

# Human Rights of Refugees: Australian Government's Policies Over Refugees

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## ABSTRACT

Global displacement levels are at a record-high level and Australia is under international pressure to accept refugees, but its strong ethnocentric nationalism resists immigration and multiculturalism. Despite claims of humanitarianism, Australian policies such as offshore processing and detention methods frequently violate human rights. The government degrades refugees and silences their voices to defend its actions and avoid accountability for international Human rights violations. The aim of this research is to investigate the policies and procedures implemented by various Australian governments, tracing their history and impact on refugees. Through a critical lens, it explores the specific human rights difficulties that refugees experience in Australia, assessing instances of violations caused by government actions. The evaluation of Australia's obedience to international human rights norms, as well as its adherence or divergence from the universality and equality principles that underpin international frameworks, are key to the research. I find that Australia's response to refugees can be more accurately explained using the concept of the International human rights framework and the concept of Universality. This research uses qualitative methods analyzing legislative documents, government papers, scholarly articles, and international human rights treaties to analyze Australia's refugee policies. A comparative Analysis is used to examine how these policies align with international human rights obligations. This research reveals human rights breaches caused by Australia's mandatory detention, boat turnback, and offshore processing practices and it illustrates cases of emotional and physical harm suffered by refugees in detention camps, raising questions about Australia's adherence to international conventions. While Australia's measures are justified by national security and border protection, they frequently cover up systematic human rights violations. Despite being a signatory to many key human rights treaties, Australia's internal policies differ from the equality and universality principles that form the foundation of international human rights laws.

**Keywords:** Refugees, Human rights, Policies, Australia, International, Universality

## INTRODUCTION

### Background

The most persecuted and the most vulnerable group of individuals in the world are refugees (Ahmed, 2016). Millions of people being forced to leave their homes due to conflicts, persecution, and violence has led to a refugee crisis (Supriyadi, 2022). This crisis is putting the principles of human rights and international law to the challenge. As countries try to provide protection and support for these populations, their policies and actions are closely examined about international human rights standards. This research aims to analyze the rights of refugees by focusing on the policies implemented by the Australian government and how they align with established international human rights frameworks. The purpose of this study is to examine the extent to which Australia's efforts to address refugee rights comply with international refugee rights law.

Human rights are fundamental freedoms that everyone has and as refugees are also humans and are viewed as a vulnerable group that needs to be protected, the subject of refugees and human rights cannot be separated (Setyardi et al., 2020). However, in nations that accept refugees, refugees are frequently subjected to brutal

treatment and abuses of their human rights, including rape, assault, discrimination, and forced repatriation (Supriyadi, 2022). The worldwide refugee crisis continues to be one of the most severe humanitarian crises of the modern day, pushing states to establish policies that balance national security issues with the fundamental rights of displaced people.

The principles contained in international human rights law establish a solid basis for protecting refugees' dignity, safety, and rights. There are a range of international, regional, and national human rights laws and mechanisms that may be used to strengthen refugee protection (Gorlick, 2000). The 1951 United Nations Convention regarding the Status of Refugees, as well as its 1967 Protocol, outlines states' legal responsibilities to refugees and establishes the rule of non-refoulement, which prohibits the return of refugees to territories where their life or freedom may be jeopardized. However, the practical application of these principles is different from one country to another country, owing to considerations such as local politics, security concerns, and societal dynamics.

The number of people applying for refugee status has surged recently. Several states stepped up their efforts to control refugees by severely restricting physical entry, such as by requiring visas, or detaining people so that they do not enter their territory (Setyardi et al., 2020). However, these initiatives have made it more difficult for refugees who desperately need international assistance. Additionally, nationalistic feelings have intensified and immigration restrictions have been stricter globally in recent years. These tendencies make it unclear if such measures comply with universally recognized human rights standards.

Due to its unique geographic location, strict border control policies, and complex legislative framework controlling the treatment of refugees, the Australian government's response to refugees has received substantial attention in the modern context. Because of its remote location and the vast oceanic distances between it and its neighbors, Australia has developed a unique strategy for handling refugee arrivals. When it was implemented in the 1990s, the policy of mandatory detention for unlawful immigrants drew praise for its focus on border security and condemnation for its effects on refugees' human rights. Australia has been in the worldwide attention because of its approach to resettling migrants. According to some, Australia's policy does not assist in the acceptance of refugee rights, and therefore, refugees find it challenging to enter Australian territory (Setyardi et al., 2020).

This Research examines how Australia's policies fit within the framework of international human rights law through a broader lens, looking at whether there is a violation of the human rights of refugees. In the end, an in-depth understanding of the difficulties and opportunities for protecting the human rights of refugees can open the door for more humane and successful policies that preserve the dignity and rights of individuals compelled to seek refugee status abroad.

### **Significance of study**

The proposed research on the "Human Rights of Refugees: Case Study of Australian Government's Policy Over Refugees" holds a significant position due to its unique emphasis on a critical and complex issue at the connection of international law, human rights, and government policy. Using the Australian government's policies as a case study, the research intends to provide an understanding of the various obstacles encountered by refugees and the related responsibilities of governments under international human rights law. Australia is a signatory to international refugee and human rights agreements and treaties, notably the Refugee Convention. But its actions have consequences not only for refugees within its borders but also for the global refugee regime. Research in this field can shed light on how the acts of wealthy countries affect worldwide refugee protection efforts and the research's emphasis on the Australian scenario can serve as a helpful reference for examining similar circumstances in other nations and regions.

Therefore, the importance of this study resides in its ability to further both academic research and real-world policy issues. The study also helps to understand any disparities between Australia's responsibility under the international human rights framework and the way its refugee policies are put into practice.

## Problem Statement

Human rights protection and preservation are core foundations of international law, and refugee rights play an important role within this framework. Refugees, who are frequently escaping conflicts, persecution, or other life-threatening situations, have specific rights and safeguards under international human rights law. However, how these rights are implemented, particularly in the context of government policy, can vary significantly posing complicated ethical and legal difficulties. One such example is the Australian government's policy toward refugees, which brought international attention and raised concerns about refugees' human rights.

The Australian government has put in place several strategies to discourage and manage the entry of refugees. These policies, including mandatory detention, offshore processing, and boat turnbacks, have raised arguments over their consistency with international human rights obligations notably those enshrined in the 1951 Refugee Convention and its accompanying protocols. The government's policy has raised concerns about how refugees are treated, their access to protection, and the possible violation of their basic human rights.

## Research Objectives

1. Examine the policies and practices of Australian governments over Refugees.
2. Investigate specific instances and cases where refugees in Australia have experienced violations of their human rights due to government policies.
3. Analyze and compare Australian government policies on refugees to assess their alignment with international human rights standards.

## Research Questions

1. What are the policies and practices of Australian governments over Refugees?
2. What are the specific human rights challenges and violations experienced by refugees in Australia due to government policies?
3. To what extent has the Australian government's refugee policy complied with international human rights standards and principles?

The refugee crisis has emerged as a critical global issue in an increasingly interconnected world. The international community has created an extensive system of rules and regulations known as International Refugee Rights principles to handle the complicated issues that refugees face. The main international agreement for refugee rights is the 1951 Refugee Convention. Two-thirds of the world's states have signed the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (Gorlick, 2000).

The 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Social, Economic, and Cultural Rights (ICESCR), the 1984 Convention against Torture, and the 1989 Convention on the Rights of the Child are few other examples of the international human rights treaties that include many of the rights identified in the international refugee instruments (Gorlick, 2000). These legal frameworks include a variety of clauses emphasizing refugee protection. For example, Article 3 of the Refugee Convention, emphasizes "the principle that human beings shall enjoy fundamental rights and freedoms without discrimination" (The Refugee Convention, 1951). Moreover, the fundamental doctrine of non-refoulement is firmly established in the convention for the protection of refugees (Ahmed, 2016). According to Article 33 of the Refugee Convention, States everywhere must refrain from deporting or sending back refugees in any way to places where their lives and basic freedoms may be in danger (The Refugee Convention, 1951).

Some of the other rights of refugees are highlighted in the 1951 Convention on Refugees: According to Article 16, a refugee has free access to courts of law on the territory of all signatory nations, and Articles 17, 18, and 19 control the provision of work opportunities to refugees (The Refugee Convention, 1951). The freedom of movement within the territory of the signing state is one of the additional rights guaranteed to refugees under Articles 26 and 31 of the Convention (The Refugee Convention, 1951).

Australia has received international attention as a result of its refugee policy and Australia's approach has been criticized for failing to assist in the fulfilment of refugees' rights. Refugees find it difficult to enter Australian territory (Setyardi et al., 2020). This research will evaluate the different approaches to Australian policies related to refugees because there has been no previous research that provides a comprehensive review of those policies.

The Australian government implemented a program known as Mandatory Detention which is a type of detention enforced on refugees who arrive by sea and have no valid visas (Setyardi et al., 2020). Under that Refugees should be kept in immigration detention until they are either given visas or expelled from Australia. The Australian government has violated multiple international agreements through its policy of mandatory detention of refugees and has been accountable for extensive physical, mental, and sexual abuse of detainees (Minns et al., 2018). In the late 1990s, Australia transitioned from an onshore asylum system to an offshore one with new policies. In 1999, the conservative Howard administration changed permanent residence visas to temporary protection visas for immigrants arriving by boat (Crock and Bones, 2015). It created a detention arrangement with Indonesia to hold and process possible boat people. To carry out its program, the Australian government reached bilateral agreements with Pacific Island countries such as Nauru and Papua New Guinea (Setyardi et al., 2020). Also, the Australian government has implemented a program known as Operation Sovereign Borders (OSB), which is a border security operation led by the military that aims at preventing human smuggling and safeguarding the Australian border (Minns et al., 2018).

Hudson-Rodds stated in his article that in Australia Refugees have been subjected to laws and actions that regard them as possible risks to national security and deny them human security and Politicians think that harsh treatment of migrants makes their citizens feel safer (Hudson-Rodd, 2009). The Australian government's strategy involves preventing, intercepting, and holding refugees arriving by boat on offshore islands and in detention centers, which violates international human rights regulations (Hudson-Rodd, 2009).

Although Australia has agreed to refugee protection conventions and agreements, the treatment of refugees by the Australian administration has received considerable attention. Whether Australia follows these agreements in practice is still up for controversy. Also, there is a research gap in understanding the extent to which Australia's policies and practices align with its commitments under international agreements related to the protection of refugees' human rights. Therefore, analyzing the effects of policies like mandatory detention, offshore processing, and boat turnback on the rights of refugees, such as their freedom from torture and the prohibition of cruel, inhumane, or degrading treatment, under the human rights framework could be part of this research analysis.

## Theories and Concepts

By attributing a theoretical dimension to this research, a useful scholarly role can be constructed for this study. Therefore, to give a conceptual value to this research related to Australian policies that affect the rights of refugees, the International Human Rights Framework and the concept of universality are used here. By looking into this, this research intends to give a better understanding of the challenges and possibilities for the Australian government in aligning its policies with international human rights principles.

The international human rights framework includes a collection of principles and standards enshrined in international treaties and conventions such as the Universal Declaration of Human Rights (UDHR) and the 1951 Refugee Convention. This framework demands nations to respect, safeguard, and fulfill the human rights of every individual under their jurisdiction, irrespective of nationality and immigration status. The research give an in-depth understanding of the international human rights principles applicable to refugees, such as the prohibition of torture and cruel, inhuman, or degrading treatment and non-refoulement. Throughout the years, Australia's policy on refugees has changed, including measures such as mandatory detention, offshore processing, and boat turnbacks. The "Pacific Solution," which involves holding refugees in offshore detention camps, brings into question Australia's adherence to the non-refoulement principle (Setyardi et al., 2020). Also, the "border protection" narrative has frequently been dissatisfied with human rights principles, creating arguments over how refugees should be treated ethically.

The concept that certain principles, notions, and values should apply to all nations and actors, irrespective of their size, power, or cultural disparities, is known as the concept of universality in international relations. Human rights are one of the most important contexts where universality is maintained. The United Nations established the Universal Declaration of Human Rights in 1948, which states that fundamental human rights should be protected and upheld everywhere, irrespective of the political structure of a nation or cultural background. Universality concepts are further reflected in international law, notably in treaties and conventions. In terms of refugee rights, universality highlights that these rights are fundamental to every human being and should apply universally, despite their nationality, race, gender, religion, or other characteristics. Therefore, Universality is an important standard in safeguarding refugees' human rights. This research aims to use the concept of Universality to study this research area.

