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Closing borders

The ripple effects of Australian and European refugee policy: case studies from Indonesia, Kenya and Jordan

Karen Hargrave and Sara Pantuliano, with Ahmed Idris

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HPG Humanitarian Policy Group

ICHA International Center for Humanitarian Affairs
At the Kenya Red Cross Society

ODI

About the authors

Karen Hargrave is a Research Officer with the Humanitarian Policy Group (HPG) at the Overseas Development Institute (ODI).

Sara Pantuliano is Managing Director at ODI.

Ahmed Idris is Head of Policy and Advocacy at the Kenya Red Cross.

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Humanitarian Policy Group
Overseas Development Institute
203 Blackfriars Road
London SE1 8NJ
United Kingdom

Tel. +44 (0) 20 7922 0300
Fax. +44 (0) 20 7922 0399
E-mail: hpgadmin@odi.org
Website: http://www.odi.org/hpg

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1 Introduction

International arrangements to safeguard the movement of refugees began in the wake of the First World War, following recognition by developed economies of the increasing numbers of people who, having fled their homes, found themselves outside of their country of origin and in need of international protection, first in Europe and, in later years, beyond Europe's borders. From the appointment of Fridtjof Nansen as the first High Commissioner for Refugees to the establishment of the International Refugee Organisation and then the UN High Commissioner for Refugees (UNHCR), the global refugee regime emerged as a collaborative endeavour to address an issue which, as became apparent over time, was not a temporary phenomenon but instead an enduring matter of global significance. With the emergence of new institutions came the development of international norms on refugees, most significantly the Convention Relating to the Status of Refugees, signed in 1951, which enshrined a universal 'refugee' definition and accorded a number of rights to refugees, most prominently the principle of non-return, or non-refoulement.

While the 1960s and 1970s saw a progressive expansion of the international refugee protection regime, from the 1980s onwards refugee policies have become increasingly restrictive, with industrialised countries in particular violating international norms both in the letter and the spirit. Manifestations of this trend include interdiction, interception, offshore detention and restrictions to family reunification rights. 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 what we term a 'ripple effect', with developed countries influencing each other's policies and consciously cultivating or indirectly fostering negative developments in lower-income countries. This study examines in detail the cases of Indonesia, Kenya and Jordan. However, similar trends can be observed elsewhere, not least with Pakistan this year threatening to repatriate Afghan refugees.

While this is certainly not a new development, this ripple effect has accelerated in recent years as a result of increased awareness in lower-income nations of policies implemented in rich economies, particularly in the wake of Europe's 'refugee crisis' in 2015. Restrictions in developed countries are seen as evidence of double standards, and send a clear message that international obligations towards refugees no longer hold. The case studies presented here show how, as these norms lose international credibility, space is opening up for similarly restrictive policies in lower-income countries. The ripple effects of refugee policies and other border control measures introduced by Australia, European Union (EU) member states (both bilaterally and collectively) and other developed countries risk overturning the existing international refugee protection regime.

It is however not too late to reverse this dangerous trajectory. Instead of allowing ripple effects to gain strength, policy-makers in developed countries must understand the global repercussions of their restrictive behaviour and consider its wider implications. As protection space shrinks in lower-income countries, developed economies' restrictive policies may in fact have the unintended consequence of increasing flows to their borders. 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 actively harness these effects and promote positive emulation by highlighting good practices.

1.1 Methodology

Produced in the run-up to the UN General Assembly High-Level Meeting on Refugees and Migrants on 19 September, this paper addresses a key trend worthy of debate given the meeting's focus on global burden-sharing. The study draws on a desk review supplemented by 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, although policies in the United States and Latin America

certainly merit further attention. A detailed review of government statements, relevant policies, media articles and academic literature was undertaken for the three case studies and in relation to broader global trends.

The document review was supplemented by 22 semi-structured interviews carried out in July and August 2016, targeting a range of respondents, both those specifically placed to comment on individual case study contexts and those in a position to discuss global trends. Respondents included senior government officials, prominent academics included, directors of national NGOs, senior UN agency and NGO officials, local journalists and activists. Face-to-face interviews were conducted in Kenya by the International Center for Humanitarian Affairs, and in Indonesia with assistance from the Geutanyoe Foundation.

2 The global refugee protection system

The 1951 Refugee Convention and its 1967 Protocol outline the rights of refugees and the legal obligations of states towards them. The cornerstone of the Convention is the principle of non-refoulement contained in Article 33, which prohibits the return of a refugee to a territory where their life is threatened or they may face ill-treatment. A refugee seeking protection must not be prevented from entering a country as this would amount to refoulement (UNHCR, 2011a). The principle is considered a rule of customary international law, and as such is binding on all states, including those who are not party to the 1951 Convention or the 1967 Protocol (*ibid*.). The right of every individual to seek and enjoy asylum from persecution is also enshrined in Article 14 of the Universal Declaration of Human Rights, signed in 1948 prior to the 1951 Convention.

While the 1960s and 1970s saw a progressive expansion of the international refugee protection regime, from the 1980s onwards refugee policies, particularly in developed economies, have become increasingly restrictive as industrialised countries have become concerned about the rising costs of their asylum systems, the difficulties around applying refugee concepts to mixed groups of arrival (Feller, 2001) and broader worries about migration. This trend has accelerated over the last decade, with refugee movements increasingly becoming a matter for bilateral and regional cooperation agreements mostly aimed at erecting obstacles to prevent refugees from gaining legal and physical access to territory where they may obtain protection (Betts, 2010).

The last two decades have seen the introduction in developed economies of a broad sweep of policies aimed at restricting migration flows, ranging from tightening visa policies to imposing penalties on airlines carrying unauthorised migrants, intercepting migrants before they reach borders, establishing offshore processing and detention centres, repatriating asylum-seekers to 'safe third countries' without examining the merits of their case, introducing asylum quotas, tightening the criteria for the determination of refugee status, and restricting family reunification rights. Some states have moved away from an objective and law-based system to an asylum system 'resting increasingly on ad hoc and subjective procedures built around the exercise of executive discretion' (Feller, 2001). Australia and the EU are cases in point.

2.1 Australian refugee policy

Australia first introduced onshore detention facilities in 1991 (Chan, 2015), and mandatory detention without judicial review of asylum-seekers arriving in Australia followed in 1992. Since then successive governments have pursued a deterrence system aimed at preventing boats carrying asylum-seekers from reaching Australia, and instead either transferring them to offshore detention centres or returning them to their point of embarkation (Isaacs, 2016).

The key turning point came in August 2001, when over 1,500 refugees landed on Australian shores in the space of 11 days. On 27 August the Norwegian freighter *MV Tampa* rescued 439 Afghan asylum-seekers from a sinking Indonesian ferry in international waters near Australia. The Australian government refused entry into its waters, and the diplomatic dispute that followed between Australia, Norway and Indonesia did little to change the mind of the Australian government, which eventually transported the asylum-seekers to offshore detention centres in Nauru and Manus Island (northern Papa New Guinea) as part of what became known as the Pacific Solution.

