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Submission to the US Department of State Bureau of Population, Refugees and Migration on the impacts of climate change on relocation, evacuations and statelessness

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Thank you for this opportunity to provide a written submission on the impacts of climate change on relocation, evacuations and statelessness. Please do not hesitate to let me know if I can provide any further information or assistance, including by providing feedback on drafts if useful (j.mcadam@unsw.edu.au). I am **attaching** copies of my articles referred to below.

TOPIC 1: PLANNED RELOCATION

1   What existing policy and legal frameworks provide guidance for planned relocation that respects human rights?

Please see:

- o   Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation (Brookings/Georgetown/UNHCR, October 2015)
- o   A Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change (UNHCR/Georgetown University/IOM, 2017)

As noted in the Kaldor Centre's submission of 28 May 2021, a few countries have specific domestic instruments on planned relocation. In 2018, Fiji developed national Planned Relocation Guidelines: A Framework to Undertake Climate Change Related Relocation, as well as a Climate Relocation and Displaced Peoples Trust Fund for Communities and Infrastructure. Fiji is now in the process of developing standardized operating procedures to implement the guidelines operationally, even though a number of communities have already been relocated from areas highly susceptible to disasters. New Zealand donated US$2 million to Fiji's relocation fund (as part of a broader package of climate change assistance).

It is important to be clear about whether a planned relocation, by definition, is intended to capture movements of whole communities, or whether it could also be a more individualized

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process. The Brookings/Georgetown/UNHCR definition refers to 'persons or groups of persons' and notes that relocations may occur 'at the individual, household, and/or community levels'.

2   What are good practices and successful case studies for planned relocation that respects human rights?

I refer you to the Kaldor Centre's submission of 28 May 2021. In particular, I reiterate the relevance of Erica Bower and Sanjula Weerasinghe's 2021 report, [Leaving Place, Restoring Home: Enhancing the Evidence Base on Planned Relocation Cases in the Context of Hazards, Disasters, and Climate Change](#) which provides a detailed analysis of State practice on planned relocations. This study, and its accompanying [dataset](#), identifies over 300 cases of planned relocation across the world since 1970, including 36 in the United States alone. Its analysis and recommendations will be of particular interest. For general background, see Jane McAdam and Elizabeth Ferris, 'Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues' (2015) 4 *Cambridge Journal of International and Comparative Law* 137.

See also Robin Bronen's work on Alaska Native communities' own attempts to relocate and the legal (and other) obstacles to doing so. Her most recent piece, with recommendations for a national governance framework, is here: https://socialchangenyu.com/wp-content/uploads/2021/04/Robin-Bronen_RLSC-The-Harbinger_45.pdf.

3   Are there good practices or existing frameworks for planned relocation between countries (cross-border)? For planned relocation within countries? From small island states?

The answer to this question depends on the starting point. As I have written elsewhere, relocation and resettlement of populations in fact began as 'an 18th-century innovation, which, in part stimulated by the writings of Malthus, gained especial academic and political traction from the late 19th century through to the mid-20th century in response to concerns about a burgeoning global population that could not be sustained unless redistributed across under-utilised land. … Over the long 19th century and into the mid-20th, relocation was understood both as a pre-emptive solution to anticipated overpopulation and resource scarcity, and as an answer to existing displacement. Thus, when resettlement was proposed as a solution to the Jewish refugee problem in the 1930s and 1940s, this was evolutionary rather than novel.'[1]

During the 1930s and 1940s, the International Labour Organization (ILO) was involved in trial 'migration for settlement' projects,[2] and 'resettlement was regarded as a solution for groups of displaced refugees—including by US President Franklin D Roosevelt, who established a

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[1] Jane McAdam, 'Relocation and Resettlement from Colonisation to Climate Change: The Perennial Solution to "Danger Zones"' (2015) 3 *London Review of International Law* 93, 94–95.
[2] See Ibid 107ff.

secret project to scour the world for possible resettlement sites (a "rational colonization of the world"). At that time, and in contrast to today, refugee resettlement was envisaged precisely as a group-based solution—the re-establishment of an ethnic community (e.g. Jews) elsewhere—rather than a strategy pursued by individuals or households. Arguably, it was the political failure of proposed large-scale resettlement schemes that caused post-war refugee resettlement to become an individualised solution.'[3] As well, there are some interesting records about what elements were considered as prerequisites for a successful relocation, as analysed in my piece. At the time, human rights concerns were not front and centre; notwithstanding this, a lot of other practical problems were identified.

