Australian Refugee Policy and its Impacts on Pacific Island Countries

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ABSTRACT

Refugees present an immense challenge globally but until recently Pacific Island Countries (PICs) have been relatively sheltered from this phenomenon. However, changes to Australia's border security and refugee policies in recent years have significant implications for the Pacific because of Australia's determination to prevent asylum seekers from arriving by boat in Australian territory. This article examines Australia's so-called 'Pacific Solution', which entails the transfer of asylum seekers to camps in Nauru and Papua New Guinea, where they are detained pending determination of their refugee status and ultimate resettlement. The social impacts of Australia's policies include the heightened tensions that arise from establishing large detention facilities in small island communities, and the social costs of resettling persons who are found to be refugees among poor local populations. Australia's policies also have other impacts on PICs. Australia's selective allocation of foreign aid and other funds make PICs vulnerable to pressure from its developed neighbour, and create the danger that Australia's perceived 'problem' with unauthorised boat arrivals is being shifted to acquiescent countries in the Pacific.

KEYWORDS: *asylum seekers, Australia, immigration detention, international aid, maritime arrivals, Nauru, Pacific Solution, Papua New Guinea, refugees, regional processing, resettlement.*

INTRODUCTION

The challenges faced by people who have been displaced from their homes due to persecution or war now regularly attract media attention worldwide. Whether it is the death at sea of individuals who have undertaken risky voyages to seek asylum, or the harsh conditions of refugee camps or immigration detention centres, the problems of deracination are all too common.

Pacific Island Countries (PICs) have not been immune from these challenges but historically the scale of refugee movements in the Pacific has been modest compared to other regions. Recently, however, Australia's policies regarding border protection and refugees have threatened to unsettle this quiescence by shifting Australia's 'refugee problem' to neighbouring countries in the Pacific. This has occurred because of the determination of successive Australian Governments to stop unauthorised arrivals of boats carrying asylum seekers (which typically originate in Indonesia), and to process the applications of these refugee claimants beyond Australian territory. At present, Nauru and Papua New Guinea (PNG) co-operate in Australia's 'Pacific Solution', but other Pacific countries have been touted as possible sites for offshore refugee processing or resettlement, and attempts have also been made to involve south-east Asian countries such as Cambodia, Indonesia and Malaysia in resolving the asylum-seeker issue.

This article examines the impact of Australia's border protection and refugee policies on its Pacific Island neighbours. Although the number of asylum seekers transferred by Australia to the Pacific is not large in absolute terms, it is highly significant when viewed in relation to the small and relatively homogeneous populations of the destination countries. Moreover, the social impacts of Australia's policies include the tensions that arise from establishing large detention facilities in small island communities, and the economic and social costs of resettling persons who are found to be refugees among local populations. The article concludes that the economic vulnerability of some PICs make them susceptible to pressure by Australia, and that there is a danger that Australia's perceived problem with unauthorised boat arrivals is being transferred to the Pacific.

Part 2 of this article examines the international legal regime for protecting refugees and its relevance in the Pacific. Part 3 details the scope of refugee movements in the Pacific using recent United Nations data. Part 4 explains the development of Australian refugee policy and practice, with emphasis on the birth, decline and renaissance of the 'Pacific Solution'. Part 5 analyses the impact of these policies on PICs, and Part 6 offers a brief conclusion.

THE INTERNATIONAL REFUGEE FRAMEWORK IN THE PACIFIC

The 1951 *Convention Relating to the Status of Refugees* (the '1951 Convention') seeks to protect asylum seekers in two ways. The obligation of *non-refoulement* (non-return) prohibits a State from returning a refugee to the frontier of a territory where he or she would face persecution. Additionally, persons who are found to be refugees are afforded a suite of rights, which allow them to enjoy the same standard of treatment enjoyed by nationals of the host country, or by other non-nationals in the host country, depending on the right.

These protections inure only for the benefit of a person who is a 'refugee' as defined in the 1951 Convention, namely, a person who: 'owing to 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 nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country'. The five 'Convention grounds' of persecution are restrictive—they certainly do not extend to every circumstance in which a person leaves his or her country of origin under duress to seek a better life abroad. The grounds do not specifically include gender, although protection of girls and women is sometimes achieved through liberal interpretation of 'membership of a particular social group'.

The 1951 Convention was supplemented by the 1967 *Protocol Relating to the Status of Refugees* (the '1967 Protocol'), which dispensed with the temporal and spatial limitations of the original instrument. At present, 146 States are bound by the 1951 Convention or the 1967 Protocol, including Australia and New Zealand, but ratification is not widespread in the Pacific (Table 1). Only six PICs have ratified both instruments. Coverage is best in Melanesia (where all States are party except Vanuatu); and poorest in Micronesia (where no State is party except Nauru, which ratified in 2011).

TABLE 1: *Ratification of Refugee Instruments in the Pacific*

Region/ State*	1951 Refugee Convention	1967 Refugee Protocol
Melanesia		
Fiji Islands	1972	1972
Papua New Guinea	1986	1986
Solomon Islands	1995	1995
Vanuatu	—	—
Micronesia		
Federated States of Micronesia	—	—
Kiribati	—	—
Marshall Islands	—	—
Nauru	2011	2011
Palau	—	—
Polynesia		
Cook Islands	—	—
Niue	—	—
Samoa	1988	1994
Tonga	—	—
Tuvalu	1986	1986

Source: *United Nations Treaty Collection, Multilateral Treaties Deposited with the Secretary General*

However, the application of refugee law in the Pacific may be both narrower and broader than Table 1 suggests. It is narrower in so far as the Convention and Protocol permit States to make reservations at the time of expressing their consent to be bound, and this has the effect of modifying treaty obligations in relation to the reserving State. The most significant Pacific example occurred in 1986 when PNG acceded to the 1951 Convention but rejected the obligations in seven articles relating to employment, housing, education, freedom of movement, penalisation for illegal entry, expulsion, and naturalisation of refugees. The reservations were prompted by the Government's concern that it lacked the economic capacity to grant refugees the same social assistance as nationals (Glazebrook, 2014). It is relevant to the themes of this article that this reservation was partially withdrawn in August 2013 'in relation to refugees transferred by the Government of Australia to Papua New Guinea', but it remains in force for other persons.

