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Australian border policing: regional 'solutions' and neocolonialism

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Abstract: Australia's punitive border policing regime, aimed at deterring asylum seekers attempting unauthorised entry into the country, was ratcheted up even further in 2013 by the former Labor-led government and its successor (as of September 2013), the Liberal National Party Coalition. In effect, under the guise of combating 'people-smuggling', and a pledge to 'Stop the Boats', policies such as the mandatory detention of unauthorised arrivals and the use of off-shore detention facilities have been made even more draconian. Now the aim is to block entirely any right to resettlement or residence for refugees in Australia itself, using the weaker and poorer states of Nauru and Papua New Guinea, historically under Australia's control, to act – to their own long-standing detriment – as detention and resettlement centres, for increasing numbers of migrants.

Keywords: asylum-seeker, Australia border policing, immigration detention, Indonesia, LNPP, Nauru, Pacific solution, Papua New Guinea, people-smuggling, Stop the Boats

On 19 July 2013, Australia's Labor Prime Minister Kevin Rudd¹ and Papua New Guinea's Prime Minister, Peter O'Neill, convened a joint press conference to announce the signing of a Regional Settlement Arrangement (RSA) for asylum

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seekers seeking unauthorised entry into Australia.² Under the terms of the RSA: 'From 19 July – no matter where an asylum seeker arrives in Australia by boat – they are subject to transfer to Papua New Guinea and if they are found to be a genuine refugee, they will be permanently settled in PNG.'³ The PNG Agreement came with little warning and was clearly intended to wrong-foot the opposition Liberal National Party Coalition (LNPC) led by Tony Abbott in the run up to the federal election, subsequently called for 7 September.

Predictably, the RSA intensified the spiral of punitive deterrence policies directed at refugees. Despite clear opposition from Indonesia, the Coalition pledged to introduce a 'tow-back policy' to be enforced through its military-led Operation Sovereign Borders⁴ and a substantial expansion of detention and 'processing' facilities on Nauru.⁵ In turn, the Rudd government signed a further agreement on 3 August enabling the permanent re-settlement of an unspecified number of refugees on Nauru, with a view to seeking out similar arrangements with other Pacific states.⁶

The LNPC comfortably won the election on 7 September 2013 and has pledged to prioritise the implementation of its Regional Deterrence Framework to Combat People Smuggling.⁷ At the time of writing, the long-term impact of Coalition policy remains to be seen. Here, I want to discuss the continuities between Labor and Coalition policies towards unauthorised refugees and the neocolonial dimensions to Australia's arrangements with PNG and Nauru.

Pacific Solution Mark II

After winning office in 2007, the first Rudd government dismantled the final vestiges of the Pacific Solution implemented by the Howard Coalition government in 2001.⁸ The Australian-funded immigration detention centre on Nauru was closed; the remaining refugees on Nauru were resettled in Australia; and residence visas replaced temporary protection visas for unauthorised arrivals deemed to be refugees.

However, the Labor governments that ruled between 2007 and 2013 remained committed to preventing refugees arriving by boat and claiming protection. I have detailed elsewhere the various strategies deployed to achieve this aim.⁹ These included: maintaining the policy of mandatory detention for all unauthorised arrivals; the opening of the high-security Christmas Island detention centre; a failed attempt to establish an immigration detention centre on Timor Leste; a swap agreement with the Malaysian government that was subsequently declared unlawful by the High Court of Australia; and high-profile policing operations against people-smugglers.

The main purpose of such measures was to deter and punish irregular travel to Australia, preferably by engaging neighbouring states in the implementation of Australia's border policing regime. This had a limited impact on refugee movement in the region: 14,555 people arrived on 275 boats between 2007 and 2011 but the numbers spiked to 17,202 in 278 boats in 2012.¹⁰

Locked into the logic of deterrence and struggling to maintain a burgeoning detention network on both Christmas Island and the Australian mainland, the Gillard-led government (August 2010–June 2013) desperately sought a mechanism to forcibly remove large numbers of asylum seekers to neighbouring states. A turning point was reached in June 2012 when two boats en route to Christmas Island from Indonesia sank and at least ninety people drowned. After failing to get legislation through the parliament that would have enabled forced removals to Malaysia and Nauru,¹¹ the government appointed an Expert Panel on Asylum Seekers to advise on 'how best to prevent asylum seekers risking their lives by travelling to Australia by boat'.¹² The Panel's recommendations included increasing Australia's annual humanitarian intake to 20,000 (including doubling the allocation of refugees to 12,000); legislation to enable forced transfers to Nauru and Papua New Guinea for offshore processing; establishing 'capacity' on Nauru and Papua New Guinea for the processing of asylum claims; restricting family reunion entitlements for 'irregular maritime arrivals'; and excising the Australian mainland from Australia's migration zone.¹³

