



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

29 June 2020

Dear Committee Secretary,

As members of the Kaldor Centre for International Refugee Law at UNSW Sydney, we are pleased to provide this submission to the **Inquiry into the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade.**

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.

Our submission considers two issues relevant to the Inquiry's terms of reference and the Centre's expertise. The first is how States' responses to refugees and people seeking asylum in the context of COVID-19 pose challenges to the international rules-based order, in Australia's region and beyond. The second is the implications of COVID-19 for the Pacific, particularly the need to promote longer-term resilience through measures to address the impacts of climate change, such as enhancing mobility.

If we can provide any further information, please do not hesitate to contact us at [kaldorcentre@unsw.edu.au](mailto:kaldorcentre@unsw.edu.au).

Yours sincerely,

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

Frances Voon  
Executive Manager, Kaldor Centre for International Refugee Law, UNSW Sydney

## Respect for international law concerning refugees and asylum seekers

1. The commitment to promoting an international rules-based order is rightly a cornerstone of Australia's foreign affairs and defence policy. As noted in the Kaldor Centre's Principles for Australian Refugee Policy, 'International law reinforces, rather than undermines, Australia's sovereignty, and it provides an important framework within which governments can manage their borders yet still cooperate on matters of common concern.'<sup>1</sup>
2. The COVID-19 pandemic has given rise to a range of State responses affecting refugees and asylum seekers, including some that violate international law and may erode respect for the international rules-based order.
3. As of June 2020, 219 States, territories, and areas had implemented over 64,500 restrictive measures, predominantly concerning border closures and entry restrictions.<sup>2</sup> At least 99 States had made no exception for people seeking asylum.<sup>3</sup>
4. Border closures have left many people trapped in dangerous or precarious situations in conflict zones and transit countries, or stranded at sea.<sup>4</sup> Such measures undermine the right to seek asylum, which is enshrined in Article 14 of the Universal Declaration of Human Rights, and may flout other international legal obligations as well.<sup>5</sup>
5. Blanket measures that result in asylum seekers being **turned away at the border, or transferred to unsafe third countries**, risk violating the principle of *non-refoulement*. This principle requires that people are not sent to any place where they face a real risk of persecution or other serious harm. The principle is reflected in refugee and human rights treaties and is also part of customary international law, which means that it even binds States that have not ratified those treaties.
6. States such as the United States have carried out **summary deportations** of asylum seekers who were already on their territory, including unaccompanied children.<sup>6</sup> Such measures carry a high risk of *refoulement*.
7. The pandemic has led to the increased use of **immigration detention**, with several countries, such as Malaysia and Bangladesh, corralling asylum seekers, refugees and other vulnerable migrants into closed facilities – or, in the case of Bangladesh, a small and flood-prone island – ostensibly to limit the spread of the virus among the broader community. While quarantine measures for health purposes are permitted under international law, these measures must be provided for in law, be necessary

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<sup>1</sup> Kaldor Centre for International Refugee Law, [Principles for Australian Refugee Policy](#), July 2019, 2.

<sup>2</sup> IOM, [Global Mobility Restriction Overview](#) (4 June 2020).

<sup>3</sup> Kristy Siegfried, [The Refugee Brief: 5 June 2020](#) (UNHCR 2020); see also UNHCR, [Key Legal Considerations on Access to Territory for Persons in Need of International Protection in the context of the COVID-19 Response](#) (16 March 2020).

<sup>4</sup> Refugees International, [COVID-19 and the Displaced, Addressing the threat of the novel coronavirus in humanitarian emergencies](#), 20 March 2020.

<sup>5</sup> Geoff Gilbert, [Knowing all of the law, all of the time – responding to COVID-19](#), *COVID-19 Watch*, Kaldor Centre for International Refugee Law, 14 May 2020.