The application of refugee law in the Pacific also has the potential to be broader than appears from Table 1 in so far as the Convention and Protocol allow metropolitan States to extend the treaties to any of their territories. This is relevant to the many British, French, New Zealand and United States territories in the Pacific. Thus, on ratification in 1954, France extended the 1951 Convention to all territories on behalf of which it conducts international relations, which includes New Caledonia, French Polynesia, and Wallis and Futuna. The application of refugee law in the Pacific is broader in another sense too: non-party States may be bound by rules of customary international law that relate to the *non-refoulement* of refugees, but the ambit of customary obligations in refugee law is contested.

REFUGEE MOVEMENTS IN THE PACIFIC

According to data compiled by the United Nations High Commissioner for Refugees ('UNHCR'), at the end of 2014 some 59.5 million individuals were forcibly displaced worldwide as a result of persecution, conflict, generalised violence or human rights violations, of whom 19.5 million were officially refugees (United Nations High Commissioner for Refugees, 2015). UNHCR estimates that women comprise half of the adult refugee population, and children some 51 per cent of the total refugee population. The Pacific accounts for only a tiny fraction of the world refugee population, whether assessed by country of origin or country of asylum (Table 2).

Viewed by country of asylum, in 2014 9,916 individuals sought refuge in PICs, almost all of them Indonesian nationals seeking protection in PNG. They reflect the intractable situation of West Papuans who crossed the border from the Indonesian province of Papua into the Western Province of PNG—initially in the 1960s following Indonesia's takeover of the western half of the island of New Guinea from the Netherlands, and more recently following mass exoduses from Indonesian-controlled territory (Glazebrook, 2014; King, 2004).

Viewed by country of origin, the number of Pacific Island nationals who have sought refuge outside their country of origin is even smaller. In 2014, only 1,334 refugees or people in refugee-like situations originated from PICs. Over 96 per cent of these individuals came from the 'arc of instability' in Melanesia. Fijians alone accounted for nearly70 per cent of refugees from the Pacific, which is a consequence of successive coups d'etat in 1987, 2000 and 2006.

In sum, the Pacific has had its own challenges with respect to refugees, which arise from

circumstances of conflict, instability or human rights abuse specific to the region. Some of these problems are long-standing, others are short-lived; yet the scale of the challenges has been modest. In this historical context, Australia and New Zealand have not burdened their developing neighbours but, rather, have provided a potential haven on the Pacific Rim for asylum seekers from the region.

TABLE 2: *Refugees and People in Refugee-Like Situations, Pacific States, 2011–2014*

	Refugees by country of origin				Refugees by country of asylum			
	2011	2012	2013	2014	2011	2012	2013	2014
Melanesia								
Fiji Islands	1,579	1,317	1,112	924	7	6	5	13
Papua New Guinea	128	174	221	288	9,377	9,383	9,378	9,510
Solomon Islands	72	61	61	70	-	-	-	3
Vanuatu	1	1	1	1	-	2	2	-
Micronesia								
Fed. States of Micronesia	-	-	-	-	-	-	-	-
Kiribati	33	33	20	3	-	-	-	-
Marshall Islands	-	2	3	3	-	-	-	-
Nauru	-	-	-	-	-	-	-	389
Palau	-	-	1	1	1	1	1	1
Polynesia								
Cook Islands	1	1	1	1	-	-	-	-
Niue	7	10	14	18	-	-	-	-
Samoa	1	1	1	1	-	-	-	-
Tonga	10	13	18	22	2	3	3	-
Tuvalu	1	1	2	2	-	-	-	-
Total	1,833	1,614	1,455	1,334	9,387	9,395	9,389	9,916
Australia	39	48	28	25	23,434	30,083	34,503	35,582
New Zealand	18	20	17	17	1,934	1,517	1,403	1,349

Source: *United Nations High Commissioner for Refugees, Global Trends (various years)*

DEVELOPMENTS IN AUSTRALIAN REFUGEE POLICY

Australia's refugee policy and practice is complex and contradictory. On the one hand, Australia portrays itself as a good international citizen, and it has a strong track record of admitting refugees for resettlement. In 2014 it accepted 11,600 (11 per cent) of the 105,200 global resettlement arrivals—third only to the United States and Canada (United Nations High Commissioner for Refugees, 2015)—and in 2015 it agreed to accept an additional 12,000 refugees from the conflict in Syria. On the other hand, since the 1990s Australia has taken an increasingly harsh stance towards asylum seekers arriving by boat, largely to assuage public opinion, which is hostile to international migration programs if they are considered poorly-managed (Opeskin, 2012). In consequence, there have been many twists and turns in refugee policy as successive Governments have sought to address the intermittent flows of asylum seekers coming from Australia's northern borders. This Part charts the legal and policy developments that have been most significant for the Pacific.