Following the *Tampa* incident, John Howard's government introduced the Border Protection (Validation and Enforcement Powers) Bill, which provided the government with the power to intercept boats suspected of carrying asylum-seekers and refugees in Australian waters and return them to the edge of Indonesian waters. It also guaranteed that no asylum applications could be made by people on board the ship (Refugee Council of Australia, 2016a). From 2002 to 2006

arrivals to Australia fell to just 140 people and 13 boats. Although Kevin Rudd's Labor government suspended the policy in 2008 and closed the offshore detention facilities following a public outcry over conditions in these facilities, the centres were reinstated in 2011.

As at 31 May 2016, 1,309 asylum-seekers were in detention in Australian-funded Offshore Processing Centres in Nauru (466, including 50 children) and Manus Island (843) (Refugee Council of Australia, 2016b). Human rights and humanitarian groups have long denounced the abysmal conditions in the two detention centres, with poor health services and widespread sexual violence. Reporters are banned from entering the centres and there is no independent authority overseeing procedures in Nauru or Manus Island. The only information filtering out from the centres is provided by aid workers and others working on the islands, who have breached non-disclosure agreements to denounce the conditions in which asylum-seekers have been held. In response to mounting public pressure following these reports, Australia has recently announced that it will close the detention centre on Manus Island.

In addition to offshore processing, 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. Implementation is driven by a Joint Agency Task Force headed by an Australian general. The key elements of the policy include funding for regional governments to disrupt people smuggling, the interception of boats carrying asylum-seekers, extension of Australia's offshore detention capacity and the reduction of Australian resettlement places in favour of resettlement in third countries such as Papua New Guinea and Nauru.

Australian practices have been repeatedly criticised by the UN Human Rights Council and UNHCR. Despite their manifest illegality, and the huge human and financial costs involved, the government has persisted in its approach, and has sought to promote it with great zeal. In April 2015, Prime Minister Tony Abbott stated that Europe should replicate Australia's 'stop the boats' policy, and that there had been 'contact at official level between Australian people and Europeans'. Senior EU officials have denied seeking Australia's advice on how to control the arrival of vessels in the Mediterranean, stressing that the EU upheld the principle of non-refoulement and that Europe would never emulate Australia in forcibly repatriating asylum-seekers (Marks, 2015).

In reality, Australia's refugee policies are already being copied around the world, especially in Europe (Cosgrave et al., 2016). In 2003, just two years after the Pacific Solution was implemented, an Australian academic foreshadowed this trend, writing (Howard, 2003):

> *The interception, return, and redirection of thousands of people … and the shameless 'burden shift' engaged in by Australia highlights the lengths to which a wealthy state can and will go to ensure the meeting of a domestic policy objective … It sends a dangerous message to all states that it is acceptable to 'deflect' asylum seekers away from your territory when you feel that you have carried enough of the asylum burden. It is hoped that they resist the temptation to expand the Pacific Solution into a 'European Solution' or an 'Atlantic Solution'.*

It appears that such warnings have fallen on deaf ears. 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, suggesting that asylum-seekers should be sent to Greenland or Tanzania as part of a similar offshore arrangement (Farrell, 2016). Austrian Foreign Minister Sebastian Kurz has argued that, while 'the Australian model … cannot be completely replicated … its principles can be applied in Europe' (EurActiv, 2016). The European Commission has proposed an Australian-style force to monitor the EU's borders and deport asylum-seekers, and European nations are also copying Australia's policy of privatising detention centres (Loewenstein, 2016). Despite the clear illegitimacy and dubious 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 equally keen to 'stop the boats'.

2.2 Refugee policy in the EU

EU countries' policies towards asylum-seekers and refugees have become increasingly restrictive since the 1990s in parallel with the progressive relaxation of internal borders following the Schengen Convention (1990) and the Maastricht Treaty (1993). Sanctions

on airlines found to be carrying passengers without correct documentation to enter their port of arrival, first introduced in the UK and Germany in 1987, became universal by the late 1990s. Visa restrictions were gradually extended by the Schengen signatories, who created a joint list of countries whose citizens require visas to enter the EU. This list currently stands at 135, including nine out of ten of the world's top refugee-producing countries (UNHCR, 2016a). Deportation policies in various countries have also became more draconian; in the UK, for example, from 2000 there was a 'radical' increase in deportations of failed asylum-seekers (Gibney, 2008), while access to welfare benefits and the right to work for asylum-seekers has been progressively restricted.

The Treaty of Amsterdam in 1999 represented a turning-point in European migration policy, as the competence for immigration and asylum was transferred from member states to the EU (Faure et al., 2015). However, the most significant changes to the EU asylum regime stem from the 1990 Dublin Convention, which stipulated that an asylum claim would be dealt with by one state only, specifically the state of first entry, laying the foundation for a Common European Asylum System (CEAS). The Convention was followed by a consensus at a subsequent ministerial meeting in London that member states could refuse to consider asylum claims if the applicant had transited through a country deemed 'safe', placing the onus for examining their claim on the first EU member state an asylum-seeker entered.

The Dublin Convention came into force in 1997, but faced numerous practical difficulties, notably proving which countries an asylum-seeker has crossed on the way to another EU member state, and the strict time limits for requesting the readmission of an asylum-seeker to another EU member state (Refugee Council UK, 2002). After two iterations, in 2013 the 'Dublin III Regulation' (European Union Regulation 604/2013) established a method for deciding which country amongst the signatories (all EU member states except Denmark, Ireland and the UK, plus four non-EU signatories to the regulation) should process a claim for asylum. Like its predecessors, this is based on the principle that the first member state where fingerprints are stored or an asylum claim is lodged is responsible for that asylum claim, but clarifies the deadlines and responsibilities for processing costs between member states. The so-called 'Dublin system' clearly privileges northern EU countries over those in the south, where most refugees first arrive. Various explanations have been given as to why member states situated at the Union's external borders may have consented to such a mechanism. One plausible answer is the range of financial and infrastructural incentives envisaged by the Dublin system, such as the European Refugee Fund (ERF) and the establishment of EU agencies such as the European Asylum Support Office (EASO) and Frontex (Mouzourakis, 2014). As Mouzourakis notes, the 'Dublin plus assistance' package shares common features with other agreements such as Australia's 'Pacific Solution', most prominently the replication of the Australian logic that responsibility for offering asylum can legitimately be transferred to other states in exchange for financial and political incentives.

Frontex, established in 2005, has faced severe criticism from activists, NGOs, academics and even EU institutions for its failure to comply with human rights standards. Its mandate focuses on deterring 'irregular' migrants and preventing them from reaching the EU, without first knowing whether they are in danger or in need of international protection. The agency also collaborates with third countries intercepting migrants and asylum-seekers before they reach the EU's borders. Frontex's interception of vessels has been criticised as incompatible with the right to seek asylum and the principle of non-refoulement. Further concerns raised by human rights organisations include the conditions of forced repatriation flights and collaboration with third countries that are unable to guarantee the rights of migrants and asylum-seekers on their soil.