<sup>6</sup> Sabi Ardalan, [The Trump Administration, COVID-19, and the continuing assault on the rights of asylum seekers and refugees](#), *COVID-19 Watch*, Kaldor Centre for International Refugee Law, 11 May 2020.

and proportionate, and last for no longer than is necessary. Further, refugees and asylum seekers are often detained in crowded and unsanitary conditions which put them at particular risk during the pandemic. As stated in the *Principles of protection for migrants, refugees, and other displaced persons*, which were developed by a group of experts (including from the Kaldor Centre) in April 2020: 'Detention of migrants, refugees and other displaced persons is impermissible where such detention would expose them to serious risks to their health and life due to the COVID-19 pandemic.'<sup>7</sup> United Nations organisations have called for people held in such conditions to be released without delay<sup>8</sup> – and a number of States have heeded this call.<sup>9</sup>

8. As noted by UNHCR's Assistant High Commissioner for Protection, Gillian Triggs:

Not only have national responses to COVID-19 led to the denial of fundamental refugee rights, but they have also resulted in the unnecessary and disproportionate use of immigration detention, a dramatic rise in sexual violence, discriminatory restrictions on access to health and social services, the loss of livelihoods, and the closure of schools. Such national measures to contain the virus fall heavily on refugees and others in need of international protection.<sup>10</sup>

9. In Australia's region, various States' responses to asylum seekers and refugees in the context of COVID-19 raise concerns for human rights and regional security. For instance, in April and May 2020, boats carrying several hundred Rohingya refugees were left stranded at sea after being turned back by Malaysian authorities. At least one vessel, holding about 300 Rohingya, has been stranded at sea since February, when Thailand, Malaysia and Indonesia closed their borders due to the pandemic. While United Nations officials have urged Australia and Indonesia to trigger emergency talks as co-chairs of the Bali Process, they have not done so to date.
10. As was the case during the 2015 Andaman Sea crisis, when some 8,000 Rohingya were left stranded at sea, the current crisis demonstrates the potentially fatal<sup>11</sup> results of a collective failure to respect the right to seek asylum. It also makes plain the challenges to regional order and security posed by the lack of a cooperative, rules-based framework for responding to displacement in the Asia-Pacific.
11. Around the world, including in the Asia-Pacific, COVID-19 has provided fertile ground for xenophobia and anti-migrant sentiment. As noted by Ashraf Azad, '[i]n many places, the pandemic has rejuvenated the dormant hatred and xenophobia against

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<sup>7</sup> [Human mobility and human rights in the COVID-19 pandemic: Principles of protection for migrants, refugees, and other displaced persons](#) (April 2020), developed under the auspices of the Mailman School of Public Health at Columbia University, Migration and Human Rights Program at Cornell Law School, and the Zolberg Institute on Migration and Mobility at The New School (accessed 25 June 2020).

<sup>8</sup> [The rights and health of refugees, migrants and stateless must be protected in COVID-19 response](#), Joint press release from OHCHR, IOM, UNHCR and WHO, 31 March 2020.

<sup>9</sup> Including Austria, Belgium, Luxembourg, Mexico, Norway, Spain, Switzerland, the United Kingdom and Zambia. See UNHCR Regional Bureau for Europe, [Practical recommendations and good practice to address protection concerns in the context of the COVID-19 pandemic](#), 9 April 2020, 8-9; United Nations Network on Migration, [COVID-19 & immigration detention: What can governments and other stakeholders do?](#), 28 April 2020.

<sup>10</sup> Gillian Triggs, [We can secure both public health and rights of refugees to protection](#), *COVID-19 Watch*, Kaldor Centre for International Refugee Law, 8 April 2020.

<sup>11</sup> Rozanna Latiff, [Rohingya refugees tell Malaysia how dozens perished during four-month voyage](#), *Reuters*, 24 June 2020; Hannah Ellis-Petersen and Shaikh Azizur Rahman, [Bangladesh rescues hundreds of Rohingya drifting at sea for nearly two months](#), *The Guardian*, 16 April 2020.

groups considered “outsiders” because of their religion or ethnicity, irrespective of their citizenship status.’<sup>12</sup> In India, for example, there has been a surge of anti-Muslim rhetoric in connection with the pandemic, attributing blame for the spread of COVID-19 to Muslim minorities, including in statements by political leaders. This rhetoric has already led to violent attacks against Muslims in India.<sup>13</sup> Other minorities, such as Chin refugees and asylum seekers in India, have also reported experiencing xenophobia and stigma.<sup>14</sup>