However, if we want to consider the modern period where an identifiable population has been relocated across a border, I am only aware of the following three during the period of British colonialism in the Pacific. They were movements from:

- The island of Banaba (in present-day Kiribati) to Rabi (Fiji) in 1945 (and a smaller movement in 1947) (a relocation forced by colonial phosphate mining interests on Banaba)[4]
- The island of Vaitupu (in present-day Tuvalu) to Kioa (Fiji) from 1947[5] (a 'voluntary' movement of 'settlers')
- The Gilbert Islands (which is present-day Kiribati; most of them had already internally relocated to the Phoenix Islands) to Gizo and Wagina in the Solomon Islands (1955–64) (relocated on account of resource scarcity)

Three other cross-border relocations were mooted but were not carried out:

- Nauru to Curtis Island (in Queensland, Australia) in the 1960s[6]
- Tuvaluans to Tonga (1950s)
- Tokelauans to New Zealand (from 1963–76 – only 528 moved)[7]

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[3] Ibid 95, quoting Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press, 2009) 112.

[4] See further Jane McAdam, 'Historical Cross-Border Relocations in the Pacific: Lessons for Planned Relocations in the Context of Climate Change' (2014) 49 *Journal of Pacific History* 301; Jane McAdam, '"Under Two Jurisdictions": Immigration, Citizenship and Self-Governance in Cross-Border Community Relocations' (2016) 34 *Law and History Review* 281; Jane McAdam, 'Self-Determination and Self-Governance for Communities Relocated across International Borders: The Quest for Banaban Independence' (2017) 24 *International Journal on Minority and Group Rights* 428.

[5] McAdam, 'Historical Cross-Border Relocations' (n 4).

[6] See further Brian Opeskin and Gil Marvel Tabucanon, 'The Resettlement of Nauruans in Australia: An Early Case of Failed Environmental Migration' (2011) 46(3) Journal of Pacific History 337; Jane McAdam, 'The High Price of Resettlement: When Nauru Almost Moved to Australia' (2017) 48 *Australian Geographer* 7.

[7] See further John Connell, 'Population Resettlement in the Pacific: Lessons from a Hazardous History?' (2021) 43(2) *Australian Geographer* 127.

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Deliberations about planned relocation in the context of climate and disasters change in many ways echo those of the early 20th century about surplus population: concerns about the 'carrying capacity' of land, 'resource scarcity', 'overcrowding', 'danger zones' and conflict. As I have explained elsewhere: 'There are common concerns about whether the benefits of movement outweigh its significant psychological and practical challenges. There are precedents for cataloguing the many considerations to be taken into account in any proposed move: the ILO's Conference on the Organisation of Migration for Settlement in 1938, for example, compiled a long list of practical and legal issues required to facilitate group movement and settlement. And there are similar methodological debates about how to identify who may need to move, and over what time frame. For instance, a standard technique in the 1920s was to predict population "danger zones" based on the habitability of land, a method criticised by some as too rudimentary because it failed to take account of technological or agricultural advances. Seventy years later, sociologist Norman Myers's suggestion that 150 million people would be displaced by climate change by 2050 was similarly critiqued for its crude methodology, based on the assumption that the total population of areas vulnerable to sea-level rise and increased extreme weather events would need to move. This overlooked people's adaptive capacity, resilience and other mitigating factors.'[8]

'In particular, it is sobering to recall the "M" Project's conclusion that an "essential pre-condition"199 for resettlement is adequate funding to enable people to restore their livelihoods and communities—an aspect that has been disregarded all too often in the past, and which will require enormous political will to be safeguarded in the future.'[9]

Relocation is a complex process, and past experiences in the Pacific show its deep, intergenerational consequences (linked to a sense of injustice, in the Banaban case). This is why most view it as an option of last resort.

