Protection Agenda provides the roadmap. In following it, however, it is vital that Australian policymakers ensure that initiatives are attuned to the needs and interests of Pacific communities themselves.

A true partnership

15. To create truly responsive and effective policies, Australia must engage with and listen to the views of our Pacific neighbours. While Australia's Step-Up initiative is well-intentioned, it is perceived as external and unilateral in its approach.²¹ Pacific communities want a *quality* relationship with Australia, rather than one measured by the *quantity* of aid, trade or other assistance provided.²² Some Pacific communities feel that Australia's approach is often paternalistic and transactional, and thus ineffective.²³ Increasingly, Australia is just one of many potential relationships for Pacific nations, and with their domestic concerns increasingly connected to global ones, such as climate change, they have a greater willingness and confidence to engage with other partners, such as China.²⁴

¹⁴ Protection Agenda (n 13) vol 1, paras 76–86, 117–18. The Sendai Framework for Disaster Risk Reduction 2015–2030, UNGA res 69/283 (23 June 2015) notes the importance of creating 'public policies ... aimed at addressing the issues of prevention ... of human settlements in disaster risk zones' (para 27) and calls for the promotion of 'transboundary cooperation ... to build resilience and reduce disaster risk, including ... displacement risk' (para 28).

¹⁵ Protection Agenda (n 13) vol 1, paras 99–105, 123–24. The Guiding Principles on Internal Displacement already apply to disaster displacement and provide a useful blueprint to assist governments in identifying people's needs in the short, medium and long term.

¹⁶ Protection Agenda (n 13) vol 1, paras 46–47, 114–15.

¹⁷ *Ibid*, paras 87–93, 119–20.

¹⁸ *Ibid*, paras 94–98, 121–22.

¹⁹ Statement by Australia in Nansen Initiative, *Global Consultation: Conference Report* (Geneva, 12–13 October 2015) 77.

²⁰ *Ibid* 76.

²¹ Tess Newton Cain, James Cox and Geir Henning Presterudstuen, *Pacific Perspectives on the World* (Whitlam Institute 2020) 5, 6.

²² *Ibid*, 6.

²³ *Ibid*, 26.

²⁴ *Ibid*, 6.

Enhancing mobility

16. Australia should proactively develop laws and policies that enable people in the Pacific region to move out of harm's way and to rebuild their lives. This is a way in which migration can be harnessed as a climate change adaptation strategy in its own right.
17. Unlike reactive responses when people are displaced, migration policies can provide people with a self-help mechanism. They give people choices to take control of their own lives. Such policies could include bilateral or regional free movement agreements, training programs that prepare individuals to find work abroad, as well as the creation of special visa categories for people living in at-risk areas. They could also be premised on giving people in vulnerable circumstances preferential access to existing labour, education, or family visas. Temporary mobility schemes could provide another lifeline, especially in the aftermath of a disaster. Meanwhile, permanent migration could enable a smaller population to remain at home for longer, given that population pressure places a strain on already scarce resources.²⁵
18. The former President of Kiribati, Anote Tong, described migration as a win-win opportunity for both sending and receiving states alike. By linking it to education and training that can be utilised at home or abroad, it has benefits irrespective of whether people remain in their own country, move elsewhere for a period of time, or migrate permanently.²⁶ The Australian Government has also recognised Pacific labour mobility as 'a win-win for Australia and sending countries' because it can help to fill Australian labour shortages and enhance skills and economic prospects for 'our nearest neighbours.'²⁷ Many experts argue that the individual and structural benefits of migration counter concerns about 'brain drain',²⁸ although some Pacific communities are still concerned about its impacts, and the potential depopulation of rural areas.²⁹
19. If only one per cent of the Pacific's relatively small population were permitted to work in Australia, this would bring more benefits to the people of the Pacific than Australia's aid contribution.³⁰ Pacific communities, meanwhile, would like labour mobility schemes to be strengthened, including by increasing the number of opportunities and investing in their operation, especially to reduce risks linked to poor working conditions and exploitation.³¹
20. Finally, Australian law should provide expressly for the temporary entry and non-expulsion of non-citizens affected by a disaster, where it is unsafe or unreasonable for them to

²⁵ See Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012) 36; Richard Bedford and Charlotte Bedford, 'International Migration and Climate Change: A Post-Copenhagen Perspective on Options for Kiribati and Tuvalu' in Bruce Burson (ed), *Climate Change and Migration: South Pacific Perspectives* (Institute of Policy Studies 2010).

²⁶ Note that his 'migration with dignity' approach was replaced by the new administration in 2016 with a 'long term coastal security' strategy, recognising security of place: Paul Barnes (ed), *A Pacific Disaster Prevention Review* (Australian Strategic Policy Institute 2020) 60.

²⁷ Department of Foreign Affairs and Trade, 'Pacific Labour Mobility'
<<https://www.dfat.gov.au/geo/pacific/engagement/pacific-labour-mobility/Pages/default>>.

²⁸ See eg Graeme Hugo, 'Migration and Development in Low-Income Countries: A Role for Destination Country Policy?' (2012) 1 *Migration and Development* 24, 28; Hein de Haas, 'Migration and Development: A Theoretical Perspective' (2010) 44 *International Migration Review* 227.

²⁹ Eg Fiji: Newton Cain et al (n 21) 19.

³⁰ Leon Berkelmans and Jonathan Pryke, *The Development Benefits of Expanding Pacific Access to Australia's Labour Market* (Lowy Institute for International Policy 2016) 1. See also Menzies Research Centre, *Oceans of Opportunity: How Labour Mobility Can Help Australia and Its Neighbours* (Menzies Research Centre 2016).

³¹ Newton Cain et al (n 21) 31.

remain at/return home.³² At present, this is a matter of executive discretion and thus provides no security for those affected. Policymakers should also consider ways to regularise status so that people admitted on a temporary basis can remain here if return proves to be unreasonable or impossible.

³² See further Bruce Burson and Richard Bedford, 'Clusters and Hubs: Toward a Regional Architecture for Voluntary Adaptive Migration in the Pacific' (Discussion Paper, The Nansen Initiative on Disaster-Induced Cross-Border Displacement 2013) 10.