Externalization of Migration Control: Legal Basis, Implementation, and Human Rights Implications

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The externalization of migration control has become an increasingly dominant strategy employed by high-income states to manage irregular migration. Through the relocation of border controls beyond territorial boundaries, states aim to deter asylum seekers from reaching their borders. Although widely practiced, this approach raises serious legal, political, and ethical questions, particularly regarding the human rights of migrants and the obligations of states under international law. This paper examines the legal foundations, mechanisms of implementation, and implications of migration externalization, focusing on three key examples: Australia's offshore processing arrangements in *Papua New Guinea* and *Nauru*, the *EU-Turkey Statement of 2016*, and the *UK-Rwanda Migration Partnership*. It also analyzes the legal instruments underpinning these arrangements and the actors involved in their negotiation and implementation.

Australia's Offshore Processing Regime: MoUs and Informal Legality

Australia's offshore processing policy, particularly in Papua New Guinea and Nauru, is premised on bilateral Memoranda of Understanding rather than formal treaties. These MoUs, first signed in 2012 under the *Labor government* and later reaffirmed by successive governments, form the legal basis of transferring asylum seekers to offshore facilities. Under international law, MoUs are considered non-binding political commitments rather than enforceable treaties. Their informality, however, allows them to evade parliamentary scrutiny, judicial oversight, and public transparency.

Australia's *Migration Act of 1958*, specifically *Section 198AHA*, provides legislative authority for the government to take actions relating to offshore processing countries. However, this domestic legal basis does not absolve Australia of its international obligations under the *1951 Refugee Convention* and its *1967 Protocol*, to which Australia is a party. The offshore processing centres have been extensively criticized by international bodies including *the UN Human Rights Committee* and the *UN Special Rapporteur on Torture for conditions that amount to cruel, inhuman or degrading treatment*.

The implementation of these arrangements is managed by the *Australian Department of Home Affairs* and *Australian Border Force*, with operational support from private contractors such as *Broadspectrum* and *Wilson Security*. While Papua New Guinea and Nauru are technically the host states, their role is often limited to nominal oversight, with real authority and decision-making vested in Australian officials and private service providers.

In terms of human rights implications, multiple reports have documented systemic abuses within the offshore processing regime, including denial of medical care, indefinite detention, lack of access to legal counsel, and psychological harm. These conditions raise concerns under *Articles*

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3 and *5* of the *Universal Declaration of Human Rights* ("**UDHR**"), and *Articles 7* and *9* of the *International Covenant on Civil and Political Rights* ("**ICCPR**"), all of which prohibit arbitrary detention and cruel or degrading treatment.

The EU-Turkey Statement: A Political Arrangement Lacking Judicial Oversight

The EU-Turkey Statement, issued in March 2016, exemplifies another form of externalization that operates in legal grey zones. Though widely described as an "*agreement*", it is not a treaty in the legal sense but rather a political declaration. The European Commission and the Turkish government negotiated the terms, and implementation has involved the European Asylum Support Office, Greek and Turkish border agencies, and the EU's border agency Frontex. The legal ambiguity of the arrangement allows for policy flexibility but results in significant gaps in accountability.

The primary legal basis for returning migrants from Greece to Turkey lies in the *EU Asylum Procedures Directive (2013/32/EU)*, which allows member states to designate third countries as "*safe*". However, Turkey's asylum system has been widely criticized for its lack of procedural safeguards and poor protection standards. Moreover, Turkey maintains a geographical limitation to its obligations under the *1951 Refugee Convention*, only granting full refugee status to European asylum seekers. As a result, non-European asylum seekers returned to Turkey may not benefit from the full protection of international refugee law.

The legal responsibility for implementing the Statement rests primarily with the executive branches of the EU and its member states, particularly Greece. National parliaments have had limited involvement, and the Court of Justice of the European Union has not ruled on the legality of the arrangement, largely due to the political characterization of the Statement. This has led to challenges in enforcing accountability and upholding migrants' rights.

Human rights organizations and legal scholars have raised serious concerns about the impact of the EU-Turkey deal. Pushbacks in the Aegean Sea, lack of access to fair asylum procedures, and overcrowded reception centres on Greek islands have been documented extensively. These practices violate Article 33 of the Refugee Convention (*prohibition of refoulement*), Article 3 of the European Convention on Human Rights, and fundamental principles of the Charter of Fundamental Rights of the European Union.