12. In Malaysia, hate speech against migrants, together with the scale-up of arrests and deportations, have created a climate of fear. Rohingya refugees have been particular targets.<sup>15</sup> United Nations human rights experts have expressed alarm at the ‘crackdown and hate campaign’,<sup>16</sup> noting that journalists have been hindered in reporting about immigration raids, and human rights defenders have been threatened for supporting migrants. Such threats to human rights and social cohesion among Australia’s neighbours do not serve regional stability.
13. Measures deter refugees’ movement and deflect responsibility for refugee protection to other States were in place well before the pandemic, including through the erection of border walls, maritime interception, immigration detention, and anti-migrant rhetoric. COVID-19 has resulted in further rapid and widespread restrictions on refugees’ movement and human rights. The risk is that problematic measures implemented in response to the pandemic, which might be justifiable for a short period in the interests of public health, continue in some form long after the health threat subsides.
14. These efforts to evade protection responsibilities will have corrosive effects on respect for the international legal regime governing the treatment of refugees, and will undermine efforts to promote international cooperation and responsibility-sharing in responding to refugees. This will not be in the interests of regional stability or human rights either, as people in need of protection are forced into dangerous, irregular travel routes and face heightened vulnerability and marginalisation.

### **Australia’s role**

15. It is in Australia’s interests to promote respect for the international legal principles relating to human rights and refugee protection, within the Asia-Pacific and beyond. As noted in the Kaldor Centre’s Principles for Australian Refugee Policy:

The challenges of refugee protection are international in nature and require international cooperation in response. Securing protection and solutions for refugees requires engagement and cooperation with other countries, the UN and other international organisations to protect people seeking asylum in accordance with international law. Under the Refugee Convention, Australia is obliged to cooperate

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<sup>12</sup> Ashraf Azad, [‘How this pandemic is testing the limits of political community’](#), *COVID-19 Watch*, Kaldor Centre for International Refugee Law, 1 June 2020.

<sup>13</sup> Meenakshi Ganguly, [‘India’s steps to contain COVID-19 have failed to curb anti-Muslim rhetoric’](#), *Human Rights Watch*, 18 April 2020.

<sup>14</sup> Roshini Shanker and Prabhat Raghavan, [‘The Invisible Crisis: Refugees and COVID-19 in India’](#), *COVID-19 Watch*, Kaldor Centre for International Refugee Law, 19 May 2020.

<sup>15</sup> Emily Fishbein, [‘Fear and uncertainty for refugees in Malaysia as xenophobia escalates’](#), *The New Humanitarian*, 25 May 2020.

<sup>16</sup> [‘Malaysia/COVID-19: “Stock crackdown on migrants, journalists and civil society” – UN rights experts’](#), Office of the United Nations High Commissioner for Human Rights, 21 May 2020.

with UNHCR in the exercise of its functions, which include providing international protection and seeking permanent solutions for refugees.

Further, under international human rights law, Australia has committed to respect, protect and fulfil fundamental human rights. As a Member State of the United Nations, Australia has pledged to take 'joint and separate' action to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all'. These commitments require not only that Australia uphold its obligations within its own territory and jurisdiction, but also that it cooperate with and assist other States to promote and protect human rights more generally.<sup>17</sup>

16. In the Asia-Pacific, Australia could more effectively advance regional stability and human rights by working cooperatively with our neighbours to promote refugee protection. It is only through cooperation that effective measures can be developed to address the root causes of displacement, enhance protection in countries of first asylum, encourage responsibility-sharing among States, and increase the availability of durable solutions for refugees in the region.
17. However, Australia's authority to promote protection and cooperation both regionally and globally depends upon it being able to demonstrate respect for human rights within its own territory and wherever it acts abroad. Australia's credibility and moral authority to promote constructive and protection-sensitive responses to displacement in the Asia-Pacific region, and to encourage respect for an international rules-based order, has been fundamentally undermined by several of its current policies. In particular, the policies of offshore processing and maritime interception of boats carrying asylum seekers send a signal to Australia's neighbours that Australia is seeking to evade, rather than fulfil, its responsibilities under international law. This is particularly concerning given that Australia is one of the few countries in the Asia-Pacific region that has ratified the key treaties relating to the protection of refugees.
18. As noted in the Kaldor Centre's Principles for Australian Refugee Policy:

