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RLI Policy Brief on Externalisation

What is Externalisation?

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Refugee Law Initiative

The RLI is a unique academic centre promoting interdisciplinary research, teaching and exchange on law, policy and practice in refugee and displacement contexts. Established in 2010 at the School of Advanced Study of the University of London, the RLI works in the UK and internationally to promote new research and facilitate practical impact in this field.

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Executive Summary



Externalisation is a widely used strategy by States and international organisations to control, obstruct and manage migration. However, these practices often result in serious harm to refugees, asylum seekers and other migrants. Externalisation should be understood as the process of shifting functions that are normally undertaken by a State within its own territory so that they take place, in part or in whole, outside its territory.

This policy brief builds upon the RLI Declaration on Externalisation and Asylum, and it outlines the key practices, policies, and legal implications of externalisation.¹ When these practices violate international standards, States and International Organisations may incur legal responsibility.

The brief also highlights necessary policy actions to curb harmful externalisation strategies and ensure asylum and migration regimes uphold fundamental protections.²

Shifting responsibilities, undermining rights

As States and the European Union intensify efforts to externalise border controls and asylum systems, a clear understanding of externalisation and its consequences is essential to inform effective responses.

Externalisation refers to the shifting of border controls and asylum processes beyond a State's territory, often involving the shifting of these responsibilities to countries of origin and transit, international organisations, and private actors. It is often associated with concepts such as 'remote control,' 'non-entrée,' 'deterrence,' 'offshoring,' 'extra-territorialisation,' and 'protection elsewhere,' which also seek to prevent irregular migration and access to the State's territory by non-nationals.

The legal and humanitarian impacts of externalisation:

- Serious, well-documented violations of international human rights, refugee law, and the law of the sea, i.e. denial of the right to leave, forced return, arbitrary detention, ill-treatment, and loss of life.
- Denial of access to territory and access to asylum.
- Framed as pragmatic solutions to irregular migration or as saving lives, agreements shift responsibility onto Global South countries with fewer resources and less capacity to provide effective protection.
- Lack of transparency, safeguards and oversight mechanisms leading to unchecked abuses.
- Obstacles to accountability for human rights violations by States and other actors.



What are the main practices and policies?

Externalisation has a long history and is widely practiced by Global North States—especially Australia, the United States, and European countries—but is also increasingly deployed by States in the Global South.³ Externalisation practices can be categorised into two main approaches:

Externalised Border Control

- Visa requirements: 'blacklisted' nationalities are required to obtain visas or other forms of travel authorisation before departure.
- Carrier sanctions: penalties imposed by States on transport companies for transporting improperly documented individuals to their territory.
- Pre-clearance programmes: officials posted in third countries to screen passengers before departure.
- Interceptions: stopping, diverting, or preventing a vessel or individuals from continuing their journey within the State's territorial sea, on the high seas or in another State's territory.
- Pushbacks at sea and on land (taking place outside a State's territory and/or in cooperation with partner countries): the interception and forcible return of individuals arriving at State borders without assessment of their international protection needs.
- Pullbacks (or pushbacks by proxy): partner countries preventing people leaving their territory and/or intercepting them at sea and forcibly returning them to their territory on behalf of a destination State.
- Migration control agreements with partner countries: agreements with countries of origin and transit, such as mobility partnerships and memoranda of understanding, to prevent irregular migration to the destination State, for instance via border closures, detention or criminalisation.
- Return cooperation: cooperation with partner countries for the purpose of return and readmission, including agreements for establishing 'return hubs' in countries of transit.

Externalised Asylum Procedures

- Offshore processing: asylum seekers who have already arrived in a State's jurisdiction are transferred to another country for asylum processing.
- Offshore detention: individuals transferred to a partner country for the processing of their asylum application or other activities related to the asylum procedure.
- Exclusive jurisdiction zones: areas within a partner State where the externalising country exercises asylum-related control, bypassing standard national asylum procedures.
- Safe country concepts: concepts used to determine whether an asylum seeker can be returned or sent to another country deemed 'safe', thus potentially limiting or accelerating their access to asylum procedures. The concepts include safe countries of origin, safe country of asylum, and safe third country.

Examples

Pushbacks: These are considered externalisation when they take place outside a state's territory and/or in cooperation with a third country. Pushbacks occur widely on land and sea, for example those conducted by Greece to Turkey on the basis of the EU-Turkey deal, those carried out by Australia turning back boats to Indonesia, Sri Lanka and Vietnam, the US interdiction program targeting Haitians, and Southeast Asian nations pushing back Rohingya refugees.