TOPIC 2: EVACUATION

1   What protection policies apply or should be instituted during evacuation and in preparedness/risk mitigation? (Consider, in particular, ensuring provision of healthcare, family reunification, psychosocial support, and other services)

While evacuations provide a vital emergency tool to rescue people from crises and save lives, they are also a form of displacement.[10] As such, they can impinge on people's human rights – particularly those in vulnerable situations, such as children or people with a disability. Even a brief evacuation can have long-lasting impacts, affecting different rights over time. There is

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[8] Ibid 129 (fns omitted).
[9] Ibid 130, citing Ladislas Farago, 'Refugees: The Solution as FDR Saw It', United Nations World (June 1947), republished in Henry Field, *'M' Project for FDR: Studies on Migration and Settlement* (Edward Bros, 1962) 376.
[10] See further Jane McAdam, 'Displacing Evacuations: A Blind Spot in Disaster Displacement Research' (2020) 39 *Refugee Survey Quarterly* 583.

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evidence to suggest that many evacuations are prolonged, and 'significant numbers' of people end up displaced for long periods of time.[11] This can have serious consequences for their livelihoods, access to resources, legal status and overall well-being. For these reasons, it is essential to consider international human rights law, as well as particular instruments on displacement (eg the Guiding Principles on Internal Displacement, which pertain expressly to people who have been forced to move in the context of disasters) in conceptualizing people's protection needs at different stages in the evacuation process.

It is also important to appreciate that even when evacuations are framed as 'voluntary', certain minorities and disadvantaged groups may have no real choice at all,[12] especially if they do not have the means (including transport) to leave. Such socio-economic and psychological factors may help to explain why people's decisions may be disconnected from official advice.[13]

Research into compliance/non-compliance with Australian bushfire evacuation orders has identified seven archetypes, ranging from people who deny that a threat exists, to those who are determined to evacuate safely, through to those who are self-reliant, well-prepared and experienced with fires but prepared to evacuate in certain unfavourable conditions.[14] Decisions may be influenced not just by the immediate risk of harm, but also by 'the need to protect property and/or care for dependents and animals, family circumstances that may create additional requirements during evacuation, and the influence of social media commentary.'[15] In addition, 'the magnitude and proximity of the disaster, past encounters with disasters, vulnerability of dependents, and consistency and clarity of warnings'[16] will factor into decision-making processes.

2   Are there evacuation policy considerations for achieving long-term solutions (e.g., voluntary return, local integration, relocation or resettlement)?

Ensuring that people can return – in safety and with dignity – is crucial to recovery. It is essential that evacuation planning processes consider what happens beyond *physical* return alone. As the *MEND Guide* states, while an evacuation plan itself will not go into the detail of

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[11] IDMC, *Global Report on Internal Displacement* (*GRID) 2021* (IDMC, 2021) 21, 78.

[12] Brandon Curtis, 'Criminalizing Non-Evacuation Behavior: Unintended Consequences and Undesirable Results' [2015] 2 *Brigham Young University Law Review* 503, 526; David P Eisenman et al, 'Disaster Planning and Risk Communication with Vulnerable Communities: Lessons from Hurricane Katrina' (2007) 97(S1) *American Journal of Public Health* S109.

[13] Luke Bonkiewicz and R Barry Ruback, 'The Role of the Police in Evacuations: Responding to the Social Impact of a Disaster' (2012) 15(2) *Policy Quarterly* 137, 139.

[14] Ken Strahan, Joshua Whittaker and John Handmer, 'Self-Evacuation Archetypes in Australian Bushfire' (2018) 27 *International Journal of Disaster Risk Reduction* 307.

[15] Australian Institute for Disaster Resilience (AIDR), *Evacuation Planning* (Australian Disaster Resilience Handbook Collection, Handbook 4, 2017) 3. On the role of social networks, see Bonkiewicz and Ruback (n 13) 140–41.

[16] Curtis (n 12) 526, referring to Keith Elder et al, 'African Americans' Decisions Not to Evacuate New Orleans before Hurricane Katrina: A Qualitative Study' (2007) 97 *American Journal of Public Health* S124.

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return, 'it is important to identify appropriate strategies for transitioning into the solutions stage, and to identify appropriate actors to whom the longer-term recovery process can be handed over.'[17] As a matter of law, evacuees have a right to seek safety elsewhere in the country, and to be protected against forcible return if their life, safety, liberty and/or health would be at risk.[18] Evacuation plans should include possibilities for local integration or planned relocation if return is not viable.[19]

3   Are there significant risks that cross-border evacuation would be needed, and if so, are there good practices for such movements?