EARLY EXPERIENCE OF ASYLUM SEEKERS ARRIVING BY BOAT

Australia did not develop a clear policy towards onshore refugees until the first waves of asylum seekers began to arrive by boat from Vietnam in the late 1970s in the aftermath of the Vietnam War (York, 2003). Australia's generosity to these arrivals stands in sharp contrast to the policies introduced in later years. The asylum seekers were provided with comfortable hostel accommodation and comprehensive settlement services. Rather than seeking to deter arrivals, the Australian Government participated in a multilateral management plan aimed at containing asylum flows within the region. Under these arrangements, Australia and other Western nations agreed to resettle large numbers of Vietnamese refugees and, in return, Vietnam's neighbours were to grant the Vietnamese temporary asylum while they awaited resettlement. These initiatives were largely seen as successful in stemming the flow of arrivals (Crock & Ghezelbash, 2010: 248).

MANDATORY DETENTION AND TEMPORARY PROTECTION

Starting in 1989, successive waves of boats carrying Cambodian nationals, then Sino-Vietnamese and Chinese nationals, began arriving in Australia in search of asylum. Despite their modest numbers, these arrivals provoked a strong reaction from the government and community. The Labor Government, led by Prime Minister Hawke, began detaining all unauthorised boat arrivals. Mandatory detention legislation was introduced in 1992 as a temporary and exceptional measure for particular cohorts of boat arrivals, but in 1994 it was expanded to apply to all 'unlawful non-citizens'. This change broadened mandatory detention to all persons who either arrived without a visa or who were in Australia on expired or cancelled visas. Although there have been minor reforms in the intervening years, the architecture of mandatory detention has remained in force ever since.

The next wave of boat arrivals, starting in the mid-1990s, was dominated by fugitives from Iraq, and later Afghanistan, who made their way to Australia via Indonesia. One of the policy responses to this cohort was the Temporary Protection Visa (TPV) regime in 1999. This provided for temporary, rather than permanent, protection for those persons found to be refugees. The rationale was that the measure would deter prospective arrivals by providing only a limited period of protection, after which the holder had to go through the refugee determination process afresh. TPV holders were also denied many of the rights afforded to permanent residents, including the right to sponsor the immigration of family members. TPVs were abolished in 2008, only to be reintroduced in 2014.

The TPV regime has had ramifications for the gender composition of asylum seekers. In the 1970s and 80s, individuals seeking asylum in Australia were predominantly adult males, following a traditional practice of sending a father or eldest son to find a country of refuge, with the rest of the family following later as regular immigrants (Crock, Saul, & Dastyari, 2006: 169-170). By making it more difficult for refugees to be reunited with their families, TPVs swelled the proportion of women and children attempting the perilous journey to Australia. Data on the gender composition of asylum seekers arriving in the two years before and after the introduction of TPVs in 1999 indicates that the proportion of females increased from 7 per cent to 20 per cent,

and the proportion of children from 7 per cent to 24 per cent (Senate Legal and Constitutional Affairs Legislation Committee, 2012).

THE 'PACIFIC SOLUTION' IS BORN

In the face of continuing maritime arrivals, the Coalition Government introduced an interdiction and offshore processing regime in 2001. Whereas TPVs and mandatory detention sought to deter asylum seekers by making life difficult for them once they arrived in Australia, interdiction and offshore processing sought to prevent asylum seekers from accessing Australia at all. The immediate trigger for the policy change was the rescue at sea of 433 asylum seekers by a Norwegian registered container ship, *MV Tampa*, in August 2001. After a five-day stand-off, the crisis was resolved when agreements were reached with New Zealand and Nauru for the rescuees to be transferred to those countries to have their protection claims assessed.

In the aftermath of the *Tampa* incident, in 2001 the Australian Parliament enacted a series of reforms that retrospectively validated the executive's response and introduced new provisions that would deprive future asylum seekers arriving by boat from access to regular asylum procedures. The scheme, which became known tendentiously as the 'Pacific Solution', and later as the 'Pacific Strategy', involved three initiatives. The first was the 'excision' of specified territory from Australia's 'migration zone', with the effect that migration legislation pertaining to the mainland (including refugee determination procedures) no longer applied in these places. A new category of 'offshore entry person' (OEP) was created to catch all asylum seekers who landed without a valid visa or authority on an excised territory. OEPs were barred from making a valid application for a protection visa unless the Minister exercised a discretion to allow it.

The second initiative involved the power to remove OEPs to a designated country for their claims to be processed. Hasty agreements were reached with Nauru and PNG for the establishment of offshore detention facilities in their territory, to which OEPs could be transferred. Depending on where asylum seekers were held and when they arrived, their claims were processed by either UNHCR or by Australian immigration officials. Individuals found to be refugees were not entitled to resettlement in Australia. Rather, they were required to await resettlement in a third country, although in practice many were resettled in Australia.

The third strategy was an interdiction program dubbed *Operation Relex*, which allowed unauthorised boats to be intercepted on the high seas by the Australian Navy. The Navy would first attempt to tow or escort the unauthorised boats back into Indonesian waters. If this failed, the asylum seekers aboard the vessels were transferred to naval ships and taken to Manus Island or Nauru for processing of their claims. Between August and November 2001, 12 boats carrying asylum seekers were intercepted by the Australian Navy in this way. Of these, eight could not safely make the journey back to Indonesia, and their passengers were transferred to Manus Island and Nauru—in total 1,501 asylum seekers, including those rescued by the *Tampa* (Manne, 2004).

