

POLICY ANALYSIS OF THE ‘PACIFIC SOLUTION / OFFSHORE PROCESSING ‘COMPONENT OF IMMIGRATION AND ASYLUM SEEKER/ REFUGEE POLICY OF AUSTRALIA

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Abstract

This article describes and critically analyses the findings of the Pacific Solution/ ‘Off-shore processing’ component of immigration and Asylum Seeker and refugee policy including recent proposed changes in July 2013. This will highlight strengths and limitations of the policy, and identify implications of policy implementation. Additionally, critical issues with regards to social policy and legal framework are discussed. The psychological disturbances that confront Asylum Seekers, reported by different interest groups are highlighted. This analysis outlines the issues emerging at detention centres, its impacts on children and women Asylum Seekers and the need for Australian society including the government to understand the human voice. These issues can assist in an understanding of the current critical nationwide situation of this problem. This article will argue that, due to the implementation of a continuously changing short-term

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policy in tackling the problem of Asylum Seekers, a range of social, moral and legal problems have occurred and affected human life. The paper concludes with policy alternatives and proposes solutions and recommendations with regards to the policy.⁵The framework used in this article, critically evaluates the Pacific Solution policy and addresses social, welfare and ideological aspects. In this research, this framework was of great use to collect data relevant to the Offshore Processing 'component of immigration and Asylum Seeker/ Refugee Policy of Australia. Additionally, it provided ways and means to identify roadmap to shift from good practices to alternate best practices.

Keywords: *Pacific solution, Immigration Policy, Asylum seekers, Human Rights*

Historical Background regarding Pacific Solution and its Objectives

Irregular migration by smuggling people across the Pacific Ocean from developing countries remains a challenge for Australia. On 13 August, 2012, the Gillard Government followed the strategy of the Howard Government, to deal with Asylum Seekers' issue. This initiated attempts to transfer Asylum Seekers to third countries in the Pacific for processing. This strategy included the establishment of the offshore processing facilities in Nauru and Papua New Guinea. This strategy became known as the 'Pacific Solution' (Phillips, 2012). On 15 August, 2012, parliament passed the Migration Legislation Amendment (Regional Processing and other Measures). Under this agreement, during the same year the Australian Government signed administrative agreements with the Governments of Nauru and of Papua New Guinea to accommodate Asylum Seekers for processing. This was replaced by another MOU which was signed with PNG on 11 October 2001 regarding establishing a processing centre for Asylum Seekers on Manus Islands (Phillips, 2012). This short-term strategy still

⁵ The frame work used in this policy analysis is developed by Chris Williams, former lecturer in the School of Social Work and Community Welfare. Referred Chapter 05 of 'The Australian Policy Handbook' Fifth Edition, (2013) written by Catherine Althaus, Peter Bridgman and Glyn Davis.

continues today and remained the major agenda of debate before the 2013 election.

Under the Pacific Solution policy, the greatest number of people arrived on Nauru and Manus Island late in 2001 and early in 2002. The following statistics were recorded till 15 April 2002, at each centre; the details of each Asylum Seekers were collected and processed for verification and other paper work such as citizenship and details of her/ his origin. Ironically, the data of the table depicts that 213 children, 30 unaccompanied children along with 30 females were detained in pathetic conditions which is against the international laws of Human Rights.

Statistical information mentioned in the Philips (2012) report shows statistical data of each processing centre. From 2001 to 2008, this data helps in analyzing information regarding population movement from detention centre to different places. As per the statistical data, such decisions to move population more than three years to make each of the processing cells have increased population movement. This period had start of detrimental effects on those 19 new born babies.

1. Policy Analysis regarding Different Periods

In view of the mentioned background, the Pacific solution was addressed during tenure of different governments.

1.1. The Howard Government (2001- 2007)

The Howard Government policy of not allowing illegal immigrants to settle in Australia was effective in reducing their numbers. In 2007, Kevin Andrew, the Immigration Minister, affirmed that the Howard Government's policy (2001-2007) of not allowing persons, who seek to enter Australia illegally to settle, was effective in reducing the number of Asylum Seekers (Phillips, 2012). Statistical guide to the asylum seeker caseloads on Nauru and Manus Island show step by step the implementation of offshore- processing during the Howard Government's tenure (Phillips, 2012). This process was often too slow and people had to wait for years to get their cases processed.