The UK-Rwanda Migration Partnership: Formalization of Externalization

The United Kingdom's agreement with Rwanda marks a new phase in migration externalization by formalizing the policy through a treaty. Initially signed as an MoU in 2022, it was subsequently elevated to a binding international treaty in 2023 and supported by the enactment of the *Safety of Rwanda (Asylum and Immigration) Act, 2024*. The legal design of this partnership represents an effort to circumvent domestic judicial obstacles, following the UK Supreme Court's ruling that Rwanda was not a safe third country under the European Convention on Human Rights.

The treaty allows for the transfer of asylum seekers from the UK to Rwanda, where their claims will be processed under Rwandan law. The UK has committed substantial financial resources to support the scheme, including payments for infrastructure, training, and long-term

resettlement programs. The operational responsibility lies with the UK Home Office and the Rwandan Ministry of Interior, supported by various implementing partners.

This partnership raises significant legal and ethical concerns. The UNHCR has consistently maintained that the UK-Rwanda deal is inconsistent with the spirit and letter of the 1951 Refugee Convention. The lack of a genuine possibility of return to the UK, limited procedural safeguards, and the risk of indirect refoulement contravene both UK obligations under the Refugee Convention and international human rights law.

The *Safety of Rwanda Act, 2024* attempts to insulate the scheme from judicial review by declaring Rwanda a safe country by legislative fiat. This raises profound constitutional questions regarding the separation of powers, the independence of the judiciary, and compliance with the UK's international obligations under Article 3 ECHR and Articles 13 and 14 of the ICCPR.

Legal Accountability and Human Rights Implications

Across these three models, Australia's offshore processing, the EU-Turkey Statement, and the UK-Rwanda Partnership, a common feature is the deliberate use of informal or hybrid legal instruments to avoid full transparency, parliamentary oversight, and judicial accountability. This tactic allows governments to retain operational control while distancing themselves from legal responsibility.

Under international law, states cannot evade their human rights obligations by transferring asylum seekers to third countries. The principle of non-refoulement, enshrined in Article 33 of the 1951 Refugee Convention and recognized as customary international law, prohibits returning individuals to countries where they face a risk of persecution, torture, or inhuman treatment. Additionally, the extraterritorial application of human rights obligations, as recognized in cases like *Hirsi Jamaa v. Italy* (European Court of Human Rights, 2012), affirms that states remain responsible for violations occurring under their effective control, even outside their territory. Also, the outsourcing of migration management to private contractors, as in Australia, and the political framing of agreements to escape legal scrutiny, as in the EU and UK cases, undermine the rule of law. These strategies deprive migrants of due process, judicial remedies, and procedural fairness, violating core tenets of the ICCPR, CAT, and regional human rights instruments.

The impact of these externalization policies is not only legal; it is deeply human. On Manus Island and Nauru, clinics report widespread psychological trauma among detainees, with high incidences of depression, self-harm, and post-traumatic stress disorder. Many of these individuals, even after release, remain in legal limbo, stateless and unsupported. In Europe, families wait in squalid camps on the Greek islands, trapped between uncertain asylum procedures and the threat of return to Turkey. In the UK-Rwanda context, people with familial ties in Britain face being uprooted and sent to countries they have never seen, with their fears of persecution unheard or dismissed.

Denial of legal safeguards is routine. Individuals are detained for long periods without oversight or access to legal counsel, and appeals processes are either absent or inaccessible. The principle of non-refoulement is weakened when governments unilaterally designate countries as "*safe*" without transparent, evidence-based assessments. Accountability gaps abound. Victims of

abuse in offshore facilities rarely have access to justice. Courts are limited in reach; contracts with private actors often operate beyond the scrutiny of domestic law.

There is an urgent need to realign migration governance with international legal standards and human dignity. Transparency must become the norm, with all agreements: MoUs, treaties, and operational contracts, open to public scrutiny. Legal cooperation must be conditional on human rights protections, including independent monitoring and judicial review. States must recognize and act on their extraterritorial human rights obligations. Private contractors must be held accountable, with oversight mechanisms and sanctions for rights violations. Technology used in migration control, including surveillance and data-sharing, must be regulated to protect privacy and consent. Above all, the approach to migration must place care, family unity, and human well-being at the center, replacing punitive deterrence with pathways rooted in protection and inclusion.

Conclusion

This crisis isn't merely legal or structural; it is fundamentally human.