THE 'PACIFIC SOLUTION' FALLS DORMANT

Over the next few years the number of unauthorised boat arrivals dropped off significantly. In 2008, the newly elected Labor Government announced that it would bring the 'Pacific Solution'

to an end, describing it as a 'cynical, costly and ultimately unsuccessful exercise' (Evans, 2008). It did not abandon the policy completely, maintaining the legislative provisions underpinning the strategy. Australia's offshore territories also remained excised from the migration zone. However, after the February 2008 resettlement in Australia of the final group of refugees detained on Nauru, the Government adopted a policy of not exercising the power to transfer OEPs to third countries. Instead, asylum seekers interdicted at sea were held on the Australian territory of Christmas Island. As such, OEPs remained barred from the mainland status determination procedures and were subject to separate, inferior, processing on Christmas Island.

The scheme was designed to keep status determination procedures beyond the reach of the Australian courts, but in a landmark case in 2010 the High Court of Australia decided that OEPs were entitled to have their status determinations reviewed by the courts to determine whether those decisions were made according to law, including the common law rules of procedural fairness (Crock & Ghezelbash, 2011). The decision resulted in a surge of litigation by OEPs challenging adverse status determinations. This also coincided with the start of a new wave of asylum seekers travelling to Australia by boat, predominantly originating in Afghanistan, Sri Lanka and Iran. Public opinion began to turn against the Government, with a view that the perceived 'softening' of Australia's border protection policies was to blame.

REGIONAL AND BILATERAL SOLUTIONS ARE SOUGHT

In response, the Government led by Prime Minister Gillard moved to introduce a number of measures to stem the flow of new arrivals. Attempts were made to seek agreement for the creation of a regional processing centre. East Timor was flagged as a possible location but this plan was abandoned after support within the East Timorese Government evaporated. A bilateral arrangement was then negotiated with Malaysia, giving rise to what became known briefly as the 'Malaysian Solution'. Shortly after the deal was announced, but before any asylum seekers could be transferred, the arrangement was struck down in the High Court on the grounds that the protections provided in Malaysia were inadequate and did not meet the statutory thresholds required for third-country transfer. Relevant to the Court's decision was the fact that Malaysia was not, and still is not, party to the 1951 Convention or 1967 Protocol.

THE 'PACIFIC SOLUTION' IS REVIVED

Following recommendations from a report by an expert panel set up to examine policy options (Houston, Aristotle, & L'Estrange, 2012), the Australian Labor Government reversed its opposition to offshore processing on Nauru and Manus Island and moved to reopen the facilities at those locations. The 'Pacific Solution Mark II' was born. In 2012, legislation was passed to replace the threshold requirements that had been relied on to strike down the 'Malaysian Solution', in an attempt ensure future third country transfer and processing arrangements would not be invalidated by the courts. The Government also negotiated new memoranda of understanding with Nauru and PNG to reopen their processing camps. As at the end of July 2015, 637 asylum seekers were being held at the processing centre on Nauru and 942 at the facility on Manus Island (Australian Department of Immigration and Border Protection, 2015).

The new offshore processing regime differs from the original 'Pacific Solution' in a number of

ways. First, legislative amendments expanded the categories of persons liable to be transferred to third countries to include all unauthorised boat arrivals, not just those who arrived at an excised offshore place. Second, whereas under the 'Pacific Solution' refugee status determinations were carried out by UNHCR or Australian Government officials, status determinations under the current regime are carried out pursuant to newly enacted domestic refugee legislation in Nauru and PNG, by officials from those countries. Third, the updated memorandum of understanding signed with PNG not only allows for the transfer of asylum seekers for processing but also for the resettlement in PNG of transferees assessed to be refugees. Nauru has made it clear that it cannot offer permanent resettlement to refugees. Rather, recognised refugees will be settled in Nauru temporarily until a third country can be found to accept them. In September 2014, Australia signed a memorandum of understanding with Cambodia that would allow for the resettlement of some of the recognised refugees from Nauru in Cambodia.

'STOP THE BOATS'

Upon being elected in 2013, the Government led by Prime Minister Abbott launched Operation Sovereign Borders, a military initiative to deter and prevent asylum seekers reaching Australia by sea. The policy involves both the continuation and expansion of offshore processing on PNG and Nauru, as well as the reintroduction of a policy of interdicting and returning sea-borne asylum seekers to their point of departure wherever possible. As of January 2015, Australia had intercepted and turned back 15 boats carrying a total of 429 asylum seekers (Medhora & Doherty, 2015). The majority of these turn-back operations involved the return of asylum seeker boats to Indonesian waters, often without the cooperation of the Indonesian Government. Recent allegations suggest that Australian officials have even paid substantial sums to people smugglers to return boats to Indonesian waters (Roberts, Yaxley, & Conifer, 2015).

A High Court challenge to Australia's interdiction practices prompted the Australian Government to introduce amendments in 2015 which significantly expand the executive's powers to interdict, detain and transfer asylum seekers at sea. Most significantly, the amendments stipulate that when exercising maritime powers, an authorising officer is not required to consider Australia's international obligations, or the international obligations or domestic law of another country. Further, the amendments stipulate that authorisation of maritime powers under the Act are not invalid if inconsistent with Australia's international obligations. As such, there are no legal safeguards in place to ensure that Australia does not breach its *non-refoulement* obligations by returning persons to a place where they face persecution, or to a situation where they are in danger of death, torture or other mistreatment.

In combination, Australia's border protection and refugee policies have been largely successful in recent years in significantly slowing the influx of asylum seekers arriving by boat. However, this has come at great cost to the health and wellbeing of those seeking asylum and, as the next Part shows, to some Pacific communities.

THE IMPACT OF AUSTRALIAN REFUGEE POLICY ON THE PACIFIC

Australia's refugee policy has had a discernible impact on some of its Pacific neighbours. In

so far as Australia receives and processes asylum seekers from the Pacific—Fijians escaping military coups or West Papuans fleeing Indonesia—that impact is benign and reflects Australia's fulfilment of its international obligations. However, this Part focusses on the deleterious effects of Australia's policies, commencing with the 'Pacific Solution' in 2001 and its later variants. Because some of these impacts depend on the magnitude of Australian transfers to the Pacific, we begin with an account of that issue.

