

# A Look into Australian Policy on Asylum Seekers and Refugees: A Humanitarian Effort or a Violation of Human Rights?

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### **Abstract**

Global levels of displacement are higher today than they've ever been. Australia, called on by the international community to take in refugees, is entrenched in an ethnocentric nationalism adverse to increased immigration and the rise of multiculturalism. While the government professes humanitarian motivation, the reality of policy and detainment is a gross violation of human rights and concerted efforts to decrease the number of refugees and asylum seekers. Refugees are villainized and strategically silenced by Australian government and media as a means to justify their actions and minimize publicity of humanitarian atrocities. John Howard's famous statement, "we will decide who comes to this country and the circumstances in which they come," professes the government's endeavors to control who composes the Australian nation.

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## **Introduction: Living in a Detention Center**

It is 10 years this week since Woomera detention center was closed. I still remember how isolated our lives were in the middle of the desert. Incidents of self-harm such as ingesting shampoo or cutting with razor wire were things I'd see every day. Some nights we'd get together and speak about our families and I would notice our group getting smaller. My memories are full of riots, people being beaten and tear-gassed, and friends being taken into isolation for weeks... Have we moved on from these distraught experiences?<sup>1</sup>

Ramesh Fernandez fled Sri Lanka in 2001 and sought asylum in Australia. He was detained in Cocos Island, Christmas Island, Perth, and Woomera, before being transferred to Baxter, Victoria, and finally granted asylum in 2004. Woomera detention center, built on a defense site in the middle of the South Australian desert, opened in 1999 in response to increasing arrivals of asylum seekers.<sup>2</sup> The Department of Immigration and Multicultural and Indigenous Affairs contracted the Australasian Correctional Management (ACM) to operate the center, delegating the government's responsibilities towards asylum seekers and refugee to a company with a background in running prisons. This is outlined in the 1951 United Nations (U.N.) Convention Relating to the Status of Refugees and its 1967 Protocol, to which Australia is a signatory.<sup>3</sup> Originally intended for 400 people, in the early 2000s Woomera detention center held close to 1,500. Strict rules and harsh punishments dictated detainees' lives. Although temperatures in the area regularly reach 45 degrees centigrade, the facility had no air-conditioning. Three washing machines and five toilets were meant to accommodate all 1,500 people.<sup>4</sup> Riots in 2000 – instigated both by asylum seekers detained at Woomera and external protesters denouncing the Australian government – drew national as well as international attention to the facility.<sup>5</sup> Having become infamous for such human rights abuses, overcrowding, and brutal conditions, the center was shut down in 2003.

Harsh and sometimes inhumane treatment of refugees and asylum seekers did not end

with Woomera. As of April 30, 2017, 1,392 people were confined to immigration detention facilities in Australia and 1,194 asylum seekers were detained in Australian-funded “Offshore Processing Centers.”<sup>6</sup> Men, women, and children in such centers live in constant uncertainty; they do not know if they will be granted refugee status, and they have no voice in, nor influence on, the outcome of their detention. While some Australians praise the government’s policy, others accuse politicians and immigration officials of violating asylum seekers’ human rights. Despite this dissent, offshore detention and processing policies in the last two decades have received bipartisan support; evidently a large number of Australians wish to restrict the arrival of asylum seekers on Australian shores and of refugees into Australian society. Many of these asylum seekers are of African, Middle Eastern, and South Asian origins, and the rhetoric used to justify restrictive immigration policies seems, at least at times, to be racially motivated.

As Australia asserted itself as a new nation on the 20<sup>th</sup> century world stage, Australians sought to establish a national identity for themselves. This identity grew from quintessentially “Australian” Bush, Pioneer, and Anzac legends but it also clung to a predominantly white and British heritage, which helps explain the development of the White Australia policy. This policy – an amalgam of laws enacted over multiple years – effectively barred non-whites from immigrating to Australia for the first half of the 20<sup>th</sup> century and maintained an Anglo-centric cultural homogeneity within the nation. The laws emerged amidst a fear of “invasion” by Asian migrants. Even after World War II, when policy shifted to a more open stance towards non-British migrants, anxiety about Australia’s economic reliance on Asia fueled racist sentiments and prompted support for restrictive immigration measures. A new principle – “multiculturalism” – replaced White Australia, yet the legacies of the former policy and the discriminatory undercurrents that gave rise to it continue to influence Australian society and policy today.

