

# Closing borders

## The ripple effects of Australian and European refugee policy

Karen Hargrave and Sara Pantuliano



### Key messages

- Rich countries are violating international norms on refugee protection and asylum, both in spirit and in practice, causing an erosion of refugee protection worldwide that risks overturning the international refugee regime.
- Restrictive refugee policies in contexts such as Australia and Europe are creating 'ripple effects', fostering negative developments in lower-income countries such as Indonesia, Kenya and Jordan.
- It is not too late to reverse this dangerous trajectory. Higher-income countries should rethink strategies aimed at deterring refugees at their borders, and instead promote positive emulation of good practice.

Refugee policies have become increasingly restrictive in recent decades, with industrialised countries in particular violating international norms both in their letter and their spirit. These negative attitudes are increasingly being replicated in lower-income countries that have hosted large numbers of refugees, often for many years, and are today home to 85% of the world's refugee population. While domestic factors are clearly at play, it is possible to trace a 'ripple effect', with developed countries influencing each other's policies, and consciously cultivating or indirectly fostering negative developments in lower-income states.

Produced in the run-up to the UN General Assembly High-Level Meeting on Refugees and Migrants on 19 September, this Policy Brief addresses a key trend worthy of debate given the meeting's focus on global burden-sharing. The study draws on a desk review of government statements, relevant policies, media articles and academic literature, supplemented by 22 key informant interviews. Europe and Australia were selected as the focus of the study as they provided the most acute examples of restrictive policies in developed economies. Case studies looked at refugee policies in Indonesia, Jordan and Kenya.

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This Policy Brief is drawn from Karen Hargrave and Sara Pantuliano, with Ahmed Idris, *Closing Borders: The Ripple Effects of Australian and European Refugee Policy. Case Studies from Indonesia, Kenya and Jordan*, HPG Working Paper (London: ODI, 2016).

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Photo: Greek police near the village of Idomeni, on the border with the Former Yugoslav Republic of Macedonia.

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## Australian refugee policy

Since the early 1990s, Australia has pursued a deterrence policy aimed at preventing ships carrying asylum-seekers from reaching Australia, and instead either transferring them to offshore detention centres or returning them to their point of embarkation. As of 31 May 2016, 1,309 asylum-seekers were in detention in Australian-funded processing centres in Nauru (466, including 50 children) and Manus Island (843). In 2013, the government introduced Operation Sovereign Borders, a military-led border security operation aimed at intercepting and deterring asylum-seekers hoping to reach Australia by sea.

Despite the dubious legality and morality of Australian policy, its apparent effectiveness, and the lack of sanctions on Australia for following policies that contravene international norms, are setting an example for other countries, especially in Europe. Denmark's policy of confiscating asylum-seekers' and migrants' valuables in order to pay for their time in detention camps closely resembles Australia's practice of charging asylum-seekers for the costs of their detention. Far-right groups such as the Danish People's Party have urged the country to adopt a similar model to Australia's system of offshore detention.<sup>1</sup> Austrian Foreign Minister Sebastian Kurz has argued that, while 'the Australian model ... cannot be completely replicated ... its principles can be applied in Europe'.<sup>2</sup> The European Commission has proposed an Australian-style force to monitor the European Union (EU)'s borders and deport asylum-seekers, and European nations are also copying Australia's policy of privatising detention centres.<sup>3</sup>

## EU refugee policy

EU countries' policies towards asylum-seekers and refugees have become increasingly restrictive in parallel with the progressive relaxation of the Union's internal borders. Key developments include the introduction of airline carrier sanctions, visa restrictions, draconian deportation policies and reduced access to welfare benefits and rights to work for asylum-seekers. The EU's focus on deterrence has been thrown into the spotlight in recent years in response to the increase in migration

flows and surge in asylum applications across Europe. Many European states have taken unilateral action to secure their own borders, pouring vast sums of money into building fences and fortifying controls.

Most controversial perhaps has been the deal between the EU and Turkey in March 2016, stipulating that any asylum-seeker whose application has been declared inadmissible will be returned from Greece to Turkey, in exchange for a Syrian resettled from Turkey to the EU (an arrangement that bears a striking similarity to a 2011 Australian compact with Malaysia, which was subsequently struck down by Australia's High Court).<sup>4</sup> In exchange, the deal offers the liberalisation of visas for Turkish nationals, who (providing Turkey meets a number of criteria) get access to the Schengen zone, financial assistance of €3 billion in support of Turkey's refugee population and the re-energising of Turkey's accession process to the EU. In June 2016 the European Commission unveiled plans for Turkey-type deals across Africa and the Middle East, alongside development aid and other assistance for source and transit countries.<sup>5</sup> Potential partners for these 'compacts' include Somalia, Eritrea, Sudan and Afghanistan – four of the world's top ten refugee-generating countries.