The EU's focus on deterrence and the challenge that its policies and practices pose to the global refugee regime have been thrown into the spotlight in recent years in response to the increase in migration flows and surge in asylum applications across Europe. The most controversial manifestation has been the deal between the EU and Turkey in March 2016, which stipulates that any asylum-seeker whose application has been declared inadmissible will be returned from Greece to Turkey, and in exchange another Syrian will be 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 the Australian High Court (Bowen, 2016)). 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. The main aim of

the deal is clearly to prevent unchecked arrivals into the EU, but as Collett (2016) argues 'policymakers will have to drastically cut legal corners, potentially violating EU law on issues such as detention and the right to appeal'.

The EU–Turkey deal significantly undermines international obligations outlined in the 1951 Convention because it allows an individual to be deported without giving them assurances that they will not be sent back to a country where their rights will not be protected. Turkey does not officially extend the protections afforded by the 1951 Convention to non-European citizens, and its Temporary Protection regime for non-European refugees is technically limited to Syrians (and Palestinians from Syria). In addition, Turkey has been accused by human rights organisations of rounding up an average of 100 Syrian refugees a day and sending them back to Syria, in violation of both Turkish and international law. This lends further weight to the view that Turkey is not a safe third country for refugees (Lakha, 2016).

UNHCR, several international NGOs and human rights groups and the Council of Europe have raised numerous concerns about human rights issues stemming from the EU–Turkey deal, ranging from keeping migrants in overcrowded and insanitary detention centres on the Greek islands to inadequate legal protection for people seeking to appeal against the rejection of an asylum claim (Council of Europe, 2016). The deal has particularly affected children, with hundreds of unaccompanied children being held in closed detention facilities in Greece (Human Rights Watch, 2016a). UNHCR and prominent NGOs have announced their withdrawal from parts of Greece in protest at the conditions in which refugees and migrants are being detained (UK House of Commons, 2016). UNHCR has condemned the deal and accused Europe of seeking to buy immunity from its international obligations with aid and political concessions (Hajaj and Reitano, 2016).

Another equally controversial pillar of the EU's policy of trying to stop arrivals to its borders is the focus on addressing the problem at source by trying to prevent or discourage people from embarking on the journey in the first place. The EU has allocated significant resources to support economic development and improve conditions for refugees in low-income countries. The EU has initiated a plethora of initiatives, ranging from a high-level dialogue involving countries in the Horn of Africa (the Khartoum Process) through to launching a €1.8bn Trust Fund for Africa explicitly designed to tackle the 'root causes' of irregular migration from Africa. In June 2016 the European Commission unveiled plans for a Partnership Framework to replicate Turkey-type deals across more than 16 countries in Africa and the Middle East, alongside €8bn in development aid and other assistance for source and transit countries over the next five years (Zalan, 2016). The plans envisage a mix of positive and negative incentives, cutting trade and development assistance for countries that do not stem migration to Europe or facilitate forcible returns, while rewarding those that do. Potential partners for these 'compacts' include Somalia, Eritrea, Sudan and Afghanistan – four of the world's top ten refugee-generating countries (MSF, 2016).

Finally, many European nations have taken unilateral action to secure their own borders, pouring vast sums of money into building fences and fortifying controls (Cosgrave et al., 2016). Numerous governments have also attempted to position themselves as 'tough' on refugees or migrants through increasingly harsh measures. Ironically, some of the countries that have been the most restrictive in recent years, such as Hungary, have themselves benefitted considerably from the rights enshrined in the 1951 Convention, in the case of Hungary in the aftermath of the 1956 Hungarian Uprising.

Taken together, this broad sweep of measures has done little to address the key driving factors behind the flow of refugees arriving at Europe's shores. Instead, the major effect has been to simply push refugees into riskier and more covert routes (Cosgrave et al. 2016). At the same time, these measures have seriously undermined Europe's credibility with regard to its international obligations and sent a message to other countries hosting refugees that providing protection to people fleeing persecution is optional and subordinate to domestic priorities. European governments were the architects of the 1951 Refugee Convention, but in the words of one interviewee: 'the Refugee Convention was born in Europe and is dying here'.

2.3 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. This regime depends not only on the contents of the 1951 Convention, but also on state practice. European states used to be important role models in promoting refugee protection in other countries (Angenendt et al., 2016), but they have now lost their moral authority and with this the leverage and credibility they once had. It is hard to see how Europe can ask partner countries to continue to host refugees on a large scale and prevent further movements when EU member states have shown a shocking reluctance to shoulder their fair share of responsibility to care for people forced to flee their homes (Human Rights Watch, 2016b).

Several low- and middle-income refugee-hosting countries are already citing Australian and EU attitudes and practices as an example they will follow, as discussed in detail in the three case studies.

3 Case study: Indonesia

Since the late 1990s Indonesia has been a major transit point for refugees from Central Asia, South Asia and the Middle East en route to Australia (McNevin et al., 2016). However, increasingly strict border controls in Australia – most recently Operation Sovereign Borders (OSB) – have forced growing numbers of refugees to take up residence in the country (Fleay and Hartley, 2016). In February 2016, UNHCR documented 13,829 refugees and asylum-seekers in Indonesia (UNHCR, 2016b). While overall numbers remain small in global terms, this is an increase of more than 30% from 2013 (Brown and Missbach, 2016).

3.1 Refugee policy in Indonesia

Indonesia is not a signatory to the 1951 Refugee Convention, though since 1979 it has permitted UNHCR to operate an office in the country (Nethery and Gordyn, 2014). Historically, the Indonesian government has refused to accept local integration, and resettlement comes with a long wait: refugee status determination alone can take up to 20 months, while UNHCR has reportedly told refugees that they should expect to wait six years before they are relocated (Ali et al., 2016). In the meantime, non-refoulement remains the only substantive right afforded to refugees in Indonesia, on condition that they possess UNHCR documentation (Thom, 2016). Refugees are not entitled to welfare payments and cannot work or start a business (Ali et al., 2016), though regional variations in how policies are applied mean that the authorities can turn a blind eye to refugees' involvement in work (Nethery et al., 2013). However, in other areas policies have been so strictly applied that refugees, out of desperation, have reported to Immigration Detention Centres (IDCs) as a means to access food, shelter and healthcare (Fleay and Hartley, 2016).