Refugees and asylum seekers form a particularly vulnerable group of people because they lack the protection of their national government. To address this vulnerability various members of the United Nations committed themselves to protecting refugee and asylum seeker rights by crafting and signing the Convention Relating to the Status of Refugees in 1951. This Convention defined the term “refugee,” and outlined the rights of the displaced, as well as the legal obligations of states towards refugees and asylum seekers. Since 1951, 145 State parties have

ratified the Convention, which now serves as the primary international legal document relating to refugee protection.<sup>7</sup> Because the original Convention restricted refugee status to those whose displacement had occurred “as a result of events occurring before 1 January 1951” and was intended to encompass only refugees of World War Two within Europe, member nations amended it in 1967 by instituting a Protocol Relating to the Status of Refugees, which removed temporal and geographic restrictions from the Convention.<sup>8</sup> The norms established in these conventions should, theoretically, guarantee refugees and asylum seekers international protection and basic human rights. Too often, however, countries – including signatories to both the original Convention and its Protocol – fail to guarantee these rights or flagrantly violate them.

In light of Australia’s immigration history, it is evident that a white ethnocentric Australian national identity enabled the formation and continuation of exclusionist refugee policies that violate human rights as well as international laws. Through these policies, Australia is shirking its responsibilities as a signatory to the 1951 Refugee Convention and its 1967 Protocol and setting a dangerous precedent in the region with regards to the treatment and protection of displaced persons. Asylum seekers today undergo the same hardships Fernandez experienced in Woomera in 2002. He describes how monotony and uncertainty bred desperation among detainees:

The breakout during the Easter of 2002 was something I’ll never forget. Protesters arrived at the detention center and broke fences. Some asylum seekers managed to escape. Some tried to jump over the razor wire and got stuck. They were cut so badly they fainted due to blood loss. Others were crying, asking protesters to “please take me too!” and some were jammed in the middle because there were so many people rushing to escape. As people gathered closer to the fences the guards became aggressive. After a while police and the guards surrounded us and there was no escape. All went back to the sad reality once again.<sup>9</sup>

## **Section I: Boat Arrivals and Offshore Detention Centers**

Insular political parties and anti-refugee rhetoric have gained ground in Australia over the past twenty years, and the creation of offshore detention centers exposes a widespread inclination to exclude refugees from the nation. Both the Liberal-National Coalition and the Labor Party preach the humanitarian necessity of intercepting boats carrying asylum seekers and detaining those aboard to deter people from undertaking the dangerous journey. However, analyses of the policies that stipulate these actions suggest that the government's actions and motives are not humanitarian.

In October 2013 the government instructed administrative staff to start referring to asylum seekers arriving by boat as “illegal maritime arrivals” rather than “irregular maritime arrivals”<sup>10</sup> – in spite of the fact that entering a country without authorization for the purpose of seeking asylum is not illegal.<sup>11</sup> Further criminalizing refugees, the government then implemented a policy involving military vessels patrolling Australian and international waters for the purpose of intercepting migrant boats. Rather than rescue the people in these boats, Australian defense forces tow them to their point of origin and sometimes even send asylum seekers back in inflatable dinghies or “unsinkable” lifeboats, subjecting them to the same journey they claim to discourage.<sup>12</sup> These measures not only violate the rights of asylum seekers, they also are a form of refoulement, given that the refugee status of these individuals has not yet been determined.

In October 2012, the government started conducting “enhanced screening” of asylum seekers. Under this policy, officers from the Department of Immigration interviewed asylum seekers arriving by boat from certain countries. If the interview raised concerns that indicated a need for protection, people were “screened in” so their claims could be officially processed. If it did not raise such concerns, however, asylum seekers were “screened out” and returned to their country of origin. As the Refugee Council of Australia explains, this system failed to protect the rights of asylum seekers by depriving them of the opportunity to formally lodge a claim for asylum in a safe environment:

In July 2014, a group of 41 Sri Lankan asylum seekers who had attempted to enter Australia by boat were intercepted by Australian

authorities and screened at sea before being returned to Sri Lanka. Some subsequently fled to Nepal where they were found to be refugees by UNHCR. Another group of 12 Sri Lankan asylum seekers whose boat was intercepted by the Australian authorities near Cocos Island in May 2016 were also screened at sea before being flown to Sri Lanka. They were reportedly arrested on arrival at the Colombo airport. In March and July 2015, two boats carrying Vietnamese asylum seekers were intercepted by the Australian navy and their passengers underwent enhanced screening before being returned to Vietnam. Asylum seekers on the first boat were held at sea for nearly a month. It has been reported that some of the people on board the first boat were subsequently tried and sentenced to two to three years in prison.<sup>13</sup>