Australia's international legal obligations include the fundamental duty not to send any person to a place where they are at risk of persecution or other serious harm (known as the principle of *non-refoulement*), as well as obligations not to discriminate against refugees or to penalise them for the manner in which they arrive. Australia is responsible for upholding these obligations wherever it asserts its jurisdiction or control. This includes outside Australian territory – for example, when Australia intercepts boats carrying asylum seekers at sea, or exercises control over refugees held offshore in Nauru and Papua New Guinea. Some aspects of Australia's refugee policy have put Australia in breach of these obligations, including turning back boats at sea and detaining asylum seekers and refugees (including children) for extended periods of time. ...

A renewed commitment by Australia to comply with its international legal obligations would improve its reputation as a good international citizen and a leader in human rights. It would also provide a stronger basis for cooperation between Australia and other countries on refugee protection issues, both within the Asia-Pacific region and globally.<sup>18</sup>

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<sup>17</sup> Kaldor Centre (n 1) 18 (citations omitted).

<sup>18</sup> Ibid, 2 (citations omitted).

19. They go on to state:

By adopting a coherent, human rights-centred approach across its diplomatic, aid and refugee policies, Australia can support the expansion of the protection space in countries of origin and asylum. Measures such as the provision of development and humanitarian assistance and the strategic use of resettlement can promote respect for refugees' rights in countries of asylum and enhance opportunities for refugees and host communities, which may in turn reduce the need for people to take dangerous journeys to other countries in search of safety.<sup>19</sup>

20. The Kaldor Centre's Principles for Australian Refugee Policy set out a number of recommendations for how Australia can comply with its international legal obligations regarding refugees and asylum seekers, and provide global and regional leadership on refugee protection, which are included in **Annex 1** below.

### **Resilience, climate change and mobility in the Pacific**

21. In the Pacific, the COVID-19 pandemic has seen the collapse of government revenue, loss of incomes and halting of key industries such as tourism, and has also highlighted limitations in the region's capacity and critical infrastructure needed to respond to external shocks. This is taking place in the context of the overarching threat posed by climate change and disasters, as demonstrated when Cyclone Harold wreaked destruction in the region in April 2020. The pandemic has not only increased vulnerability in the immediate term, but it has also highlighted the importance of building resilience in our near region over the long-term.

22. As the Department of Foreign Affairs and Trade notes, Australia has 'an abiding interest in the **sovereignty, stability, security and prosperity** of the Pacific'.<sup>20</sup> The Australian government's *Partnerships for Recovery* plan states:

Australia has an important role to play in ensuring the stability, prosperity and resilience of the Indo-Pacific. We face a world where established rules, norms and institutions that have served Australia's interests are under enormous stress. We seek to emerge from this pandemic with these interests defended, and the rules-based order in our region upheld. We will aim to be a partner of choice for our Indo-Pacific neighbours throughout this crisis to minimise the human, economic and social costs. Our shared security, prosperity and stability depend on it.<sup>21</sup>

23. Advancing these objectives requires that Australia not only provide immediate humanitarian assistance to the Pacific to address the impacts of COVID-19, as has begun through the Pacific Humanitarian Pathway on COVID-19, but also requires greater action now to address the implications of climate change for the region.
24. Even in the wake of the pandemic, Pacific leaders have been clear and consistent in identifying climate change as the greatest threat to the security, livelihoods and well-being of their people. As Dame Meg Taylor, Secretary General of the Pacific Islands Forum, stated:

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<sup>19</sup> Ibid, 19 (citations omitted).