1.2. The Rudd Government and Situation at Detention Centres (2007-2010)

The Rudd Govt maintained a detention centre at Christmas Island, where applications were processed, and mandatory detention of unauthorized non-citizens, was implemented.

Following the election of the Rudd Labour Government from December 2007, the detention facility on Nauru was closed (Grecock, 2008). Here the offshore processing of Asylum Seekers application continued and the mandatory detention of 'unauthorized non-citizen' was implemented (Migration Legislation Amendment Act 6, 2001). The granting of refugees status to remaining detainees, resulted in indefinite detention of refugees, who were excluded from the wider Australian community, and restricted in their movements, by the wearing of electronic identification tags, and being covered by CCTV.

1.3. The Gillard Government (2010-2013)

Under the Gillard Government, Asylum Seekers would be processed at an offshore facility and remain the Australian Government's responsibility (Keane, 2013), unless another country accepted them for resettlement. In fact, PNG was the only country willing to accept them. The disadvantages that resulted from this decision arose, because in comparison to Australia, PNG is an underdeveloped country. Thus Asylum Seekers would have to suffer from more social, economic and psychological issues (Keane, 2013). As the status of a refugee necessarily has to be established (Australian Immigration Act 198 A), they would still have to wait for an indefinite period of time for their legal status to be processed.

1.4. The Rudd Government (2013- Jul 2013)

During the recent tenure of the Rudd Government, 2013, it was declared that all Asylum Seekers who are trying to come to Australia, will never be settled in Australia, they will all be assessed as genuine refugees in Papua New Guinea, under the Regional Resettlement Agreement expanded facility (Department of Foreign Affairs and Trade, 2013). At the same time, the imprisonment of women and children was questioned, and regarded as beyond detention policy. A further change in policy by Rudd, was to be the resettlement of genuine refugees in PNG, which would require an increase in Aid, for the healthcare and education of the increasing number of refugees (Keane, 2013). However, the Rudd Government

continued to maintain a detention centre on Christmas Island. Here, offshore processing of Asylum Seekers applications continued, as did the mandatory detention of the 'unauthorized non-citizen' (Migration Legislation Amendment Act 6, 2001).

2. Values of the Pacific Strategy

The policy of offshore processing was formulated strategically to discourage those Asylum Seekers who were trying to arrive by boat. Phillips (2012) notes that Asylum seekers were not detained under Australian law or the laws of Nauru or Papua New Guinea but were granted Special Purpose Visas by Nauru and Papua New Guinea. This was made possible through the administrative agreements as mentioned above.

One of the biggest arguments regarding processing centres was of the delay in the processing of each Asylum Seeker. This includes establishing identity, checking their health status and importantly, dealing with any claims for refugee protection. Assessing these claims in Nauru or Manus Province was in compliance with Australia's obligation under the 1951 (UN Refugee Convention) and its 1967 protocol.

This was clearly showing that decision makers wanted to portray this issue before the media and the public which is they do not want to take any chance to accommodate Asylum Seekers who might become burdensome on the Australian welfare system and become demanding on the population in seeking resources for their livelihood.

This issue of Asylum Seekers is a paradigm of a synecdoche, which according to Stone (2012, p. 168), 'is a figure of speech in which the whole is represented by one of its parts'. According to Department of Immigration and Border Protection (2012), 53, 900 people were illegally overstaying in Australia in 2010 which is a comparatively larger number than the people who came by boat. According to the report of Refugee Council of Australia (2012), the number of Asylum Seekers who came by boat were 5175 persons which is less than 10% of over-stayers. The number of boat arrivals was a small problem but was magnified by the public opinion that 'boat arrivals' would share welfare and other public resources of Australian citizens, therefore, need to be stopped before arriving at an Australian seashore. The politicians used synecdoche and generated a fear of boat people

which is according to Stone (2012) equivalent to creating an environment of fear. Instead of this strategy, the public need to be made aware regarding Asylum Seekers and their problems in their home country which compelled them to risk of their lives. Their cases for immigration should be processed on shore keeping women and children in a harmonious environment.