Despite such episodes, the government continues to claim that boat interceptions and offshore processing are necessary to deter people from risking their life in boat journeys. Journalist Thomas Albrecht, writing for *The Guardian*, highlights the paradox of Australia's policy of offshore processing. "I understand why those who originally supported offshore processing were moved by the tragic drownings of men, women and children who were trying desperately to reach Australia's shores, to embrace policies and practices seeking to end the boats." Allegedly designed to protect people, offshore processing subjects them to physical and psychological harm from "open-ended mandatory detention, inadequate conditions and indefinite limbo."<sup>14</sup> According to Albrecht,

there is a false and disingenuous logic in saving people at sea, only to then mistreat them on land. When faced with overwhelming evidence of harm and neglect, we must acknowledge that good intentions cannot justify the status quo. The current policy has been an abject failure. A proper approach by Australia must include, at a



minimum, solutions for all refugees and asylum seekers sent to Papua New Guinea and Nauru, and an end to offshore processing. This is the time to share, not shirk, responsibility.<sup>15</sup>

Rather than fulfill the principle of international protection, these policies transgress international law. “There is nothing illegal about seeking sanctuary from war and persecution,” explains Albrecht, “the right to seek asylum is enshrined in the Declaration of Human Rights... Australia’s obligation to people fleeing persecution, just as with any country in the world, is the same whether they arrive by air or by sea.”<sup>16</sup>

While it is true that boat journeys are dangerous and that people smugglers take advantage of asylum seekers, the reality is that most people in these situations – who abandon their possessions, their family, and their home, pay thousands of dollars to climb onto a boat, and leave all that they know for an unknown destination – will always attempt to flee conflict, oppression, and persecution and will always try to reach countries, like Australia, that supposedly protect human rights. Moreover, evidence suggests that Australia’s policies have not reduced deaths at sea.<sup>17</sup> Given these facts, the idea of deterring asylum seekers is inherently flawed. While the government insists that their policies have restored the integrity of Australian borders, an analysis of the situation suggests these measures, rather than the asylum seekers’ actions are illegal.<sup>18</sup>

## **Section II: Setting a Dangerous Precedent**

In 2016, all 193 Member States of the United Nations unanimously adopted the New York Declaration for Refugees and Migrants, proffering “profound solidarity with, and support for, the millions of people in different parts of the world who, for reasons beyond their control, are forced to uproot themselves and their families from their homes.”<sup>19</sup> Today however, low or middle-income countries host more than eight in ten of the world’s refugees.<sup>20</sup> Given this statistic Albrecht (among others) calls on Australia and other “prosperous, successful immigrant countries with respect for the rule of law and a fair go for all” to uphold their end of the international asylum system.<sup>21</sup> “The example Australia sets at home is one that is watched

closely by countries in the region and around the world. Closing borders and outsourcing obligations will not prevent people from seeking safety, nor will it provide protection to the men, women and children who need it. It will only be a destructive and dangerous precedent.”<sup>22</sup>

Over the past two decades, all three major parties in Australia have implemented and agreed to offshore processing, but Australia’s immigration policies haven’t always been this harsh. In 1973, the same year in which Australia signed the 1967 Protocol Relating to the Status of Refugees, the Whitlam government legally abolished the White Australia policy. Two years later, Australia accepted thousands of refugees from the Vietnam War. As more and more asylum seekers fled to Australia, the Government refined and systematized its humanitarian immigration program; in 1978, the governing Liberal Party implemented a procedure for processing onshore applications for refugee status in accordance with Australia’s obligations under the Refugee Convention.<sup>23</sup> The same year, in language strikingly different to that used in political discourse today, Immigration Minister Michael MacKellar affirmed that “boat people” were not “illegal immigrants” and that “refugees arriving by boat [should] no longer [be] considered queue jumpers.”<sup>24</sup> However, attitudes began to shift again as the principle of multiculturalism took effect in earnest in the late 20<sup>th</sup> century and increasing numbers of ethnically diverse migrants and refugees entered Australia; backlash became apparent as people invoked nationalism, border security, and economic arguments in demanding more restrictive immigration policies.

