

Lessons from Australia's Pacific Solution

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Nine years after it was first implemented, Australia's 'Pacific Solution' has not proven to be the promised panacea. Any country or region hoping to emulate the Australian offshore framework should be wary of its legal, ethical and operational failings.

Asylum seekers, and maritime arrivals in particular, were a contentious topic in the period leading up to the 2013 Australian federal elections. The preceding years had seen a rise in the number of asylum seekers arriving by boat and this was used by the two major political parties as a key electoral ground, with both parties attempting to outdo the other in terms of hard-line policies. Offshore processing was offered as the ideal deterrence model. The primary motivation of this process, the country was told, was to save lives at sea. However, nine years on many refugees remain in limbo, living in punitive conditions.

Australia announced its current offshore processing policy on 19th July 2013. Anyone arriving in Australia by boat after this date was to be transferred, processed and resettled in 'regional processing countries' – Nauru and Papua New Guinea (PNG). Since then, Australia has sent 3,127 people to Nauru and PNG. As of December 2020, 900 refugees have been resettled in the US, seven in Cambodia, and 23 in other countries.¹ Forty-seven percent of the initial population (1,500 individuals) remain in limbo despite 86.7% of this population being recognised as refugees.² Thirteen people have died. One was murdered. At least three killed themselves.

By any economic or ethical measure, this has been an exorbitantly uneconomical exercise. The Australian government has spent \$7.618 billion on regional processing since 2013, representing \$2.44 million spent for each of the 3,127 people sent to regional processing countries.³ This is likely to be an underestimate as it does not include the funding used to assist with resettlement deals, such as \$40 million in foreign aid for Cambodia, where seven refugees were resettled.

Externalisation in practice

A key factor that was overlooked in the embryonic stage of this policy was the sovereignty of both Papua New Guinea (PNG) and Nauru. The offshore policy appeared to ignore the fact that both these countries were no longer Australian colonies but sovereign states with their own distinct laws and procedures. Ninety-seven percent of the land is held under customary law in PNG⁴ and it is extremely difficult to negotiate the sale of such land. One might have expected this to have had an impact on decisions around resettlement of refugees there. In April 2016, the PNG Supreme Court also ruled that the detention of asylum seekers on Manus Island was illegal and unconstitutional.⁵ While the Memorandum of Understanding was signed by the PNG Prime Minister in 2013, the judiciary – as a separate arm of government – identified the failings of this detention policy which had by then been ongoing for three years. There is speculation that this reflected shifting public perception in PNG towards detaining asylum seekers in the country, with citizens increasingly viewing it as a blight on their national conscience. In addition, little attention was paid to the cultural impact of any potential integration.

Nauru, whose economy is more reliant on Australia, has been less vocal in its opposition but has refused to let anyone stay for longer than five years.⁶

These complications have led to an irrational and conflicting treatment of refugees who, though they have been granted refugee status, have not been granted any certainty in terms of permanency, travel documentation and the prospect of family reunion. Nine years on, all the refugees should have been given status, resettled, and allowed to bring their families to join them. These are not aspirational standards

but ones that Australia has committed to under various conventions and treaties.

By not factoring in the countries' sovereignty, domestic issues or moral compass, the Pacific solution has been a short-sighted expensive policy without resolution in sight.

Improvements and solutions – a matter of perspective?

The current government in Australia prides itself on following through on its convictions, and its adherence to the offshore processing is credited with 'stopping the boats'. It is another matter entirely that the boats may have also stopped largely due to Australia's 'turn back the boat' policy and not just because of offshore processing alone. Australia's punishment of those who seek refuge on its shores runs counter to evidence of the rich contributions that refugees make to the social fabric of Australian communities. A change in perspective could open alternative pathways to ensure safe and legal access to Europe and Australia in humane conditions. This would help stop asylum seekers from having to resort to smuggling, reduce fatalities at sea, and allow for more orderly arrivals.

The status of the remaining offshore cohort of refugees needs to be resolved quickly. If bringing them to Australia entails unacceptable compromises for the Australian government (unacceptable because this would necessitate a softening of the hard-line policies they believe have 'stopped the boats'), then other options need to be given genuine consideration. Every year since 2013 New Zealand has offered to resettle 150 of these refugees but Australia has yet to accept the offer.

Solutions may have always been available closer to home if approached with a genuine desire for resolution and commitment to protection obligations as opposed to punishment. For example, in 2013, Australia had already excised Christmas Island from its migration zone. A possible strategy to allay fears of the mainland being 'overwhelmed' by boat arrivals would have been to hold asylum seekers there to

be processed. Processing could have been conducted in a timely manner, from initial interview to outcome in a few months. If the expenditure on offshore processing is anything to go by, the federal coffers have the resources for dedicated taskforces and for training staff to enable efficient application processing. After initial interviews and recording of biometrics, applicants could also have been allowed to live in community detention on Christmas Island while they wait for their applications to be processed in order to minimise detention trauma. The high risk of retraumatising asylum seekers fleeing oppressive regimes by subjecting them to high security detention centres is often overlooked or justified in the name of national security. A more nuanced approach is needed and it is possible. Although community detention is a form of detention where supervision arrangements would be in place, asylum seekers are not monitored by security guards as they would be in 'held' detention. Community detention would allow asylum seekers to experience some semblance of normality by allowing them independence in their living space, and movement within the community. Community detention also costs less, both financially and in terms of detainees' mental health.⁷

Australia's offshore policy was set up to discourage 'irregular maritime arrivals' who often arrived without any identity papers. However, there are enough checks and balances in Australia's robust Refugee Status Determination (RSD) process to detect inauthentic claims. The process involves an initial transferee interview, an RSD interview, provision of biometrics and access to information sharing between governments, and not every application for refugee status is accepted.

Successful applicants could have been allowed resettlement in Australia, an island continent capable of accommodating this. Changes to its humanitarian quota for each year could have been made to reflect resettlement levels in order to better inform budgetary forecasts and resource allocation for resettlement services. Arrangements for removal, another part of

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the RSD process, could have been made for applicants who had exhausted all avenues of appeal, to avoid indefinite detention.

Australia has followed its current path to such an extent that for a major party to suggest alternatives might well be political suicide. However, alternatives are needed. Offshore processing and turning the boats away are not realistic solutions at a time when the world has the highest number of refugees ever recorded. Resolution may lie in less fear-mongering, increased quotas, more efficient processing and increased diplomacy to do more to resolve armed conflicts and prevent the human rights violations that force people to flee. Deterrence simply shifts the problem out of sight; it does not offer any practical solution to address protection needs.

There is arguably still room for a suite of measures and approaches that allow Australia to be in compliance with its Convention obligations without compromising the integrity of Australia's borders.

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1. bit.ly/Kaldor-offshore-processing-factsheet
2. bit.ly/Guardian-09122020-in-limbo
3. Refugee Council of Australia (2020) *Seven Years On: an overview of Australia's offshored processing policies*
www.refugeecouncil.org.au/wp-content/uploads/2020/07/RCOA-Seven-Years-On.pdf
4. bit.ly/Diplomat-PNG-032016
5. <https://ab.co/3CV4uyF>
6. bit.ly/Guardian-Nauru-10082016
7. www.fmreview.org/detention/marshall-et-al
8. The author has worked in both PNG and Nauru.