SIZE AND COMPOSITION OF ASYLUM SEEKER TRANSFERS TO THE PACIFIC

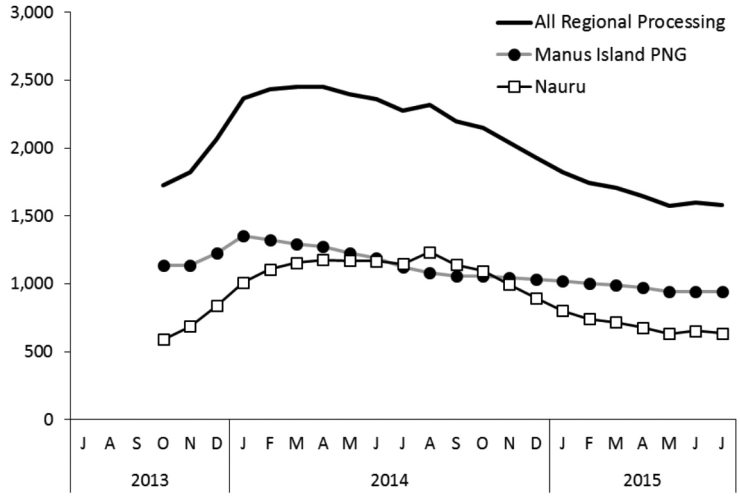
During the first phase of the 'Pacific Solution', which spanned 2001–08, a total of 1,240 individuals were transferred from Australian control to Nauru, and 365 to Manus Island (Phillips, 2012: 12-13). As a result of these arrivals, the asylum seeker population peaked at 1,115 on Nauru and 357 on Manus Island in early 2002. Overwhelmingly, they were Afghans and Iraqis, but there were also Sri Lankans, Palestinians and Iranians among them. In terms of gender, females accounted for 20 per cent of Nauru arrivals and 34 per cent of Manus Island arrivals. In terms of age, minors accounted for 21 per cent of Nauru arrivals and 35 per cent of Manus Island arrivals.

Since the rebirth of the 'Pacific Solution' in 2012, the size of these population movements has grown (Figure 1). For Nauru, the peak number of asylum seekers (1,233 in August 2014) is not dissimilar to the peak during the first phase of the 'Pacific Solution'. However, the numbers are now sustained at high levels, whereas in the earlier phase they declined from their peak fairly rapidly. For Manus Island, the peak number of asylum seekers (1,353 in January 2014) is nearly four times the peak during the first phase, and it too has been at sustained levels, with over 900 detainees still on the Island.

These numbers must be evaluated in relation to the size of the populations in each locality. The mid-2013 population of Nauru was estimated to be 10,500 persons (Secretariat of the Pacific Community, 2013), hence the peak number of Australian transferees corresponded to 12 per cent of the country's population. Nauru also has the highest population density of any country in the Pacific—499 persons/km^2—further heightening the pressure-cooker effect. On Manus Island the situation is less extreme, with the peak number of asylum seekers accounting for 3 per cent of island's population.

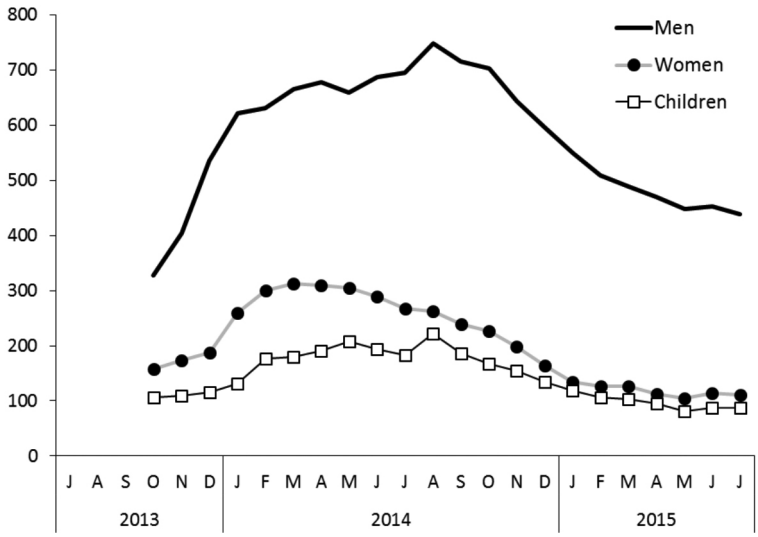
The composition of the asylum seekers has also changed. The Manus Island immigration detention centre currently contains no women or children because the Australian Government has taken the view since mid-2013 that conditions are too harsh for anyone other than adult males (Metcalfe, 2014). Women and children are thus sent to Nauru for regional processing, rather than to Manus Island. By contrast, in the first phase of the 'Pacific Solution' about one-third of the detainees were children and one-third were females. The composition of the detention centre on Nauru is more diverse (Figure 2), although it is still predominantly masculine, with 69 per cent adult males, 17 per cent adult females, and 14 per cent children, according to July 2015 data.