In 1989, reacting to the influx of asylum seekers arriving in Australia following the Tiananmen Square massacre and the collapse of the Soviet Union, the Hawke Government introduced the *Migration Legislation Amendment Act* to deter “illegal entrants” by implementing new regulations that introduced mandatory detention and required asylum seekers to pay back the cost of their ‘protection’ (i.e. detention), which, for some, amounted to hundreds of thousands of dollars<sup>25</sup>. Building on these increasingly severe measures against asylum seekers, the outsourcing of management of immigration detention centers to private companies began in 1997<sup>26</sup> and served as one of the most important turning points in Australian immigration policy, since it enabled government officials to evade responsibility for abuses committed against asylum seekers.

Most Australians at the time rejected the extreme attitudes of anti-refugee advocates. In

1998, when Pauline Hanson (leader of the right-wing populist One Nation party) suggested Temporary Protection Visas (TPVs), Phillip Ruddock, the Minister for Immigration, responded by saying, “Can you imagine what temporary entry would mean for them? It would mean that people would never know whether they were able to stay here ... I regard the approach as being highly unconscionable in a way that most thinking people would clearly reject.”<sup>27</sup> TPVs are issued to persons who have been recognized as refugees, but who continue to live in uncertainty because three years after being granted a TPV, they are required to reapply for a visa (in case conditions have changed in their homeland). Moreover, refugees under TPVs have no family reunion rights and are prohibited from reentering Australia if they leave.<sup>28</sup> Yet, only a year after Ruddock’s statement the Liberal-National Coalition headed by John Howard, implemented TPV legislation, claiming it was necessary to prevent misuse of the asylum process by unauthorized arrivals.<sup>29</sup>

Once again, this legislation contained a fallacy; asylum seekers and refugees, by definition, should not be considered “unauthorized.” Article 31 of the Refugee Convention

prohibits States from imposing penalties on refugees who, when coming directly from a territory where their life or freedom was threatened, enter... their territory without authorization... [T]his includes both refugees coming straight from their country of origin and refugees coming from any other territory where their protection, safety and security cannot be assured. This Article recognizes that refugees have a lawful right to enter a country for the purposes of seeking asylum, regardless of how they arrive or whether they hold valid travel or identity documents. As such, what would otherwise be considered illegal or unlawful actions (e.g. entering a country without a visa) should not be treated as such if a person is seeking asylum.<sup>30</sup>

Yet, TPVs still exist in Australia today. In 2008, Kevin Rudd’s Labor Government abolished

TPVs only to have Tony Abbott's Liberal-National Government begin the process of reinstating the policy in 2013, despite Immigration Minister Chris Evans' affirmation that "the Temporary Protection visa was one of the worst aspects of the Howard government's punitive treatment of refugees, many of whom had suffered enormously before fleeing to Australia. There is clear evidence that the TPV arrangements did nothing to prevent unauthorized boat arrivals."<sup>31</sup> In claiming to protect asylum seekers, Australian leaders have misrepresented policies that are in breach of international law. As the State Library of New South Wales explains,

Article 31 means that Australia should not impose any penalty against an Afghan asylum seeker who travels from Afghanistan to Pakistan, to Malaysia using false documents, on to Indonesia and then to Australia by boat without a visa or passport. There is no country between Australia and Afghanistan that is a signatory to the Refugee Convention... Australia places this person into indefinite detention at an excised location and has created a system of processing that differs from the system used for someone who arrived by plane with a tourist visa and then applied for protection... Article 31 also prohibits State parties from restricting the freedom of movement of refugees who arrive without authorization... [But] Australia's Temporary Protection Visas (TPVs) deny people the right to re-enter Australia if they leave.<sup>32</sup>

Although a signatory to the Refugee Convention, Australia has managed to evade its stipulations through TPVs, turning boats back, and through multiple other means. During the Tampa Crisis of 2001 a Norwegian ship rescued 439 Afghan asylum seekers from international waters near Australia and was then refused entry into Australian waters. This event marked the beginning of the "Pacific Solution," the first formalized policy of detaining asylum seekers on island nations in the Pacific in order to prevent them from setting foot on the Australian mainland.<sup>33</sup> In response to the Tampa affair, the Howard government introduced the *Border*