<sup>20</sup> Department of Foreign Affairs and Trade, ['Stepping up Australia's engagement with our Pacific family'](#), September 2019 (emphasis in the original).

<sup>21</sup> Department of Foreign Affairs and Trade, [Partnerships for Recovery: Australia's COVID-19 Development Response](#), 29 May 2020, 25.



It is important to emphasise the interconnectivity between the COVID-19 pandemic and climate change. Cyclone Harold is a clear example that climate change induced disasters can exacerbate the COVID-19 crisis in our Blue Pacific continent... This climate change exacerbated disaster is a stark reminder that notwithstanding the current threats and impacts of COVID-19, climate change remains the biggest threat facing humanity today. We must not lose sight of this reality. The COVID-19 public health emergency and its ensuing humanitarian and economic fallout offers us a glimpse of what the global climate change emergency can become – if it is left unchecked and if we do not act now.<sup>22</sup>

25. We already know that climate change is a 'threat multiplier', amplifying existing challenges and making responses all the more difficult. The intersection of Cyclone Harold in April 2020 – a high-intensity extreme weather event, consistent with climate change – with a global pandemic was an example of the perfect storm. However resilient people may be, there is a tipping point when their capacity becomes overwhelmed.
26. Climate change also exacerbates the frequency and/or severity of certain sudden-onset disasters, such as cyclones, and it contributes to slower-onset processes, such as drought and sea-level rise. These sudden- and slow-onset processes also interact: for instance, the impacts of drought may be felt through more immediate triggers, such as when food insecurity turns into a famine.<sup>23</sup>
27. Australia cannot afford to ignore the fact that internal and cross-border displacement in the Pacific is likely to increase as disasters intensify and become more frequent. While some displacement is inevitable no matter what mitigation or adaptation strategies are put in place now,<sup>24</sup> we can certainly reduce the potential scale of displacement if action is taken now.
28. Investing in preventative measures such as mitigation, adaptation and disaster risk reduction, and developing proactive measures such as enhanced mobility, could significantly reduce the risk of future displacement (as well as economic, social and human costs and suffering). In this regard, it is notable that the UN Office for Disaster Risk Reduction has estimated there could be a 60-fold return for each dollar spent on disaster preparedness.<sup>25</sup>
29. In 2015, Australia was one of 109 governments that endorsed the Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change, spearheaded by the intergovernmental Nansen Initiative on Disaster-Induced Cross-Border Displacement. The Protection Agenda set out a toolbox of strategies to manage the risks of future displacement and to build resilience within affected communities. The underlying rationale is that people should be enabled to stay in their

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<sup>22</sup> Dame Meg Taylor, '[COVID-19 and climate change: We must rise to both crises](#)', Pacific Islands Forum Secretariat, 19 April 2020.

<sup>23</sup> 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.

<sup>24</sup> Government Office for Science (UK), [Foresight: Migration and Global Environmental Change](#) (2011) 9–10.

<sup>25</sup> 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.

homes when they so wish, but that it is also important to provide options for them to move before disasters strike (rather than responding only once people flee).

30. The Protection Agenda's core recommendations were that States should:
- integrate mobility into disaster risk reduction and climate change adaptation strategies;<sup>26</sup>
  - ensure that the needs of internally displaced persons are addressed by relevant laws;<sup>27</sup>
  - review and develop humanitarian protection mechanisms for (at least temporary) admission and stay;<sup>28</sup>
  - enhance migration opportunities as a positive form of adaptation;<sup>29</sup> and
  - consider the use of planned relocation as a preventative or remedial measure.<sup>30</sup>
31. It is time for Australia to build systematically on the commitments it made in endorsing the Protection Agenda, when it noted the importance of creating 'links across environmental, migration, humanitarian, security, and development sectors, to achieve workable, flexible and differentiated responses'.<sup>31</sup> 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.
32. In following the roadmap set out in the Protection Agenda, it is vital that Australian policymakers ensure that initiatives are attuned to the needs and interests of Pacific communities themselves. To create truly responsive and effective policies, Australia must engage with, and listen to, our Pacific neighbours. Australia's Pacific Step-Up initiative, though well-intentioned, is perceived in the Pacific as adopting an external and unilateral approach.<sup>32</sup> Pacific communities want a *quality* relationship with Australia, rather than one measured by the *quantity* of aid, trade or other assistance provided.<sup>33</sup> 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.<sup>34</sup>

### Enhancing mobility

33. As Australia and Pacific leaders discuss the possibilities of re-opening travel within the region following COVID-19 border closures, Australia should develop migration policies that support resilience among Pacific communities. This is a way in which migration can be harnessed as a climate change adaptation strategy in its own right.

