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Geographies of Migration and Settlement

Policy-Brief: Australia's Regime of Non-Arrival and Architecture of Exclusion

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1.0 Executive Summary

Australia's policy for the Offshore Detention of Asylum Seekers has helped constitute a regime of non-arrival and an architecture of exclusion. While Canada's welcoming, responsive, and empowering Refugee Program has effectively alleviated the plight of asylum seekers, comparatively, Australia's infamous approach, directed towards maritime migrants, has led to a number of asylum claimants being denied crucial assistance, despite dire need.

Introduced in 2001, Australia's Pacific Solution was realized by excising frequently-harboured island territories from their migration-zone, signing resettlement and processing agreements with third countries, enhancing naval surveillance, and increasing coordination with transit countries to, "*deter the dangerous and criminal smuggling of asylum claimants at sea*".^{1,2} Whilst maintaining the same ethos, the Pacific Solution's policies have evolved over time with revisions to concentrate specifically on terminating unauthorized maritime migration to Australia. Their implementation, however, has been critiqued as representing an unsustainable and ineffective approach to maritime migration, as by detaining asylum seekers offshore for processing, they have been prevented from lodging asylum claims with Australia. Therefore, in addition to indicating Australia's disingenuous evasion of its commitments under the 1951-RC³, it has also initiated a humanitarian crisis.⁴

While the impact of Australia's policy on Canadian immigration is negligible, given the recent appeal of such isolationist philosophies in the EU, UK, and US⁵, as a global leader in hosting refugees,⁶ Canada must make clear its stance on the approach. Establishing a standardized system to ethically support refugees is increasingly critical, because with the globally amplifying political and climatic problems, in the near future, individuals seeking refuge are projected to increase exponentially.⁷ Furthermore, by virtue of Geography, some nations are bound to receive more refugees than others. Hence, to avoid reactive policy and share the responsibility fairly, global coordination for the assistance of these refugees is critical.

^{1,3} Motta, Francesco P. "Between a Rock and a Hard Place": Australia's Mandatory Detention of Asylum Seekers." *Refuge: Canada's Journal on Refugees*, 2002, 12-43. <https://doi.org/10.25071/1920-7336.21262>.

² Phillips, Janet, and Spinks, Harriet. "Boat Arrivals in Australia since 1976." *The Parliament of Australia*, January 10, 2014. https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2011-2012/boatarrivals.

³ 1951 Refugee Convention

⁴ Higgins, Claire. "The (Un-)Sustainability of Australia's Offshore Processing and Settlement Policy." *'Boat Refugees' and Migrants at Sea: A Comprehensive Approach*, 2017, 303-26. https://doi.org/10.1163/9789004300750_014.

⁶ United Nations High Commissioner for Refugees. "UNHCR Global Trends 2018." UNHCR, 2018. <https://www.unhcr.org/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>.

⁷ "Migration and Climate Change - IOM." International Organization for Migration, 2008. https://www.ipcc.ch/apps/nj-lite/srex/nj-lite_download.php?id=5866.

Following a thorough examination of Australia's offshore policy and its implementation, this brief will evaluate 3 proposals that vary in degree of response. These alternatives are assessed based on their ability to be diplomatic, humanitarian, and feasible. The analysis deems the offshore policy inapplicable in Canada and further calls for its renouncement to set a precedent for the International community.

2.0 Australia's Regime of Non-Arrival and Architecture of Exclusion

2.1 Current Policy Mandate

Ratified in 2013, Operation Sovereign Borders, a zero-tolerance policy, marked Australia's revival of the Pacific Solution that additionally endorsed the mandatory offshore detention of all Maritime Refugee Claimants (MRCs).⁸ The government rationalized these policies, "*as necessary measures to save the lives of asylum seekers by deterring them from hazardous boat journeys.*"⁹ Furthermore, Australian public sentiment towards MRCs, portrayed them as, "*queue jumpers and unauthorized immigrants - not genuine refugees.*"¹⁰