*Protection Bill* in August of 2001.<sup>34</sup> The Bill gave the government the power to remove any ship in the territorial waters of Australia, use reasonable force to do so, and forcibly return any person to the ship.<sup>35</sup> The *Migration Amendment (Excision from Migration Zone) Act* (2001) excised certain territories from the Australian migration zone and stipulated that a non-citizen who first enters Australia at an excised offshore place without legal authorization has fewer rights than a person who reaches Australian mainland to seek asylum. *The Migration Amendment* further strengthened The Pacific Solution.<sup>36</sup> “The legal fiction underlying the policy is that because the asylum seekers never set foot on Australian soil, Australia can shirk the responsibilities it would otherwise have toward them under the U.N. Refugee Convention,” explains foreign policy expert Rebecca Hamilton.<sup>37</sup> All the policy does, however, is wrongfully force people into indefinite detention as their refugee claims are processed and resettlement or repatriation is arranged. Despite extensive research, interviews, and harrowing personal accounts showing the deleterious psychological effects of indefinite detention, the Australian government persists with offshore processing.<sup>38</sup>

### **Section III: Deciding Who Comes to Australia and How**

Not only are the arguments advanced for offshore processing “legal fiction,” Australian politicians and leaders have not always been truthful in statements meant to garner support for immigration policies or to conceal the effects of these policies. In 2001 the government released photo evidence of asylum seekers on SIEV 4 throwing their children overboard to prompt rescue and passage to Australian territory. The event became known as the Children Overboard Affair when subsequent evidence revealed the photos were actually taken during the rescue of passengers as the SIEV 4 was sinking.<sup>39</sup> In October of 2002, the Senate Select Committee released a report of their inquiry into the Children Overboard Affair and the Tampa Affair, stating that “along with genuine miscommunication or misunderstanding,” “deliberate deception motivated by political expedience” factored into “the making and sustaining of the report that children had been thrown overboard from SIEV 4.”<sup>40</sup> Later that month, the U.N. working group on Arbitrary Detention published a report on Australia’s detention centers asserting that “one could reasonably assume that if public opinion were fully and specifically informed about the

conditions to which human beings are being subjected... public opinion would change.”<sup>41</sup>

While government officials lie or suppress information to maintain support for policies, immigration officials painstakingly review the claims of asylum seekers, often making them relive traumatic experiences, because they must provide proof of their persecution to be granted refugee status. Yet, no one has systematically reviewed the government’s unnecessarily harsh policies. When SIEV X sank between Indonesia and Christmas Island in October of 2001, leading to the death of an estimated 146 children, 142 women, and 65 men, the Senate expressed concern over a potential link between this tragedy and Australia’s intensive anti people-smuggling program at the time.<sup>42</sup> A product of a policy that prevented these men from sponsoring the resettlement of their families, “many of the women and children who died were attempting to reunite with husbands and fathers in Australia who were on TPVs.”<sup>43</sup> The Senate passed three resolutions calling for an independent judicial inquiry, but the inquiry never took place. Instead, only seven days after the sinking of SIEV X, in his campaign for re-election, John Howard made his famous statement: “We will decide who comes to this country and the circumstances in which they come.”<sup>44</sup>

Howard and other government officials focused on the “circumstances in which they come,” justifying their measures as necessary to save the lives of asylum seekers by deterring them from hazarding boat journeys. However, rhetoric used by both politicians and policy decisions suggest the government’s intentions in implementing policies such as the Pacific Solution were – at least in part – racially motivated. By “decid[ing] who comes,” officials could deliberately exclude people of certain ethnicities from the possibility immigrating. In a 2007 speech, Prime Minister Howard made his views on immigration – views that had always influenced his policy-making – painfully evident, stating “this idea of Australia being a multi-cultural community has served only to dilute our sovereignty and our national identity... as Australians, we have our own culture, our own society, our own language and our own lifestyle.”<sup>45</sup> This is a clear expression of nationalized ethnocentrism pervasive in Australia’s refugee policy. For example, in early 2002, the government froze about 2,000 refugee applications, all from Afghani asylum seekers.<sup>46</sup> This clear targeting of a particular group sparked riots and protests; people in detention centers went on hunger strikes and sewed their

lips together in an attempt to symbolize their lack of voice and of choice.<sup>47</sup>

In February of 2002, Ruud Lubbers, the U.N. High Commissioner for Refugees, expressed worry about the vilification of asylum seekers in Australia and urged politicians to circulate accurate information about asylum seekers.<sup>48</sup> However the government has consistently concealed information about the experiences of asylum seekers in detention centers and with popular support has perpetuated its policies of boat interception and offshore processing for over a decade. In July of 2002, a U.N. Report on Mandatory Detention contended that Australian immigration policy “contravened the International Covenant on Civil and Political Rights, which outlaws arbitrary detention and the denial of access to legal review of incarceration, and the UN Convention on the Rights of the Child, which prohibits detention of children except as a last resort.”<sup>49</sup> Publicized allegations of rights violations and reports from journalists and human rights activists guarantee that Australian officials understand the current state of detention centers; yet, abusive immigration policies persist.

