

# Whose Job is it Anyway?

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Abstract

This paper discusses Australia's treatment of asylum-seekers in the Nauru Regional Processing Centre. I explore how Australia has managed to avoid large-scale criticism and discuss a few of the factors contributing to this evasion. Primarily, this paper attributes Australia's ability to escape responsibility to the complicity of other actors involved in the abuse of asylum-seekers and discuss how this shared responsibility lessens the burden placed on Australia. Finally, it looks specifically at the role of the principle-agent relationship and the absence of institutions that enforce the respect of human rights and argue that this enables a lessened critique of Australia.

Located in Micronesia and qualifying as the smallest republic in the world, the nation of Nauru has an intriguing and rich history. Nauru's rich phosphate stores once made the country very wealthy so that through the 1960s, it had the highest per-capita gross domestic product (GDP) in the world. After depleting its phosphate reserves, however, the country became a tax haven, especially to Russia and Ukraine where suspected members of the Russian Mafia at one point held 70 billion US dollars in Nauruan banks.<sup>1</sup> Beginning in 2001, the island formally began a longstanding relationship with nearby Australia wherein Nauru hosted the Nauru Regional Processing Centre in return for a significant amount of aid to the island from Australia. This was the result of an Australian governmental policy known as The Pacific Solution, which diverted Australia-bound asylum-seekers arriving by boat to offshore detention centers on nearby Pacific islands, primarily Nauru and Papua New Guinea. This policy lasted until 2007, at which point the newly elected Australian Prime Minister Kevin Rudd ended the Pacific Solution, granting Australian residency rights to those asylum-seekers still detained on the island of Nauru. In 2012, the center was reopened by Prime Minister Julia Gillard and has remained open to this day. Since 2012, the center has been functioning primarily under the administration of the Australian Department of Immigration and Border Protection, who have hired out private companies to provide medical and other services to asylum-seekers on the island.

Conditions for the nearly 380 asylum-seekers on Nauru appear to be harsh. According to reports from the international non-governmental organization Human Rights Watch, the Australian government is guilty of "detaining [asylum-seekers] for prolonged periods in inhuman conditions, denying them appropriate medical care, and in other ways structuring [government] operations so that many experience a serious degradation of their mental health."<sup>2</sup> Until October of 2015, asylum-seekers were forcibly detained and not allowed to leave. Though it is now an "open" facility, asylum-seekers have yet to be processed and have very limited ability to leave the island. These are

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<sup>1</sup> Agence France-Presse, "Tiny Pacific Island is Facing Money-Laundering Sanctions," *New York Times*, December 6, 2001, accessed December 1, 2016, <http://www.nytimes.com/2001/12/06/world/tiny-pacific-island-is-facing-money-laundering-sanctions.html>.

<sup>2</sup> "Australia: Appalling Abuse, Neglect of Refugees on Nauru," Human Rights Watch, August 2, 2016, accessed December 1, 2016, <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>.

violations of the right to be free from arbitrary detention and torture. Interestingly enough, this denunciation by Human Rights Watch, Amnesty International, and other Non-Governmental Organizations (NGOs) is directed at the Australian government rather than the island of Nauru itself. Independent authorities in Australia have claimed that “The Australian government’s persistent failure to address abuses committed under its authority on Nauru strongly suggests that they are adopted or condoned as a matter of policy” and that Australia’s inaction is a “deliberate policy to deter further asylum seekers from arriving in the country by boat.”<sup>3</sup> As for Australia, the country has relied on its client-state relationship with Nauru to justify its failure to improve conditions on the island. This paper will explore how Australia has managed to distance itself from culpability for the human rights violations occurring in the Nauru Regional Processing Centre, relying upon the principle-agent model, the spatial effect of Human Rights Organizations, and the concept of corporate responsibility to evade rebuke.