Framed as a policy to mitigate advantage, MRCs were to be processed offshore and, "*make up for the time they would have been detained onshore for, had they not travelled by boat.*"¹¹ Initially, after serving this time in detention MRCs were to be resettled in Australia. However, owing to processing-lags due saturated capacities of the offshore processing centres and limited prospects of current asylum seekers in Australia ever making it to the offshore facilities, the 'no-advantage' policy was rendered useless as timeframes were impossible to calculate. In response, the government announced a new policy of no-resettlement in Australia.¹²

As for its implementation, with respect to Australia's national interests to deter maritime migration, this policy mandate has been extremely successful.¹³ In 2014, the government claimed a 90% reduction¹⁴ in MRCs, with a 6-month boat-free streak.¹⁵ However, this success has been criticized as the turn-back policy has not reduced the number of refugees, but instead sent them elsewhere. In considering their

⁸ "Australia's Refugee Policy: An Overview." Australia's refugee policy: An overview | Kaldor Centre, July 17, 2020. <https://www.kaldorcentre.unsw.edu.au/publication/australias-refugee-policy-overview>.

⁹ Achi, Nahla Gedeon. "A Look into Australian Policy on Asylum Seekers and Refugees: A Humanitarian Effort or a Violation of Human Rights?" Dartmouth Undergraduate Journal of Politics, Economics and World Affairs, 9, 1, no. 1 (2018).

¹⁰ Phillips, Janet, and Spinks, Harriet. "Boat Arrivals in Australia since 1976." The Parliament of Australia, January 10, 2014. https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2011-2012/boatarrivals.

¹¹ "Transcript of Press Conference, Canberra: Prime Minister of Australia - Archived Website." Trove, August 17, 2012. <https://webarchive.nla.gov.au/awa/20120816171835/http://pandora.nla.gov.au/pan/121064/20120817-0000/www.pm.gov.au/press-office/transcript-press-conference-canberra-29.html>.

¹² Gleeson, Madeline. "Five Questions: On Six Years of Australia's Offshore Processing Policy." Kaldor Centre, July 18, 2019. <https://www.kaldorcentre.unsw.edu.au/news/five-questions-six-years-australia%E2%80%99s-offshore-processing-policy>.

¹³ "**A probable link between restrictive refugee policies and lower attempts at seeking asylum in Australia by boat have been confirmed by the UNHCR: in April 2014, UNHCR Indonesia representative Manual Jordao stated: Word that the prospects of reaching Australia by boat from Indonesia are now virtually zero appears to have reached smugglers and would-be asylum seekers in countries of origin such as Afghanistan, Iran, Pakistan and Myanmar. The numbers registering with the UN Refugee Agency (UNHCR) in Indonesia have dropped from about 100 a day during 2013 to about 100 a week now.**"

¹⁴ "Asylum Seekers Left High and Dry in Indonesia." The New Humanitarian, April 16, 2019. <https://www.thenewhumanitarian.org/news/2014/04/09/asylum-seekers-left-high-and-dry-indonesia>.

¹⁵ Ireland, Judith. "Both Sides Claim Credit for Slowing Boat Arrivals." The Sydney Morning Herald. The Sydney Morning Herald, October 20, 2013. <https://www.smh.com.au/politics/federal/both-sides-claim-credit-for-slowing-boat-arrivals-20131021-2wfp.html>.

¹⁵ "Satisfied Australia Marks Six Months with No Boatpeople." SBS News, June 19, 2014. <https://www.sbs.com.au/news/satisfied-australia-marks-six-months-with-no-boatpeople>.

ratified international obligations, Australia has been condemned for creating a humanitarian crisis by pursuing a policy actually focused on claim-deterrence, rather than smuggling-deterrence.