Refugees, under the U.N. Refugee Convention (and under any universal human rights treaty) have the same rights as citizens in relation to “freedom of religion, intellectual property, access to courts and legal assistance, rationing, public relief, access to elementary education, labour rights and social security” and should receive “treatment which is... at least as favorable as that accorded to foreign nationals, in relation to the acquisition of property, self-employment, practicing as a professional, access to housing and access to secondary and tertiary education” and “with respect to freedom of association, wage-earning employment and freedom of movement.”<sup>50</sup> People in Australian-funded offshore processing centers are granted few, if any, of these rights.

#### **Section IV: Protests and Depictions of Asylum Seekers**

Lacking access to judicial review and often hidden from the media, asylum seekers in offshore detention centers have tried to make their voices heard. Rather than listen, the government has used asylum seekers’ protests as justification for stricter policies. In March of 2011, peaceful protests at the North West Point processing facility on Christmas Island turned into unrest, to which the Australian Federal Police responded by taking control of the center

using tear gas and rubber bullets.<sup>51</sup> Over the next month, protests and hunger strikes spread to detention centers across Australia, prompting the Immigration Minister to propose amendments to the Migration Act that would deny, on character grounds, a detainee convicted of any crime from receiving permanent protection. “Any crime” can include damage to commonwealth property at a detention center, which might occur during even a peaceful protest. In refusing to hear their grievances, the Australian government has sometimes pushed asylum seekers to extreme actions. On April 2, 2001 Shahrzad Kayani, a recognized refugee, self-immolated outside the Parliament House in Canberra to protest immigration policy; for five years, Kayani had been attempting to reunite with his family.<sup>52</sup> To succeed, he needed to raise AUD\$75,000 to pay for the care of his middle daughter, who suffered from cerebral palsy. Given the lack of opportunity as well as prejudice he was subject to as a newly settled refugee, he had been unable to raise such a sum. Within three months, he died of infection caused by his burns; his symbolic plea accomplished nothing.

For close to two decades, men, women, and children in Australian detention centers have endured the same trauma. Their grievances have been largely ignored or smothered. Ramesh Fernandez remembers his time at the Woomera center in 2000:

Each day in Woomera was a nightmare. Sometimes I’d go... and hold on to the burning hot fence thinking I was the only one. But when I turned right and left I saw many others doing the same thing. I would look straight ahead and the infinite desert would stare back at me... If I walked into the mess where lunch was served, I would see an empty space filled with flies and untouched food. Most people felt depressed, sleeping all day and with nothing to do. In 2002 there was a big hunger strike and people sewed their lips together... [S]ome started drinking shampoo and attempted suicide. After no response from the government, frustration grew daily, and people started rioting. One person needed hospital treatment after jumping off the roof.<sup>53</sup>



More than fifteen years later, asylum seekers continue to tell the same story. This year, twenty-five-year-old Sundanese refugee, Abdul Aziz Muhamat, told Sydney Morning Herald photographer Alex Ellinghausen that life on Manus Island is more difficult than in the country he fled: “Back there, when people torture you, they torture you and put a bullet in your head and it’s over. Here it’s like systematic torture, mental torture that doesn’t end.”<sup>54</sup>

Ellinghausen and his colleague Michael Gordon had to overcome multiple barriers to speak to Muhamat – getting a visa to access the Port Moresby processing center, which is in a remote province of Papua New Guinea, dealing with officials reluctant to provide information and admission, and interviewing detainees unwilling to tell their story for fear of retribution. Muhamat was held on Manus for three and half years before being moved in preparation for the center’s closure. Not only does his story shed light on the struggle of living in a detention center, it highlights the futility of recent gestures the Australian government has made to assuage accusations of human rights abuses in its offshore processing centers. For instance, Malcom Turnbull’s administration, reacting to domestic and international pressure, closed the Manus Island detention facility; yet, asylum seekers were merely moved to an equivalent center on a different island and most remain uncertain about their future.<sup>55</sup>