### **Limitations and Delimitations**

This research has its own limitations and delimitations. When researching refugee rights, it is necessary to examine them internationally or by utilizing multiple regions, but this is difficult and broadens the scope of the study, thus for this research, only Australia is used as a case study. Further, there can be many policies regarding refugees in Australia that affect the human rights of refugees, examining all of those policies is difficult and broadens the scope of the study, thus for this research, only some main policies are used. Moreover, since Australia is used for this research, there is no possibility to go to that country and obtain data. Limited access to certain government documents or confidential information may restrict the ability to gather comprehensive data for this research. Furthermore, there can be many human rights violations of refugees in Australia but this research delimits by concentrating on specific aspects of human rights. As there are many international treaties and conventions related to the human rights of refugees, this research mainly examines specific international human rights treaties or conventions such as the 1951 United Nations Convention regarding the Status of Refugees, as well as its 1967 Protocol and Universal Declaration of Human Rights. Lastly, access to policymakers or refugees for interviews or surveys might be limited, potentially affecting the depth of the research.

## **RESEARCH METHODOLOGY**

### **Introduction**

This chapter describes the methodology and methods employed in this research. This Research adopted a qualitative method approach with an interpretative case study on Australian Policies over refugees. This approach allowed for a deeper understanding of the extent to which Australia's efforts to address refugee rights comply with international refugee rights law. In more detail, this part, outlines the research design, the research method, the methods of data collection, the selection of the sample, the research process, the type of data analysis, the ethical considerations, and the research limitations of the project.

### **Research Approaches/ Research Design**

A research design is a method for collecting, analyzing, interpreting, and disseminating data (Myers 2008). There are several methods of study, many of which have contrasting if not competing, epistemological and ontological viewpoints. The research design can be qualitative, mixed method (qualitative and quantitative), or quantitative.

A qualitative study is useful when the research objective is to describe phenomena based on someone's perception of their experience in a specific situation (Stake, 2010). It is a subjective research strategy that employs a naturalistic and interpretative method, with data often acquired through interviews to provide qualitative data (Rubin & Babbie, 2010). Creswell explains that a quantitative method is helpful when a researcher wants to explore the connections between variables (Creswell, 2003). The quantitative method is objective and often entails acquiring quantitative data in the type of numbers; therefore, statistical approaches may be employed to examine hypotheses (Ary et al., 2002). Mixed methods research is a new strategy that combines qualitative and quantitative research approaches to gather and evaluate data in a single research

project (Vathsala, 2014). This mixed method technique provides a comprehensive description and analysis of a research topic without restricting the scope of the study or the type of the participants' responses.

When choosing between qualitative and quantitative techniques, Hammersley contends that judgment should be made based on the situation and pupusa, not on a commitment to one competing philosophical worldview over another (Hammersley, 1996). While acknowledging the aforementioned, I believe that a qualitative method approach would be the most appropriate for this study because educational research often involves complexity and contextual factors.

The qualitative method approach was the most appropriate approach since the objective of the research was to investigate the Human Rights of Refugees in the framework of Australian policies. Research involving this method is suitable for examining complex social issues and understanding the real-life experiences of refugees in Australia. The rationale behind utilizing a qualitative method research design was its ability to generate more comprehensive and detailed data about how Australian policies impact the rights of refugees who live in Australia.

Two distinct approaches were employed in this study to collect data, which may be divided into the primary and secondary categories. Primary data is, as the name implies, data that is gathered first by the researcher, whereas secondary data has already been gathered or created by others. Primary data is factual and original, whereas secondary data is only the analysis and interpretation of the primary data (Ajayi, Victor, 2023). In this research, the main primary data sources I used are the 1951 Refugee Convention and the 1967 Protocol, and case laws related to Australian refugee rights violations were also looked into.

Secondary data is gathered for different reasons, whereas primary data is gathered to find a solution to the current issue. Thus, the key distinctions between primary and secondary data are as follows: primary data are those that were initially created by the researcher, whereas secondary data are those that were previously gathered by the agencies and organizations conducting the investigation (Ajayi, Victor, 2023).

I used both primary and secondary data sources to get a full understanding of the human rights of refugees, with a particular focus on Australian policy towards them. Although I used both these types of data, I gave priority to secondary data. Because it is difficult for me, the researcher, to access Australia, which is the field of study that I have chosen for the research. A basic understanding of historical and present viewpoints on refugee rights and Australian immigration policies obtained through the use of secondary data, which is gathered from reports, government papers, policy documents, and reviews that already exist. This makes it easier to comprehend the issues, gaps, and amount of knowledge that exist in this area.

In addition, primary data collection includes the collecting of firsthand information using questionnaires. To obtain firsthand information about Australian refugee policy and its effects on human rights, it might be helpful to create and distribute questionnaires to refugees in Australia whose rights are already affected. A deeper understanding of the real-life experiences of refugees affected by Australian policy can be gained from these primary sources. My research attempts to provide a comprehensive analysis of the issues surrounding refugee rights in the Australian setting by utilizing both primary and secondary data.

## Data Collection Methods

A questionnaire served as the data-collecting instrument in this study. A printed self-report form called a questionnaire is intended to extract information from individuals through their written replies. Although the questions on a questionnaire are often less in-depth than those on an interview, the information they yield is comparable. Pallant claims that the data collected through the questionnaire is standardized and simpler to evaluate (Pallant, 2005). Data can be collected conveniently from a massive amount of respondents and be able to compare the outcomes with parallel surveys used in other institutions.

A descriptive questionnaire was chosen because it accurately reflects or provides the characteristics, such as behavior, views, abilities, beliefs, and knowledge, of a certain individual, situation, or group. This design was designed to comply with the research's aims, which are to evaluate refugees' knowledge and perspectives on

their human rights in the context of Australian policy. This questionnaire is provided using the online survey software Google Forms. The questionnaires were in English and divided into two sections: A and B. Section A aims to collect demographic information, such as age and gender.

This data could assist the researcher in analyzing the results. The researcher personally gave questionnaires to the refugees for completion. The data was collected during six months. This questionnaire would take participants 10 to 15 minutes to complete and consisted of 16 questions. These questions were written in basic language to ensure clarity and ease of understanding. Questions were developed based on information acquired from the primary and secondary data to ensure that they accurately represented what refugees should know about how Australian policies affect refugee rights. A sample of a consent form is shown in Annexure 2.

Data was collected with the aid of questionnaires to evaluate how Australian policies affect the rights of refugees. Questionnaires were decided upon because of the following:

- By giving out questionnaires and having the researcher collect those up in person, they guaranteed a high response rate.
- It took less effort and time to carry out.
- Since the identities of the individuals did not need to be on the completed questionnaires, they provided the option of anonymity.
- Since they were presented consistently, there was less room for bias.
- It's simpler to compare the answers to each questionnaire item because the majority of the items were closed-ended.

With the exception of a few open-ended questions that offered more varied detail, the majority of the questions were closed-ended. Whereas options for closed-ended questions had been determined by the researcher, open-ended questions needed written responses from the participants (Burns & Grove 1993). I used open-ended questions in my research because they let participants answer in their own words and give more information. Because they are simpler to administer and evaluate, closed-ended questions were also added. In addition, a respondent may finish more closed-ended than open-ended questions in a given amount of time, making them more efficient. The purpose of the research was explained to the respondents prior to the questionnaire being distributed. All participants in the study were notified that their involvement was entirely voluntary and that their responses and information would be kept confidential. Before conducting research or administering questionnaires, respondents should be thoroughly informed about the nature of the study, as stated by Dongre & Sankaran (2016) and addressed in the cover letter of the research questionnaire (Dongre & Sankaran, 2016).

In addition to the previously mentioned advantages, questionnaires contain disadvantages. For instance, validity and accuracy are issues that need to be addressed (Burns & Grove 1993:368). Since the respondents' responses are usually brief important information may be missed since they may not fully reflect their opinions. Instead, they may answer questions in a way that they believe will satisfy the researcher.

Thus, the researcher employed methodological triangulation in this research to verify the accuracy of this data. Qualitative researchers employ triangulation to guarantee a rich, solid, accurate, and advanced research account (Thurmond, 2001). From Roberta and Dorothy's journal: the term 'triangulation' comes from the area of navigation, where the location is established by utilizing the angles between two known points (Heale & Forbes, 2013). Triangulation is the term used in research to describe the application of many methods to investigate an issue. Triangulation, according to Cooper and Schindler (2008:185), is the blending of many qualitative techniques or the mixing of qualitative and quantitative techniques.

The purpose of this data Triangulation is the process of verifying a hypothesis using two or more independent measurements to increase trust in the results. Method triangulation (also called data triangulation), theoretical triangulation, and investigator triangulation are the three different forms of triangulation. In this research, I did this investigation utilizing the triangulation approach. To do that I used primary and secondary data to collect data as shown in Figure 1. Methodological triangulation is the process of investigating a topic using many approaches. It has been demonstrated to assist validate findings, provide more precise data, enhance validity, and enhance understanding of the issues being studied (Bekhet & Zauszniewski, 2012). Thurmond claims that

the advantage of this kind of triangulation is that it offers a comprehensive and deeper understanding of the findings (Thurmond, 2001).

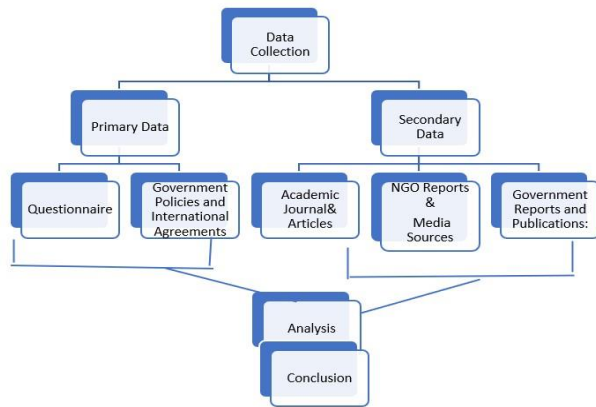


Figure 1 Data Collection

### Sampling Techniques

A sample is a selected group of respondents taken from the population of interest, and in many circumstances, sampling is more practical than examining the population as a whole. Although no sample can be assured to be completely representative, it serves the objective of getting a result that is representative of the whole population being sampled without the need to examine everyone. For this research, the sample consisted of 10-15 respondents from various states in Australia. The researcher focused on the Australian region due to time, personnel, and financial constraints, as well as Australia's various refugee rights concerns.

When carrying out research, several methods of sampling are achievable, however, qualitative researchers often focus on small samples. Research participants are chosen for their ability to provide detailed descriptions of their experiences, which can challenge and improve the researcher's understanding (Crabtree & Miller, 1992). Cresswell defines sampling as the process of selecting individuals or locations to research, gaining access to study s, and creating connections with participants in order for them to offer relevant information (Cresswell,1998).

The snowball sampling approach, which is not probability-based, is used in this research. In this strategy, the sample is increased by requesting identified participants to suggest other refugees in Australia that they know who could be ready to offer relevant feedback on the research issue. This is referred to as snowball sampling (Marshall, 1996). The researcher sought potential participants, and those who met the requirements and agreed to participate in the study were handed questionnaires. In this study, the researchers contact refugees who have made initial contact and explain their research aims. Then ask them if they would be willing to participate in their study and if they can recommend others who might also be interested or knowledgeable about this research topic.

I collected data for my questionnaire using a variety of approaches. I sought support from Sri Lankan refugees who came to Australia during the civil war. Their opinions offered vital context for the issues they encountered during their journey and resettlement in Australia. They helped me to distribute my questionnaire among other refugees they know. In addition, I connected with online communities, particularly Facebook groups founded by refugees and refugee activists residing in Australia.

Choosing a small number of refugees at first, and then asking them to recommend other refugees who will fit the research's participation requirements. This method works especially well when investigating policies or people that are difficult to reach. Therefore, this method is especially helpful for studying subjects like refugee human rights since it gives researchers access to people who would be difficult to identify using traditional sampling techniques.



## Avoidance of biasness

Recognizing the sensitive and complicated nature of the issue, researchers must work hard to preserve objectivity during the research process. This includes admitting and leaving aside any personal opinions, assumptions, or connections that may impact data interpretation or formulation of conclusions.

In this research, I intended to collect data in a non-biased way. That is, collecting data has been carried out transparently. When researching refugees' human rights, particularly Australian policy, it is critical to completely identify and eliminate biases that may unintentionally impact the study process and results. Biases can take many forms, including confirmation bias, in which previous preconceptions or beliefs regarding refugees and their rights impact one's interpretation of data or conclusions. Furthermore, cultural biases, political connections, or personal experiences can all impact the researcher's perspective and analysis.

To prevent biases, numerous steps were adopted throughout the research process. To begin, a thorough study of current literature and empirical investigations was done to get a more nuanced knowledge of the complex challenges underlying refugee rights and Australian policies. This helped in recognizing potential biases in existing discourse and allowed for a more critical approach to the research questions.

Secondly, employing additional data-collecting methods, such as questionnaires, allowed for a more thorough evaluation of the issue from many viewpoints, as well as insights that offset potential biases in secondary sources.