2.2 Administrative Relevance in Canada

In order to assess the administrative applicability of this policy in Canada, a few factual considerations regarding its focus on boat-arrivals and its fiscal feasibility need to be made:

2.2.1 Boat Arrivals

The proportion of boat arrivals starkly differ in both Nations. In 2014, comparatively, Canada received 5 MRCs¹⁶ while Australia received 9072 MRCs¹⁷, excluding the 23 boats (1263 MRCs)¹⁸ it turned away illegally (breaches non-refoulement obligations).¹⁹ Hence, by virtue of proximal Geopolitics and Geography, this policy is more relevant in Australia than Canada.

2.2.1 Fiscal Feasibility

IRCC's total budget for 2018-2019 was \$2.4 billion.²⁰ Conversely, of Australia's \$3.8 Billion²¹ expenditure on immigration in 2018-2019, \$1.03 Billion²² alone was spent on offshore processing. Moreover, for the offshore detention of claimants, Australia spends \$570,000 per person, yearly.²³ In Canada however, the government on average spends a mere CAD \$14,000 to fully process any type of claimant.²⁴ Hence, the cost of implementing such a policy would be exponentially higher and certainly encounter opposition from Canadian taxpayers.

¹⁶ Immigration, Refugees and Citizenship Canada. "Asylum Claimants Processed by Canada Border Services Agency (CBSA) Offices, 2011 - 2016." Asylum claims by year. Government of Canada, October 21, 2020. <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/processed-claims.html>.

¹⁷ Phillips, Janet. "Asylum Seekers and Refugees: What Are the Facts?" The Parliament of Australia, June 10, 2015.

https://www.apf.gov.au/about-parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp1415/asylumfacts.

¹⁸ ABC News. "Operation Sovereign Borders: Log of Boat Arrivals and Other Asylum Seeker Incidents." ABC News, May 9, 2016. <https://www.abc.net.au/news/2013-10-25/log-of-boat-arrivals-and-other-asylum-seeker-incidents/5014496>.

¹⁹ "Research Brief: Turning Back Boats." Andrew & Renata Kaldor Centre for International Refugee Law, 2018.

https://www.kaldorcentre.unsw.edu.au/sites/default/files/Research%20Brief_Turning%20back%20boats_final.pdf.

²⁰ "IRCC Departmental Report 2018-2019." Immigration, Refugees and Citizenship Canada, 2019. <https://www.canada.ca/content/dam/ircc/images/corporate/publications-manuals/departmental-results-reports/2019/english/drr-2018-2019.pdf>.

²¹ "Immigration Budget Review 2018-2019." The Parliament of Australia, April 4, 2019.

https://www.apf.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201920/Immigration.

²² Karp, Paul. "Australia's 'Border Protection' Policies Cost Taxpayers \$4bn Last Year." The Guardian, Guardian News and Media, January 5, 2018.

<https://www.theguardian.com/australia-news/2018/jan/05/australias-border-protection-policies-cost-taxpayers-4bn-last-year>.

²³ Button, Lisa, and Shane Evans. "At What Cost: The Human, Economic and Strategic Cost of Australia's Asylum Seeker Policies and the Alternatives." Resource Centre. UNICEF, 2016. <https://resourcecentre.savethechildren.net/library/what-cost-human-economic-and-strategic-cost-australias-asylum-seeker-policies-and>.

²⁴ Harris, Kathleen. "Asylum Seekers Entering Canada Outside Legal Border Points Cost an Average of \$14K Each: PBO | CBC News." CBC News, November 29, 2018.

<https://www.cbc.ca/news/politics/pbo-budget-officer-asylum-seekers-costs-1.4924364>.

2.3 Core Evaluation for Canada

In addition to the narrow administrative scope as highlighted above, a more important set of considerations regarding the policy's legality and humanitarian ramifications need to be made. The following sections will evaluate and contextualise to Canada the core elements of this policy:

2.3.1 Offshore Processing

With Offshore processing, Australia has relocated the process of refugee-determination outside its borders.²⁵ In hosting MRCs offshore, Australia has outsourced legal responsibility and hence prevented the applicability of its own human-right laws, hindering public scrutiny of their MRCs' living conditions. The ICC²⁶ has deemed the offshore detention conditions as illegal, characterizing it as, "*cruel, inhuman, and degrading treatment*".²⁷ In Canada, fortunately, refugees are processed locally, and this policy must be maintained to uphold human rights and avoid undermining the 1951-RC.