3. Underlying Principle of Pacific Policy

The underlying principle behind the ‘Offshore Policy’ of transferring Asylum Seekers to a third country is simply an example of burden shifting to a third country who must provide the protection needs of Asylum Seekers. This model of off-shore policy apparently looks fair, but it is a strategy to avoid the arrival of Asylum Seekers on Australian shores, which itself is in violation of the United Nations Refugee Conventions which the Australian Government had ratified them (Moodley, 2013). With this objective several legislative reforms were introduced during the last decade.

4. Major Concerns and Technical Issues at Processing Centres

A major issue for Asylum Seekers was the slow scrutiny of their papers which resulted in mental health problems, and prolonged detention on Nauru and Manus Island. Lack of water, electricity and sanitation created unacceptable conditions, as did the contraction of Malaria, by several of the Asylum Seekers (Phillips, 2012). Phillips (2012) further notes that these conditions impacted more harshly on women and children, and led to hunger- strikes and self-harm. Further symptoms of utter frustration and helplessness that Asylum Seekers felt, such as violent attitudes, and outbursts of crying were also in evidence.

Adding insult to injury, the Nauru Government refused to issue entry visas to a team of lawyers (sent by Australian Lawyers for Human Rights) (Phillips, 2012). This was another barrier to the independence of the detainees. The Refugee Council of Australia expressed their views on the long period of exile required of Asylum Seekers (Phillips, 2012). However, there were no specific plans for dealing with the health needs of children and women in detention.

4.1. Mental health of Children and Families

According to Migration Act 1958 and Australian Immigration Act 198 A, all “unauthorized arrivals” will be required to be detained until the resolution of the

status of their asylum claim is accepted. This means that all Asylum Seekers will have suffered for indefinite period. Newman (2012) notes that the detention may be undefined, and applicable to children, survivors of torture and trauma, and to unaccompanied minors. These lengths of time incarceration resulted in depression, anxiety and psycho-social adaptation difficulties. Detainees frequently felt traumatized, and hesitant to mix in Australian Society. The difference in cultural beliefs that they encountered, intensified their misery and isolation. As per Australian Association of Social Work (AASW) (2010) standards, such practices are totally unacceptable and cause moral and social harms.

4.2. Human Rights Violations

Ideologically, the human rights aspects of any policy evaluation, confirms its practicality and acceptance by all stakeholders.⁶Newman (2012) visited the few detention centres and while describing pathetic conditions, she pointed out that there were serious issues of child abuse and child protection which needed immediate attention. According to Newman (2012) presented statistics, of the 3360 children held under 'mandatory detention, 50% of child Asylum Seekers were unaccompanied minors. She referred to the United Nations Declaration of Human Rights, in saying that everyone has the right to seek and to enjoy, asylum from persecution, in other countries. No one shall be subjected to arbitrary arrest, detention or exile, or to torture and degrading treatment or punishment.

In view of above fact, the Australian Government should enable the community sector to support and to help resettle people humanely, as an appropriate, sensitive and least expensive solution to Australia's humanitarian responsibilities.

5. Policy Analysis through Social and Legal Framework

Sending refugees to Nauru and PNG is an unauthorized effort and a breach of international and domestic laws (Moodley, 2012). According to Moddley (2012) states that Refugee Status Determination (RSD) mechanisms in a third country is basically a denial of effective protection and is not up to the standards of a country like Australia.

⁶ Professor Louise Newman is a part of teaching faculty at University of Melbourne and she presented her paper at Australian Institute of Family Studies on March 15, 2012.

Such decisions of diverting Asylum Seekers in a dangerous journey to other countries brings the Australia to an awkward position in two ways; according to Moodley (2013) firstly, in case of any harm, during the journey or processing, Australia has to face international criticism for making such arrangements and secondly, it will open discussions for domestic debate about the legalities of these arrangements.

According to the High Court discussion, the minister of immigration was advised to undertake Refugee Convention Protocols before issuing ministerial declarations (Moodley, 2013). The stance of High Court was that territory of any statutory power to remove Asylum Seekers from Australia, whether under Migration act section 198 A or 198 AB, must be understood in a context considering the condition, that the migration act reads as a complete document, as it mentioned that associated set of statutory provisions directed to the International obligations which Australia has undertaken in the Refugees Protocol.

Under such obligation, the Australian Government cannot deny the refugee convention and treaties of Human Rights (Taylor, 2005). This shows that such decisions are made in 'good faith' by country, by taking the opportunity of interpreting vague rules to provide space for discretion for a minister to take decision by using tacit knowledge (Stone, 2012). Stone (2012) says that such vagueness boosts the rule's effectiveness by allowing a Minister with particular facts and local conditions in hand to decide on the means for achieving the goal of stopping people smuggling, and the share the burden with other countries.