In summary, by identifying the presence of biases and employing counter-bias methods, this study intends to give a full and unbiased examination of refugees' human rights within the framework of Australian policy. The study's rigorous approach and reflexivity aim to contribute to a more educated and nuanced understanding of this complicated and important subject matter.

## Reliability and Validity

The research method used in this study on refugees' human rights, with an emphasis on Australian policy, is intended to assure the investigation's validity and rigor. This research takes qualitative approaches like as questionnaires and case studies to delve deeply into the experiences, viewpoints, and stories of refugees affected by Australian policy.

Furthermore, the triangulation of data from different sources increased the findings' accuracy and validity, allowing for a deeper examination of the complex dynamics underlying refugee rights in Australia. Additionally, ethical factors such as informed consent, confidentiality, and participant anonymity assure the research process's integrity and reliability. Overall, the research method is designed to enable a thorough examination of the human rights implications of Australian refugee policies, so contributing to a better understanding of this vital problem.

Qualitative data was gathered by administering questionnaires to refugees. These questionnaires provided perspectives, experiences, and insights into the everyday reality of refugees impacted by Australian policy, allowing for a deeper understanding of the human rights implications. Triangulating qualitative data allowed for a more accurate analysis, allowing for a full assessment of whether Australian policies maintain or violate refugees' human rights. Furthermore, while using secondary data, I wanted to use trusted and legitimate websites like Sage and Jstor to ensure data accuracy.

The objective behind this method is for the researcher to seek feedback on his emerging results from some of the individuals he has entrusted (Johnson & Christensen, 2014; Merriam, 2009). Maxwell (2013) saw this method as essential in order to avoid misinterpretation of the data and analysis, as well as perspectives on the phenomena in question. This technique is particularly important in reducing bias and misunderstanding of observations made throughout the data collection and analysis phases (Maxwell, 2013).

Instead of reliability, qualitative researchers use the term dependability. To ensure that the data was dependable the analysis of the questionnaire the analysis was not only dependent on the researcher's interpretation but also

considered how other sources concerning the same topic or themes would account for similar findings. Therefore, one way to make the dependable data was by applying triangulation. To ensure the trustworthiness of the data analysis in this research, the researcher employed the technique of triangulation.

### **Generalizability**

While the case study goes into great detail on Australia's policy regarding refugee rights, its findings may provide information that is relevant to other countries with comparable sociopolitical environments. This research intends to establish a comprehensive understanding of the effect of Australian policies on refugee rights by using a qualitative analysis of policy documents, legal frameworks, and questionnaires. Through strict methodological triangulation, this research seeks to identify patterns, trends, and lessons that go beyond national borders, contributing to a deeper understanding of the challenges and opportunities in safeguarding refugees' human rights around the world.

### **Ethical Concern**

A sample of the consent form has been presented in the **Annexure 1** section. According to Cooper and Schindler, informed consent implies that participants to be sampled in the research are first told about the research's objectives and benefits before consenting to take part (Cooper and Schindler, 2008). Therefore, refugees involved in this research were recruited after informed consent was obtained.

As a result, the target population participated voluntarily in this research, although they were encouraged to do so by emphasizing the research's benefits in addition to the limited literature and its implications for management. Participants were fully told about the research's objectives, and they were reassured that their responses would be treated confidentially and utilized exclusively for academic reasons and the particular study. Except for the aforementioned, no participants were physically or mentally mistreated or abused throughout the research.

In this research, confidentiality was preserved by keeping the obtained data confidential and not disclosing the individuals' identities while reporting or publishing the findings. The questionnaires had no identifying information, and they were only numbered after the data had been gathered. As a result, the research is undertaken with care and respect for the experiences of refugees and other participants. Participants are free to share what they have to say and have their voices heard without fear of repercussions.

Further, when using secondary data, it's important to properly identify ownership of the information collected. If secondary data is not freely available, obtain written approval from the owner before using it. Therefore, to safeguard the data collected from primary and secondary sources, we used the APA7 referencing style to recognize the data owner.

### **Methodological Limitations**

Limitations in research are restrictions or factors that may influence the interpretation or generalizability of the results. To guarantee that their findings are accurate and reliable, researchers must identify and address these constraints. According to Simon, limitations refer to factors that can affect research that are outside the control of the researcher and they occur in all research endeavors (Simon, 2011).

To conduct this research, access to comprehensive and legitimate data about refugee populations, their experiences, and the impact of policies can be constrained for a variety of reasons, including privacy issues, government restrictions, and the temporary nature of refugee communities. Moreover, Refugee policies are frequently politically sensitive issues, particularly in nations such as Australia, where immigration and asylum issues are subjected to heat Researchers may experience difficulties performing unbiased research owing to political influences or fears of retaliation from certain groups.

Furthermore, Government policies and practices concerning refugees may lack openness, making it difficult for researchers to completely comprehend their implementation and effects. Limited access to government records, decision-making processes, and organizations could hinder an in-depth investigation. Also, accessing

refugees for questionnaires may present challenges due to factors such as language barriers, the distance problem, legal constraints, or concerns about participation, and the study's scope may be limited by time constraints, preventing a comprehensive analysis of all relevant policies and case studies. Therefore, these limitations underline the significance of carefully interpreting and explaining research findings on refugees' human rights in the context of Australia.

### **Data Analysis Methods and Techniques**

According to Fraenkel and Wallen, data analysis is a method of generating data that may be easily understood, particularly for a specific research project (Fraenkel & Wallen, 2008). Additionally, Creswell defined data analysis as a way of making all the information received from respondents more accessible to everybody (Creswell, 2012). This comprises the summarization of all respondents' data.

Keeves emphasized that after data collection, "the events recorded must be processed and classified methodically to come to conclusions from the data" (Keeves, 1998, p.471). However, the literature does not propose a specific way of data analysis for a mixed-method approach. A case study technique is particularly useful for evaluating Australian policy on refugee rights.

A case study investigates persons, groups, organizations, or events in a methodical manner using as many data sources as possible. Case studies give an extensive amount of data that are used by researchers to better understand or explain phenomena. It is very useful to researchers who are looking for clues and suggestions for future research.

A case study approach is particularly suitable for examining Australian policies on refugee rights for several reasons:

#### **Complexity of the Issue:**

Refugee rights in Australia encompass a wide range of legal, social, political, and ethical considerations. A case study allows for an in-depth exploration of these complexities within a specific context or situation.

#### **Historical Context:**

Australia has a long history of immigration and refugee policies, which have evolved in response to changing domestic and international circumstances. A case study can provide insights into the historical path of these policies and their impact on refugee rights.

#### **Policy Implications:**

By examining specific cases or instances within the broader framework of Australian refugee policies, researchers can identify patterns, trends, and implications for policy formulation, implementation, and evaluation. This can contribute to evidence-based advocacy and policy recommendations aimed at protecting and promoting refugee rights.

#### **Ethical Considerations:**

Refugee rights are closely linked to ethical principles including human rights, social justice, and humanity. A case study method provides for a more detailed examination of the ethical issues inherent in Australian refugee policies, encouraging informed debates and discussions regarding the state and society's moral responsibility to refugees.

As a result, a case study approach is well-suited for examining Australian policies on refugee rights due to its ability to capture the complexity, historical context, policy implications, and ethical considerations. The Australian government's policies on refugee rights as a case study is the focus of this study. Also, it focuses on mandatory detention, offshore processing, and regional cooperation agreements.

After the data had been collected, those data were organized and analyzed. Data was analyzed using descriptive statistics. Data were displayed as pie diagrams and bar graphs and the researcher investigated the open-ended questions using case study methodology.

In this chapter, I have provided a detailed account of the methodology and methods that I employed in this Research. A qualitative method approach was adopted because it is closely aligned and therefore best suited to the purpose of the investigation. The questionnaire was conducted across a cross-section of refugees to elicit a thick, rich description, my role as researcher being interpreter.

## RESULTS AND DISCUSSION

### Introduction

This chapter of this research aims to critically assess the data collected through different methods to meet the research questions and objectives mentioned in the research. This chapter includes information from several sources, including questionnaires completed by refugees, primary and secondary data from international treaties, scholarly journals, and official government documents. The chapter uses case study analysis to provide a full overview of the Australian government's refugee policies and procedures, as well as the human rights implications. Therefore, in this chapter, the data were evaluated to determine, define, and investigate the extent to which Australia's efforts to address refugee rights are consistent with international refugee law.

In this Research, the analysis of data is carried out in two phases. The first part, which is based on the results of the secondary data, deals with a qualitative analysis of data. The second, which is based on the results of the questionnaire, is a qualitative interpretation.

A refugee is a person who has been forced to leave their home country due to well-founded fears of persecution, conflict, violence, or other life-threatening circumstances. Shacknove says that says the word "refugee" may be applied to anybody compelled to flee their country of residence to seek asylum elsewhere because of numerous traumatic incidents or acts of hostility (Shacknove, 1985). He contends that those who meet the following criteria are fundamentally considered refugees: they are people whose location permits them to get such international aid; their basic requirements are not met by their nation; and they have no choice but to request international restitution of their needs (Shacknove, 1985).

Article 1A (2) of the 1951 Geneva Convention on the Status of Refugees, as amended by the 1967 Protocol, gives a general explanation of the term "refugee" at the global level:

*“Any person who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence is unable, or owing to such fear, is unwilling to return to it”*(Geneva Convention on the Status of Refugees, 1951).

The human rights of Refugees include the fundamental rights and freedoms that all people, regardless of their refugee status, should have. These rights are established in several international human rights agreements, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the 1951 Refugee Convention with its 1967 Protocol. The article International Refugees in The Protection of Human Rights: A Discourse of International Humanitarian Law and Human Rights Law: emphasizes the importance of international and regional legislation, outlining the rights of refugees, such as nonrefoulement, refugee seeking, and equality.(Supriyadi, 2022). Article 3 of the 1951 Refugee Convention, stipulates that the States Parties must apply the provisions of the Convention without regard to race, religion, or country of birth. Article 4 addresses religious freedom and religious education. According to Article 16, a refugee has free access to courts of law on the territory of all signatory nations. Articles 17, 18, and 19 govern the provision of employment opportunities to refugees, and Article 21 states that refugees must be treated favorably. Other rights guaranteed to refugees include the freedom of movement within the territory of the state that signed the agreement (Articles 26 and 31). Article 33 includes a prohibition on returning a refugee from an asylum country at its borders, which is regarded as an essential component of international protection. Additional rights include freedom of association with non-political and non-profit-

making organizations and trade unions (Article 15), free access to courts of law (Article 16), and administrative support provided by the contracting state authority to enable a refugee to use a right under the Convention (Article 25).

According to Article 33 of the Refugee Convention, States everywhere must refrain from deporting or sending back refugees in any way to places where their lives and basic freedoms may be in danger (The Refugee Convention, 1951). It is generally acknowledged that the fundamental doctrine of non-refoulement is firmly established in the conventional worldwide rules for the protection of refugees (Ahmed, 2016). This concept of non-refoulement is a basic human right, and it imposes 'significant duties' on Contracting States particularly combined with Article 32(1) (prohibition on the deportation of refugees legally residing) (Peter, 2017). Removing a person claiming refugee status to their place of nationality or another nation willing to take them without first determining whether that individual is a refugee would violate that State's international obligations under Article 33(1) (Peter, 2017).

### **Historical context and evolution of policies**

Since World War II, Australia has resettled nearly a million refugees (Crock, 2019). The obligations of the core agreements have not been legally adopted into Australian domestic law and Australia has created advanced procedures for assessing a person requesting protection to determine their status as a refugee and has backed the UNHCR's efforts. These acknowledge the fundamental principle of the Convention, which states that those who are classified as "refugees" shall not be sent back to a location where they risk persecution due to any of the five grounds listed in the Convention (Crock, 2019).

To understand the present treatment of refugees in Australia, it's necessary to look into the country's attitudes historically towards refugees. Australia has a history of encouraging and facilitating migration. Until WWI, Australia offered incentives including passage aid and land grants to attract talented British and European migrants (Langfield, 1999). Australia's need to develop its economy, boost its population, and strengthen its national defense inspired these efforts.

Australia has historically been lenient towards European refugees, with Jews escaping Hitler's rule being among the first to be admitted. At the 1938 Evian Conference, Australia pledged to accept 15,000 Jewish refugees over three years (Hugo, 2002, p. 27)). However, this assistance was short-lived due to the war, and Australia selectively admitted refugees, prioritizing young and qualified workers over ignorant or unemployed individuals in Australia (Brennan, 2006). In 1939, Australia received almost 6,000 non-Europeans escaping the Pacific War, but legislation was created to forcefully remove individuals who refused to return home (War-time Refugees Removal Act, 1949). Australia has a history of receiving significant numbers of refugees, including 14,000 Hungarians in 1956 and 6,000 Czechoslovakian refugees in 1968 (York, 2003). Nevertheless, Australia's encounter with non-European refugees has been shaped by the White Australia policy, which sought to exclude non-European immigrants, notably Asians, by implementing a Dictation Test to ensure their failure. This indicates Australia's unwillingness to provide permanent protection to refugees.

