Asylum seeker processing in East Timor: a solution for whom?


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If the regional asylum seeker processing centre goes ahead, the only real winner will be the Gillard government, writes Savitri Taylor

Julia Gillard announces a the plan for a regional processing centre at the Lowy Institute on 6 July last year. AP Photo/Rick Rycroft

“IRREGULAR maritime arrivals,” as the immigration department calls them, now account for almost half of all those seeking protection in Australia. Labor and Coalition are of like mind in regarding these unauthorised arrivals as a problem – not because they don’t have valid claims to international protection, but because they usually do. Under Labor and Coalition governments alike, Australia’s preferred role in global efforts to deal with asylum seekers has been to offer itself as a country of resettlement for refugees whom it chooses. By arriving here without permission and invoking Australia’s international protection obligations, irregular maritime arrivals deprive Australia of that choice in a publicly visible manner.

In a speech delivered at the Lowy Institute on 6 July 2010, Prime Minister Gillard raised the possibility of establishing a “regional processing centre” for asylum seekers in East Timor. According to Ms Gillard: “The purpose would be to ensure that people smugglers have no product to sell. A boat ride to Australia would just be a ticket back to the regional processing centre. It would be to ensure that everyone is subject to a consistent, fair assessment process. It would be to ensure that arriving by boat does not give anybody an advantage in the likelihood that they would end up settling in Australia or other countries of the region.”

The announcement caught most people outside government by surprise (and, if “senior Labor sources” are to be believed, most inside the government as well). Although the prime minister indicated that she had already raised the possibility of a regional processing centre with the president of East Timor, the prime minister of New Zealand and the United Nations High Commissioner for Refugees, or UNHCR, it soon became clear that nothing approaching proper consultation had taken place. As for other regional countries, they were not consulted at all before the speech even though the proposal had obvious implications for several of them. Fortunately for Julia Gillard, none of the necessary players she treated so disrespectfully called her bluff prior to the election.

In early December last year, the Australian government sought the East Timorese government’s response to a twenty-three-page confidential document entitled the “Regional Assessment Centre Concept.” That concept paper has since found its way into the public domain. The paper explains that the Regional Assessment Centre, or RAC, is intended to be a “central component” of a Regional Protection Framework. It then goes on to deal with the construction and operation of the RAC, the assessment of protection claims at the RAC, and the final disposition of cases. Last but not least, it sets out the supposed benefits for East Timor in hosting the RAC.

A Regional Protection Framework of some sort has been on the Australian government’s agenda since well before Prime Minister Gillard’s 6 July speech. According to the government, a Regional Protection Framework involves “collective responsibility for displaced persons in the region,” whereby countries within and possibly outside the Asia-Pacific region cooperate in the assessment of refugee claims, provision of resettlement for
those found to be refugees and safe return home for the rest, and provision of accommodation in the meantime. However, the government makes no secret of the fact that its ultimate goal in seeking to establish such a framework is to protect Australia’s borders. From the Australian government’s perspective, therefore, the key regional countries are potential processing centre hosts, asylum seeker source countries and countries through which asylum seekers travel to reach Australia.

Australia envisages that a Regional Protection Framework will consist of “an interlocking series of arrangements,” one of which would be the proposed RAC. The initiative is at this stage only the subject of bilateral engagement between East Timor and Australia, but the secretary of the immigration department has said that other regional countries are being kept informed about the progress of the initiative and it is open to those countries to seek to participate in it as well. By way of example, the secretary noted that Malaysia hosts a “very large number of people from Burma” and said “it would be open for discussion as to whether those people were seen as eligible for participation in a regional assessment centre or not.” It is in Australia’s interests, of course, for the RAC to process asylum seekers who have not arrived in Australia but who would otherwise be likely to travel to Australia without authorisation. Indonesia and Malaysia are the countries through which most unauthorised arrivals travel to get to Australia so obviously Australia would be more than happy for those two countries to participate in the RAC. At the same time, it was not surprising to hear how the secretary of the immigration department responded to a question at the October 2010 Estimates hearings about whether “any consideration had been given to the thousands of people in camps on the Thailand–Burma border [being] transferred to the regional processing centre.” He tied himself up in knots saying that this was not going to happen while avoiding articulation of the real reason. The real reason is that those individuals do not fit the profile of people likely to travel irregularly to Australia and therefore from Australia’s perspective it makes no sense to use up the capacity of the RAC in accommodating them.