2.3.2 Mandatory Detention

In Australia, while being processed, all MRCs are mandatorily detained.^{28,29} Under Canada's IRPA³⁰ however, we briefly detain claimants rarely and only if deemed necessary, unless Bill-C31 is applicable.³¹ Moreover, in Canada, refugees are processed on average within 1 week while the average detention time in Australia is about 62.5 weeks.³² As observed by the UNHCR³³, Australia's indefinite and indisputable detention has raised humanitarian concerns regarding the detainees' treatment, safety, and mental health, violating Article 9(1) and 9(4) of the ICCPR.^{34,35} Canada has already faced the fallouts of aggressively detaining 492 Sri Lankans MRCs in 2010.³⁶ Hence, with the previous nationwide outcry and in respecting the ICCPR, a mandatory detention policy must not be adopted in Canada.

²⁵ McAdam, Jane. "Policy Brief 1 - Extraterritorial Processing in Europe: Is 'Regional Protection' the Answer, and If Not, What Is?" Policy Brief 1 - Extraterritorial processing in Europe: Is 'regional protection' the answer, and if not, what is? Policy brief. Kaldor Centre, May 15, 2015. <https://www.kaldorcentre.unsw.edu.au/publication/policy-brief-1-extraterritorial-processing-europe-regional-protection-answer-and-if-not>.

²⁶ International Criminal Court

²⁷ "Australia's Offshore Detention Regime in Breach of International Law." European Council on Refugees and Exiles (ECRE), October 2018. <https://www.ecre.org/australias-offshore-detention-regime-in-breach-of-international-law/>.

²⁸ "Australia's Immigration Detention Policy and Practice: Australian Human Rights Commission." The Australian Human Rights Commission. Accessed November 17, 2020. <https://humanrights.gov.au/our-work/6-australias-immigration-detention-policy-and-practice>.

²⁹ Canada's Migration Amendment Act 1992

³⁰ Immigration and Refugee Protection Act

³¹ Government of Canada, Canada Border Services Agency. "Arrests, Detentions and Removals." Government of Canada, Canada Border Services Agency, July 24, 2018. <https://www.cbsa-asfc.gc.ca/security-secure/arr-det-eng.html>.

³² Phillips, Janet. "Asylum Seekers and Refugees: What Are the Facts?" The Parliament of Australia, June 10, 2015.

https://www.apf.gov.au/about-parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp1415/asylumfacts.

³³ United Nations High Commissioner for Refugees. "UNHCR Submission to the Senate Legal and Constitutional Affairs Legislation Committee in Respect of Its Inquiry into the Migration Amendment (Complementary Protection and Other Measures) Bill 2015," 2015. <https://www.refworld.org/docid/56669e5e4.html>.

³⁴ International Covenant on Civil and Political Rights

³⁵ "Australia's Refugee Policy: An Overview." Australia's refugee policy: An overview | Kaldor Centre, July 17, 2020. <https://www.kaldorcentre.unsw.edu.au/publication/australias-refugee-policy-overview>.

³⁶ "Rights Advocates Decry Detention of Refugee Claimants from MV Sun Sea: News Release." Rights advocates decry detention of refugee claimants from MV Sun Sea | News Release. Amnesty International, 2011. <https://web.archive.org/web/20120603071700/http://www.amnesty.ca/media2010.php?DocID=247>.