On April 27, 1976, a fishing boat landed in Darwin, Australia, with five Indochinese men seeking refuge (Phillips & Spinks, 2013). This signaled the start of the first wave of boat landings, largely Vietnamese asylum seekers escaping the fall of Saigon and following communist government control (Motta, 2002, p. 13). The Khmer Rouge battle in Cambodia in 1979 intensified Southeast Asia's turmoil, forcing an increase of refugees to flee to Australia (Crock, Saul, & Dastyari, 2006, p. 36).

Australia had no regulations or procedures set up to handle these refugee applications, therefore the first arrivals were handled through the usual migration stream, with protection judgments left to the Minister's discretion. The Immigration (Unauthorized Arrivals) Act of 1980 authorized Commonwealth officials to arrest unlawful arrivals and take them to a designated authority for potential detention (Immigration (Unauthorised Arrivals) Act, 1980, ss. 12-14.). The Minister could then give an admission permit to approved refugees under section 6A(1)(c) of the Migration Act, however, non-refugees faced deportation (Immigration (Unauthorised Arrivals) Act, 1980, ss. 12 (3) (c)).

The Migration Act of Australia is based on the power to restrict migration, as outlined in the Australian Constitution Section 51. Therefore, Australia has the right to govern migration and restrict immigration without intervention.

## **Overview of Current Australian Government Policies and Practices on Refugees.**

### **Mandatory Detention**

Since Australia's Federation, there has been a provision in immigration policy that allows for detention, which the government implemented in 1989 through the Migration Legislation Amendment Act. This Act established mandatory detention for those seeking refuge who arrived without a visa or entrance permission, defining them as 'prohibited entrants' (Migration Act 1958, s. 36). These people could end up detained until they received entry permission or were deported (Migration Act 1958, S. 58). In actuality, many were detained for more than four years and were deemed not to have entered Australia, denying them legal rights. This provision was intended for a small number of illegal immigrants and people with expired entrance permits.

However, it quickly became the standard for detaining all boat arrivals (Motta, 2002, p. 14). Australia's system of mandatory detention of asylum-seekers started in 1992. This happened when the Labour government passed the Migration Amendment Act 1992 after a few hundred refugees, mostly from Cambodia, arrived by boat (Minns et al., 2018). This new law established a legal basis for retrospectively detaining specific persons. It amended the Migration Act to require that a 'designated individual' (an irregular arrival) be detained and kept for up to 273 days (Migration Amendment Act 1992 (Cth), ss. 54L, 54N, 54P). The 1992 Reforms, implemented on September 1, 1994, mandated indefinite detention of unauthorized citizens. Section 189 requires Commonwealth Officers to arrest anyone within the 'migration zone' if they have grounds to believe they are illegal non-citizens (Migration Act 1958 (Cth) s. 190). Detention was mandatory for non-citizens who lacked documentation of legal status. The 1992 Reforms eliminated the 273-day limitations on immigration detention, making it indefinite.

### **Offshore Processing**

Since 1992, and especially from 2001 onwards, the Australian government has implemented strict policies to stop asylum-seekers from arriving by boat (Minns et al., 2018). These policies include indefinitely detaining refugees in offshore detention centers. While Australia receives far fewer asylum-seekers compared to Europe, its response has been much harsher and controversial (Minns et al., 2018). These policies were not a reaction to the number of arrivals, which was always small, but rather a political strategy to use fear and division to scapegoat outsiders (Minns et al., 2018).

The Norwegian container ship MV Tampa attempted to enter Australian seas at the end of August 2001, while carrying 433 rescued boatpeople. Under the direction of Prime Minister John Howard, the Australian government stopped the ship so that the passengers could not use the onshore asylum process. The statement made by Howard, "We will determine who comes to this country and the circumstances in which they come," signaled a dramatic change in Australian immigration laws (Dimasi and Briskman, 2010, p. 201). A significant shift in the nation's approach to managing refugees and asylum seekers was marked by the use of maritime interceptions, offshore processing, and regional cooperation to stop boat people from entering the country.

This policy is known as the "Pacific Solution." Under this, the Australian government decided to process refugees on the small island of Nauru, even though it was not a signatory to the UN Refugee Convention. They also used Papua New Guinea's Manus Island for this reason, in exchange for financial assistance. New Zealand processed and resettled almost one-third of the Tampa refugees (Howard, 2001). Therefore, Howard termed this strategy "a truly Pacific solution" (Howard, 2009).

Moreover, Australia signed two bilateral transfer arrangements with Nauru and Papua New Guinea for boat people who could not be sent back, sending them there to have their asylum complaints assessed. In 2002, Australia established the Bali Process, a ministerial-led multilateral forum, to start regional cooperation on people smuggling and irregular migration. Howard pledged that all illegal migrants would be relocated to third-world countries and that nobody would enter Australia.

## Boat Turnbacks

Under Tony Abbott's administration, the new government launched "Operation Sovereign Borders," or "boat turnback" policy in 2013, a strict policy aimed at stopping boats carrying asylum seekers (Minns et al., 2018). The policy included turning boats back at sea, granting only temporary protection to recognized refugees, and refusing to answer questions about operational details. They also created the Australian Border Force, merging Customs and the Immigration Department, with officials wearing military-style uniforms and field officers allowed to carry weapons, conduct surveillance, and detain people (Minns et al., 2018). Under the program, boats carrying refugees seeking asylum are intercepted and sent back to their home country or to a third nation, including Christmas Island, or other Pacific countries such as Nauru, Indonesia, without being permitted to land in Australia. This has significantly reduced the onshore arrival numbers of boats carrying refugees.

In and after 2013, two significant modifications were made to government policy and practice. The first step was the implementation of return and turn-back policies (Crock, 2019). Then the Conservative administration introduced "shut down the shipping news," seizing entire control over what information was made public concerning "on-water operations," who was coming, and what was happening to refugees (Crock, 2019).

Australia handles refugees arriving by sea in two ways: 'turnbacks' and 'takebacks'. Turnbacks entail stopping vessels transporting refugees and returning them to a location beyond their country's territorial seas. For example, Australia may intercept vessels in its seas and pull them back to Indonesia. Takebacks are agreements between Australia and the nation of departure, such as Sri Lanka or Vietnam, to assist with the return of refugees. Human rights organizations and international agencies have criticized these approaches, expressing worries about refugees' safety and rights.

## Analysis of Human Rights Challenges and Violations

### Detention Conditions and Treatment

Australian detention violates fundamental human rights, such as the Right to Be Treated Humanely and with Dignity where prolonged detention results in harsh treatment and degradation of the detainee's dignity. Also, detention harms both the physical and mental health of the Refugees because overcrowding, a lack of medical facilities, and inadequate cleanliness, may threaten detainees' health. Moreover, prolonged detention cuts people off from their communities and cultural customs, limiting their capacity to participate in cultural life and it damages family connections, causes stress and anxiety, and leads to self-harm.

In *Al Kateb v Godwin*, the High Court of Australia upheld the constitutionality of a provision that allowed for indefinite immigration detention (*Al Kateb v Godwin*, 2005). The majority in *Al-Kateb* did not believe international human rights standards could be applied to interpret domestic laws.

The following graph (figure 2) illustrates the duration people have been spending in detention in Australia from 2018 to 2024, based on monthly statistics from the Department of Home Affairs. It shows that recently the average time spent in detention has decreased which is a notable improvement compared to the past years.

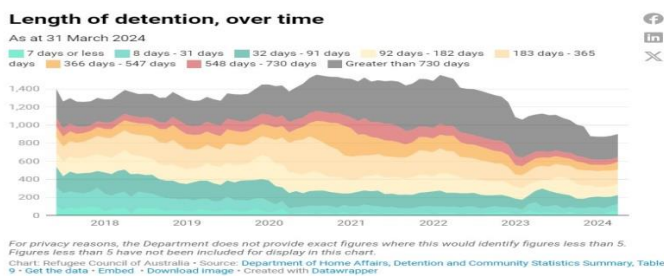


Figure 2 Length of Detention, over time

Note: From Statistics on people in detention in Australia, by Refugee Council, 2024.  
<https://www.refugeecouncil.org.au/detention-australia-statistics/5/>

The scholar Fiske, in his article, provides data about in-depth interviews with refugees who were previously detained in Australian immigration detention centers, offering insight into their experiences and viewpoints of refugees. It uses Hannah Arendt's works to demonstrate that immigration detention has dehumanizing implications (Fiske, 2016). Also, the article of Nahla Achi highlights the personal story of a Sri Lankan refugee at the Woomera detention camp, emphasizing the isolated and stressful conditions encountered by refugees and the author cites self-harm incidents such as drinking shampoo or cutting with razor wire, as well as riots, beatings, tear gassing, and weeks of isolation (Achi, 2022).

Detention can impede access to education, particularly for young detainees as well. The 2015 Moss Review included claims of rape, women being forced to expose themselves in return for showers, guards exchanging marijuana with detainees for sexual favors, and sexual and physical violence against minors (Moss, 2015). As a result, UNHCR has strongly opposed the mandatory detention of women and children in Australian detention centers.

Likewise, human rights violations have occurred as a result of Australia's long-term detention of asylum seekers in isolated places. Detainees have committed suicide, self-harm, and destructive behavior toward one another and Women and children have been sexually and physically abused (Crock, 2019).

**Human Rights violations in Offshore processing**

Refugees who have arrived in Australia since 2013 have faced brutal and inhumane treatment in the country's immigration detention camps on Manus Island and Nauru. After inspecting the camps in late 2013, the UNHCR found that the conditions there constituted arbitrary detention, which violated international law (Minns et al., 2018). Amnesty International (2011), raised similar accusations, claiming that the situations on Manus Island 'violate the prohibition on torture and other ill-treatment'. Guards, police, and others invaded the Manus Island detention camp in February 2014 to stop a refugee protest. This violence injured at least 69 asylum seekers and murdered Reza Barati, a 23-year-old who was battered by numerous locals (Cornall, 2014). Hamid Kehazaei, 24, died in 2014 as a result of an infected leg cut caused by improper medical care (Branco, 2015). Since early 2013, 15 refugees have died in Australia's detention centers, while at least ten people on temporary visas have committed suicide ((Border Crossing Observatory, 2017). In January 2015, 700 asylum-seekers on Manus Island went on a two-week hunger strike that ended after 60 accused leaders were transferred to a neighboring detention (Doherty, 2015).

To keep the poor conditions and abuses in offshore detention centers hidden, Operation Sovereign Borders was kept very secretive. In 2015, the government, supported by the Labour Party, passed the controversial Border Force Act, which threatens health and social workers in detention centers with up to two years in prison if they disclose protected information about the conditions in these camps (Minns et al., 2018).

As per the below table (figure 3), since 1999, the number of girls in immigration detention has significantly increased; from 1999 to 2003, 37% of the children in detention who were seeking refuge were girls. Most of the children who were in custody were less than twelve. Infants and toddlers (0–4 years old) have also been detained for considerable periods of their lives; of them, 164 were in 2000 and 144 in 2001; two of them had been detained for more than 2.5 years, or more than half of their lives.

Age of children as at 30 June each year	0–4 years	5–11 years	12–17 years
30 June 1999	23	15	23
30 June 2000	164	208	162
30 June 2001	144	210	278
30 June 2002	33	54	53
30 June 2003	32	29	52

Figure 3 What is the background of the children in detention?

*Note:* A last resort? - Summary Guide: The facts about immigration detention in Australia, by Australian Human Rights Commission. ( <https://humanrights.gov.au/ourwork/last-resort-summary-guide-facts-about-immigration-detention-australia>)



According to the Australian Human Rights Commission's 2014 Forgotten Children Report, from January 2013 to March 2014, there were 300 incidents of children in Nauru detention engaging in or threatening self-harm, 233 assaults including children, 33 reported sexual assaults, the majority of which involved children, and over 200 cases of voluntary starvation or hunger strikes (Australian Human Rights Commission, 2014, pp. 29–37). The study also argues that "the mandatory and prolonged immigration detention of children is in clear violation of international human rights law" and demands that all children and their families be brought to Australia (Australian Human Rights Commission, 2014, pp. 29–37).

**Human Rights Violations in Boat Turnbacks.**

In the past few years, the number of boats carrying refugees to Australia from

Indonesia and other Asian countries has increased significantly. To counter this, the Australian government launched Operation Sovereign Borders in September 2013, which tried to stop these boats from reaching Australian borders according to their election promise to "Stop the Boats" (Klein, 2014). The strategy involves actions such as transferring migrants to lifeboats for return to Indonesia and returning the boat carrying 41 migrants to Sri Lanka following screening (Klein, 2014).