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<sup>26</sup> 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](#) (vol 1, December 2015) paras 76–86, 117–18.

<sup>27</sup> *Ibid*, 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.

<sup>28</sup> Protection Agenda (n 26) paras 46–47, 114–15.

<sup>29</sup> *Ibid*, paras 87–93, 119–20.

<sup>30</sup> *Ibid*, paras 94–98, 121–22.

<sup>31</sup> Statement by Australia in Nansen Initiative, [Global Consultation: Conference Report](#) (Geneva, 12–13 October 2015) 76.

<sup>32</sup> Tess Newton Cain, James Cox and Geir Henning Presterudstuen, [Pacific Perspectives on the World](#) (Whitlam Institute 2020) 5, 6.

<sup>33</sup> *Ibid*, 6.

<sup>34</sup> *Ibid*.



34. Unlike reactive responses when people are displaced, migration opportunities can provide people with a self-help mechanism. They give people a choice to take control of their own lives. Such opportunities 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.<sup>35</sup>
35. In response to COVID-19, Australia has allowed Pacific workers (on the Pacific Labour Scheme and Seasonal Worker Programme) whose visas were due to expire to remain in Australia for up to 12 months. As the Australian government has noted: 'This means they can continue to provide for themselves and their families back home, and also help keep Australia's essential services running during the COVID-19 pandemic.'<sup>36</sup> Given the prolonged global economic shock arising from the pandemic, which is already severely impacting the Pacific,<sup>37</sup> it is vital for Australia to provide on-going livelihood opportunities, including by permitting new workers to enter (with appropriate public health safeguards).<sup>38</sup> This is in our joint national interests, especially with the decline of backpacker labour in Australia. Indeed, the Australian government has 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.'<sup>39</sup>
36. Similarly, the former President of Kiribati, Anote Tong, described migration as a win-win opportunity for 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.<sup>40</sup> While some Pacific communities are understandably worried about 'brain drain' and the potential depopulation of rural areas,<sup>41</sup> many experts argue that the individual and structural benefits of migration counter such concerns.<sup>42</sup>

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<sup>35</sup> 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).

<sup>36</sup> Pacific Labour Scheme, '[Information and advice about coronavirus](#)' (accessed 26 June 2020).

<sup>37</sup> Regina Scheyvens and Apisalome Movono, '[Sun, sand and uncertainty: The promise and peril of a Pacific tourism bubble](#)', *The Conversation*, 8 June 2020.

<sup>38</sup> For examples, see Richard Curtain, '[Recovering from COVID-19: A Pacific Pathway](#)', Devpolicy blog, 1 May 2020.

<sup>39</sup> Department of Foreign Affairs and Trade, '[Pacific labour mobility](#)' (accessed 26 June 2020).

<sup>40</sup> 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.

<sup>41</sup> Eg Fiji: Newton Cain et al (n 32) 19.

<sup>42</sup> 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.

37. If only one per cent of the Pacific's relatively small population were permitted to work in Australia, this would bring more economic benefits to Pacific peoples than Australia's entire aid contribution.<sup>43</sup> 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.<sup>44</sup>

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<sup>43</sup> 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).

<sup>44</sup> Newton Cain et al (n 32) 31.

## Annex 1

### Relevant recommendations from the Kaldor Centre Principles for Australian Refugee Policy

The full Principles for Australian Refugee Policy, and the Summary and Key Priorities, can be found on the [Kaldor Centre's website](#).