2.3.3 Refugee Visa Limitations

In focusing specifically on the circumstances under which MRCs arrive, Australia officially refers to them as *'illegal maritime arrivals'*, thereby criminalizing them. Their granting of refugee visas is allegedly arbitrary as there is no processing time-limit and even for those determined to be legitimate Refugees, there is no possibility of attaining Australian residency.³⁷ Refugees are expected to resettle in the centre's host countries, Nauru or Papua New Guinea, despite UNHCR's concerns over limited cultural, social, and economic integration prospects.³⁸ Recently however, with certain special agreements, some refugees have been relocated to the United States, Cambodia, etc.³⁹

A rare few are granted Refugee status in Australia after meeting the onerous visa criteria for offshore refugees.⁴⁰ However, in comparison to other onshore claimants, they are only assigned renewable Temporary Protection Visas⁴¹ which have received criticism for placing Refugees, *"in a constant state of mental and legal limbo"*⁴² because it attributes no right to family reunification, requires MRCs to work to support themselves, and minimizes support from the government.⁴³

Conventionally, while temporary protection must only be granted during mass refugee arrivals, Australia does so on bases of arrival without a visa. This breaches international human rights law and violates Article 31 of the 1951-RC and Article 7 of the ICCPR.⁴⁴ In Canada however, IRPA⁴⁵ s. 133⁴⁶ itself prevents this, and instead, approved refugees, are treated as protected persons with full governmental integration support and reserve the right to apply for permanent residency.⁴⁷

³⁷ Foulkes, Christopher D. "Australia's Boat People: Asylum Challenges and Two Decades of Policy Experimentation." Migration Policy Organization, October 22, 2020. <https://www.migrationpolicy.org/article/australias-boat-people-asylum-challenges-and-two-decades-policy-experimentation>.

³⁸ "Australia's Refugee Policy: An Overview." Australia's refugee policy: An overview | Kaldor Centre, July 17, 2020. <https://www.kaldorcentre.unsw.edu.au/publication/australias-refugee-policy-overview>.

³⁹ Higgins, Claire. "The (Un-)Sustainability of Australia's Offshore Processing and Settlement Policy." "Boat Refugees" and Migrants at Sea: A Comprehensive Approach, 2017, 303-26. https://doi.org/10.1163/9789004300750_014.

⁴⁰ Gleeson, Madeline. "Five Questions: On Six Years of Australia's Offshore Processing Policy." Kaldor Centre, July 18, 2019. <https://www.kaldorcentre.unsw.edu.au/news/five-questions-six-years-australia%E2%80%99s-offshore-processing-policy>.

⁴¹ Karlsen, Elibritt. "Refugee Resettlement to Australia: What Are the Facts?" The Parliament of Australia, November 1, 2016. https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp1617/refugeeresettlement.

⁴² Temporary Protection Visas and Safe Haven Enterprise Visas. Kaldor Centre, April 11, 2019. <https://www.kaldorcentre.unsw.edu.au/publication/temporary-protection-visas>.

⁴³ "Recent Changes in Australian Refugee Policy." Refugee Council of Australia, March 15, 2019. <https://www.refugeecouncil.org.au/recent-changes-australian-refugee-policy/10/>.

⁴⁴ "UNHCR Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol." UNHCR, 2007. <http://readinglists.le.ac.uk/items/10A6D761-BE98-4BDF-83B6-87857CAB6C5B.html>.

⁴⁵ "International Law Recognizes That Refugees Often Don't Have the Required Documents to Enter a Foreign Country." Canadian Council for Refugees. Accessed November 17, 2020. <https://ccrweb.ca/en/refugee-identity-documents>.

⁴⁷ Immigration, Refugees and Citizenship Canada. "Claiming Asylum in Canada - What Happens?" Government of Canada, April 11, 2019. https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming_asylum_incanadawhathappens.html.