While some Australians speak up against the government’s violations of asylum rights and of international law, many continue to support Australia’s refugee policy. A combination of factors has led to this continued support: Australia’s history of restrictive immigration policies and its persisting white, British-influenced national identity; aversion to change and fear of economic and cultural invasion by migrants; disingenuous information circulated by the government; and worldwide trends towards isolationist forms of nationalism. Moreover, Australia’s policy of intercepting boats and detaining asylum seekers has become ingrained in national politics, benefiting from bipartisan support, and the system of offshore processing centers is now almost impossible to dismantle. Closing centers requires alternatives for the people living in them, but the government has not yet come up with any. Instead, asylum seekers and refugees continue to be vilified as a means to justify brutal containment conditions. An immigration journalist, writing anonymously about her husband’s immigration experience, calls

attentions to the fallacies in Australia's current refugee policy:

I am not advocating people smuggling, but it is the smugglers and corrupt officials in the countries from which they depart who must be targeted. Border security is important, but it is organized crime and drug smugglers who pose the real risk... [U]nder the law, asylum seekers are not illegal. The real illegals are those who overstay tourist visas... or people who lie and come in on the wrong visa class to evade government regulation... We have no problem accepting British families who migrate here "for the weather"... But a boatload of desperate people who just want safety, democracy, first world freedoms, education and a chance at a better life are demonized.<sup>56</sup>

She and Ramesh Fernandez urge us to question and pressure the Australian government. The journalist laments "the vitriol and anger" directed at asylum seekers. "Putting their lives at risk to come here on a boat does not make them lazy, dishonest, welfare cheats or criminals," she says, "it makes them desperate. Surely hatred is not the right response to desperation?"<sup>57</sup> Beyond the change in attitudes she calls for, Fernandez stresses the importance of ending the current vicious cycle that is Australian refugee policy, as the government closes one center just to open another and abolishes one restrictive law just to enact another. "Do we want to keep repeating the cycle and supporting the creation of another Woomera generation?" asks Fernandez. "I urge all Australians to take action to stop this cruel treatment of refugees."<sup>58</sup>

### **Conclusion: No Human Being is Illegal**

Officials face a difficult task as they attempt to manage the influx of asylum seekers who hope to make Australia home. Various stakeholders, with different perspectives and interests, influence the process of making immigration legislation. In addition, the government, for security and equality reasons, must systematically review the claims of asylum seekers. However, Australia can make changes to its policies to better respect and protect the rights of

thousands of men, women, and children whose only “crime” is to seek a life devoid of violence and persecution. The government could improve conditions in processing centers by enforcing a cap on detention time; allowing asylum seekers access to judicial review; providing them with the human (lawyers, mental health professionals, culturally-conscious interpreters) and material resources they need to make claims for refugee status without forcing them to relive traumatic experiences over and over again; increasing access to comprehensive medical (including psychological) care; running the centers as communities rather than as prisons; allowing asylum seekers to speak up and actually listening to their grievances; allowing reporters and members of organizations such as the U.N. and Amnesty International to visit centers and publicize conditions; and updating asylum seekers on the status of their claims to mitigate the harmful effects of indefinite detention.

Australia should also end its policy of offshore processing and allow asylum seekers who arrive by boat to apply for visas in Australia; rather than spend its resources on intercepting boats and detaining people, the government can focus on building effective resettlement schemes and creating frameworks for refugees to start their lives over and integrate into society. Instead of attempting to “deter” refugees in ways that are dangerous and abusive, Australia can work on agreements with and provide support to nations, such as Indonesia, that house large numbers of asylum seekers to ensure that those asylum seekers have access to a fair and comprehensive review of their asylum claims, to safe living conditions that safeguard their basic rights, and to resettlement options. Finally, Australian politicians should stop referring to asylum seekers as “illegal.” Rather than promote divisive ideologies that pit asylum seekers as criminal and, thus, potentially destructive to society, the government should acknowledge that the large majority of admitted refugees contribute productively to society, both in economic terms and by enriching and diversifying communities intellectually and culturally. Although some people dismiss the claims of asylum seekers as invalid – citing cash-incentives-for-repatriation, for example – the reality is that few asylum seekers are accepting these incentives (and, thus, the assumption that claims are invalid cannot be generalized to the group as a whole) and that many of those who do accept the incentives are most probably doing anything in their power to escape the psychological and sometimes physical trauma of indefinite detention. Australia’s current system

renders hopeless detainees by not providing them with the resources they need to make claims for asylum.