In this already bleak environment, one representative from an international NGO indicated two key ways in which Indonesian refugee policy has grown more restrictive in recent years: through the increasing criminalisation of refugees, and through the increasing use of immigration detention. The criminalisation of refugees within Indonesia reflects a regional tendency to address refugee protection within a securitised discourse on 'irregular migration' (Kneebone, 2014). Immigration Law No. 6 of 2011 criminalises refugees' onward movement from Indonesia by introducing people-smuggling – which is defined as including providing accommodation to anyone without a visa – as a criminal offence (McNevin et al., 2016). The law, the foremost legal source on migration in Indonesia, does not mention 'refugees' or 'asylum-seekers' as a distinct category. The head of a national advocacy group for asylum-seekers and refugees explained that 'in the eyes of the government, refugees are illegal immigrants who can burden the state and pose a threat to the sovereignty and security of the country'. According to one interviewee from an international NGO, Indonesian officials frequently refer to refugees as 'illegal migrants'. A Presidential Regulation on the Management of Asylum Seekers and Refugees has been drafted (after three years in the making), which might go some way towards creating a distinctive space for refugees in Indonesian law. However, there is scepticism that the regulation will ever be signed.

Indonesia has also seen a sharp increase in the use of immigration detention, to the extent that one interviewee claimed that, today, detention 'has evolved to the priority reference for Immigration [authorities in Indonesia] on the treatment of asylum-seekers and refugees'. By 2015, 33 detention sites were in use throughout Indonesia (Fleay and Hartley, 2016). While there are mechanisms under which detainees can eventually be released into the community, detention is mandatory for anyone intercepted attempting to enter or leave the country illegally. Conditions in detention are poor, with reports of mistreatment, poor health services and sanitation and longer processing times for resettlement claims (Ali et al., 2016).

A final concerning trend is the Indonesian authorities' willingness to push back to sea boats carrying asylum-seekers nearing their shores. In May 2015, as a crisis began to unfold in the Andaman Sea over boats of Bangladeshi and Rohingya refugees and migrants, Indonesia's initial response was to turn the boats around. While Indonesia eventually agreed to allow 2,000 Rohingya and Bangladeshis into the country, this

was only after fishermen in Aceh had spontaneously rescued three boats, and was on the condition that the international community resettle the 2,000 by May 2016, a deadline which earlier this year the Indonesian government acknowledged was no longer realistic (Topsfield, 2016). When in June 2016 a boat carrying 43 Sri Lankan Tamils faltered in waters near Indonesia, the local authorities attempted to force it back to sea before eventually allowing its passengers ashore (Amnesty International, 2016; Doherty, 2016).

3.2 Domestic policy drivers

Domestic pressures have contributed to increasingly restrictive Indonesian policies in recent years. One representative from an international NGO highlighted fears of terrorism linked to people fleeing war in Iraq and Afghanistan as contributing to tensions between Indonesians and refugees, compounding existing worries about home-grown extremist elements. Attitudes to Shia refugees in particular have hardened among radicalised Islamic youth networks, which see Shia inflows as posing potential risks to Indonesia's predominantly Sunni Muslim community.

Indonesian policy needs to be understood in terms of the contrasting approaches between different branches of government. In the case of this June's attempted boat pushback, interviews highlighted that the initial decision was made by local immigration, police and military officials, in contravention of orders from the Vice President and the Vice Governor of Aceh, who requested that the boats be allowed to land. This highlights tensions between the securitised approach favoured by immigration, police and military officers, and the more open approach advanced by civilian institutions. For example, in Langsa, one of the districts hosting Rohingya refugees, the local government took the lead in developing operational guidelines on humanitarian assistance for refugees and asylum-seekers which have since been recognised as a potential model for ASEAN, and a number of local governments have accepted refugee children into their schools.

Indonesia's refugee policy also needs to be viewed within the regional context in South-East Asia (McConnachie, 2014). In general, South-East Asian countries tend to see themselves outside the global refugee regime. Very few have ratified the Refugee Convention, nor are there any binding regional frameworks for refugee protection. While South-East Asian nations have on the whole tolerated refugee inflows, they have made few attempts to codify domestic policies systematically addressing refugees' needs, and have offered scant opportunities for formal local integration (Wake, 2016).

3.3 The influence of Australian policy

Interviews and a review of the academic literature highlight several key ways in which Australia has influenced Indonesian policy. As the Australia Director for a prominent international organisation put it, 'Australia has certainly set a very bad example for countries in the region'. Another interviewee concurred:

> *It is important that countries in Europe and Australia consider that they are setting standards for other nations. Policies, even if focussing on a local electorate, have a global impact. Eroding international protection standards locally has ripple effects on other countries and regions. The right to seek asylum, the prohibition of refoulement and abolishing long-term detention of asylum-seekers and refugees are minimum standards that are best promoted via example.*

Beyond setting a bad example, a number of analysts have argued that Australia has consciously attempted to replicate its own policies in other countries in the region through the provision of financial and diplomatic incentives (Nethery and Gordyn, 2014). In recent years Australia has committed considerable resources to Indonesia, both in supporting border controls and wider assistance, channelling millions of dollars into border infrastructure, training and intelligence-sharing, and Australian immigration officials have been posted to Indonesia (Nethery et al., 2013). In 2009–10 Australia pledged over 450 million Australian dollars in aid to Indonesia, its largest overseas commitment (Nethery and Gordyn, 2014).

Australian efforts to replicate the country's policies in Indonesia, and in the region more broadly, are clearly influential in the move towards the criminalisation of refugees and the incorporation of asylum into a securitised narrative of 'illegal migration'. This discourse has been promoted through the Bali Process, established in 2002, which Indonesia and Australia

co-chair (Kneebone, 2014). While recent Bali Process statements have begun to adopt some language on protection, the overall framework remains one of criminalisation. On a national level, one interviewee spoke of how an Australian-funded anti-people-smuggling campaign in 2009–10, implemented in Indonesian coastal villages and ports by the International Organisation for Migration (IOM), contributed to 'stigmatising people that help asylum-seekers and refugees (especially in transporting them) as breaking the law'. Similarly, Indonesia's 2011 Immigration Law has been labelled the result of 'persistent diplomacy' by Australia, with various provisions mirroring aspects of Australian immigration law (Nethery et al., 2013).

Australia's conscious guiding influence is also evident in the increased interception and detention of refugees entering or leaving Indonesia illegally. This process began with the 2000 Regional Cooperation Arrangement between Australia, Indonesia and the IOM, under which Indonesia agreed to intercept boats leaving its shores for Australia, referring the people on board to the IOM for case management. A focus on detention was advanced through the 2007 Management and Care of Irregular Immigrants Project, which aimed to increase Indonesian detention capacity through Australian support.

More directly, Australian refugee policy is contributing to the growing number of refugees in Indonesia. Operation Sovereign Borders in particular has created a bottleneck of refugees unable to leave what was originally intended as a transit destination. This bottleneck worsened in November 2014, when the Australian government announced that it would resettle no more than 450 refugees from Indonesia per year, and would not resettle any refugees registered with UNHCR after 1 July 2014 (Brown and Missbach, 2016). In response, the Indonesian government has appealed to other countries, including Australia, to provide more resettlement places. However, Australia has rejected the implication that the country is not sharing Indonesia's burden (AFP, 2016). The only Australian policy move looking likely as a result of Indonesia's pleas may be a partnership to address over-capacity in Indonesian detention centres (Cook, 2016).