The most obvious and immediate manifestation of the principle-agent model is, of course, found in the relationship between Australia and Nauru, enabling Australia to transfer the burden of care for asylum-seekers onto Nauru. According to scholars Courtenay Conrad and Will H. Moore, this relationship is used to:

explain situations in which power is delegated from one person or institution to another. Miller defines a principal-agent relationship as one in which “the agent has an informational advantage over the principal and takes actions that impact both players’ payoffs. The principal has the formal authority, but in [principal-agent relationships], the attention is on a particular form of formal authority: the authority [of the principal] to impose incentives on the agent.”<sup>4</sup>

Nauru’s incentive as the agent comes in the form of receiving monetary aid from the principle, Australia, per the Pacific Solution. In regards to the Processing Centre, Nauru technically houses the center though the Australian Department of Immigration and Border Protection has legal jurisdiction over it. This relationship incentivizes the agent, Nauru, to comply with whatever standards or precedents that Australia sets forth in order to continue receiving aid. This relationship is further solidified due to Nauru’s survival as a client state to Australia, meaning Nauru is economically heavily dependent on Australia. Now depleted of any phosphate stores, Nauru would likely face bankruptcy without Australia’s economic backing. In providing economic stability to the island and employment opportunities for citizens, Nauru has very limited power to refuse upholding the Pacific Solution. As mentioned earlier, Australia’s poor treatment of these asylum-seekers is “adopted or condoned as a matter of policy,” and as such, Nauru has little incentive to intervene and or improve conditions. Since the principle actor, Australia, has set no expectations of the agent, Nauru, the island is less likely to be blamed for their part in the human rights violations being perpetrated. Australia’s distance from the island, however, also aids in its ability to escape the full force of the rebuke merited by it’s negligence of these refugees.

The question of who should be held accountable for these individuals is further complicated by the legal uncertainties surrounding the situation. This can be termed a “shared responsibility between states”<sup>5</sup> according to the Kaldor Centre for

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<sup>3</sup> Ibid.

<sup>4</sup> Courtenay Ryals Conrad and Will H. Moore, “What Stops the Torture?” *American Journal of Political Science* 54, no. 2 (April 2010): 463.

<sup>5</sup> Madeline Gleeson, *Offshore Processing: Australia’s Responsibility for Asylum Seekers in Nauru and Papua New Guinea* (Sydney: Kaldor Centre for International Refugee Law, 2015), 2–6, [http://www.kaldorcentre.unsw.edu.au/sites/default/files/Factsheet\\_Offshore\\_processing\\_state\\_responsibility.pdf](http://www.kaldorcentre.unsw.edu.au/sites/default/files/Factsheet_Offshore_processing_state_responsibility.pdf).

International Refugee Law. The Kaldor Center argues that because Nauru is a sovereign state, it does have a legal duty to uphold international human rights and refugee law. Due to its administration over the center, however, Australia largely shares in this responsibility to uphold certain human rights standards despite the refugees in question living extraterritorially. This challenges the Australian government's position "that the fact that asylum seekers and refugees are located in the territory of other sovereign States is sufficient to negate the possibility of Australia owing them human rights obligations."<sup>6</sup> Because no one state can be held solely responsible for the treatment of these asylum-seekers, it makes it much harder to effectively pass condemnation onto a state. As international studies scholars Amanda M. Murdie and David R. Davis from the University of Missouri found, "the interaction of Human Rights Organizations (HROs) shaming and HRO presence does help human rights improving human rights performance."<sup>7</sup> As Murdie and Davis predict, after being shamed by HROs and the international community, "the targeted state then calls on alternative norms of state sovereignty in order to deny or bypass the allegations."<sup>8</sup> This attempt to shed blame can be seen in Australia's claim that it has no business interfering with the practices of Nauru, with it being a sovereign nation. Following this stage of denial, according to Murdie and Davis's model, the state experiences further pressure to improve conditions and eventually begins to implement policy moves towards progress, even if only as "window-dressing."<sup>9</sup> Here is where this model breaks down in the case of Australia and Nauru, because it fails to account for such a situation of "shared responsibility between states"<sup>10</sup>: the shame and blame cast on the perpetrator is divided between two states, and thus, is weaker, failing to prompt human rights reform.