The world has never experienced levels of displacement as high as they are today;<sup>59</sup> 65.6 million people around the world have been forced from their home, 35% of whom are refugees. To put these statistics into perspective, in our modern world, nearly twenty people are forcibly displaced every minute as a result of conflict and persecution.<sup>60</sup> And, ten million stateless people continue to live bereft of their basic rights to education, healthcare, employment, and freedom of movement.<sup>61</sup> Yet, in 2016, only 1.1% of refugees worldwide were resettled, and Australia received less than 1% of the global share of new asylum seekers.<sup>62</sup> In total, 854,390 refugees have been settled in Australia between 1901 and June 2014, which means that in over 110 years, Australia has received less than 2% of the number of displaced persons in our world *today*.<sup>63</sup> According to a UNHCR report, Australia ranks 46th for hosting refugees, 59th per capita, and 94th relative to total national Gross Domestic Product.<sup>64</sup> To complicate this displacement crisis, globalization seems to have polarizing effects; some people react adversely to multiculturalism, and this backlash promotes tension and division, from which Australia's exclusionist refugee policies have grown. Rather than perpetuate this division, Australia must acknowledge people's shared humanity and embrace unity by upholding the basic, human rights of asylum seekers and refugees and by providing them with protection they are due as displaced persons and as human beings.

## Appendix: Definitions

**Asylum seeker:** A person seeking international protection but whose claim for refugee status has not yet been confirmed. Every refugee is initially an asylum seeker; however, not every asylum seeker will be recognized as a refugee. Countries with procedures for reviewing asylum claims, such as Australia, which ratified the Refugee Convention in 1954, use the Convention definition of a refugee to determine whether an asylum seeker qualifies as a refugee.<sup>65</sup>

**Refugee:** A person recognized, under the 1951 Convention Relating to the Status of Refugees, as a refugee. The Convention defines a refugee as “[a]ny person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country.” Australia is obliged under international law to provide protection to asylum seekers who are found to be refugees and to respect their rights as refugees.<sup>66</sup>

**Non-refoulement:** Principle asserting that a refugee should not be returned to a country where he or she faces significant threats to his/her life or freedom. Non-refoulement is now considered a rule of customary international law that is binding for all States, even those that have not ratified the Convention Relating to the Status of Refugees.<sup>67</sup>

**Resettlement:** The transfer of refugees from the country in which they have sought refuge and found to be refugees to another state that has agreed to admit them. Refugees who are resettled are usually granted asylum or some form of long-term resident rights and have the opportunity to become citizens. However, resettlement figures are low, and States have not increased resettlement offers in the face of drastic increases in the number of asylum seekers and refugees worldwide.<sup>68</sup>

**Human rights:** Accepted international standards that recognize and safeguard the dignity, integrity, and equality of all individuals. These rights are part of customary international law and are articulated in the legislations of most countries. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic and Social Rights are documents that seek to protect and preserve these rights.<sup>69</sup>

**International Protection:** Protection of an individual's rights in accordance with international humanitarian law. "Protection involves creating an environment conducive to respect for human beings, preventing and/or alleviating the immediate effects of a specific pattern of abuse, and restoring dignified conditions of life through reparation, restitution and rehabilitation."<sup>70</sup>

**Offshore processing:** Australia's unique practice of sending people seeking asylum in Australia by boat to Nauru or Manus Island in Papua New Guinea, where they are held in Australian-funded offshore detention (or "processing") centers while their refugee claims are assessed.<sup>71</sup>

**United Nations High Commissioner for Refugees (UNHCR):** U.N. program to support and safeguard the rights of refugees at the behest of a government or of the U.N. itself. The UNHCR Office assists with voluntary repatriation, local integration, and resettlement. Some see the UNHCR as the "guardian" of the 1951 Convention and its 1967 Protocol. States are expected to cooperate with this agency. The UNHCR's mandate stipulates that the agency provide international protection and seek permanent solutions for refugees. The 1961 Convention on the Reduction of Statelessness gave the UNHCR an additional mandate with regards to issues of statelessness; according to the mandate, the agency should help prevent statelessness by providing States with technical and advisory services on nationality legislation and practice.<sup>72</sup>

**Stateless person:** A person who, under national laws, does not have a legal affiliation of nationality with any State. The 1954 Convention Relating to the Status of Stateless Persons defines the term and outlines the rights of Stateless people.<sup>73</sup>

## Notes

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