The Australian government has stated clearly that it will not expect East Timor to contribute to the funding of the proposed RAC. At the October 2010 Estimates hearings, Australia’s ambassador for people smuggling issues referred to the “possibility of other contributors” as part of a regional approach, while admitting that Australia would probably bear “a significant proportion of the cost of the centre.” Given that Australia is the only country other than East Timor participating in the initiative thus far it looks like the proportion is going to be 100 per cent. The costs of constructing and operating the RAC will depend of course on the size of the facility. The Australian government’s concept paper sets out two options. The first provides for a total holding capacity of 2000 asylum seekers and the second for a capacity of 4000. In addition to asylum seeker accommodation, staff accommodation would have to be constructed based on a ratio of 200 staff to every 1000 asylum seekers.

EAST TIMOR is a party to the Refugee Convention and Protocol (albeit with reservations). It already has domestic procedures in place for determining asylum requests. It is clear from the Australian concept paper that Australia wants protection claims made by asylum seekers taken to the RAC to be assessed pursuant to East Timorese law. At the same time, the concept paper suggests that East Timorese law would need to be amended to ensure that the assessment procedures, in particular review rights, comply with UNHCR standards.

At the moment, the Immigration Service of East Timor makes decisions on asylum requests with assistance from the UNHCR. Given that the entire Immigration Service consists of about eighty officials, it is quite obvious that East Timor does not presently have the capacity to make hundreds of protection claim assessments per year. The Australian concept paper puts forward two possible options for achieving the necessary capacity. One of these is for the UNHCR to undertake the assessments, though the paper acknowledges that this option is contingent on the UNHCR’s agreeing to be involved with the RAC in the first place and also on an increase in the UNHCR’s own capacity. The other option is for East Timorese officials to assess claims, with countries such as Australia “assist[ing]” while East Timorese capacity is being built.

Clearly, Australia is trying to achieve two objectives. The first is to ensure there is no possibility that protection claim assessments in East Timor will come under the High Court of Australia’s jurisdiction. The second is to ensure that Australia will not incur any additional international legal obligations towards asylum seekers at the RAC by reason of involvement in such assessments. (The reason I emphasise the word “additional” is that Australia may incur international legal obligations towards those asylum seekers in other ways.)
East Timor is anxious to ensure that asylum seekers taken to the RAC will not remain there indefinitely. President Ramos-Horta has said that agreement will have to be reached on the maximum time that can lapse between an individual’s being brought to the centre and being taken to a final destination, and has floated three years as being a suitable time limit.

Theoretically, people who are assessed at the RAC and found not to be refugees can be returned to their country of nationality. In practice, things get tricky when rejected asylum seekers refuse to repatriate voluntarily or there is no state to which they can be repatriated because either they are de jure stateless or their nationality cannot be satisfactorily established. If Australia has its way, all of the practical messiness is going to be East Timor’s problem. The concept paper helpfully observes that, in Australia’s understanding, asylum seekers who are found not to be owed protection would become subject to expulsion proceedings under East Timor’s Immigration and Asylum Act 2003. It is prudently silent about the fact that these expulsion proceedings, which include rights of appeal, are not cost-free to East Timor. The concept paper then goes on to acknowledge that repatriation can be logistically demanding and again very helpfully proposes that Australia could “assist” in building East Timor’s capacity to undertake returns through, for example, secondment arrangements and the provision of assistance with negotiating “any necessary return agreements with source countries.” There is also an ominous note for the prospective returnees in all this because Australia clearly considers the manner and circumstances of return as being none of its business, simply observing mildly that “as an advocate of human rights, Timor-Leste could establish a returns program whereby returns would only be undertaken where the failed asylum seekers could return to their country of origin safely and the return itself would not expose them to a violation of their fundamental human rights.”