Measures such as these have done little to address the key drivers behind the flow of refugees arriving at Europe's borders. What these steps have done, though, is to seriously undermine Europe's credibility with regard to its international obligations, and send a message to other countries that providing protection to people fleeing persecution is optional and subordinate to domestic priorities.

## The ripple effect

The refugee policies and other border control measures introduced over the last two decades by Australia, EU member states (both bilaterally and collectively) and other developed economies are creating ripple effects that risk overturning the international refugee protection regime. Government officials and the general public in lower- and middle-income countries with large refugee caseloads are watching closely as high-income countries implement restrictive policies. Looking at the imbalance between

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1 P. Farrell, 'Danish PM Confirms Visit to Nauru Camp at Heart of Offshore Detention Outcry', *The Guardian*, 23 August 2016.

2 EurActiv, 'Austrian Minister Wants to Replicate Australian Model for Refugees', EurActiv.com, 6 June 2016.

3 A. Loewenstein, 'Australia's Refugee Policies: A Global Inspiration for All the Wrong Reasons', *The Guardian*, 18 January 2016.

4 J. Bowen, 'Australia's Refugee Policy Has Been Declared Illegal. Could Europe's Follow?', IPI Global Observatory, 3 May 2016.

5 E. Zalan, 'EU to Make Aid Conditional on Help With Migrants', *EU Observer*, 7 June 2016.

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the number of refugees in lower-income countries and in the developed world, as one interviewee put it: ‘the simple numbers tell the whole story, no matter how you package the narrative’.

The study on which this Policy Brief is based considered the cases of Indonesia, Kenya and Jordan, where the initial scoping showed that developments in Australia and Europe had strongly influenced government policy. In Indonesia, policy has grown more restrictive through the increasing criminalisation of refugees, the growing use of immigration detention and officials’ propensity to push boats carrying refugees back out to sea. Several aspects of Indonesian policy, which closely mirror Australia’s own, are the result of persistent attempts by Australia to replicate its policies in other countries through a range of financial and diplomatic incentives.<sup>6</sup>

In May 2016 Kenya announced the closure of Daadab camp and the repatriation of all 260,000 Somali refugees there by November 2016. This is not the first time the Kenyan government has announced the repatriation of Somali refugees, but it is the most emphatic to date. The Department of Refugee Affairs (DRA) has been disbanded, and the *prima facie* refugee status of asylum-seekers from Somalia has been revoked, requiring Somalis to instead undergo individual Refugee Status Determination.<sup>7</sup>

Finally, despite a long and proud history of refugee protection, since 2013 Jordan has imposed growing restrictions on Syrian refugees, notably by requiring refugees to obtain authorisation documents if they want to live outside camps. Jordan’s borders have been progressively closed, with movement across a final north-eastern point of entry coming to an abrupt halt in June 2016, trapping tens of thousands of Syrians in an area of desert known as the Berm.

### **Tilting the balance**

Policies in Europe and Australia have increased domestic pressure on refugee policy in lower-income countries. In Jordan and Kenya it is likely that European policies

have fuelled existing public discontent over refugees by highlighting to politicians and the public that these countries are doing more than their fair share in what is a global problem. Interviews in each of the case study countries highlighted that developed countries set an example for the rest of the world; if these countries, with stronger economies and institutions, are reluctant to uphold their obligations under the Refugee Convention, then there is little incentive for poorer countries, in much more difficult circumstances, to persevere in doing so. Instead, restrictions in developed countries send a clear message that at best it is one rule for them and another for the rest of the world, or at worst that international obligations towards refugees simply do not hold any more – either way tilting the balance towards restriction. In particular, the EU–Turkey deal has set a dangerous and very public precedent for other countries hosting refugees that caring for people forced to flee their homes is optional. This effect is heightened in countries like Jordan and Indonesia, which have not signed the Refugee Convention and which are asking why, if countries that have signed the Convention are turning away refugees, they, as non-signatories, should uphold these standards.

In both Jordan and Kenya domestic pressures in recent years have created imperatives for governments to impose more restrictive policies. In both cases, European policies have helped to foster an environment where it is easier for these governments to pursue restrictions thanks to newfound leverage with their developed world peers and their heightened ability to manage domestic and international criticism. European policies have created a context where international criticism of restrictions on the grounds of international norms has almost no traction and is open to accusations of double standards. With the decline in the moral value of international norms on refugee protection, cash payouts are fast becoming the main strategy to persuade governments in lower-income countries to continue to accept refugees; while it remains to be seen whether this will prove effective, it is an uncertain strategy, especially given developed countries’ poor record on delivering pledged funding, and represents a move away from the humanitarian norms on which global refugee protection was founded in 1951.