This geographic distance between Nauru and Australia also makes it easier for Australia to negate its culpability. Researchers with a confederation of NGOs called Oxfam have found that "a major motivation for the Pacific Solution policy was to keep asylum seekers 'out of sight and out of mind.'"<sup>11</sup> This is further enabled by the lack of transparency and journalist presence allowed on the island. Nauru has created a "wall of secrecy,"<sup>12</sup> according to Human Rights Watch, enforced through the tight restriction on visas for journalists, the ban of Facebook, and policies threatening island workers with criminal charges if they disclose information about the center. This is advantageous for Australia because it is far more difficult for HROs to mobilize support when their cause is less visible. Australia, too, has been complicit in adding to a lack of transparency. Back in October of 2015, information was released "[announcing] that the remaining six hundred asylum claims would be processed 'within a week,'"<sup>13</sup> yet even a year later, little progress had been made to substantiate this claim.

Australia has even attempted to place liability on the refugees themselves for causing this crisis. In Australia and much of the world, there has long been a tendency to craft a narrative that assumes immigrants will attempt to capitalize on the hardships of their home country by claiming asylum, even if they themselves are not actual refugees.

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<sup>6</sup> Ibid.

<sup>7</sup> Amanda Murdie and David R. Davis, "Shaming and Blaming: Using Events Data to Assess the Impact of Human Rights INGOs," *International Studies Quarterly* 56, no. 1 (March 2012): 3.

<sup>8</sup> Ibid., 5.

<sup>9</sup> Ibid., 2.

<sup>10</sup> Gleeson, *Offshore Processing*.

<sup>11</sup> Kazimierz Bem et al., "A Price Too High: the Cost of Australia's Approach to Asylum Seekers," Oxfam Australia, August 2007. <http://resources.oxfam.org.au/filestore/originals/OAus-PriceTooHighAsylumSeekers-0807.pdf>.

<sup>12</sup> "Australia: Appalling Abuse," Human Rights Watch.

<sup>13</sup> Ibid.

Publicly and politically, this has fueled a lot of the mistrust and skepticism regarding immigrants. Such sentiment has manifested into policies such as the Pacific Solution, which set forth the precedent that Australia will not grant residency to any migrants arriving by boat, no matter the circumstances. Processing centers, such as the one in Nauru, are then essentially holding facilities justified by the narrative that these immigrants are just trying to “jump the line” rather than going through the correct channels to apply for refugee status.<sup>14</sup> As lawyer Bruce Henry explains, however, the Australian government provides no explanation as to how a “Hazara or anyone else in Afghanistan follows the proper process to apply for refugee status in Australia. There is no such thing. There is no proper process for those people to follow, so the whole suggestion that these people in some way circumvented the proper process is just farcical.”<sup>15</sup> The government nonetheless attempts to put the burden of attaining refugee status on the asylum-seekers, despite the impossibility of such a task.

The nature of the violations has also enabled Australia to place the burden of culpability upon the refugees’ countries of origin. Human Rights Watch cites as one of the severest abuses the lack of proper medical attention, particularly in regards to mental health. Dozens of stories have been collected from asylum-seekers describing how their requests for medical attention were either denied or “not taken seriously.”<sup>16</sup> Often, the trauma of being a refugee fleeing a very dangerous country leaves asylum-seekers with severe post-traumatic stress disorder, depression, and other related mental illnesses culminating in high probability of self-harm and even suicide. It is not uncommon for these individuals to make attempts on their own lives by “overdosing on medication; swallowing bleach, other cleaning products, or razors; hanging or strangling themselves; or setting themselves on fire.”<sup>17</sup> Since much of this behavior is symptomatic of long-endured mental health issues, medical service providers on the island are able to feel less beholden to cure or treat these asylum-seekers since their conditions did not originate in Nauru.