What about asylum seekers who are assessed at the RAC and found to be refugees? To solve the Australian government’s domestic political problem with unauthorised arrivals, it is absolutely crucial that those who are found to be refugees don’t all end up being resettled in Australia. If the Australian public thinks that a RAC is a mere way station on the path to permanent residence in Australia for unauthorised arrivals who are in fact refugees (as most are), there is absolutely no political gain in taking the unauthorised arrivals to a RAC for processing instead of simply processing them on Christmas Island. Australia can, of course, be one of the countries considering resettlement of refugees from the RAC, but in order for the RAC to be a political fix, it cannot be the only one.

Apart from Australia, the only country in the Asia-Pacific region with a sizeable annual refugee resettlement program is New Zealand. New Zealand’s prime minister has agreed to discuss the RAC/Regional Protection Framework proposal but has said that New Zealand will not be increasing its annual worldwide refugee resettlement quota above the existing 750 places. Clearly, for the scheme to work countries outside the Asia-Pacific region need to be willing to resettle refugees from the RAC. At the February 2011 Estimates hearings, the secretary of the immigration department said that Australia would be talking to the United States, Canada and the Nordic countries about providing resettlement places and also asking the UNHCR to help find resettlement places. He then pointed out to the Coalition senator who was questioning him that this had also happened in the case of the Pacific Solution. That’s hardly a comforting thought for either East Timor or the hapless refugees who may be taken to a RAC in East Timor. While a few third-country resettlement places were found for refugees subjected to the Pacific Solution, the search for such places was mostly futile and simply resulted in the majority of refugees’ spending years in terrible conditions in Papua New Guinea and/or Nauru before eventually being brought to Australia.

Let’s suppose, however, that Australia manages to secure a sufficient number of third-country resettlement places to solve its political problem. If countries making resettlement places available adopt New Zealand’s position — only doing so within their current resettlement quotas — nothing would have been done to address the enormous global gap between the need for resettlement places and their availability. The only achievement in those circumstances would be a redistribution of refugee places from one region to another, plus some further skewing away from the application of needs-based resettlement criteria towards the application of politically determined resettlement criteria. In other words, it would be an Australian border protection solution but Australia could hardly claim that the RAC would be making a meaningful contribution to enhancing refugee protection overall. If, on the other hand, implementation of the RAC proposal involves an increase in the total annual
number of resettlement places made available globally then there would be a net gain in refugee protection. It would not, however, be anywhere near the gain that could be achieved with the same resources if they were applied with the enhancement of refugee protection rather than of border control as the primary objective. It makes more sense from a protection perspective to apply the resources that would have to be expended on building a RAC, intercepting irregularly moving asylum seekers, and transporting them to such a centre, towards the goal of ensuring every asylum seeker has equal access to protection wherever they happen to be.

If Australia does build and operate a RAC in East Timor, it will have to make significant investments in East Timor’s transport, sewerage, water, electricity, communications and other infrastructure. In order to keep the costs of operation down, it will have to develop local markets for consumables and services and require the contracted operator to employ locals to fill as many RAC positions as possible. The concept paper presents all of these things as being benefits for East Timor, which they are. On a cost–benefit analysis, however, East Timor is unlikely to come out ahead by hosting an RAC because, as explained above, the not inconsiderable risk of things going horribly wrong is in practice going to be borne entirely by East Timor.

In short, if the RAC proposal goes ahead the only real winner will be the Gillard government, which, at enormous expense to Australian taxpayers, will get to say, as the Howard government did, that it chooses who comes to Australia and the circumstances in which they come. By doing so it may get another term in office.