2.4 Canadian Policy Response

Antithetical to Canada's Multiculturalism, Australia's alleged nationalised ethnocentrism⁴⁸ has been criticized⁴⁹ as being reminiscent of the Nation's predominantly white immigration history.⁵⁰ Canada, as an instigator of Multiculturalism must uphold its values and duty towards humanity. As evident, the weaknesses of the offshore processing policy outweigh its strengths. Following are varying degrees of policy responses for Canada to engage with this issue:

- 1) **Reactive:** Maintain international silence on issue but amend national policy (e.g., abolish Bill-C31) to legitimize Canadian stance and avoid uptake in subsequent governments.

Diplomatic Relations: Inconsequential
Humanitarianism: Good
Feasibility: High

- 2) **Proactive:** In addition to internal changes, detest practise Internationally and call for change in other national policies to comply with humanitarian obligations and international law. Facilitate the establishment of monitoring and evaluation systems to enhance the transparency and accountability of all signatories.

Diplomatic Relations: Strained
Humanitarianism: Very Good
Feasibility: Low

- 3) **Coactive:** In addition to internal changes, establish special government-funded programs to resettle Australia's off-shore MRCs and sign MOUs with transit countries to directly channel MRCs to Canada before they advance towards Australia. Set a precedent by facilitating the relocation of the remaining 300⁵¹ MRCs in Australia's offshore detention centres as a gesture. Commend Canadian private-sponsorship programs⁵² and initiate a global dialogue to subtly push for changes in national policies.

Diplomatic Relations: Uncertain
Humanitarianism: Excellent
Feasibility: Medium - High

⁴⁸ Australian Prime Minister John Howard: "we will decide who comes to this country and the circumstances in which they come."

⁴⁸ Barkham, Patrick. "Australia Votes on How Tightly to Close the Door." The Guardian. Guardian News and Media, November 10, 2001. <https://www.theguardian.com/world/2001/nov/10/immigration.uk>.

⁴⁹ Australian Minister for Immigration and Citizenship Chris Evans: "a cynical, costly and ultimately unsuccessful exercise."

⁴⁹ "Flight from Nauru Ends Pacific Solution." The Sydney Morning Herald, February 8, 2008. <https://www.smh.com.au/national/flight-from-nauru-ends-pacific-solution-20080208-1qww.html>.

⁵⁰ Foulkes, Christopher D. "Australia's Boat People: Asylum Challenges and Two Decades of Policy Experimentation." Migration Policy Organization, October 22, 2020. <https://www.migrationpolicy.org/article/australias-boat-people-asylum-challenges-and-two-decades-policy-experimentation>.

⁵¹ "Offshore Processing Statistics." Refugee Council of Australia, October 25, 2020. <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/>.

⁵² "Canada 'like a Dream' for Refugee Who Spent 6 Years in Australia's Manus Island Camp | CBC Radio." CBC News, November 8, 2019.

<https://www.cbc.ca/radio/asithappens/as-it-happens-friday-edition-1.5353214/canada-like-a-dream-for-refugee-who-spent-6-years-in-australia-s-manus-island-camp-1.5353217>.

3.0 Recommendations

As outlined in IRCC's departmental agenda for 2020-21, *"Canada's continued commitment to refugee resettlement will reinforce Canada's positive contribution to refugee protection internationally."*⁵³ Hence, to realize this goal, Option 3 is strongly recommended. Furthermore, as IRCC will chair the Migration 5 forum this year, we must strategically leverage bilateral engagement opportunities to, *"advance Canada's immigration and humanitarian priorities and, in particular, support for safe, orderly and regular migration."*⁵⁴

Asylum seekers are individuals that are already suffering, and any instance of policy paralysis only exacerbates their plight. Therefore, we must urge the international community to avoid policies that protect the system instead of these asylum seekers. Engaging in tokenism is detrimental to refugees as bureaucratic delays only increase their vulnerabilities. Hence, Canada must take a stand and urge the international community to re-evaluate its duty towards humanity.

^{53,54} Immigration, Refugees and Citizenship Canada. "Immigration, Refugees and Citizenship Canada Departmental Plan 2020-2021." Government of Canada, June 23, 2020. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/departmental-plan-2020-2021/departmental-plan.html>.

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