In *CPCF v Minister for Immigration and Border Protection* (2015), Australian officials kept 157 migrants who arrived from India at sea for a month before taking them to Australia for initial processing. The Australian authorities stopped asylum seekers 16 nautical miles off Christmas Island and chose to deport them to India (*CPCF v Minister for Immigration and Border Protection*, 2015). Refugees were kept on Australian vessels for more than three weeks without being granted permission. The High Court upheld the detention under the Maritime Powers Act but did not consider international refugee law or Australia's non-refoulement obligations. The case is noteworthy in its national context, but it does not address its wider international legal implications.

This program aims to punish boat refugees to discourage others from doing the same. The belief is that more suffering equals more success in discouraging future arrivals. However, this policy offers no options for asylum-seekers who are unable to enter Australia. They are left with few options: return to their home country and risk persecution, proceed on dangerous travels to distant safe nations, or live in poor conditions in transit countries such as Indonesia and Malaysia (Minns et al., 2018). Indonesia is a developing nation that has not signed the Refugee Convention, therefore refugees and asylum seekers residing there are denied many basic rights, including the freedom to work.

In the late 1970s and early 1980s, the approach to dealing with refugees involved accepting successful applications in countries like Malaysia and Thailand, which acted as transit points (Minns et al., 2018). As the camps filled, these countries used a push-back strategy, actually sending boats out to sea as they attempted to land, and sometimes even providing fuel to ensure that they continued on their route, which meant a long and dangerous trip across a deadly ocean (Minns et al., 2018). When over 54,000 migrants arrived by sea in 1979, these pushbacks became standard procedure. The probability of many more people dying at sea as a result was high (Minns et al., 2018). The following graph (Figure 4) outlines the number of people turned or taken back in boats from 2013 to 2024. These data show that 2022-2023 marked the highest number of boats turnback which is more than 120 boats were returned in that year.

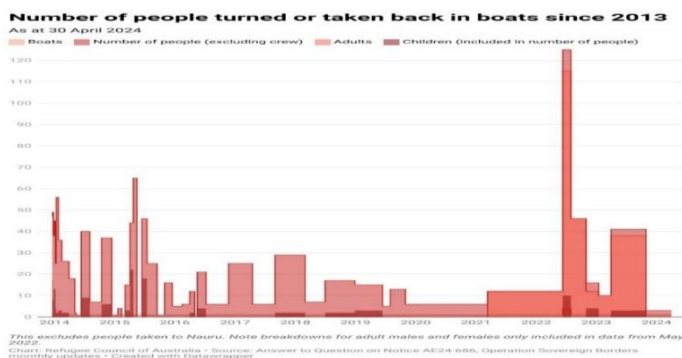


Figure 4 Number of people turned or taken back since 2013

*Note:* Statistics on boat arrivals and boat turnbacks, by refugee council, 2024. (<https://www.refugeecouncil.org.au/asylum-boats-statistics/2/>)

## Compliance with International Human Rights Standards

### International Human Rights Framework

Customary International Law is defined as international customs that are accepted as law. It develops when countries consistently engage in certain practices, believing that these practices are required by international law. For a practice to become customary law, it must be widely followed by many countries, not just a few.

Refugees and asylum seekers are particularly vulnerable because they do not have the protection of their national governments. To address this, members of the United Nations created the Convention Relating to the Status of Refugees in 1951. This Convention defined what it means to be a refugee, outlined the rights of displaced people, and set the legal obligations of states towards them (UNHCR). Since 1951, 145 countries have ratified this Convention, making it the main international legal document for refugee protection (UNHCR).

Originally, the Convention only applied to people displaced by events before January 1, 1951, mainly focusing on refugees from World War II in Europe. In 1967, member nations amended it with the Protocol Relating to the Status of Refugees, removing these time and location restrictions (UNHCR). This means the protections should apply to all refugees, regardless of when or where they were displaced.

In practice, these conventions should ensure international protection and basic human rights for refugees and asylum seekers. However, many countries, even those who signed the Convention and Protocol, often fail to uphold these rights or violate them.

The 1951 Refugee Convention contains key provisions that protect refugees from expulsion by states, except under specific conditions. Two main articles address this:

**Article 32:** Countries are not allowed to deport refugees who are regularly residing on their land unless it is necessary to maintain public order or national security. According to the 1951 Refugee Convention, every expulsion must adhere to a legal process that allows the refugee to establish their innocence and challenge the decision. Additionally, refugees must be given a fair amount of time to apply for admission to enter another nation.

**Article 33:** This article prohibits states from returning refugees to territories where their life or freedom would be threatened due to race, religion, nationality, political opinion, or membership in a particular social group. This principle is a Key aspect of Refugee law.

This provision ensures that refugees are not forced back into dangerous situations where they face significant threats to their lives or freedoms. The essence of nonrefoulement is to provide a haven for those fleeing persecution, safeguarding their fundamental human rights. It underscores the responsibility of host countries to protect individuals from being subjected to further harm and underscores the humanitarian commitment to prevent potential violations of their basic rights.

However, The Convention's Article 1F includes negative refugee criteria that identify persons to whom the Convention is not applicable. Article 1F is to exclude people who are not genuine refugees at the time they apply for refugee status. It allows states to deny refugee status to applicants who engage in crimes and pose a threat to the security of the community and the interests of the receiving nation (Peter, 2017).

Additionally, it is internationally recognized that refugees cannot be expelled until their status is determined. This rule applies to all states, regardless of whether they are parties to the 1951 Convention or the 1967 Protocol, as it has become part of customary international law (UNHCR Program on Self-Education, 2005, p.12). Therefore, Protection from expulsion and retaliation is a fundamental aspect of international refugee and human rights law. Australia actively supported the UNHCR and improved the functioning of UN human rights

treaty bodies during its early days. Therefore, UNHCR has recognized Australia as one of the most engaged, dynamic, and supportive members (Poynder, 1995).

Billings Peter in his article investigates the gap between international refugee law and Australian migration law and practice, highlighting the complicated and overlapping set of substantive requirements for refugee status (Peter, 2017). A set of amendments to the Migration Act 1958 especially the 2014 legislative changes, which purported to codify parliament's understanding of its international law commitments, excluded a specific acknowledgment of the basis of refugee protection which is the prohibition on refoulement (Peter, 2017). Section 197C of the Migration Act, which states that non-refoulement obligations are irrelevant, is a provocative clause (Peter, 2017). These rulings effectively undermined several components of Australia's policy aimed at stopping an increasing number of 'irregular maritime migrants' or refugees escaping claimed persecution and conflict. The High Court ruled in the Offshore Processing Case that "*the Migration Act was directed to the purpose of responding to the international obligations that Australia has undertaken in the Refugees Convention and the Refugees Protocol*" (Peter, 2017).

These policies call into question Australia's adherence to international obligations as well as the universality of human rights standards. They have raised concerns about how refugees are treated, as well as their safety

### Comparative Analysis

To understand how Australia's adherence to the Refugee Convention has changed over time, it's crucial to examine its historical commitment. Australia has always demonstrated a strong commitment to the Refugee Convention, as evidenced by multiple factors. Australia was among the first to sign the Refugee Convention, which entered into effect on January 22, 1954, and also, Australia actively participated in drafting the Refugee Convention (Hugo, 2002).

The offshore component of the "Humanitarian Programme" is among the most significant examples of Australia's adherence to the Refugee Convention. Australia resettles UNHCR-recognized refugees under the offshore component. Only ten nations frequently relocate refugees in this manner, including Australia (Brennan, 2006, p. 10). It is not mandatory to take part in the resettlement program, which extends Australia's responsibilities under the Refugee Convention.

Moreover, Australia faces the risk of violating its international responsibilities through expelling and detaining those seeking protection under the "Pacific Solution" approach. Australia is prohibited from expelling or sending refugees back to areas where they fear danger by the Refugees Convention, the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CROC). Under this policy, refugees in third countries face the possibility of being forced to return to dangerous environments when they apply for refugee status in Australia. Australia has an international duty to prevent the return of refugees to unsafe situations, and this is being violated by doing this.

Since 1992, Australia's mandatory detention program has been a key component of its refugee policy, largely unchanged by both major political parties. Detention has faced much criticism since it was established. Prolonged detention harms physical and mental health due to overcrowding, lack of medical facilities, and inadequate cleanliness in detention facilities. Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) protects the right to education, particularly for young detainees. Detention also limits access to cultural life, as protected by Article 15 of the ICESCR.

Moreover, Immigration detention violates fundamental rights, including the right to liberty and freedom from arbitrary detention. These rights are outlined in the ICCPR and the Convention on the Rights of the Child. Article 10 guarantees detainees the right to a judicial hearing to determine the legality of their detention (ICCPR, art 9.4). According to the ICCPR, detainees should be treated humanely and with dignity (ICCPR art 10). In poor detention conditions, the right to be free from torture and cruel, inhumane, or humiliating treatment or punishment may be applicable (ICCPR, art 7).

Special obligations exist regarding the detention of children. The Convention on the Rights of the Child states that children have the right to be free from unlawful or arbitrary deprivation of liberty. According to Article 37(b), detention should only be used as a last option and for a short amount of time (Convention on the Rights of the Child, art 37(b)). States must safeguard and assist asylum seekers, including children, in accordance with treaty rights. Detention is undesirable for Unaccompanied children, single women, and people with medical or psychiatric needs are among the most vulnerable categories.

The Refugee Convention allows states to detain non-citizens while determining their status but it allows for the detention of asylum seekers only when required (Refugee Convention, art 9, 31(2)). Article 9 authorizes States to adopt provincial measures while determining refugee status if it is deemed 'essential to national security in the case of a particular person' and 'necessary in his instance in the interests of national security' (Refugee Convention, art 9). International law requires that there be some legitimate reason for immigration authorities to detain people, like verifying identity or elements of claims testing fraudulent documents, or preventing a security threat (The UN Refugee Agency, 2012). No one should be subjected to detention as a punishment or deterrent. This suggests that Australia's mandatory detention policy is designed to act as a deterrent, which is an illegitimate aim.

The Migration Act permits the indefinite detention of individuals without a specified maximum time frame, contradicting the UNHCR's recommendations that advocate for establishing clear limits on detention periods (Migration Act 1958 (Cth) s 196). This protracted and uncertain detention has severe adverse effects on the physical and mental well-being of asylum seekers, possibly constituting cruel, inhumane, or degrading treatment and infringing upon international commitments (ICCPR arts 7, 10(1)).

Also, as per the Migration Act, detention is mandated for asylum seekers without taking into account individual circumstances (Migration Act 1958 (Cth) s 189). This policy deviates from the UNHCR's guidelines, which stipulate that detention should only be utilized when necessary, reasonable, and proportionate, resulting in the confinement of vulnerable populations such as children, the elderly, and individuals with medical conditions.

As the right to work is critical to ensuring that individuals may live in dignity. Thousands of refugees in Australia are denied the ability to work while their protection visa applications are processed. Denial of job rights for refugees leads to poverty and limited access to essentials including food, housing, and healthcare. Additionally, Refugees are often subjected to exploitative job arrangements, such as underpaying and overworking in unsafe situations. As detention centers limit the working rights of refugees, then it is a violation of Article 17 of the Refugee Convention which highlights the right to work. These policies create a lot of uncertainty and anxiety and hence explain the importance of Australia's policy on the intake and processing of refugees.

From the above points, it is clear that Australia's mandatory detention program does not comply with international legal norms and Australia's detention system is arbitrary and goes beyond what is acceptable. Arbitrary detention can be unlawful, inappropriate unfair, or unpredictable. To be considered acceptable, detention must be appropriate and essential to the given situation. Immigration detention should be the last option.

Also, the 'privative clause' in the Migration Act would have stopped countless asylum seeker decisions from being reviewed by courts, infringing the right to be free from arbitrary detention. The *Chu Kheng Lim v Minister for Immigration, Local Government, and Ethnic Affairs* case (1992) was a significant case by the High Court of Australia on immigration detention and the separation of powers in Australia. Chu Kheng Lim, a Cambodian national, entered Australia without a valid visa in 1989 and was detained as an "unauthorized arrival" under the Migration Act 1958 (Cth). The case brought up two legal questions: whether the Act's provisions requiring the detention of unauthorized arrivals without trial were valid, and whether these provisions violated the separation of powers doctrine, specifically the

Commonwealth's judicial power under Chapter III of the Australian Constitution. The High Court of Australia ruled that the detention measures were acceptable since they served the legitimate purpose of processing and

identifying the status of unauthorized immigrants, as well as assuring their availability for deportation if they were determined to be unlawful non-citizens. Crock contends that the court's decision did not consider international law principles, particularly those related to arbitrary detention (Crock, 2009). The High Court failed to decide on the legality of long-term detention, suspended claim processing, or detention conditions. The Chu Kheng Lim ruling allowed for mandatory immigration detention without judicial review. Therefore, it is clear that the system shifted its priority from refugee protection to immigration control.