The animating principle of these recommendations was that asylum seekers should gain 'no advantage' by 'circumventing regular migration arrangements'.¹⁴ The government embraced the recommendations, which amounted to a revised version of the Pacific Solution, and moved quickly to reintroduce offshore processing. All unauthorised refugees arriving in Australia after 13 August 2012 became liable to forced transfer to Nauru or Manus Island (PNG), where they would be detained in temporary camps pending the construction of new facilities on the original detention centre sites. No timeframe was set for the processing of claims, which were to be determined according to local law. For those whose claims were eventually successful, there would be an indeterminate wait, potentially for several years, before resettlement in Australia or a third country. Those not removed to Nauru or PNG faced detention in an Australian immigration detention centre or release into the community without work rights or access to normal welfare benefits. They were also to be subjected to indeterminate delays on the basis of the 'no advantage' principle.

The government sought to legitimise these measures as necessary to deter refugees from risking their lives at sea and argued that the larger resettlement programme (which the Coalition opposed) would cater for those willing to wait in transit states such as Indonesia. However, there was no immediate expansion of resettlement and the numbers travelling by boat sharply increased: 19,048 people arrived by boat between 13 August 2012 and 24 May 2013, including a growing number of family groups motivated largely by the new restrictions on family reunion.¹⁵

Regional settlement agreements

Against this background, Kevin Rudd was reinstalled as prime minister on 27 June 2013.¹⁶ Within weeks, the regional settlement agreements with the PNG and

Nauru governments were signed. Their purpose was to go one step further and remove from all boat arrivals any possibility of resettlement in Australia. Instead, those accepted as refugees would be resettled in either PNG or Nauru, although the Nauru government has said it will not be granting refugees permanent residence.¹⁷ Rudd and the new immigration minister Tony Burke argued that the agreements would undercut people-smuggling by removing the product for smugglers to sell.¹⁸ A high-profile advertising campaign was launched around the slogan: 'If you come here by boat without a visa, you won't be settled in Australia',¹⁹ although this seemed pitched more at a domestic audience than refugees in transit.

In response, the Coalition reiterated its longstanding election pledges to 'Stop the Boats'. Its Regional Deterrence Framework incorporated off-shore processing and resettlement, especially on Nauru, and included what is likely to be a dangerous and unworkable policy of the Australian navy towing unauthorised boats back to Indonesia; the reintroduction of Temporary Protection Visas; an increased presence and intelligence role for the Australian Federal Police in the region; and a curious scheme to buy unsafe fishing vessels that might otherwise be sold to smugglers. Under a newly declared Operation Sovereign Borders, border policing would further be militarised through 'a single operational command as part of a joint task force led by a three star military officer nominated by the Chief of the Defence Force'.²⁰

Whatever trajectory these policies take, they will consolidate the process of externalising Australia's border controls that began in 2001. This may well include attempts to renegotiate Australia's commitments under the Refugee Convention so as to automatically exclude refugees who have travelled through a third country that has any UNHCR presence. Labor's history in opposition and government suggests it will not mount any serious opposition to this. Despite its retreat from the Pacific Solution in 2007, its recent policies have further normalised the denial to refugees without visas any claim to asylum or resettlement in Australia.

Neocolonialism

This bipartisan approach is increasingly underpinned by institutional and structural dynamics that militate against any significant shift towards a more welcoming policy. Over the past twenty years, border policing has been an important mechanism for extending Australian influence in the Asia Pacific region. It has legitimised the presence of the Australian Federal Police and other Australian state agencies in Indonesia where, in response to Australian lobbying and funding, the government has criminalised people-smuggling and expanded its immigration detention network. The policing of people-smuggling has become emblematic of cooperation and 'capacity building' with the Indonesian National Police and an important component of the developing political relationship between the two states.

While the Australia-Indonesia relationship has enduring tensions that may well flare up over the Coalition's proposed tow-back and boat buy-back policies,

the resettlement agreements with the weaker and poorer states of PNG and Nauru reflect a more direct neocolonial relationship. Historically, both of these states have been under direct Australian control or influence²¹ and the willingness of their current governments to implement offshore processing and entertain resettlement cannot be separated from their dependency on Australian aid and development funding.