#### **Principle 1: Australia should comply with its international legal obligations**

**Australia should incorporate its international legal obligations into domestic law.** The best way to do this is by including direct reference to key refugee and human rights treaties in relevant legislation – in particular, within the Migration Act 1958 (Cth). At a minimum, Australia should ensure that the provisions of its domestic legislation are not inconsistent with its international legal obligations. Australia should also create accountability mechanisms to ensure that these obligations are fulfilled. This would make important protections for refugees enforceable at the national level and reviewable in domestic courts, giving people seeking Australia's protection the opportunity to challenge government decisions relating to their status and treatment.

**As a matter of priority, Australia should abolish laws and practices that could result in people being sent to places where they risk being persecuted, tortured, killed or otherwise subjected to cruel, inhuman or degrading treatment or punishment.** In particular, Australia should stop turning back boats at sea without engaging in a full consideration of the international protection claims of those on board.

**Australia should repeal those sections of the Migration Act that are specifically intended to exclude its international obligations from being considered under domestic law.** These include section 197C, which states that Australia's non-refoulement obligations are 'irrelevant' to the removal of unlawful non-citizens brought temporarily to Australia; sections 5H–5M, which set out Australia's own interpretation of its international protection obligations; and a number of legislative 'bars' in the Migration Act which prevent many asylum seekers from applying for a protection visa in Australia. In addition, Australia should reinsert those references to the Refugee Convention that were removed from the Migration Act, and ensure that the Act's provisions on complementary protection fully reflect Australia's nonrefoulement obligations under international human rights law. Australia should also adopt a legal framework and procedure for the identification and protection of stateless persons.<sup>45</sup>

#### **Principle 6: Australia should provide global and regional leadership on refugee protection**

Fundamentally, Australia must work with other States and the international community as a whole to ensure a global, cooperative approach to promoting peace, human rights and solutions to situations of displacement.

**Australia should actively contribute to international frameworks and mechanisms for promoting and ensuring respect for human rights,** including through diplomatic efforts, the provision of funding and by setting a positive example of cooperation and engagement on human rights issues. Australia should

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<sup>45</sup> Kaldor Centre (n 1) 3 (citations omitted, emphasis added).

take action to address the numerous concerns and recommendations expressed by UN human rights bodies regarding its own human rights record.

**Australia should also provide humanitarian assistance, development, and technical and financial support in countries of origin and first asylum**, to help people access effective protection without the need to undertake lengthy and often dangerous journeys. Australia should reverse the significant (and repeated) cuts that have been made to its foreign aid budget in recent years. As a proportion of Australia's Gross National Income, Australia's aid program should be increased from its current level (of around 0.2 per cent) to 0.7 per cent, in line with commitments under the UN Sustainable Development Goals.

**Australia should actively support regional cooperation in the Asia-Pacific** to provide protection to people who are displaced (or who are at risk of being displaced) and to promote international and regional agreements oriented to protection, solutions and standards of treatment consistent with international refugee law and international human rights law. This includes an on-going commitment by Australia to support UNHCR through funding, the provision of resettlement places and the promotion of protection. It also includes engagement by Australia with other countries in the region to promote the ratification of the Refugee Convention and Protocol and international human rights treaties; to encourage States in the region to provide opportunities for local integration or refugee resettlement; and to support capacity-building in countries of origin and first asylum aimed at improving protection for people who are displaced.

**Australia should draw on its experience and expertise to support other countries to develop their own refugee laws and policies.** Australia could encourage and support new resettlement States in the region through technical or financial assistance – for example, via the IOM–UNHCR Emerging Resettlement Countries Joint Support Mechanism. It could also provide financial assistance to countries developing their own asylum and refugee systems.

**Any regional cooperation agreements that Australia enters into with other countries in the Asia-Pacific region should be founded on a genuine commitment to responsibility-sharing (rather than responsibility-shifting).** They should aim to increase the overall available protection space in the region, be subject to effective oversight and quality assurance mechanisms, and in all cases be consistent with Australia's international legal obligations.<sup>46</sup>

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<sup>46</sup> Ibid, 19-20 (citations omitted, emphasis added).