The turnback policy affects the right to seek refuge, which is guaranteed under the 1951 Refugee Convention and its 1967 Protocol, to which Australia is a signatory. This policy prohibits refugees from entering Australian territory, denying them the chance to apply for refuge. Furthermore, the approach raises questions about the concept of non-refoulement, which prevents sending people to countries where they risk persecution. Critics contend that sending back boats without thoroughly analyzing individual claims risks returning refugees to dangerous situations.

Australia's formerly strong commitment to the Refugee Convention has been criticized for its current handling of "boat people." Australia appears to be stepping down from its duties under the Refugee Convention. It first became apparent in 1994-1995, when the government attempted to stop refugees, particularly those who escaped China's "one-child" policy, from accessing the refugee determination procedure in reaction to the arrival of Vietnamese and Chinese "boat people" (Poynder, 1995). These actions sparked a heated discussion, with claims that Australia was improperly limiting its refugee protection obligations. The Tampa incident clearly showed how the Australian Government handles refugees, demonstrating that they are not limited by the rules of the Refugee Convention when dealing with refugee arrivals.

The return of 41 irregular migrants by Australia to Sri Lanka caused concerns about non-refoulement obligation violations because of Australia's inadequate "enhanced screening" process carried out at sea (Klein, 2014). The UNHCR has already determined that Australia's screening procedures breach its duties with regard to refugees (Klein, 2014). It is challenging to determine with accuracy whether Australia's practices are legal due to the lack of information. It seems unlikely that Australia has enhanced its screening procedures to better uphold the rights of irregular immigrants, considering the current political climate that supports the 'push back the boats' strategy.

Therefore, Australia's immigration history demonstrates that an emphasis on maintaining a primarily white national identity has resulted in discriminatory refugee policies. These measures violate human rights and international regulations, such as the 1951 Refugee Convention and its 1967 Protocol. By doing so, Australia avoids its responsibilities and sets a terrible example for how displaced persons are treated in the region.

### **Government Justifications vs. Human Rights Obligations**

International human rights laws have the potential to limit state sovereignty. Hathaway believes that treaties and international customary law impose rules that governments must observe (Hathaway, 1991, p. 113). As a signatory to many human rights treaties, Australia is obligated by international law to protect human rights and avoid acts that violate them. By signing the Refugee Convention, Australia relinquishes any power over its borders, as the agreement protects the right of anyone to enter and seek refuge without incurring penalties or being returned to danger.

The Refugee Convention does not provide a specific approach, thus states must determine how to balance their sovereignty with the Convention's obligations. According to Goodwin-Gill, there is a conflict between the humanitarian objective of protecting refugees under the Refugee Convention and the national interest of upholding sovereignty and self-preservation (Goodwin-Gill, 1996). Many scholars argue that states, such as Australia, prioritize border security and migrant control over violations of human rights. Whether it's right or wrong, countries have put their interests first. As a result, many have reduced their humanitarian responsibilities and limited how they offer protection.

The arrival of refugees in Australia was viewed as a threat to sovereignty, borders, and security. Therefore, both main political parties have responded to illegal immigrants with stricter policies that prioritize sovereignty over human rights.

### Primary Data Analysis

#### Methodology of Data Collection

I collected Primary data by using a questionnaire to get firsthand information on refugees' experiences and specific human rights issues they experienced as a result of Australian government policies. The questions were designed to provide a complete picture of the living conditions of the refugees, their ability to access basic services, and the general effect that policies like mandatory detention and offshore processing have on their well-being. The answers offered insightful information that was essential for assessing how well Australian policy adhered to international human rights standards.

Out of the 13 responses that were received, only 10 could be used for this research and satisfied the participation requirements that were covered in the previous chapter. The data was acquired within six months. Percentage-based descriptive statistics were used. Pie charts, bar graphs, percentages, and frequency counts are used to display the research findings.

The data generated from the questionnaire will be presented as follows:

The first section comprises demographic data such as age, sex, country of

Origin, and current location and data describing how they came and why they came to Australia. This collection of data was meant to describe the sample's demographic characteristics and determine whether it had an impact on the findings of the research, even though it was not one of its objectives.

The Second section comprises data describing their experiences as refugees and their human rights violations.

#### Key Findings from Questionnaires

Demographics of respondents:

##### The age ranges of the participants

In the Questionnaire, Participants were asked to tick the age category appropriate to them during their arrival in Australia. Sixty percent of the respondents were in the 30-40 years age category and Forty percent of respondents were in the age category of 20-30. (see Figure 5 below).

What was your Age range during your arrival?

10 responses

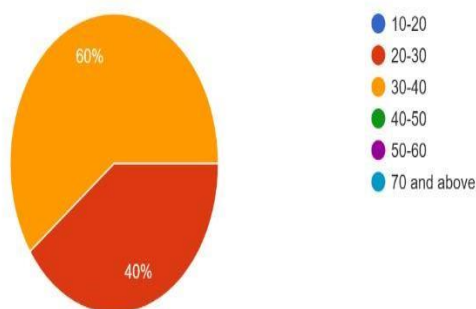


Figure 5 The Age range of the Participants

### Gender differences among the participants

In the Questionnaire, Participants were asked to indicate their gender by placing a tick next to the relevant option provided (male or female). Seventy Percent of the respondents were male and Thirty Percent were female (See figure 6).

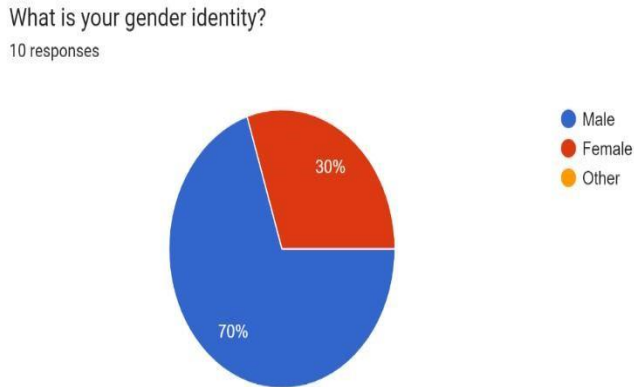


Figure 6 Gender differences among the participants

### Country of the Origin of the participants

In the Questionnaire, Participants were asked about their country of origin. Half of the respondents were from Sri Lanka (Ceylon) which is 6 respondents, 2 respondents were from Iraq, and one respondent was from Bangladesh and one from Myanmar (See figure 7). This showed that all respondents were from regions affected by war or insecurity in their home countries.

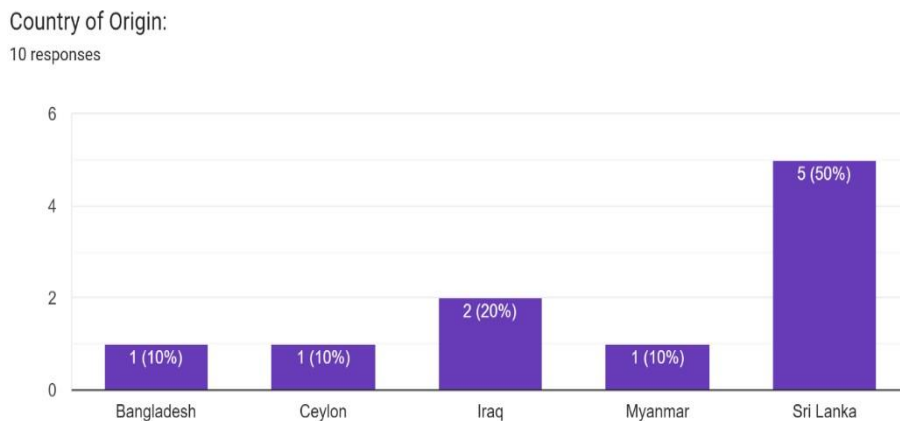


Figure 7 Country of Origin of Participants

### Current Residency Status of the respondents

In the Questionnaire, Participants were asked to indicate their current location by placing a tick next to the relevant option provided (Citizen, Permanent Resident, Temporary Resident, Refugee, and other). Fifty Percent of the respondents are Refugees, Forty Percent of them are Permanent residents and the other ten percent tick the other option (See figure 8). This high percentage of refugees demonstrates the continuous issues still present in the Australian refugee system. The data goes further to support the assertion to the effect that Australia is not meeting the basic human rights indicators because many people remain vulnerable.

What is your current residency status?

10 responses

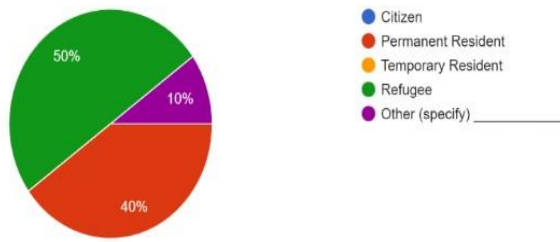


Figure 8 Current Residency Status of Participants

### How they arrived in Australia

In the Questionnaire, Participants were asked to indicate how they arrived in Australia by placing a tick next to the relevant option provided (Boat, plane, and other). Seventy Percent of the respondents arrived by Boat while the other 30 Percent arrived by plane (see figure 9).

How did you arrive in Australia (e.g., by boat, plane, etc.)?

10 responses

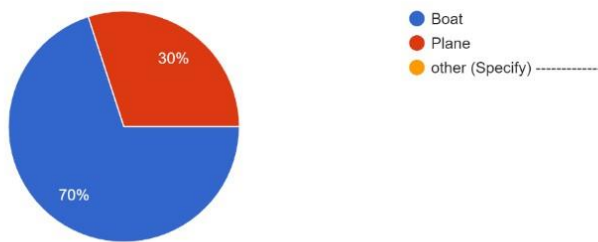


Figure 9 How Respondents Arrived to Australia

### Refugee Experience of Respondents and Their Human Rights

In the Questionnaire, Participants were asked whether they think Australian policies effectively protect the human rights of Refugees. Eighty Percent of the respondents said yes while the other 20 percent said No to this question (See figure 10).

Do you think Australian policies effectively protect the human rights of refugees?

10 responses

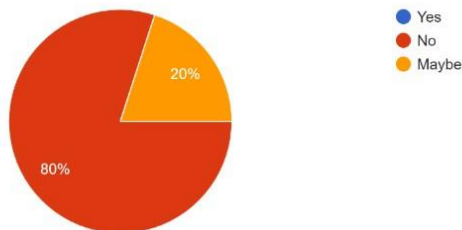


Figure 10 Do Australian Refugee Policies Effectively Protect the Human Rights of Refugees?

The analysis of the findings of the questionnaire concludes the fact that, consistently, persecution and violence are given as the primary factors motivating the individual to seek refuge in Australia. The primary reasons cited by most of the participants included political persecution for beliefs or ethnicity as well as general



insecurity in the participant's home country; Sri Lanka being most frequently mentioned. The responses illustrate such effects of such situations as human rights violations such as torture, violence, threats to life, and political instabilities. Finally, several respondents asserted that concerns for the family's safety and well-being influenced their decision to escape. It paints a picture of the terrible situations and threats to life that people had to flee and get asylum, therefore the need for international protection and asylum.

The responses to the questionnaire reveal the following specific barriers experienced by the refugees concerning accessing the Australian healthcare system.

Communication issues/ difficulty and inadequate consideration of the culture also emerge as common clues, often culminating in poor experience by the refugees. The scarcity of interpreters makes it worse and thus, poses a key barrier to communication between refugees and healthcare givers. Moreover, there is a recognized scarcity of culturally appropriate services, which has been identified as another problem. Time to be attended and access to specialists have also limited another factor highlighted by the respondents where they emphasized the number of days taken to seek medical attention. These challenges are even more for refugees because they are subjected to even more severe restrictions as compared to officially recognized refugees.

Figure 11 shows that 66.7% of participants have detention center experiences while 33.3% did not have that experience.

Did you have any experience in a detention center?

9 responses

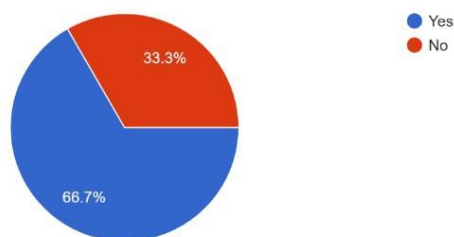


Figure 11 Experience in Detention Centre

From questionnaire responses, one can conclude that detainees' performance in detention centers is generally negative and filled with different violations of human rights. Some of the commonly cited complaints which range from basic problems of overcrowding and lack of access to proper medical care, the inmates can aggravate their physical as well as mental ailments. Also, when it comes to education, the lack of access to education for both children and adults remains a problem, because education gives detainees a chance to change their lives and become useful members of society again once released. The fourth factor is embarked this is because individuals are not informed and especially in terms of seeking asylum they feel helpless since they are denied any legal representation. Concerning the consequences of family separation, pain, and suffering are also underlined, pointing to severe emotional and psychological manifestations in parents and children. Also, some of the responses raised issues concerning some dehumanizing treatment, with some of the respondents being a victim of an abusive policy by some authorities sometimes in the form of verbal or even physical assault. The results imply that the centers are characterized by severe neglect and abuse of detainees, indicating that there is an urgent need to bring changes that enhance the human rights of detainees.