NGOs and HROs also have a more difficult time in trying to mobilize support for human rights because there are essentially no HROs based in Nauru. As scholars Sam Bell, Chad Clay, and Amanda Murdie conclude, “we should expect HRO members and volunteers or HRO permanent office locations to be more important to a neighbor’s human rights performance than HRO shaming of neighbors, which would not involve the actual resources on the ground that could be diffused across borders.”<sup>18</sup> This is known as the “spatial effect of human rights organizations,” which describes how the presence of HROs in neighboring countries makes encouraging and enforcing proper adherence to human rights standards easier. In a case like Nauru, this idea is complicated. As an isolated island, moving resources across borders is very difficult and expensive. This principle is exaggerated even further by Nauru’s strict regulations on visas. Amnesty International found that even “UN officials have been denied entry or in some cases have concluded that a visit would be impractical due to severe limitations on their access.”<sup>19</sup> As a result, this “boots on the ground”<sup>20</sup> approach that Bell, Clay, and Murdie suggest is nearly impossible in this context. Thus, NGOs and HROs must rely almost solely on

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<sup>14</sup> Bem et al., “A Price Too High.”

<sup>15</sup> *Ibid.*

<sup>16</sup> “Australia: Appalling Abuse,” Human Rights Watch.

<sup>17</sup> *Ibid.*

<sup>18</sup> Sam K. Bell, Chad Clay, and Murdie, “Neighborhood Watch: Spatial Effects of Human Rights INGOs,” *Journal of Politics* 74, no. 2 (April 2, 2012): 3.

<sup>19</sup> “Australia: Appalling Abuse, Neglect of Refugees on Nauru,” Amnesty International, August 2, 2016, accessed December 2, 2016, <https://www.amnesty.org/en/latest/news/2016/08/australia-abuse-neglect-of-refugees-on-nauru/>.

<sup>20</sup> Bell, Clay, and Murdie, “Neighborhood Watch.”

shaming techniques. In a scathing report released in 2007, international organization Oxfam condemned Australia's actions with nearly no mention of Nauru:

As a signatory of the Refugee Convention, Australia has a commitment under international law to provide for non-refoulement of refugees—the principle under international law that forbids sending a refugee back to a place where s/he might face persecution—and for the principle of asylum. The Pacific Solution fails to uphold these commitments and in doing so, undermines the integrity of the system of asylum in Australia and the international system of protection globally.<sup>21</sup>

Though this is a powerful denunciation, Bell, Clay, and Murdie's model predicts that this criticism will have very limited effect without the physical presence of HROs in, or directly next to, Nauru.

To further complicate things, there is also a level of corporate responsibility present in the case of Nauru. The final actor in this situation thus comes from the private sector. While the Australian Department of Immigration and Border Protection officially runs the detention center, the Australian government actually contracts out two main companies to provide services for asylum-seekers: Broadspectrum—who has subcontracted out a company called Wilson Security—and International Health and Mental Services (IHMS). Amnesty International found that these two companies are “profiting from an abusive context, and [...] some are directly responsible for serious abuse and the failure to provide appropriate medical care,”<sup>22</sup> calling into question just how independently Broadspectrum and IHMS are operating in Nauru. As scholar Steven Ratner found, “corporations are powerful global actors that some states lack the resources or will to control.[...] corporate law provides guidance to international law on the need to view corporations, and not simply those working for them, as dutyholders [sic].”<sup>23</sup> Applying Ratner's theory, it seems that the principle-agent model can be extended to this relationship. Ratner assumes that corporations are, to some degree, sovereign in a sense and because of this, they have a “duty” to uphold human rights. This duty, however, is complicated in the case of Nauru due to the companies' contractual accountability to Australia. In a communiqué to the Office of the Prosecutor of the International Criminal Court, a team of international lawyers with Stanford noted that “the Australian government is transparent in its intention for its offshore detention centres to serve a deterrent function.”<sup>24</sup> Well aware of the center's punitive purpose, these corporations on the island are being accused of suppressing reports of mistreatment and even complicity in the abuse. The communiqué cites evidence that “in 2015 alone Wilson Security officers ‘downgraded’ 128 formal reports of assault, self-harm, rape, and abuse without justification” and even presented proof that in January of 2015, “Wilson Security received a report of sexual assault of a four-year-old boy perpetrated by its own security officers, and knowingly downgraded the matter, even after this incident had been reported to immigration officers.”<sup>25</sup> The contribution of these private companies to the

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<sup>21</sup> Bem et al., “A Price Too High.”