The growing reliance on externalizing migration control signals a concerning trend in how states handle their international obligations. By physically and legally distancing themselves from asylum seekers, states aim to shield their domestic political systems from the challenges of migration management. Yet, in doing so, they shift the burden onto countries that may lack adequate legal protections, institutional capacity, or genuine commitment to human rights. This approach does not solve the crisis, it simply relocates it.

Rather than crafting migration policies that reflect legal integrity and humanitarian responsibility, many governments have turned to ambiguous and legally flexible tools. MoUs, political statements, and now increasingly, formal treaties are employed in ways that limit public scrutiny, judicial challenge, and democratic debate. These instruments often operate below the radar of traditional treaty law, intentionally blurring the lines of accountability. This is not a legal oversight; it is a calculated strategy designed to reduce state exposure to legal responsibility under international law.

The three cases explored, *Australia's offshore processing model*, the *EU-Turkey Statement*, and the *UK-Rwanda partnership*, demonstrate variations of the same pattern. Each uses a different legal wrapper, but all share a central purpose: to prevent asylum seekers from accessing protections by physically removing them from jurisdictions where human rights are enforceable. The consequences are not abstract. They involve real people being detained indefinitely, denied access to fair asylum procedures, and left in legal limbo in countries often unable or unwilling to protect them.

These arrangements often rely on fragile or contested interpretations of what constitutes a "*safe third country*". In reality, these designations are frequently based more on political convenience than on objective assessments of human rights conditions. Declaring a country safe does not make it so, especially when international monitors, human rights groups, and domestic courts continue to highlight deficiencies in protection standards and risks of return.

What makes these practices especially troubling is the erosion of legal norms they represent. The principle of *non-refoulement*, the idea that no one should be returned to a place where they

face serious harm, is a cornerstone of international refugee law. It is not optional. Yet, by transferring asylum seekers to countries with questionable records and shielding these actions through ambiguous legal instruments, states are effectively rewriting this principle to suit short-term political goals.

Worse still, the execution of these arrangements often bypasses the democratic safeguards that typically constrain executive action. Parliaments are left in the dark, courts are restricted in their ability to review state decisions, and civil society is sidelined. Migrants and refugees, meanwhile, are left without effective remedies or avenues to challenge their treatment. This undermines not only the rights of migrants but the rule of law itself.

In the end, these policies represent more than a shift in migration control, they reflect a broader decline in the willingness of states to uphold shared legal and moral commitments. When rights are treated as privileges dependent on geography or diplomatic convenience, the universality of human rights is fundamentally compromised.

There is a pressing need to return to a rights-based approach to migration, one rooted in transparency, legal accountability, and the belief that no person should be outside the protection of the law. Externalization must not become a vehicle for avoiding legal duties. It must be subjected to the same standards of justice and fairness that democratic societies promise to uphold within their borders. Anything less risks dismantling the international protection system as we know it.

References

Associated Press. (2024, March 2024). British government watchdog says UK's Rwanda deportation plan could cost nearly 500 million pounds. *AP News*. https://apnews.com/article/6391f3c0937cf5fb5d51812c581fe822

UK House of Lords Joint Committee on Human Rights. (2024, February 12). *Second report of session 2023–24: Safety of Rwanda (Asylum & Immigration) Bill*. Parliament Publications. https://publications.parliament.uk/pa/jt5804/jtselect/jtrights/435/report.html

Essex, R., Kalocsányiová, E., & Young, P. (2022). Psychological distress in Australian onshore and offshore immigration detention centres from 2014–2018. *Journal of Immigrant and Minority Health, 24*(4), 868–874. https://doi.org/10.1007/s10903-022-01335-7 en.wikipedia.org+5link.springer.com+5pubmed.ncbi.nlm.nih.gov+5

Specker, P., et al. (2024). Investigating whether offshore immigration detention and processing are associated with an increased likelihood of psychological disorders. *The British Journal of Psychiatry*. Advance online publication. https://www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/investigating-whether-offshore-immigration-detention-and-processing-are-associated-with-an-increased-likelihood-of-psychological-disorders/B8F3D6DA18956959A4BAA06650F3E588 cambridge.org

Essex, R. (2024). Authoritarian neoliberalism and asylum seekers: The silencing of accounting and accountability in offshore detention centres. *Journal of Business Ethics, 180*, 1025–1043. https://doi.org/10.1007/s10551-024-05770-4 link.springer.com