In general, the responses to the questionnaire provided several specific issues related to the education of refugees in Australia. One common problem is related to the deficit of English language schools and learning opportunities for students; this greatly complicates their adjustment and academic achievement. Lack of funds to pay for school fees, and the failure to have their qualifications from their countries of origin certified – adds to the challenges of attaining a college education. Several responses also indicated that participants were unable to attend school due to not having proper documents while the education system does not award credits to prior learning. Also, adequate specialized education programs for refugees are lacking or severely

developed, which makes their situation worse. The absence of language support in schools, and a generally limited cultural acceptance are also some of the major impediments. All in all, these difficulties highlighted the necessity of specific interventions to help refugee learners in Australia.

The results of the questionnaire as to personal experiences concerning the treatment of refugees in Australia cover a plethora of attitudes that can be deemed accurately as a rather positive and negative experience. On a positive note, organizations and individuals have praised friendly gestures from individuals, local communities, and NGOs which have helped in the integration and probably emotional support.

Education was also proposed as one of the positive effects that needed to be highlighted. However, concerns with negative experiences seemed to be equally reported and include; Continual reporting of the delay in processing of asylum claims, procedural and legal barriers, and service gaps. The most frequently reported areas were discrimination, prejudice, and perceiving oneself as a foreigner, which pointed out prejudice at the individual and/ or at the level of an organization. The following observations imply that although there are positive aspects of the refugees' integration into the communities of Australia, the systematic and societal challenges affecting refugees have not been fully resolved.

Some of the difficulties that the refugees experienced according to the responses to the questionnaire are some of the consequences of the Australian policies. On this account, there is constant reference to organizational structures as well as the restrictive immigration laws that deny equal access to some basic needs and rights that would enhance the integration process. Such policies continue to create a feeling of insecurity, exclusion, and helplessness among the refugees resulting in mental health complications. In detention centers and offshore processing, the policies increase the suffering of refugees and asylum seekers, including mandatory detention and Work Rights restrictions.

Based on the responses to the questionnaire, respondents agreed that there is a lack of effective and satisfactory policies and strategies regarding the protection of refugees' rights in Australia. One of the most noted strategies is the establishment of integration programs at the community level, which several respondents said would improve refugee rights. Moreover, there is also a special focus on raising funding for mental health care and legal aid since it is noted that their enhancement could help minimize the consequences of contemporary policies. Respondents also assert the need for advocacy of compassionate and liberal policies for human rights concerns and reforms for efficient family reunification processes and orderly resolution for the immigration status of the immigrants. Engaging in community sponsorship programs and increasing funding for refugee services, thus are suggested as humane methods that could perhaps be implemented instead. Combined, the responses communicate a specific need for reforms, concerning integration, mental health, legal aid, and human rights to enhance refugees' rights in Australia.

A brief analysis of the responses to the questionnaire referring to proposed changes that should enhance the conditions of refugees in Australia will identify several important topics. Two aspects are apparent from the arguments; there is the necessity to shorten the time taken in the processing of refugee applications and the desire of the public to see administrative burdens reduced to make the system more efficient. Concerning the detailed proposals, there is a particular focus on improving funding for organizations supporting refugees and integration initiatives, which would contribute to better results of refugees' settlement. Hiring professional psychological assistance and improving access to it is another point that many respondents mention, being aware of the psychological problems refugees have. Moreover, it is suggested to enhance cultural competence education among the providers to provide better, sensitive, and culturally appropriate services for the intended population. Another part is concerned with such reform measures as the improvement of legal aid services, the non-detention policy, and access to education and employment. Altogether, the answers suggest a rather comprehensive strategy that focuses on the improvement of the refugees' quality of life in Australia.

### **Comparative Analysis**

The fill-in responses in the questionnaire and the information drawn from the secondary data sources are indicative of the fact that the Australian government does not fully respect international human rights law and practices in its treatment of refugees. The primary data collected from the questionnaire presents poor remarks

on the interruptions and barriers experienced in pursuit of the basic rights in health, education, and legal assistance, which are gross human rights despite the Universal Declaration of Human Rights and the 1951 Refugee Convention. These real-life narratives of refugees suggest that there is a huge disconnect between the norms and standards that Australia takes and those the international law provides, thus suggesting systemic problems with the country's implementation of refugee justice.

On the other hand, the secondary sources of information, which entail the reports of the international organizations that work on protecting human rights as well as academic works support these observations. These sources offer some more information on the general standards arguing that Australia's measures like mandatory detention or the policy of offshore processing have been long regarded as violations of human rights. Whereas the primary data is general and individual perception, the secondary data is all-inclusive of policy analysis and impacts, and the conclusion that Australia is not meeting international human rights law standards in the treatment of refugees is made more valid. The two data sets used in this study offer a representation that calls for the change of Australian refugee policies to meet the standard of current international human rights.

## Theoretical analysis

### International Human Rights Framework

Following World War II, national governments participated in forming the United Nations. This international organization developed non-binding declarations and binding treaties outlining particular human rights, such as the Universal Declaration of Human Rights (UDHR), adopted in 1948. Although the Universal Declaration of Human Rights is not legally enforceable, its universal recognition highlights the need to treat all people equally and with respect, regardless of nationality, gender, race, religion, or other status (UDHR).

The United Nations has ratified other legally binding international human rights treaties including the Refugee Convention. These treaties serve as the foundation for the discussion and implementation of human rights, as well as imposing legal duties on governments that agree to them. They also created procedures to hold governments responsible for human rights violations. The international human rights framework is made up of treaties, agreements, and protocols that aim to defend human rights across the world. However, International law cannot address the refugee crisis or the challenges created by refugee flows, but it may serve as a facilitator and guide to the practical efficacy of efforts that states may take (Constalain, 2019).

Moussaoud Constalain Chrisna in his article, the International Legal Framework of Refugee Protection, demonstrates the position of refugee protection in the international legal framework, which is International refugee law, which governs refugee protection as a component of international law (Constalain, 2019). According to this article, International law cannot solve the problem of refugees and the challenges posed by refugee flows, but it may serve as a facilitator and guide to the practical efficacy of steps that nations may adopt (Constalain, 2019). The globally recognized legal instruments governing the status of refugees are the 1951 Geneva Convention on the Status of Refugees and its 1967 two protocols. State signatories to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol include almost two-thirds of the world's nations. These legal agreements include a variety of sections emphasizing refugee protection, such as preventing the return of refugees to unsafe areas. It indicates that states are responsible for ensuring the protection of refugees on their territory by working with other world organizations and nongovernment organizations engaged in humanitarian assistance (Constalain, 2019). With the enactment of the Universal Declaration of Human Rights in 1948, the movement of refugees between nations, as well as refugee protection, became a subject of international law.

Therefore, key international instruments affecting refugee rights include:

- The 1951 Refugee Convention and its 1967 Protocol define who a refugee is and what their rights are.
- The International Covenant on Civil and Political Rights (ICCPR) protects civil and political rights, including the right to life and freedom from torture.

- The Convention on the Rights of the Child (CRC) protects the rights of children including refugee children.

Despite certain concerns about whether these international laws are adequately up to date to address current refugee issues, they remain the primary body of international law for the safety of refugees. Additionally, the term refugee and some of the rights provisions included in these documents have been widely adopted into regional and national laws.

The Refugee Convention is an active convention that, despite its antiquity, remains relevant in terms of providing an international standard for addressing contemporary refugee challenges (Gorlick, 2000). The UNHCR and refugee advocates may use these laws and procedures to strengthen protection principles and put enforcement into action.

Australia has signed these important international agreements, and its domestic measures should be consistent with these duties and standards. However, Several international instruments indicate that mandatory detention of asylum seekers might be against international standards. Also, Australia's refugee policies frequently violate the principle of non-refoulement, which is outlined in the Refugee Convention. The conditions in detention facilities and the treatment of refugees also violate the ICCPR. Furthermore, the treatment of child refugees, including detention and limited access to education and healthcare, breaches the CRC. As a member of these international treaties, Australia is required to defend the human rights of all asylum seekers and refugees who enter the country, regardless of how or where they arrived or whether they have a visa.

Therefore, it is clear that Australia's refugee policy differs significantly from international human rights principles and standards. Despite being a signatory to important international human rights agreements, Australia's policies frequently emphasize national security and border protection over refugee rights.

### **Concept of Universality**

The concept of universality is a foundation of international human rights law, emphasizing that all human beings have certain fundamental rights regardless of nationality, ethnicity, religion, or any other status. This idea appears in important international human rights agreements, such as the Universal Declaration of Human Rights (UDHR), which declares that "all human beings are born free and equal in dignity and rights" (UDHR, Article 1).

Australia's refugee policies must be assessed through the lens of universality to see if they protect the fundamental human rights of all people inside its boundaries, regardless of refugee status. This includes the right to seek refuge (UDHR, Article 14), the right to be free of discrimination (Article 2), and the right to life, liberty, and personal security (UDHR, Article 3). However Australian policies, especially those involving offshore processing and mandatory detention, have been challenged for infringing on these basic rights.

The right to equality and non-discrimination is critical to ensuring that everyone may fully exercise their social, economic, and social rights. These concepts are crucial to international human rights laws and are consistent with the idea of universality, which implies that everyone is entitled to fundamental rights.

However, Australian refugee policies, especially those involving mandatory detention, boat turnbacks, and offshore processing, frequently contradict the concept of universality. These policies aim to discourage irregular maritime arrivals while prioritizing national security and border control over individual human rights. Mandatory detention of asylum seekers, including children, has been highly condemned for its harsh circumstances and psychological impact on detainees, which violates the right to liberty and security of persons established in the Universal Declaration of Human Rights.

The gaps between Australia's refugee policy and the concept of universality demonstrate the tension between national sovereignty and international human rights responsibilities. While Australia has the sovereign right to manage its borders, it also has a responsibility to protect the human rights of all people within its boundaries.

The findings reveal that Australia's measures to prevent refugee seekers by boat, mandatory detention, and offshore processing to successfully secure its borders against large numbers of immigrants have breached key principles of international refugee and human rights law. Australia's lack of good faith is demonstrated by its continued forced and indefinite offshore detention of asylum seekers and resettlement of refugees in unsafe third countries. The major issue is that there is no enforcement mechanism to overturn Australia's state sovereignty which denies refugees safety. This demonstrates why it is crucial to examine each treaty in light of the entire human rights framework, as doing so can be more successful in giving refugees long-lasting protection.

## CONCLUSION

This last chapter outlines the results from the other chapters of the research on refugees' human rights, with a focus on Australian policies. Chapter One included an outline of the research. Chapter Two described the research method. Finally, Chapter Three provided a thorough analysis of the data, highlighting the specific human rights issues and violations faced by refugees in Australia and assessing the extent to which Australian policies are consistent with international standards for human rights. This chapter will collect these insights, provide a critical review of the findings, and provide recommendations for policy to further protect refugees' human rights in Australia.

The Australian government's policies to manage refugee entry, such as mandatory detention, offshore processing, and Boat Turnback, have raised concerns about their consistency with international human rights obligations, particularly those outlined in the 1951 Refugee Convention. These policies raise concerns about refugee treatment, access to protection, and potential violations of basic human rights. To identify and understand this problem the following research objectives are used in this research.

### Research Objectives:

1. Examine the policies and practices of Australian governments over Refugees.
2. Investigate specific instances and cases where refugees in Australia have experienced violations of their human rights due to government policies.
3. Analyze and compare Australian government policies on refugees to assess their alignment with international human rights standards.

And to achieve these objectives, I came up with following research questions,

### Research Questions:

1. What are the policies and practices of Australian governments over Refugees?
2. What are the specific human rights challenges and violations experienced by refugees in Australia due to government policies?
3. To what extent has the Australian government's policy on refugees complied with international human rights standards and principles?

To answer the above questions, I used two analytical approaches to set my argument distinguish from previous studies. First, the majority of scholars see Australia's policy as a result of the number of immigrants and/or domestic politics. I do not deny that both elements contribute, but I believe that neither argument is enough on its own and must be incorporated into a wider narrative that examines the role of international law, particularly the Refugee Convention. My second analytical approach was to examine this through the lens of universality and the international human rights framework. I proposed that these concepts offer a more comprehensive view.