<sup>22</sup> “Australia: Appalling Abuse,” Amnesty International.

<sup>23</sup> Steven R. Ratner, “Corporations and Human Rights: A Theory of Legal Responsibility,” *Yale Law Journal* 111, no. 3 (December 2001): 243.

<sup>24</sup> James Cavallaro, Diala Shamas, Beth Van Schaack, et al., *Communiqué to the Office of the Prosecutor of the International Criminal Court Under Article 15 of the Rome Statute: The Situation in Nauru and Manus Island: Liability for Crimes Against Humanity* (Stanford: International Human Rights and Conflict Resolution Clinic, 2017), <https://www-cdn.law.stanford.edu/wp-content/uploads/2017/02/Communiqué-to-Office-Prosecutor-IntlCrimCt-Art15RomeStat-14Feb2017.pdf>.

<sup>25</sup> *Ibid.*

human rights abuses occurring raise an interesting question of responsibility. While Australia's clearly communicated intentions for the detention center incentivize the provision of subpar services, the companies themselves are ultimately the ones delivering this service. Thus, it seems Broadspectrum, Wilson Security, and IHMS are culpable, or at least aware of the abusive treatment of these asylum-seekers on Nauru.

Nauru's refusal to allow any outsiders into the country means HROs have no presence there, meaning atrocities committed there are more easily swept under the rug. In the context of torture, political scientists Courtenay Conrad and Will Moore found that "not one of the democratic institutions has a significant effect on the probability of a state terminating its use of torture."<sup>26</sup> In this study, Conrad and Moore discovered that free press and other characteristics often associated with developed, democratic countries have little impact on the likelihood that a state would stop practicing torture. While the human rights violations on Nauru cannot be classified as torture, some similarities certainly exist. Australia is not a nation often associated with gross human rights violations or mass atrocities. It is a developed, affluent country isolated from many of the more contentious areas of the world, according to international organization Global Democracy Ranking.<sup>27</sup> This is perhaps one of the reasons why it seems so difficult to place blame directly onto Australia; it does not fit the common narrative of a nation that would intentionally harm human beings, such as Yemen or Syria.<sup>28</sup> This coupled with the "shared-state responsibility"<sup>29</sup> principle, the impossibility for the spatial effect of HROs to take place, and the measure of corporate responsibility all seem to contribute to Australia's denial of its complicity in the human rights abuses happening in Nauru. This is significant because to improve respect for human rights, there must be a clear assignment of responsibility in order to practice shaming and blaming, and to draw upon international law to protect asylum-seekers and refugees.

These actions and the policies set forth by the Australian government are not isolated phenomena. Rather, they are in stride with similar right-wing, populist political movements running primarily on anti-immigration platforms that are gaining traction worldwide. Marked by the passing of "Brexit" and the election of current US President Donald Trump, it seems that this fear of outsiders is a global trend and one that is resulting in similar cases of human rights violations. The stream of refugees fleeing Syria, too, seems unlikely to ebb anytime soon. This combination of increased migration and increased anti-immigration sentiment does not bode well for the future of human rights, particularly as they relate to the rights of refugees. If Australia's irresponsible treatment of these asylum-seekers is not met with rebuke and consequences from the international community, such behavior will likely spill over into other countries with similar anti-immigration policies.

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<sup>26</sup> Conrad and Moore, "What Stops the Torture?"

<sup>27</sup> "Democracy Ranking 2015," Global Democracy Ranking, accessed May 4, 2017, <http://democracyranking.org/wordpress/rank/democracy-ranking-2015/>.

<sup>28</sup> *Ibid.*

<sup>29</sup> Gleeson, *Offshore Processing*.

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