3.4 Implications

Australian policies have undermined refugee protection in Indonesia in several ways. First and foremost, refugees' prospects for resettlement have diminished as Australia has cut resettlement quotas, in a context where Indonesia continues to reject local integration. Australian policy has led to greater restrictions on the part of Indonesia, including the increased use of immigration detention, the growing criminalisation of refugees and boat pushbacks. All of these measures are in clear contradiction of the spirit of the Refugee Convention.

4 Case study: Kenya

Kenya has for many years been home to hundreds of thousands of refugees from the Horn of Africa and the Great Lakes. In June 2016, UNHCR recorded 562,357 refugees and asylum-seekers in the country, over 200,000 of whom were in Kenya's largest camp, Dadaab (UNHCR, 2016c). The vast majority of refugees – almost 400,000 – are from Somalia.

4.1 Refugee policy in Kenya

Despite the long-term presence of Somali refugees in the country, Kenya has always approached the situation as a temporary one, in which the refugees would eventually return home. Even so, the camps have over time become more than temporary settlements; Dadaab, the world's largest refugee camp, has been described as a 'refugee camp that became a city' (Hujale, 2016). While initially refugee inflows into Kenya were largely unregulated by the government, in 2006 the Refugee Act, more than a decade in the making, set a framework for the management and registration of refugees.

Although periodic attempts to restrict the number of refugees seeking asylum have been successfully challenged in the Kenyan courts, Kenya's refugee policy has become increasingly restrictive. Its stance towards Somali refugees first took a noticeably restrictive turn in January 2007, when Kenya temporarily closed its border with Somalia. While the closure had only a limited impact, it was closely followed by another restrictive move: the forcible deportation of 420 refugees, mostly women and children, to Somalia (Human Rights Watch, 2009). Since then the Kenyan government has made clear on numerous occasions that it is seriously pursuing the repatriation of Somali refugees. In 2013, an agreement between the government of Somalia, UNHCR and the Kenyan government was signed paving the way for the voluntary repatriation of Somali refugees. However, this has failed to deliver the expected results, in part because of a lack of international financial support and continued conflict and instability in Somalia. During a pilot phase in the first half of 2015, UNHCR reported that just 2,589 refugees had returned to Somalia, well short of the target of 10,000 (UNHCR, 2015a). By August 2016, the total stood at 24,000 (Hajir, 2016). Although UNHCR has repeatedly stressed that any repatriation to Somalia must be voluntary (UNHCR, 2013), incidents of forcible deportation have been recorded since the Tripartite Agreement was signed, including the forced deportation of 349 Somalis in 2014 (All Africa, 2014).

The Kenyan government has also become increasingly assertive in calling for the closure of Dadaab camp. In April 2015, immediately after an Al-Shabaab attack on Garissa University in which almost 150 people died, Kenya's Deputy President, William Ruto, announced that, if UNHCR did not close the camp within three months, the Kenyan government would do so (IRIN, 2015). Although the government softened its stance shortly afterwards, the following May it again announced the closure of Daadab and the repatriation of all the refugees there by November 2016 (Kenya Ministry of Interior, 2016). Speaking at the World Humanitarian Summit in May 2016, Ruto insisted that the decision to close the camp was final (Mutambo, 2016).

The 2016 announcement on Dadaab came in tandem with another important announcement disbanding the Department of Refugee Affairs (DRA), the key agency responsible for the implementation of Kenya's obligations to refugees as provided for in the Refugee Act. According to a senior government official, 'there is no agency to implement the functions envisioned under the Refugees Act. The functions relating to refugee affairs have therefore become a function of security under the Ministry of Internal Security'. In late April 2016 an amendment was introduced to the Refugee Act revoking the prima facie refugee status of asylum-seekers from Somalia, requiring Somalis to instead undergo individual Refugee Status Determination (Kenya Gazette, 2016).

4.2 Domestic policy drivers

Links between insecurity, radicalisation, terrorism and the refugee presence have been repeatedly cited in justification for Kenya's more restrictive policy. Senior government officials interviewed claimed that terrorist

incidents in Kenya, including attacks at Nairobi's Westgate shopping mall in 2013 and the Garissa attack, both perpetrated by Al-Shabaab, were planned and directed from the refugee camps. A high-ranking security official interviewed for this study explained: 'Dadaab has become a dangerous area where high-level crimes and terrorism are organised. It is a threat to Kenya's internal security'. The camps have been described as 'hosting grounds for Al Shabaab as well as centres for smuggling and contraband trade [and] illicit weapons proliferation' (Kenya Ministry of Interior, 2016). While a senior UN official expressed doubt about evidence linking the Westgate and Garissa attacks to Dadaab, other incidents within Dadaab itself have highlighted the presence of Al-Shabaab, including the kidnapping of aid workers and bomb explosions (UNHCR, 2011b). Although it is not a given that closing the refugee camps will contribute to improved national security – indeed, in Pakistan camp closures have been followed by a deterioration in the security situation – it is nonetheless clear that security concerns are a key factor in government decision-making. According to a former government official, 'the attitude of the Kenyan government is that the national interest of security has come into direct conflict and at times has overpowered international interests relating to refugees'.

Interviews with government officials also revealed a range of broader motivations behind restrictive policies, many rooted in the length of time refugees have been in Kenya. As one former government official put it, 'It started with a feeling that the refugees had stayed in Kenya too long'. Although studies have pointed to the significant economic benefits Dadaab has brought (Zetter, 2012), interviews nonetheless indicated that refugees are seen as an economic burden. Kenya's Foreign Minister, Amina Mohamed, has claimed that, prior to its closure, the DRA cost Kenya 1 billion Shillings (almost $10m) to operate, though the DRA's closure has rendered this figure difficult to verify (Moore, 2016). Senior government officials interviewed cited economic concerns as a primary reason for closing the camps, alongside environmental protection and safeguarding the livelihoods of local Kenyan communities.

Restrictive policies can also be explained by the consensus in Kenyan public opinion in support of the closure of camps housing Somali refugees. A recent IPSOS survey found that 69% of Kenyans were in favour of closing Dadaab (Gaffey, 2016). In addition to concerns around insecurity, the expansion and entrenchment of the camps over time has created tensions with host populations, predominantly pastoralists who require large areas of land to support their livestock, but also among Kenyan businessmen who see Somali entrepreneurs as a threat. Given popular support for a more restrictive approach to Somali refugees, it seems clear that Kenya's official position has at least in part been formulated in pursuit of domestic political goals as President Uhuru Kenyatta looks towards upcoming elections in August 2017. It is worth noting that populist strategies of this kind elicit obvious comparisons with statements by politicians in industrialised nations, with one analyst accusing Kenyan politicians of 'taking a page out of Donald Trump's playbook' (Alfred, 2016).

4.3 The influence of European policy

In our interviews government officials highlighted that the Kenyan government's desire to close Dadaab and repatriate Somalis is driven by the domestic concerns outlined above, and a glance at the historical evolution of these policies makes clear that this is an objective the Kenyan government has sought to achieve for years. At the same time, however, public statements by key government officials explicitly refer to a connection between policy in Europe and Kenya's position on repatriation.