FIGURE 1: *Persons in Australia's Regional Processing Centres, by Location*



Source: *Australian Department of Immigration and Border Protection (various months)*

FIGURE 2: *Persons in Australia's Regional Processing Centre in Nauru, by Sex and Age*



Source: *Australian Department of Immigration and Border Protection (various months)*

EXERTING PRESSURE ON PACIFIC STATES

The bilateral relationships between Australia and its Pacific neighbours are not partnerships among equals in any practical sense. Australia's role in the Pacific region is underpinned by its historical ties as a colonial administrator. It is likely no coincidence that the two Pacific countries involved in the initial 'Pacific Solution' were Australia's two former territorial possessions in the region—although unsuccessful approaches were also made to Fiji, French Polynesia, Kiribati,

Palau, Tonga and Tuvalu (Australian Senate, 2002: 293). Over the 20th century, Nauru and PNG evolved from protectorates or colonies, to mandates under the League of Nations, and then to trust territories under the United Nations. Australia was designated as a mandate power, and then trustee, until these territories achieved independence—Nauru in 1968 and PNG in 1973. But Australian influence did not terminate when the new nations were born. As Taylor (2005:19) has noted with respect to the 'Pacific Solution', 'Australia's historical ties with Nauru and Papua New Guinea are particularly intimate; however, rather than treating those ties as a source of special responsibilities to the islanders, Australia chose to use them for its own opportunistic ends.'

A further reason for Australia's importance in the region is its towering presence in terms of foreign aid. In 2013, Australia was the largest donor of Official Development Assistance to the Oceania region (Organisation for Economic Co-operation and Development, 2015). Its contribution of USD 1,041 million was nearly five times the contribution of each of New Zealand and the United States, which are the second and third ranked donors in Oceania today. Indeed, in 2013, Australia accounted for 59 per cent of all bilateral aid to the region. Moreover, Australia has held this position consistently since 1970—except for the period 1985–2000 when it was outranked by France—indicating a sustained regional presence. According to Australia's 2015 budget, in 2015–16 Australia will expended 27 per cent of its total foreign aid on the Pacific. Of this regional contribution, PNG will secure AUD 554 million (50 per cent) and Nauru AUD 26 million (2 per cent) (Australian Department of Foreign Affairs and Trade, 2015).

The aid flowing from Australia to the Pacific makes PICs susceptible to overt and covert pressure from their principal donor because their needs as developing countries are so vast. These needs are particularly acute in the case of Nauru, whose 'riches to rags' story has been told elsewhere (Connell, 2006; Hughes, 2004). Although the giving of aid is not necessarily without altruism, President Nixon's injunction to 'remember that the main purpose of American aid is not to help other nations but to help ourselves' (Hayter, 1990: 83-84) is a salutary reminder of the prudential motivations that can underpin the actions of the world's wealthy industrialised states (Opeskin, 1996). There is some evidence of this in Australia, whose foreign aid budget has shrunk dramatically in recent years as a measure of fiscal austerity. Yet, despite the planned reductions, PNG and Nauru have been largely spared from the cuts, prompting one commentator to speculate that this is their reward for assisting Australia in its policy of stopping the boats (McDonald, 2015). There have been other financial payments too—since the Nauru facility was reopened in 2012, Australia has paid Nauru $29 million (more than its annual foreign aid contribution) in fees to obtain transfer visas and refugee visas in respect of the transferees (Farrell, 2015).

With respect to the 'Pacific Solution', and having regard to the asymmetric power relationship between Australia and its Pacific neighbours, Taylor (2005: 32-33) has pithily concluded:

> *'it is very clear from what transpired after the bargains were struck that the governments of Nauru and Papua New Guinea did not factor in the social and political costs to their respective countries … when they accepted Australia's offers. They did not, because they could not. Both governments were too desperate for money and too dependent on Australia's continued patronage to bargain with the Australian government on equal terms.'*

SOCIAL TENSIONS IN SMALL ISLAND COMMUNITIES

The damage to both the physical health and mental well-being of asylum seekers detained in remote offshore facilities has been well-documented (Newman, Proctor, & Dudley, 2013). What has received much less attention is the broader damage that Australia's offshore processing policy is having on social cohesion in Manus Island and Nauru. The presence of foreign asylum seekers in close-knit Pacific communities has led to tensions between locals and foreigners, whether they be asylum seekers awaiting their status determination or refugees resettled in the local community. The locals view these foreigners as the face of a problem thrust upon them by Australia, and their animosity is exacerbated by accusations of mistreatment made by the transferees (Chandler, 2014a).

In February 2014, tensions between detained asylum seekers and locals on Manus Island erupted in a confrontation in which one Iranian asylum seeker was killed and another 77 detainees were seriously injured (Cornall, 2014). There have also been numerous reports of violence against asylum seekers living in the community in Nauru, possibly aggravated by the cultural differences between them (Warbrooke, 2014). In October 2014, four unaccompanied minors were hospitalised after being physically assaulted by two local men (Chalmers, 2014). Shortly after this attack, a threatening letter from the 'Youth of the Republic of Nauru' was distributed to refugees telling them to stop stealing jobs and fraternising with local women and to leave the island or face 'bad things happening' (Perera & Pugliese, 2014). By December 2014, these attacks had become so commonplace that refugees living in the community were requesting that they be returned to detention to ensure their safety (Mathiesen, 2014).

The presence of the asylum seekers in Manus Island and Nauru has also caused tensions between locals and their governments. On Manus Island, locals were angered by the fact that they were not adequately consulted by the PNG Government before the decision was made to reopen the detention centre. There is also rising tension between the local community and personnel from the military, police and security forces, who mostly hail from the mainland (Chandler, 2014b).