It is demonstrated that Australia's practice of mandatory and indefinite detention extends back to the 1990s and has never been successfully challenged by the Australian High Court. Nevertheless, the Australian Human Rights Commission has highlighted concerns multiple times, particularly about children in custody. Several

UNHCR and Amnesty International assessments have shown that the living conditions in Manus Island and Nauru are unacceptable, and sexual abuse has occurred in those centers.

Australia has breached Article 31 of the Refugee Convention, which prohibits punishment for illegal entry. The lack of individual assessment and the opportunity to review the detention demonstrates that there is no assessment of the necessity of detention for refugees coming by boat, and hence mandatory detention amounts to punishment. Article 33 places a limit on moving refugees elsewhere, as they may face persecution in another nation. However, prior chapters have shown that Australia likewise violates this principle.

Even while the Refugee Convention provides refugees with specific protection, the Children's Rights Convention (CRC) and the International Covenant on Civil and Political Rights (ICCPR), particularly sections 9 and 10, which advocate for humane treatment in detention and prohibit arbitrary detention, can provide an alternate form of protection. Due to its policy of arbitrary, obligatory, and indefinite detention, Australia violates both Article 9 on the circumstances of detention and Article 10 about the conditions of detention. Articles 6 and 7 of the the International Covenant on Civil Political Rights as well as Article 3 of the Convention against Torture, together prohibit the deportation of people to locations where their lives could be in danger or where they would be subjected to cruel treatment, offer additional protection for those seeking refuge.

Therefore it is clear that examination of how the Australian government treats refugees shows a rather paradoxical relationship between security policies on the one hand and human rights on the other. Consequently, by analyzing both secondary data and primary data collected from the questionnaires and the subsequent analysis of the gathered results, several important findings have been identified, which can suggest answers to the posed research questions.

Firstly, various Australian governmental policies and strategies regarding refugees have been outlined as harsh, and these include detainment, offshore evaluation procedures, and the turn-back policy. The rationale of these practices is to prevent the so-called 'boat people' and other forms of unauthorized sea crossing and ensure that the influx of refugees flows within the prescribed limit and in a legal and orderly manner. Nevertheless, these policies present human rights consequences with regard to the treatment of refugees and asylum seekers.

Secondly, the paper explained that the refugees in Australia face particular human rights concerns and abuses as a result of government measures. There have been documented cases of poor living conditions in both the on-shore detention centers and the off-shore facilities; long periods of detention without clear release dates and access to basic services. The offshore processing centers for instance have been accused of having poor health, mental health, and poor legal services which have in the end resulted in detainees suffering from dreadful psychological impacts. The boat turnback policy, which was implemented to avoid risky sea voyages, has been deemed contradictory to the safety and legal rights of asylum seekers as it leads to refoulement, which is against the norms of international human rights.

Thirdly, the reports demonstrate the compatibility of Australian government policies for refugees with international human rights standards and principles. Despite the fact that Australia is a party to most of the international human rights instruments, its domestic laws are quite discriminative of these commitments. There have been a lot of criticisms by international organizations such as the United Nations arguing that the policy of mandatory detention and offshore processing does not uphold the set human rights standards as provided for in international instruments. However, much remains undone, suggesting that these practices will still require considerable policy shifts to achieve international standards.

In conclusion, the findings present a very complex picture of how the Australian government policies directly affect the rights of refugees. Consequently, sometimes the goal of defending a nation's security and maintaining borders can be achieved at the cost of violating human rights. This analysis' findings point to a need to maintain Australia's international obligations in addressing the situation while ensuring that refugees and asylum seekers are provided humane and just treatment. New approaches in detaining practices, reconsideration of off-shore processing, and the stopping of turning back boats are essential to reach this

balance. There is a need for change in Australia's policies to embrace human rights for refugees and give them the respect they deserve.

## Limitations

Certain limitations to this study have been recognized, as the scope of this research does not permit a review of all important human rights treaties. This is why mainly the Refugee Convention, ICCPR, and CAT were prioritized, although the ICESCR, Convention on the Status of Stateless Persons, and Convention on the Rights of Persons with Disabilities would also be useful in analyzing the issue in question.

While my study focuses largely on Australian refugee policy issues such as mandatory detention, boat turnbacks, and offshore processing, it is important to recognize that other parts of refugee policy may have a substantial impact on the entire human rights situation. Resettlement programs, integration policies, and regional cooperation frameworks are critical components that can give more information on how refugees' rights are protected and violated in Australia. These factors frequently determine the long-term results and well-being of refugees, affecting their ability to rebuild their lives with dignity and security. Understanding these wider policies, as well as the details of detention, turnbacks, and offshore processing, helps provide a more complete picture of Australia's commitment to refugee rights and compliance with international norms. Due to the word limit of this research, it was important to focus on specific elements of Australia's refugee policy. While this paper delves deeply into mandatory detention, boat turnbacks, and offshore processing, it does not cover all aspects of Australia's complex refugee rights situation. As a result, certain important topics, such as the Resettlement programs, integration policies, and regional cooperation frameworks were beyond the scope of this study. Future research with larger parameters may give a more thorough insight by including these other factors.

Moreover, throughout this research, data accessibility and reliability have been another issue. Government transparency and access to detailed data on refugee populations, their experiences, and the results of policy initiatives are still restricted, limiting the depth and breadth of research in this study.

## RECOMMENDATIONS

In this research, violations of refugee and human rights standards have been highlighted. This provides a wide basis for recommending solutions in accordance with the treaties' objective and purpose, as well as the intention of providing refugees with the best possible protection against strict and deterrent immigration policies.

First, governments must read treaties in good faith to avoid undermining the international protection system for vulnerable persons by seeing them as a danger to national security. This is the reason that Australia should begin with the immediate implementation of signed treaties in its legislation. This would allow the Australian High Court to apply international law to an arbitrary and discriminatory policy.

Australia's detention system for persons without visas is mandated by law and is utilized as a first rather than a last measure. Conditions are getting worse, with brutal and controlling measures being used. People can be held indefinitely without a time restriction, and unlike prisons, there are no particular regulations governing detention conditions or official evaluations. Releasing from detention depends mainly on the Minister and the Immigration Department, with little transparency (ReliefWeb, 2018). The Australian Border Force has tightened security in detention, including restrictions on movement and visitor access (ReliefWeb, 2018).

Some recommendations to stop human rights violations of refugees in Australia due to mandatory detention:

- Repealing the Migration Act's mandatory detention sections.
- Creating statutory maximum time restrictions for immigration detention.
- Enacting legislation to restrict child imprisonment.
- Specifying the criteria for immigration detention.

- Including in the statute an independent and judicial review of detention, which would take place immediately when a person is detained and periodically thereafter.
- Integrating public examination by independent monitoring agencies into rules and laws.
- Providing equal access to merit and judicial review of unfavorable security assessments.
- Establishing a regional human rights court or a supranational agency might provide a more robust framework for ensuring that governments meet their international responsibilities to refugees.

The policy of holding refugees on Nauru and Manus Island has had a negative impact on their mental and physical health, with high rates of anxiety, depression, posttraumatic stress disorder self-harm, and suicide. Poor living conditions and limited medical access have worsened these difficulties, as have claims of sexual abuse and safety concerns within detention facilities (ReliefWeb, 2018). Despite this harm deportations and voluntary returns continue, and families remain divided. To overcome this, the recommended policy solution includes stopping offshore processing and boat turnbacks, processing refugees onshore, and adhering to Refugee Convention obligations.

To reduce the suffering of refugees detained in offshore processing centres, the following other recommendations are:

- To put a stop to the long-term suffering of individuals currently in detention, the issue must be resolved urgently.
- Remove all Australian-funded offshore detention, processing, and transit facilities.
- Bring all refugees to Australia to find long-term solutions.
- Ensure that all asylum applications are processed fairly and quickly.
- Grant recognized refugees' permanent protection.

Importantly, moving from temporary to permanent protection for refugees in Australia is critical for giving people and families the stability they need to recover, integrate into society, and positively contribute to their communities (ReliefWeb, 2018). Permanent protection allows refugees to reconstruct their lives without worrying about their status. By providing permanent protection, Australia can meet its humanitarian obligations while also providing a more humane and effective path for refugees to succeed.

Also, providing government assistance for legal aid and advice is critical to ensuring that those seeking refuge have equitable and timely access to legal representation during the refugee process (ReliefWeb, 2018). Adequate legal help not only improves the quality of refuge applications but also increases the transparency and impartiality of decision-making procedures (ReliefWeb, 2018). The funding is critical for protecting refugees' rights and ensuring their claims are heard and evaluated correctly under Australian law.

More importantly, access to financial support, basic health care, and employment rights is critical for the well-being and dignity of all refugees in Australia. They must be able to access these services regardless of how they arrived or where they are in the process of obtaining asylum (ReliefWeb, 2018). Ensuring that refugees have access to these vital services helps to prevent poverty and allows them to retain their health and dignity while their refugee requests are processed. Offering those seeking refuge the same access to mental health treatments as resettled refugees and other individuals in the community is critical for treating the psychological effects of relocation and trauma (ReliefWeb, 2018).

These proposals seek to preserve Australia's international duties and commitments to refugee rights while encouraging a fair and compassionate strategy for refugee policy.

In conclusion, there should be a global shared duty for refugee protection, which should begin with every state ratifying the Refugee Convention and other applicable human rights treaties and implementing them in good faith. Overall, there should be more cooperation in delivering effective and long-lasting solutions to those in need of protection.



## Declaration of Conflict of Interest

I declare no conflict of interest during the process of writing and producing the paper.

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## APPENDICES

Annexure 1

### Consent Form For Questionnaire

**This study has been approved by the University Ethics Committee of University of Colombo, Sri Lanka.**

**TITLE OF RESEARCH:** Human Rights of Refugees: Case Study of Australian Government's Policies Over Refugees

1. **INVESTIGATOR:** Dr. Pavithra Jayawardena
2. **For this study, you will be completing a short questionnaire about** Human Rights of Refugees in the context of Australia.
3. **If you have any questions before you complete this questionnaire, please contact me,** Email: lavanyalewmini@gmail.com.
4. **All responses you provide for this study will be completely confidential.**
5. **By clicking "Yes" below, you acknowledge that you have read and understood that:** o Your participation in this survey is voluntary. You may withdraw your consent and discontinue participation in the project at any time. Your refusal to participate will not in any way adversely impact upon you. o You have given consent to be a subject of this research and respond to the questionnaire as truly as possibleo You do not waive any legal rights or release the University or the investigator from liability for negligence or misconduct.
6. **Do you wish to participate in this study?**
  - **Yes, I am consenting to participate**
  - **No, I am NOT consenting to participate**

.....  
**Signature**

**Name**

**Date**

Annexure 2

### Section 1 of 2

Dear Sir/Madam,

I am Lavanya Gunaratne and I'm following an International Relations Degree at University of Colombo, Sri Lanka. Currently I'm undertaking my final year research project on the topic of human rights of refugees, with a specific focus on analyzing Australian policies.

I have prepared a brief questionnaire that covers various aspects related to refugee rights within the context of Australian policies. Your insights and perspectives on this subject would be immensely valuable to the depth and quality of my research. Your responses will be kept confidential and will only be used for academic purposes.

Thank you in advance for your consideration and support. Your contribution to this crucial research will make a meaningful difference.

Warm regards,

Lavanya Gunaratne

University of Colombo

### Section 1 of 2

1. Name (Optional):
2. Country of Origin:
3. Current Location (Detention Center, Community, etc.):
4. How did you arrive in Australia (e.g., by boat, plane, etc.)?
  - Boat
  - Plane
  - Other (specify):
5. What was your Age range during your arrival?
  - 10-20
  - 20-30
  - 40-50
  - 50-60
  - 60-70
  - 70 above
6. What is your gender identity?
  - Male
  - Female
  - Other
7. What is your current residency status?
  - Citizen
  - Permanent Resident
  - Temporary Resident
  - Refugee
  - Other

### Section 2 of 2

8. Do you think Australian policies effectively protect the human rights of refugees?

- Yes
  - No
  - Maybe
9. Can you briefly describe the reasons why you sought refugee status in Australia?
10. What specific challenges, if any, have you faced in accessing to health care system in Australia as a refugee?
11. What specific challenges, if any, have you faced in accessing education in Australia as a refugee?
12. Do you have personal experiences related to the treatment of refugees in Australia? if yes, please share your experience, both positive and negative?
13. Have you observed any specific challenges faced by refugees due to Australian policies? if yes please specify
14. Are you aware of any alternative approaches or policies that could better protect the rights of refugees in Australia?
15. What changes, if any, would you propose to improve the situation for refugees in Australia?
16. Do you consent to the use of your responses for research or educational purposes while ensuring your anonymity and safety?
- Yes
  - No
  - Maybe

**Thank You for Responses**