The Kenyan government has clearly been watching closely throughout Europe's 'refugee crisis', directly comparing the situation in Europe to Kenya, taking European actions as a benchmark for acceptable practice in the management of refugees and using the situation in Europe to address local and international criticism of its own policies, particularly in relation to the closure of Dadaab. Over the years, Kenya's refugee policies, particularly those pushing for the repatriation of Somali refugees, have repeatedly been subject to domestic and international claims that these moves are in violation of Kenya's international obligations under the Refugee Convention and human rights law. For example, in 2015, in response to the government's threat to close Dadaab, UNHCR stated that 'abruptly closing the Dadaab camps and forcing refugees back to Somalia would have extreme humanitarian and practical consequences, and would be a breach of Kenya's international obligations' (UNHCR, 2015b). In 2016, following the most recent closure announcement, the

Kenyan National Commission on Human Rights joined MSF in claiming that closing Dadaab would constitute a violation of international law (Mwagwabi, 2016).

Our analysis suggests that responses to refugees in Europe have opened up space for Kenyan policy-makers to more forcefully pursue increasingly restrictive refugee policies. First, as Europe has taken drastic measures to reduce flows, Kenya – as a country that has arguably more adeptly handled a far larger influx than the numbers Europe at large has struggled with – has used the leverage this has provided to further the domestic priority of closing Dadaab and repatriating Somali refugees, and demand greater burden-sharing from the international community.

One senior official interviewed stated that policies in Europe had had the effect of 'emboldening' Kenya in its repatriation endeavour. Recent developments, in particular the wording of the May 2016 closure announcement, show that, on both domestic and international counts, European policy has set a crucial precedent, allowing the Kenyan government to rebut criticism by arguing that, on the basis of recent state practice, national interest represents a legitimate justification for non-compliance with international commitments, including under international refugee law. The statement released by the Ministry of Interior in May 2016 announcing the closure of Daadab explained: 'governments across Europe and the Middle East have taken unprecedented efforts to limit refugee inflows into their countries on the grounds of national security. Kenya cannot look aside and allow this threat to escalate any further' (Kenya Ministry of Interior, 2016). As one senior UNHCR official explained, 'international and humanitarian obligations are not as persuasive for Kenya because of rampant flaunting that has been witnessed'. Discussing Kenya's international commitments under the Refugee Convention and other international legislation relevant to refugees, a senior official from the Ministry of Foreign Affairs stated that 'What is happening in Europe is creating space for the violation of these instruments'. Restrictive policies in Europe have created a 'new paradigm' for refugee policies, and the violation of international obligations towards refugees in Europe meant that international legal instruments 'do not have any integrity'.

Interviews also indicated that Europe's refugee policies feed a broader perception that developed economies are not pulling their weight in terms of global burden sharing on refugees, both in the number they are prepared to host themselves, and in the resources they are providing for refugees elsewhere, including in Kenya. Karanja Kibicho, Principal Secretary of the Ministry of Interior, has criticised Europe's perceived introspection regarding refugees for reducing funding for refugees in countries like Kenya, writing that 'there has also been a fall-off in the voluntary international funding for the camps in Kenya, in favour of raising budgets in the northern hemisphere to refugees headed to the West. International obligations in Africa should not be done on the cheap; the world continues to learn the ruinous effect of these persistent double standards' (Kibicho, 2016).

While the May 2016 closure announcement was by no means the first time the Kenyan government has used the threat of forcible repatriation and refugee camp closure to demand greater burden sharing from the international community, European policies, in particular the EU–Turkey deal, have added new weight to Kenya's bargaining position. In recent months senior government officials have argued that the global refugee challenge is the responsibility of the international community as a whole, not just of refugee-hosting states, and a burden that must be shared equally (Psiromi, 2016). Kenyatta has stated that 'the refugee issue is a shared responsibility … and the international community had a responsibility to support Kenya in ensuring that Somali refugees are repatriated in the best way possible' (Executive Office of the President, 2016b).

4.4 Implications

European policies have opened up space for the Kenyan government to more forcefully advance policies of repatriation concerning Somali refugees. This represents a clear concern for refugee protection; given the size of Dadaab camp, and in lieu of any significant improvements in stability in Somalia, it is difficult to see how its closure could be completed within the rapid timeframes suggested by the Kenyan government while at the same time safeguarding voluntary repatriation and thus the right to non-refoulement. While at the time of writing the Kenyan government may have softened its stance on closing the camp, it is nonetheless apparent – especially in light of the revocation of prima facie refugee status for Somalis and the disbanding of the DRA – that Kenyan policy has gone further than ever before down a trajectory that could result in the clear violation of rights enshrined in the Refugee Convention.

5 Case study: Jordan

Since the start of the Syrian crisis in 2011, Jordan, like other neighbouring countries, has seen vast numbers of refugees entering from Syria. As of July 2016, almost 660,000 Syrian refugees were registered with UNHCR, though with many going undocumented the actual number is likely to be much higher (UNHCR, 2016d). In recent public statements, Jordanian officials have quoted estimates of up to 1.5 million Syrian refugees residing in the country. While there have been several positive developments, most recently on the issue of Syrians' access to employment, Jordanian policy is becoming increasingly restrictive. Like other countries in the region, from an initially open welcome at the onset of the conflict, Jordan's policy has progressively tightened.

5.1 Refugee policy in Jordan

Jordan has a long history of refugee inflows and a proud record of refugee protection (Pavanello and Haysom, 2013). Over the past century, hundreds of thousands of Palestinians and Iraqis have sought refuge in Jordan, and the country has historically been a welcoming destination: many Palestinian refugees were granted full citizenship and afforded rights comparable to native Jordanians, while Iraqis were for decades generously admitted into the country. At the outset of the Syrian civil war, Jordan admitted hundreds of thousands of refugees. However, since 2013 policy has grown more restrictive.

Perhaps the most significant change came through the more consistent application of 'bailout' procedures. 'Bailout', which requires refugees to obtain authorisation documents if they want to live outside camps (involving payment of a fee and sponsorship by a Jordanian citizen), was long an official policy in Jordan but initially was rarely enforced, allowing Syrians to move freely in and out of camps (Francis, 2015). This changed in the second half of 2014, when officials began enforcing these procedures, while the documentation involved became increasingly difficult to obtain (Achilli, 2015). Refugees in the camps were suddenly unable to freely leave as they had before, and those that do still leave have been forced to rely on riskier and more covert means.

There have also been severe consequences for Syrians in urban areas, an estimated 120,000 of whom do not possess correct bailout documentation (Human Rights Watch, 2016c). In July 2014, the Jordanian government instructed UNHCR to stop providing Asylum Seeker Certificates (ASCs) to Syrians outside camps without 'bailout' documents. ASCs are required to ensure access to humanitarian services and prevent forcible removal to camps by the Jordanian security forces. Furthermore, without bailout documentation the 'service cards' refugees need to access subsidised Jordanian public services have become 'virtually unobtainable' (Francis, 2015; Human Rights Watch, 2016).[1] In November 2015, fees for accessing health services were raised to the level of uninsured Jordanians (previously they had been set at the level paid by insured Jordanians).