The promised economic benefits of the regional processing centres have also failed to meet the expectations of locals. There is brewing discontent about the fact that only a small portion of the funds received by the PNG Government under the deal with Australia has flowed on to Manus Island. Only AUD 37 million out of the total AUD 420 million aid package (9 per cent) has been allocated to Manus Province (Chandler, 2014b). There is also resentment about the large discrepancies between wages paid to local and foreign workers, with Manus Island locals reportedly being paid only four kina (AUD 1.84) per hour (Chandler, 2014b). Similar issues have arisen in Nauru, where locals find it hard to understand the need for the influx of foreign workers to the detention centres when the unemployment rate for the local population is estimated at 90 per cent (van Berlo, 2013). These economic concerns are aggravated in Manus Island and Nauru by the fact that the inflow of foreign money has led to rapid inflation, with rents and food prices soaring (Chandler, 2014b; van Berlo, 2013).

This growing resentment places the Governments of Nauru and Manus Island in a political bind when determining the level of support services that are to be delivered to persons who are

recognised as Convention refugees and released into the local community. If the refugees are provided with access to housing and services that are not available to locals, this will further fuel the tensions; but a failure to provide adequate support could give rise to a humanitarian disaster for individuals who cannot return home because they face persecution.

EXACERBATING GENDER INEQUALITIES

There is increasing recognition that females' experience of persecution can be different to that of males. For example, the Australian Refugee Review Tribunal (RRT) has issued *Gender Guidelines*, which aim to 'promote a gender inclusive and gender sensitive review process' (Refugee Review Tribunal, 2010: 1). The guidelines recognise the special vulnerabilities of female asylum seekers, yet the decision to transfer such persons to the processing centre on Nauru disregards these vulnerabilities by exposing women and girls to harms that may be similar to those they are fleeing in their countries of origin.

Pacific States have some of the highest rates of violence against women in the world (UNICEF, 2015). In PNG it is reported that 68 per cent of women have been the subject of some form of violence (Blackwell, 2013), while in Nauru the figure is 48 per cent (Nauru Ministry of Home Affairs, 2014). This compares with one in ten women worldwide.

There have been numerous reports of physical and sexual violence against asylum seeker women in Nauru, both inside and outside the detention centre (Mathiesen, 2015). Females held at the detention centre are vulnerable to attacks from guards, locals and male detainees. A government review into the processing facility found evidence of numerous instances of sexual assault (Moss, 2015). In May 2015, a 23 year old Iranian asylum seeker was allegedly the subject of a violent sexual assault while on day-release from detention (Bagshaw, 2015).

The presence of asylum seekers on Nauru has also put local women at a heightened risk of violence. The letter distributed to refugees, discussed above, stated '[o]ur women, girls and daughters are having contact with refugees and having affairs with them and we can never see our women having fun with refugees and neglecting locals' (Perera & Pugliese, 2014). This contact has the potential to exacerbate tension and violence in the community, as well as within families, with women being punished for interacting with asylum seekers against the will of male members of their families.

CONCLUSION

Australia has a long history of accepting refugees. More than 800,000 refugees and displaced persons have been settled in Australia since 1945 (Phillips, 2015). The country's current annual intake of humanitarian migrants places it among the most generous of UNHCR's resettlement states. This intake covers forced migrants admitted through planned programs, but when faced with another type of asylum seeker—persons without visas who seek Australia's protection at their own initiative—the response has been radically different. Over the years, various measures have been implemented to deter such arrivals, in particular those who journey to Australia by boat.

One of the keystones of the current deterrent framework is offshore processing in Nauru and PNG. This has involved the Australian Government shifting responsibility for processing asylum seekers and caring for refugees to countries that are less well equipped for the task. The passage to Nauru and PNG has been smoothed by longstanding historical links between Australia and these territories, but it has been hastened by the liberal disbursement of foreign aid and other funds. The presence of Australia's asylum seekers in Nauru and Manus Island has caused acute social unrest in these small tight-knit Pacific communities. It has also resulted in nativist sentiment that has at times erupted in physical violence against asylum seekers. Women have been particularly vulnerable to attacks, being targeted by reason of their gender and their status as foreigners. Thus, despite the political success of Australia's refugee policies at home, it is fair to say that they have been harmful both for the development of mature relations between Australia and PICs, and for the status of female asylum seekers living in affected Pacific communities.

REFERENCES

Australian Department of Foreign Affairs and Trade. (2015). Portfolio Budget Statement 2015-16. Canberra: Australian Government.

Australian Department of Immigration and Border Protection. (2015). Immigration Detention and Community Statistics Summary (31 July 2015). Canberra: Australian Government.

Australian Senate. (2002). Report of the Select Committee on a Certain Maritime Incident. Canberra: Australian Parliament.

Bagshaw, E. (2015, 25 May). Nauru Police to Investigate Asylum Seeker Sex Assault Claim. *Canberra Times*. Retrieved from http://www.canberratimes.com.au/federal-politics/political-news/nauru-police-to-investigate-asylum-seeker-sex-assault-claim-20150525-gh8yfi.html

Blackwell, E. (2013, 2 April). PNG Govt Backs Domestic Violence Law. *The Australian*. Retrieved from http://www.theaustralian.com.au/news/latest-news/png-govt-backs-domestic-violence-law/story-fn3dxix6-1226611122873

Chalmers, M. (2014, 28 October 2014). Teen Asylum Seekers Fear For Their Lives After Weekend Violence On Nauru. from https://newmatilda.com/2014/10/28/teen-asylum-seekers-fear-their-lives-after-weekend-violence-nauru

Chandler, J. (2014a). Manus in the Balance: Life Outside the Detention Centres on Manus Island *The Monthly*.

Chandler, J. (2014b, 16 December). Welcome to Manus, the Island that has been Changed Forever by Australian Asylum Seeker Policy. *The Guardian*. Retrieved from http://www.theguardian.com/australia-news/2014/dec/16/-sp-welcome-to-manus-island-changed-forever-australian-asylum-seeker-policy

Connell, J. (2006). Nauru: The First Failed Pacific State? *The Round Table, 95*(383), 47-63.