Pullbacks: Italy and Frontex's support to the Libyan authorities to intercept and pull back migrants attempting to cross the Mediterranean, and pullbacks by the Lebanese authorities of Syrian refugees attempting to reach Cyprus, which receive funding from the EU and its member states.⁴

Offshore Detention: The US and Australia have long detained asylum seekers and refugees offshore (the US at Guantanamo Bay in Cuba; Australia on Nauru and previously Papua New Guinea), excluding them from seeking asylum in their intended destination.

Offshore Processing: Recent bilateral deals, such as the United States' 2019 agreements with Central American countries, the UK-Rwanda asylum deal (2022), and the first iteration of the Italy-Albania agreement (2023), outsource asylum processing and, at times, protection to third countries.

Legal Framework Governing Externalisation

States remain bound by their international legal obligations, even when acting extraterritorially or delegating border and asylum responsibilities to other actors.

Externalisation is governed by treaty and customary law, including:

- International refugee law
- International human rights law
- The law of the sea

International refugee law establishes key protections for refugees, with non-refoulement as its cornerstone, which prohibits returning individuals to a country where they face a serious risk of harm. Human rights treaties safeguard fundamental rights, and courts have affirmed that States remain bound by these obligations in many externalisation contexts. The law of the sea enshrines the fundamental duty to rescue individuals in distress at sea and disembark them to a place of safety.



States and international organisations may incur international legal responsibility for externalisation policies that violate international law, whether acting directly or aiding and assisting other States or non-State actors.⁵ Domestic legislation cannot justify breaches of international obligations such as refoulement, collective expulsion, and denial of the right to seek and enjoy asylum, including the full spectrum of protections under the Refugee Convention.

Unlawful and problematic externalisation policies differ from those mechanisms that take place outside a destination State's territory which seek to expand access to protection. Lawful approaches, such as resettlement and protected entry procedures, are consistent with international standards and are implemented in good faith to safeguard rights.

Recommendations

States and intentional organisations should:

- End unlawful externalisation policies and practices: Eliminate measures that seek to shift or shirk responsibilities away from destination States or that undermine international standards.
- Uphold international standards: Ensure migration and asylum laws and policies are consistent with human rights, refugee law, and the law of the sea.
- Commit to good faith implementation: Perform international obligations in good faith, upholding both the letter and spirit of the law.
- Expand access to protection: Ensure access to asylum at the border, promoting fair and humane asylum procedures and responsibility sharing. Expand opportunities for safe and regular pathways for protection and legal mobility options.
- Uphold extraterritorial obligations: Uphold human rights and refugee protections whenever they operate outside their borders or cooperate with partner countries and non-State actors.

Conclusion

Externalisation has become a widespread tool for ‘managing’ migration, yet many of its practices result in serious human rights violations. People are pushed and pulled back, and detained offshore, while their lives and rights are endangered.

States and international organisations must ensure their asylum and migration policies uphold protection, comply with international law, and reflect the principle of responsibility sharing. Failure to do so not only endangers individuals but may also lead to the international legal responsibility of international actors for violating fundamental rights.



Other policy briefs in the Externalisation Series: [#2 - Pullback and Pushback Practices](#)

Endnotes

[1] Refugee Law Initiative Declaration on Externalisation and Asylum (2022) 34 IJRL 114

[2] For an in-depth study of externalisation see David Cantor, Nikolas Feith Tan, Mariana Gkliati, Elizabeth Mavropoulou, Kathryn Allinson, Sreetapa Chakrabarty, Maja Grundler, Lynn Hillary, Emilie McDonnell, Riona Moodley, Stephen Phillips, Annick Pijnenburg, Adel-Naim Reyhani, Sophia Soares, Natasha Yacoub, 'Externalisation, Access to Territorial Asylum, and International Law' (2022) 34 IJRL 120.

[3] See e.g. Choo Chin Low, 'Externalization of Border Control in ASEAN Countries' in AKM Ahsan Ullah (ed), Handbook of Migration, International Relations and Security in Asia (Springer Nature 2024); David Scott FitzGerald, Refuge Beyond Reach: How Rich Democracies Repel Asylum Seekers (OUP 2019).

[4] See also, Policy Brief 2 - Border Externalisation: Pushback and Pullback Practices, V. Kapogianni, S. Mutsvara, E. Xanthopoulou, in M. Gkliati, S. Phillips (eds), Refugee Law Initiative Externalisation Policy Brief Series.

[5] See the 2001 ILC Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) and 2011 ILC Draft Articles on Responsibility of International Organisations (ARIO).