Recent years have also seen the progressive closure of Jordan's borders. The western border was sealed in mid-2013, leaving the north-eastern border the only point of entry (Human Rights Watch, 2015). The following July the Jordanian military began to restrict entry there as well, leaving refugees stuck in an area of desert now known as the 'Berm' (Staton, 2016). Although refugees were allowed into Jordan in fits and starts, movement across this final point of entry came to an abrupt halt in June 2016 following a car bombing in the area claimed by Islamic State (IS) (Al Jazeera, 2016). At the time of writing in August 2016 over 70,000 Syrians were trapped in conditions that one senior UN agency official interviewed for this study described as 'more than heartbreaking'.

5.2 Domestic policy drivers

From 2015 onwards security has been the predominant factor in Jordanian policy towards Syrian refugees. The public killing in January 2015 of Jordanian Air Force pilot Moaz al-Kassabeh by IS

1 Our research, however, suggests that some of these regulations have not been consistently enforced by local authorities; the fact that many Syrians still use Jordanian public services indicates that access has not been cut off completely.

highlighted Jordan's vulnerability to security threats following its involvement in the US-led air campaign against IS. Government statements following the June car bomb indicate that the attack has been taken as proof of the existence of terrorist elements among refugees gathered at the Berm (Jordan Times, 2016a). In the wake of the bombing, the Jordanian military designated the border a 'closed military zone' (Al-Khalidi, 2016). Although international NGOs and UN agencies have tried to secure access to people gathered at the border, one UN agency staff member explained that the military insist that they have intelligence that these people, including women and children, pose a security threat.

There are also concerns about the pressure on Jordanian society and its economy. As one senior expert put it, the influx has 'impacted every single part of life, every aspect of public services'. Addressing the London conference on Syria in February 2016, King Abdullah II told delegates that, 'looking into the eyes of my people and seeing the hardship and distress they carry, I must tell you: we have reached our limits'. Interviews highlighted the pressure refugees were exerting on education, healthcare, social services, public transport, housing, water and waste management. On the one hand, while in 2015 Jordan received less than 40% of the $3 billion requested from the international community to cover the costs of the influx – a shortfall that one Jordanian aid worker said came 'from my pocket, from the government's pocket' – the country has clearly benefited from international assistance and Syrians have demonstrated an ability to benefit the economy (Chatty, 2015). On the other, and regardless of the refugees' actual net impact, the economy has become an important flash-point in terms of public opinion. In particular, Syrian refugees have been accused of crowding Jordanians out of the labour market, an accusation that, while unsupported by available evidence (*ibid*.), has gained powerful traction in a country where unemployment stands at 15% (Jordan Times, 2016b).

While Syrians received a generally warm welcome in Jordan at the beginning of the crisis – due to a combination of kinship ties, 'Arab fraternity' and a history of social and economic interaction between the two countries – as patience has worn increasingly thin, sentiment has turned against them amongst substantial parts of the population. Polling by the Centre for Strategic Studies in Amman has shown that the majority of Jordanians do not want to take in more Syrians because, as one Jordanian activist put it, 'people feel worse off because of [them]'. Growing public resentment of Syrians may also be connected to fears that the refugees will eventually settle permanently in Jordan as conflict in Syria deepens and peace talks falter.

5.3 The influence of European policy

Several interviewees cautioned that a straight line could not be drawn from restrictive policies in Europe to closed borders in Jordan, given the numerous domestic factors also at play. Nonetheless, various indirect connections were apparent. Interviews showed that European refugee policies have affected Jordanian policy in key ways.

Numerous interviewees stated that Jordanians, both policy-makers and the public at large, have been looking very closely at Europe over the course of its own 'refugee crisis'. Jordanians read the international press, and Europe's 'crisis' has also been covered by Jordanian national media. Syrians have been using smartphones to tell relatives in Jordan about the conditions they have encountered in Europe. Interviews revealed a broad understanding among Jordanians that Europe did not want to receive refugees, and was willing to pay out to prevent their arrival. This perception has deepened following the EU–Turkey agreement; according to one senior UN agency official, 'everybody understands why Turkey was given €3 billion' under the deal. Europe's reluctance to accept Syrians has fed a perception among Jordanians that the burden of responding to the Syria crisis is not being equally shared. Dr. Ibrahim Badran, a former government minister and presidential advisor on international relations at Philadelphia University in Amman, explained: 'The pressure of refugees in Europe made Europe forget there are other countries, like Jordan, like Lebanon, that are much smaller in size and economy, who are receiving more refugees than Europe at large'. Interviews conveyed a sense among Jordanians that they had been taken for granted, both in terms of burden-sharing on refugees and as regards international assistance; refugees, said one interviewee, 'have become a Jordanian problem'.

Interviewees also reported a widespread feeling among Jordanians that Europe's refugee policies were evidence of double standards on international principles and

legal obligations regarding refugees, particularly in relation to international attempts to convince Jordan to open its border. One senior UN agency official, explaining Jordanian public opinion, commented: 'There is a sense of people in their European ivory tower calling for greater assistance. The idea of … people from the industrialised world preaching human rights standards and refugee law, and who haven't upheld those standards themselves'. This view appears to extend to military officials controlling Jordan's borders, who have asserted, when asked about the possibility of Jordan opening its borders, that no other countries have been willing to take people stuck at the Berm and that Jordan has taken more than its fair share of refugees, making the point by saying 'Look at what you're doing in Greece'.

The Jordanian public's feeling that they have been left on their own to deal with the crisis, with Europe refusing to relieve the pressure by taking Syrians themselves, exacerbates already negative public opinion over Syrian refugees in Jordan. As developments in Europe have made apparent that Jordan is shouldering more than its fair share of the Syrian inflow, it is likely that this has helped to cement public opinion in favour of restrictive policies. European policies also appear to have emboldened Jordanian officials to take a more assertive line on the international stage. While Jordan's dependence on international funding means that the country cannot be too outspoken in its criticism of Europe, public statements show a conscious effort to use the European 'crisis' as a negotiating tool with the international community. According to one interviewee, Jordan is very aware of how Europe's political mood could work to its advantage, capitalising on European fears of further refugee flows to the continent by arriving at the February 2016 London conference on Syria with a compact detailing an itemised strategy for handling refugees in Jordan, complete with detailed requests for assistance. Favoured nation trading status with the EU looks likely to become another fruit of this strategy, with the EU agreeing in June 2016 to relax the rules governing Jordanian products entering the EU (Jordan Strategy Forum, 2016).