Cornall, R. (2014). Review into the Events of 16-18 February 2014 at the Manus Regional

Processing Centre. Canberra: Department of Immigration and Border Protection.

Crock, M., & Ghezelbash, D. (2010). Do Loose Lips Bring Ships? The Role of Policy, Politics and Human Rights in Managing Unauthorised Boat Arrivals. *Griffith Law Review, 19*(2), 238-287.

Crock, M., & Ghezelbash, D. (2011). Due Process and Rule of Law as Human Rights: The Court and the "Offshore" Processing of Asylum Seekers. *Australian Journal of Administrative Law, 18*(2), 101-114.

Crock, M., Saul, B., & Dastyari, A. (2006). *Future Seekers II: Refugees and Irregular Migration in Australia*. Sydney: Federation Press.

Evans, C. (2008). Last Refugees Leave Nauru: Media Release: Minister for Immigration and Citizenship.

Farrell, P. (2015, 22 May). Australia Has Paid Nauru $29m in Visa Fees to Keep Asylum Seekers in Detention. *The Guardian*. Retrieved from http://www.theguardian.com/australia-news/2015/may/22/australia-has-paid-nauru-29m-in-visa-fees-to-keep-asylum-seekers-in-detention

Glazebrook, D. (2014). Papua New Guinea's Refugee Track Record and Its Obligations under the 2013 Regional Resettlement Arrangement with Australia, SSGM Discussion Paper 2014/3 *State, Society & Governance in Melanesia Discussion Papers*. Canberra: Australian National University.

Hayter, T. (1990). *The Creation of World Poverty* (2nd ed.). London: Pluto Press.

Houston, A., Aristotle, P., & L'Estrange, M. (2012). Report of the Expert Panel on Asylum Seekers: Australian Government.

Hughes, H. (2004). From Riches to Rags: What are Nauru's Options and How Can Australia Help? *Centre for Independent Studies: Issue Analysis, 50*, 1-11.

King, P. (2004). *West Papua and Indonesia since Suharto: Independence, Autonomy or Chaos?* Sydney: UNSW Press.

Manne, R. (2004). Sending Them Home: Refugees and the New Policy of Indifference. *Quarterly Essay, 13*, 1-95.

Mathiesen, K. (2014, 31 December). Refugees Living on Nauru Say They Want to Return to Detention to Flee Violence *The Guardian*. Retrieved from http://www.theguardian.com/australia-news/2014/dec/31/refugees-living-on-nauru-say-they-want-to-return-to-detention-to-flee-violence

Mathiesen, K. (2015, 19 March). Even God Can't Help you Here: Nauru Refugees Describe a Life Devoid of Hope. *The Guardian*. Retrieved from http://www.theguardian.com/world/2015/mar/19/even-god-cant-help-you-here-nauru-refugees-describe-a-life-devoid-of-hope

McDonald, H. (2015). Bishop Faces Test Over Execution of Aid Cuts. *The Saturday Paper,* p.

12.

Medhora, S., & Doherty, B. (2015, 28 January). Australia Confirms 15 Boats Carrying 429 Asylum Seekers Have Been Turned Back. *The Guardian*. Retrieved from www.theguardian.com/australia-news/2015/jan/28/australia-confirms-15-boats-carrying-429-asylum-seekers-have-been-turned-back

Metcalfe, S. (2014, 9 September). The Government is Downgrading the Needs of Vulnerable Men in Detention. *The Age*. Retrieved from www.theage.com.au/comment/manus-detention-unsuitable-for-women--and-men-20140908-10drzw.html

Moss, P. (2015). Review into Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru: Final Report. Canberra: Australian Department of Immigration and Border Protection.

Nauru Ministry of Home Affairs. (2014). Nauru Family Health and Support Study: An Exploratory Study on Violence against Women.

Newman, L., Proctor, N., & Dudley, M. (2013). Seeking Asylum in Australia: Immigration Detention, Human Rights and Mental Health Care. *Australasian Psychiatry, 21*(4), 315-320. doi: 10.1177/1039856213491991

Opeskin, B. (1996). The Moral Foundations of Foreign Aid. *World Development, 24*(1), 21-44.

Opeskin, B. (2012). Managing International Migration in Australia: Human Rights and the "Last Major Redoubt of Unfettered National Sovereignty". *International Migration Review, 46*(3), 551-585.

Organisation for Economic Co-operation and Development. (2015). Development Aid at a Glance: Statistics by Region: 6. Oceania. Paris: OECD.

Perera, S., & Pugliese, J. (2014, 20 November 2014). Manifesto for a Pogram: Hostility to Resettled Refugees Grows on Nauru. from http://theconversation.com/manifesto-for-a-pogrom-hostility-to-resettled-refugees-grows-on-nauru-34356

Phillips, J. (2012). The 'Pacific Solution' Revisited: A Statistical Guide to the Asylum Seeker Caseloads on Nauru and Manus Island *Background Note*: Australian Parliamentary Library.

Phillips, J. (2015). Asylum Seekers and Refugees: What are the Facts? *Research Papers*: Parliamentary Library.

Refugee Review Tribunal. (2010). Gender Guidelines: Refugee Review Tribunal,.

Roberts, G., Yaxley, L., & Conifer, D. (2015). *Indonesian Vice-President Jusuf Kalla Likens Allegations Australia Paid People Smuggling Crews to 'Bribery'*: ABC.

Secretariat of the Pacific Community. (2013). Pacific Island Populations. Noumea: Statistics for Development Division.