In the case of PNG, the Rudd government pledged \$1.1 billion over four years to build and operate new immigration detention facilities on Manus Island; an additional \$420 million foreign aid; and \$18 million to fund 'tackling law and order issues'.²² As part of the negotiations, the PNG prime minister claimed to have secured greater control over the use of the aid funding,²³ which was in addition to the previously allocated \$507 million annual aid payment. However, the overall funding arrangements remain in the hands of Australia's administrative aid agency, AusAid, and the Coalition has taken an ambivalent attitude to the resettlement proposal, preferring to focus on a 'five year plan to permanently increase the capacity for rigorous offshore processing at Nauru'.²⁴

In PNG, there is no guarantee that the O'Neill government will be able to implement the agreement in the longer term. In August 2013, the main Opposition party initiated a second legal challenge to the Manus Island centre and 2,000 students from the University of PNG protested in Port Moresby.²⁵ There is also opposition to plans to bulldoze an informal settlement of 3,000 people near Port Moresby airport to provide resettlement accommodation for refugees²⁶ and concerns on Manus Island that the Australian immigration department is funding paramilitary 'Mobile Squad' members to intimidate local landowners opposed to the development.²⁷

For Nauru, which has a population of about 10,000 and has been heavily dependent on aid since its phosphate supplies were exhausted in the 1990s, the resettlement agreement secured an aid payment of \$29.9 million and a further \$17 million to refurbish the local prison.²⁸ These were significant sums for a country with a national budget of only \$35 million and reflect Australia's extensive and direct involvement in Nauru's financial and political affairs. As researcher Nic Maclellan notes, Australia is Nauru's major aid donor and Australian officials dominate its state and financial institutions. Since 2001, the various memoranda of understanding between Australia and Nauru on the management of detention centres 'also set out clear requirements that had to be met if the island was to continue receiving aid'.²⁹ These requirements included a public utility privatisation programme that not only transferred costs for basic supplies such as water and electricity onto the wider community, but also made Nauruan citizens more dependent on the detention centres for jobs and sources of income.

It seems the main commercial benefits of reopening detention facilities have flowed to private contractors, such as Canstruct, Wilson Security and Transfield Services, who set up the temporary centre in August 2012 but paid local Nauruans much less than their Australian counterparts.³⁰ There are close links between some of these companies and the Coalition. In July 2013, logistics company Toll

Holdings, which already holds \$26 million worth of contracts with the immigration department, provided free air travel to Nauru to Coalition immigration spokesperson (now minister) Scott Morrison and two News Limited employees. Toll Holdings is believed to be a major bidder to provide tents and other facilities for the Coalition's proposed 'tent city', which will house up to 2,000 refugees on Nauru.³¹

While there are significant profits to be made from off-shore processing in the short term, 'the arrival of hundreds of asylum seekers, police and camp staff in 2012–2013 has once again disrupted cost structures on the island, with rental costs soaring, increased food prices affecting nutrition for the unemployed and renewed pressure on the already limited water supply'.³² These distorting effects may well intensify a political crisis characterised by eleven changes of leadership and four states of emergency since 2001. This level of instability suggests operating as an offshore gulag for Australia may not be politically viable within Nauru in the longer term.

In this context, there must be some doubt whether offshore processing and resettlement will proceed according to the agenda and timetable set by the Australian government. To date, the absence of functioning detention facilities has meant only a minority of the post-13 August arrivals have been removed offshore. As of 27 May 2013, 430 asylum seekers were detained on Nauru and 300 on Manus Island³³ in camps that were already being extensively criticised as abusive and inadequate by UNHCR, Amnesty International and other independent observers.³⁴ The Coalition's plans to develop a tent city on Nauru imply an expectation of impermanence. It also seems unlikely that any significant numbers of refugees could remain resident on Nauru in the longer term, given the economic and structural limitations on the island, and the clear statements from its government that permanent resettlement is not being offered. On Manus Island, the new 600-bed facility provided under the 2012 plan is not due for completion until January 2014. The Regional Resettlement Agreement required that facility to be expanded to 3,000 places but no new arrangements with the building contractors were in place by the time of the federal election, nor was there a clear picture of what the actual resettlement arrangements in PNG would be.

So where does this leave the refugees?

This level of uncertainty compounds the pressures being imposed on unauthorised refugees by the Australian authorities. Removing rights to resettlement or permanent residence in Australia is designed both to deter future arrivals and facilitate repatriation. Even if the Coalition succeeds in dramatically reducing the number of unauthorised arrivals, those who arrived after 13 August 2012 (over 23,000 by the time of the 2013 federal election) face a precarious existence in limbo. There is the prospect that a significant proportion will be forced offshore to Nauru and PNG but denied resettlement or secure, long-term residence. They

will then face a choice between repatriation or being stranded until, as with the first Pacific Solution, Australia or another state eventually resettles them. Those not moved offshore will face an uncertain future under a temporary protection regime requiring them to continually re-establish their claims.

It is difficult to predict the evolution of the Coalition's border policing policies. However, the unrelenting mobilisation of state resources to prevent the free movement of refugees in the region is certain to continue. Whether or not this achieves its stated purpose of 'stopping the boats', it will certainly inflict further harm on thousands of vulnerable people seeking Australia's protection.

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