Finally, restrictive European refugee policies have made it much more difficult for the international community to pressure Jordan into relaxing its own policies, in particular in relation to the closed borders at the Berm. This trend has played out both in the public domain and in private fora, as Jordanian policy-makers have pushed back against international demands to reopen their borders, citing international reluctance to take in Syrians by way of justification. In a BBC interview in February 2016, King Abdullah stated that 'We have already taken 1.4 million people. If you are going to take the higher moral ground on this issue, we'll get them to an airbase and we're more than happy to relocate them to your country'. According to one government minister, Jordan simply does not accept international criticism of its refugee response (RT, 2016). Meanwhile, senior UN and international NGO staff feel that humanitarian arguments have lost influence in Jordan, particularly at the Berm. One senior UN agency official felt that this had affected negotiations over humanitarian access and presented challenges for traditional advocacy strategies as field staff 'struggled to form arguments'. While access was eventually secured at the Berm in early August, it was not easily gained and relied on close personal relationships with the military at the border.

5.4 Implications

Jordan's sealed borders effectively leave refugees fleeing conflict in Syria with three main options: remaining in Syria, moving into Jordan irregularly or seeking refuge elsewhere, with Europe one major option. To the extent that Jordan's policies may prompt the first two of these options, there are clear concerns in terms of refugee protection and rights under the 1951 Refugee Convention. However, they could also prompt increased flows to Europe. In the latter case, there is a sense in which European restrictions aimed at reducing flows to Europe have in fact encouraged a Jordanian approach that may in the long term increase the number of Syrians arriving at Europe's borders. As one Jordanian academic put it: 'If Jordan and Lebanon could not receive refugees, then these refugees would reach Europe in one way or another. Jordan is taking a heavy load that would have reached Europe. So why is Europe not doing something more effective?'.

6 Conclusion

The findings from the case studies presented here provide evidence of increasing restrictions faced by refugees in numerous low- and middle-income countries. Restrictions imposed in recent years have included limitations on freedom of movement, reduced access to services, closed borders, forced repatriation, increased use of immigration detention and incorporation of refugees into a securitised discourse of 'illegal migration'. These restrictions, particularly in countries that have traditionally accepted vast numbers of refugees, are deeply concerning. In Jordan and Kenya – both countries that have admitted hundreds of thousands of refugees for decades – such restrictions present a clear reversal of previous policies. Given the vast numbers of refugees resident in these two countries, these changes potentially have enormous impact. In Indonesia, while the overall numbers of refugees are smaller, the rate of increase (30% from 2013 to 2015) has been dramatic, meaning that over time restrictions in Indonesia are affecting increasing numbers of people.

The case studies show that politicians, 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. Indeed, it is likely that awareness of European and Australian policies in these countries is stronger now than ever – just as restrictions have increased significantly – given advances in communications technology, social media, the easy availability of international and domestic press and new online means of communication such as WhatsApp and Skype. These have all played a part in ensuring that the harsh treatment of refugees in Europe and Australia is witnessed globally. Simultaneously, a proliferation of fora for discussion of refugee and migration issues has brought policy-makers in low- and middle-income countries into increasing contact with their counterparts in high-income countries, again heightening awareness of policies in rich economies. The unequivocal global failure to ensure fair burden-sharing on refugee protection has been cast into sharp relief. Looking at the imbalance between 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'.

In Jordan, Kenya and Indonesia public officials have become increasingly assertive in calling for greater burden-sharing. Following the signals given by the EU–Turkey deal, countries like Jordan and Kenya have become more proactive in exploiting global trends to leverage funds from wealthier nations, as it has become starkly clear that these countries are willing to pay out to avoid taking refugees. While these efforts have seen some success, one interviewee described private discussions in which officials from low-income countries made it clear that increased funding was not enough; instead, they demanded that developed countries take more refugees as well.

6.1 Tilting the balance

As multiple interviewees highlighted, it is difficult to draw a straight line correlation between increased restrictions in Europe and Australia and policies in lower-income countries; in each case study, a number of domestic policy drivers were identified. Indeed, scrutiny of the domestic contexts in Jordan, Kenya and Indonesia is telling in terms of Europe's own 'refugee crisis', indicating that it is not 'unprecedented', as some have claimed, nor is it really a 'crisis'. As the cases of Jordan and Kenya show, lower-income countries have been coping with very large numbers of refugees for decades. Moreover, as seen in all three case studies, lower-income countries face very similar issues to their counterparts in Europe and Australia with regard to refugee policy, including security concerns and public pressure for a more restrictive approach.

Policies in Europe and Australia have increased domestic pressure 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 response to global refugee numbers. Meanwhile in Indonesia, Australian policies have directly increased the number of refugees in what historically has been a predominantly transit country. In addition to exacerbating domestic pressures, it is likely that

European and Australian policies have had more damaging effects in creating an enabling environment for restrictive decision-making.

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 very clear message that at the very best it is one rule for developed nations and another for the rest of the world, or at the worst 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 to the effect that caring for people forced to flee their homes is optional and becomes secondary if states face the prospect of domestic unpopularity or security concerns as a result. This effect is heightened in countries like Jordan and Indonesia, which have not signed the Refugee Convention, and which are inevitably 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 Indonesia, Australia has actively pushed the government to implement restrictive policies noticeably similar to its own. Again, the overall effect is declining refugee protection and the devaluing of the norms established in the 1951 Convention.

6.2 The erosion of refugee protection worldwide

Taken together, the case studies display a clear trend in the erosion of refugee protection on a global scale. Until recently, the refugee regime had been based on goodwill, particularly on the side of lower-income countries. Jordan and Kenya in particular show signs of pushing back against the assumption that poorer countries will unquestioningly continue to house 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 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.

6.3 Opportunities to reverse a damaging trend

Overall, there has been a lack of creativity in responses to refugee movements in recent years. This is highlighted by what, on the eve of the meeting, looks the likely outcome of the 19 September UN General Assembly High-Level Meeting on Refugees and Migrants, namely to preserve the status quo, with a global compact on refugees pushed down the road to 2018 (Sengupta, 2016). This is concerning when, in the context of thousands of refugees drowning in the Mediterranean and thousands of refugees trapped in the desert at the Berm, the status quo represents an abject failure to provide adequate protection to the millions of people worldwide who have fled their homes in search of safety and a better life.

While this study primarily serves to evidence a concerning global trend, it also argues that 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 actively 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 example is the provision of safe pathways to asylum in Brazil, which since 2013 has issued 9,000 humanitarian visas to refugees fleeing Syria (Wood, 2016). There is also the experience of Canada, where from November 2015 to August 2016 10,892 Syrians were resettled under private sponsorship arrangements (Government of Canada, 2016). Even within countries following disturbing policy trajectories there are examples of good practice, as in the case of Indonesia highlighted here, 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 (Kuch, 2016).

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' (Loescher, 2001). Whilst these days 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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Humanitarian Policy Group
Overseas Development Institute
203 Blackfriars Road
London SE1 8NJ
United Kingdom

Tel. +44 (0) 20 7922 0300
Fax. +44 (0) 20 7922 0399
E-mail: hpgadmin@odi.org
Website: http://www.odi.org//hpg

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