### **The erosion of refugee protection worldwide**

Taken together, the case studies display a clear trend in the erosion of refugee protection. Until recently, the

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6 A. Nethery, B. Rafferty-Brown and S. Taylor, ‘Exporting Detention: Australia-Funded Immigration Detention in Indonesia’, *Journal of Refugee Studies*, 26(1), 2013.

7 Kenya Gazette, ‘The Refugees Act (No. 13 of 2006) Revocation of Prima Facie Refugee Status’, 27 April 2016.

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refugee regime had been based on goodwill. Jordan and Kenya in particular show signs of pushing back against the assumption that poorer countries will unquestioningly continue to host large numbers of refugees on behalf of the rest of the world. While this increased opposition has yet to be seen in Indonesia, the country may well make similar moves as the number of refugees there rises. There are also broader questions, worthy of further investigation, as to whether other countries, for example Pakistan in its threats to repatriate Afghan refugees, are adopting a similar stance.

As goodwill has ebbed away, discussions on refugees have moved towards more transactional arguments for assistance. While there are benefits in this model, including increased funding to refugee-hosting countries and discussions on refugees' access to labour markets, there are also clear losses for refugee protection on a global level if overt transactionalism is not balanced by respect for the norms enshrined in the Refugee Convention. The case studies presented here evidence how, as these norms lose international credibility as they are flouted in the developed world, space opens up for similarly restrictive policies in lower-income countries. Crucially, if this trend continues there will be fewer and fewer places where refugees can go to seek protection. Refugees trapped at the Berm on Jordan's borders are just one very visible example of the human cost of shrinking asylum space.

In addition to the devastating human cost exacted by restrictive policies, these may actually prove to be very short-sighted, as they may undermine the explicit goal of European and Australian policy-makers to reduce the number of refugees arriving at their borders. There is at the very least a good chance that, as lower-income countries become more restrictive, in the long term some of the people currently contained regionally may try to move onwards to developed countries, and in particular to Europe.

### **Opportunities to reverse a damaging trend**

There is still an opportunity to reverse this dangerous trajectory. As the case studies show, refugees are clearly a global issue; as one interviewee put it, 'Transit countries, destination countries, they are all interlinked and any decision in one country will affect the others'. Instead of allowing ripple effects to spread and gain in strength, with restrictive policies becoming increasingly

widespread across the world, policy-makers in developed countries must understand the repercussions of their policies globally and the wider consequences of their restrictive behaviour. They should weigh up whether current restrictions are a path worth pursuing, both on pragmatic and humanitarian grounds. In recognising links between refugee policies in different parts of the world, and the potential for countries to influence one another, there is instead an opportunity to harness these effects and promote positive emulation by highlighting good practices.

Notwithstanding the global trend towards restriction highlighted here, there are plenty of examples of good practice elsewhere in the world. One is the provision of safe pathways to asylum in Brazil, which since 2013 has issued 9,000 humanitarian visas to refugees fleeing Syria.<sup>8</sup> There is also the experience of Canada, where between November 2015 and August 2016 almost 11,000 Syrians were resettled under private sponsorship arrangements. Even within countries following disturbing policy trajectories there are examples of good practice, as in the case of Indonesia, where local civilian authorities have been progressive in their handling of refugee arrivals. Lower-income countries also offer lessons that developed economics could heed, for example the 2007 decision by Tanzania to offer citizenship to 200,000 Burundian refugees.

As argued by Gil Loescher 15 years ago, on the occasion of the fiftieth anniversary of the Refugee Convention, 'refugee and human rights norms enjoy a special status among Western states because they help define the identities of liberal states. They are also important to non-Western states because adherence to these norms constitutes a crucial sign to others of their membership in the international community of law-abiding states'.<sup>9</sup> Whilst today it is common in Europe to talk about a 'refugee crisis', what Europe, Australia and other countries are in fact experiencing is a crisis of solidarity and of the very values that led to the drafting of the Refugee Convention in 1951. It is time for developed countries to rekindle the spirit that ushered in the Convention in the wake of the horrors of the Second World War, and prevent the negative effects of their current policies from spreading any further.

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8 J. Wood, 'Could South America Be the Solution for Syrians Dreaming of a Better Life?', *The National*, 9 March 2016.

9 G. Loescher, 'UNHCR and the Erosion of Refugee Protection', *Forced Migration Review*, 2001.