6. Effective solution for Asylum Seekers

Humane solutions are widely supported at national level and international level. Australian Council of Social Services (ACOSS) and other 260 non-profit organizations agreed that onshore processing is the better solution. This will not only prevent mental health issues but it will be a cost-effective solution (Australian Council for Social Services, 2010). ACOSS is willing to work and support Asylum Seekers for a fraction of the cost which is actually incurred. In a joint statement by nonprofit organizations and ACOSS, the following key points were suggested to the Australian Government (Australian Council for Social Services, 2010):

1. A High Court ruling needs to be followed by political parties, so that indefinite detention and long term period processing of Asylum Seekers may be avoided.
2. In order to address the vulnerability of Asylum Seekers, the state should protect them from legal prosecution.
3. Offshore detention centres establishment cost, its operating cost, overseas transportation cost of Asylum Seekers to a third country, are each too high. A less costly solution is to have Asylum Seekers settled at a local community level.
4. Offshore processing and compulsory detention of Asylum Seekers needs to be ceased. They need to be settled within local community places till their cases are processed.
5. To overcome the human smuggling problem, the Australian Government should increase its yearly quota of Asylum Seekers.

Definitely, at international level, implementation of the above steps will promote good practices of dealing with Asylum Seekers and Australia will be considered as a trendsetter in dealing with such issues in a humane way.

7. Alternative Strategies

By having a cost- benefit analysis, it is evident that developing the off shore infrastructure of detention centres and its operating cost will not be viable. A solution could be placing Asylum Seekers in local communities of Australia. This will be a more humane response to the issue. In this regard Newman (2012) suggested a few points and emphasized those alternative strategies and practices enhance the mental health, social and emotional wellbeing of young Asylum Seekers and their families. Her main points include:

- community-detention options;
- opportunities for children and families to socialize in communities during detention, including the ability for children to attend school;
- guardians for unaccompanied minors;
- ongoing advocacy to promote and protect the human rights of Asylum Seekers;
- settlement support;

- Trans-generational communications to help children maintain their cultural identity.

The above recommended alternative solutions will lessen the harm and address the policy problem to a great extent. With such humane policies, the state will ensure the equity, equality and liberty of Asylum Seekers on one hand and fulfil the international obligations of human rights on the other hand.

8. Personal view

During the federal election of 2013, all the politicians were claiming to propose their policy to stop the arrival of thousands of illegal refugees in Australia as it was suggested that they were a threat to the welfare of Australians and the economy. The people of Australia were also assuming that this is a serious and threatening issue for them. But as per previous discussion and statistics, the actual figure of Asylum Seekers shows that the problem was not as great as suggested by the politicians and media. The predicated fact behind this issue was that the politicians wanted to get the sympathies and attention of potential voters through magnifying the problem and proposing short term solutions.

9. Recommendations

The policies of a sympathetic country encourage the understanding by communities of the hardships of Asylum Seekers more clearly. Politicizing such problems will result in mistrust and social-division in the society. On-shore processing and community-based arrangements for Asylum Seekers will be an efficient and a cost-effective solution of the policy problem. As per points mentioned on page 09, by ACOSS and other non-profit organizations, all need to be considered for making policy decisions at parliamentary level. Services of ACOSS may be obtained for the rehabilitation of Asylum Seekers. Such attempts, if taken in a human rights perspective, will definitely achieve political dignity for Australia in the higher order of International politics.

10. Conclusion:

These major findings regarding the Pacific solution /off-shore processing suggests that prolonged detention of Asylum Seekers in a detrimental environment, of causes serious issues of mental health, child protection and human rights. This article highlighted the implications due to the implementation of this policy, and

suggested alternatives for processing of Asylum Seekers with the support of Australian Services Union through on shore facilities. This will not only be a cost-effective solution but quality services may be provided according to health-safety standards in Australia, but also in compliance with the obligations of Human Rights. Overall, Asylum Seekers need to be treated in humane ways and by considering the above-mentioned recommendations this will be achievable. This article covered concisely the historical perspective and critically evaluated the situation through its social and legal framework.

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Legislations

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