Aitchison, G., & Essex, R. (2024). Client states: Australia's offshore detainees and the limits of therapy. *Medical Anthropology Quarterly*. Advance online publication. https://pubmed.ncbi.nlm.nih.gov/37243980/ link.springer.com+3pubmed.ncbi.nlm.nih.gov+3mdpi.com+3

Robjant, K., Hassan, R., & Katona, C. (2009). The mental health implications of detaining asylum seekers: A systematic review. *British Journal of Psychiatry, 194*(4), 306–312. https://doi.org/10.1192/bjp.bp.108.053223 pubmed.ncbi.nlm.nih.gov

Briskman, L. (2020). The People's Inquiry into detention: Social work activism for asylum seeker rights. *Journal of Sociology, 56*(3), 402–418. https://doi.org/10.1177/1440783319882540 journals.sagepub.com+1link.springer.com+1

Amnesty International. (2016). Australia's regime of cruelty has turned Nauru into an open-air prison. Amnesty International Australia. https://www.amnesty.org.au/island-of-despair-nauru-refugee-report-2016

European Court of Human Rights. (2012, February 23). *Case of Hirsi Jamaa and Others v. Italy*, 27765/09 (Grand Chamber). European Court of Human Rights. https://hudoc.echr.coe.int/eng?i=001-109231 pubmed.ncbi.nlm.nih.gov+2en.wikipedia.org+2cambridge.org+2

UK House of Commons Home Affairs Committee. (2024, January 12). *UK–Rwanda treaty: provision of an asylum partnership* (Second Report of Session 2023–24). UK Parliament. https://publications.parliament.uk/pa/cm5804/cmselect/cmhaff/434/report.html

UNHCR UK. (2024, January 15). *UNHCR analysis of the legality and appropriateness of the transfer of asylum-seekers under the UK–Rwanda arrangement: An update*. https://www.unhcr.org/uk/publications/unhcr-analysis-legality-and-appropriateness-transfer-asylum-seekers-under-uk-rwanda

UN News. (2024, February 19). UK bill to send asylum seekers to Rwanda 'undercuts human rights': UN rights chief. https://news.un.org/en/story/2024/02/1146662

Le Monde. (2024, April 25). Immigration: The UK's shameful Rwanda law. *Le Monde*. https://www.lemonde.fr/en/opinion/article/2024/04/25/immigration-the-uk-s-shameful-rwanda-law_6669508_23.html

Migration Observatory (University of Oxford). (2024, April 26). *The uncertain financial implications of the UK's Rwanda policy*. https://migrationobservatory.ox.ac.uk/resources/commentaries/the-uncertain-financial-implications-of-the-uks-rwanda-policy/

Guardian. (2024, November 11). Offshore detention makes it 20 times more likely asylum seekers will suffer PTSD, Australian study finds. *The Guardian*.

https://www.theguardian.com/australia-news/2024/nov/12/asylum-seekers-in-australian-offshore-detention-at-20-times-greater-ptsd-risk-than-someone-not-detained-study-finds

The Guardian. (2024, November 11). Offshore detention makes it 20 times more likely asylum seekers will suffer PTSD, Australian study finds. *The Guardian*. https://www.theguardian.com/australia-news/2024/nov/12/asylum-seekers-in-australian-offshore-detention-at-20-times-greater-ptsd-risk-than-someone-not-detained-or-onshore-for-less-than-six-months-study-finds theguardian.com+1theguardian.com+1

The Guardian. (2025, January 10). Australia violated rights of asylum seekers on Nauru, UN watchdog rules. *The Guardian*. https://www.theguardian.com/australia-news/2025/jan/10/australia-violated-rights-of-asylum-seekers-on-nauru-un-watchdog-rules

Guardian. (2025, June 5). *"We just sit here": the broken men Australia's offshore detention regime left behind in Papua New Guinea*. *The Guardian*. https://www.theguardian.com/australia-news/2025/jun/06/we-just-sit-here-the-broken-men-australias-offshore-detention-regime-left-behind-in-papua-new-guinea

The Guardian. (2025, June 5). 'We just sit here': The broken men Australia's offshore detention regime left behind in Papua New Guinea. *The Guardian*. https://www.theguardian.com/australia-news/2025/jun/06/we-just-sit-here-the-broken-men-australias-offshore-detention-regime-left-behind-in-papua-new-guinea theguardian.com

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