'Evacuation' is not a term of art but encompasses a variety of practices with different legal underpinnings. In terms of cross-border evacuations, these are most common as a form of consular protection by a State bringing back its citizens/permanent residents from a crisis abroad (eg disaster, conflict, pandemic). The legal rationale tends to be about helping people to return home, rather than about saving lives per se.

At other times, non-nationals (including refugees) may be evacuated across a border. This is most common when States assist non-citizen family members of their own nationals, or when they aid an allied government by evacuating its nationals as a practical show of assistance. Sometimes States also evacuate non-citizens across international borders in the aftermath of sudden-onset disasters, often for medical assistance (eg UK/1995 Montserrat volcano; China/2002 Cyclone Eline in Africa; Vietnam/2006 Typhoons Chanchu and Ketsana in the Philippines; US, Canada, Mexico/2010 Haitian earthquake). There is also a longstanding practice of States evacuating refugees/internally displaced persons (IDPs) from danger zones, but this is typically framed as a temporary, humanitarian gesture rather than a formal legal responsibility.

In terms of risks, there have been instances where children have been evacuated (ostensibly because they were orphans) and thus separated from their families. Particular attention needs to be paid to this if people are to be transferred to places of safety.

TOPIC 3: STATELESSNESS

1   How do issues of nationality and statelessness arise in the context of climate change and migration, and how can the United States best address them?

I refer you to the Kaldor Centre's earlier submission of 28 May 2021 on the issue of statelessness:

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[17] *The MEND Guide: Comprehensive Guide for Planning Mass Evacuations in Natural Disasters* (IASC Camp Coordination and Camp Management Cluster, 2014) 97. For guidance in this context, see 97–99. See also the Guiding Principles on Internal Displacement.
[18] Guiding Principles on Internal Displacement, principle 15.
[19] *MEND Guide*, 97.

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'Since the territorial integrity of some low-lying small island States is at risk from sea-level rise, it is often asked whether their citizens might be rendered stateless. The short answer is "probably not". First, the protection afforded by the statelessness treaties is deliberately restricted to people who are 'not considered as a national by any State'. Unless a small island State were to deprive its citizens of nationality, which would be unlawful in this context, the statelessness definition would only be triggered if there were no longer a State in existence to recognize them as nationals. This is a highly speculative and convoluted legal argument, and also unlikely to offer much protection in reality. This is because well before territory is inundated, people will need to move because fresh water supplies will decline, temperatures may be intolerable, and some areas may become uninhabitable. It could be many decades or more before the territory itself "disappears", by which time many former inhabitants (and their descendants) might be citizens of other States. As such, the timeframes between leaving one's country and needing protection elsewhere are mismatched. From a purely practical perspective, too, the statelessness treaties are not well ratified, and few States have a procedure in place to determine who is stateless (and thus provide an appropriate legal status).'

However, the existing statelessness regime remains relevant since stateless people may find themselves at particular risk in the context of climate change and disasters. It will be important to ensure that births can be registered, that women can pass down their nationality to their children, and that processes exist for proving identity if registries have been destroyed (eg by floods). In all this, UNHCR has a vital role to play.

Finally, there should be a particular focus on enabling people to retain their nationality/acquire a new one. In this context, dual nationality (which is linked strongly to identity) should be permitted in order to enable people to retain links to both their old and new homes.

2   How can states be incentivized to provide access to citizenship in the context of slow-onset climate impacts? Why is legal residency not sufficient?

Ensuring that people have the full entitlements of citizens in their new home is very important, particularly for intergenerational reasons (ie the ability to pass down nationality to children). This is especially so if return to the country of origin is not possible, and people are at risk of becoming stateless because they cannot acquire citizenship in the country in which they are now resident.

Some novel concepts of citizenship acquisition were designed for the Banabans who moved from present-day Kiribati to Fiji in the 1940s. Today, the Banabans are citizens of Fiji, but they also retain the right to acquire citizenship of Kiribati. Even without the latter, they have a special entitlement to representation in the Parliament of Kiribati, their original homeland.[20]

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[20] For details, including complex negotiations on citizenship, see McAdam, 'Under Two Jurisdictions' (n 4); McAdam, 'Self-Determination and Self-Governance' (n 4).