Health, Human Rights, and Offshore Processing

The Health Implications of Australia’s Mandatory Offshore Processing Practices

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Introduction

Australia’s mandatory offshore processing practices are directly harmful to health and breach international treaties on human rights.[1] Article 12 of the International Covenant on Economics, Social and Cultural Rights (ICESCR) states that everyone is entitled to the ‘enjoyment of the highest possible standard of physical and mental health’ and has been ratified and in force in Australia since 1976.[2] Underlying these practices, the policy in question is the 2013 Regional Resettlement Arrangement (The PNG Solution), in the context of Section 189 of the 1958 Migration Act which, when amended in 1992, established mandatory detention of unauthorised maritime arrivals in Australia.[3] The PNG Solution ascertains that any person arriving in Australia by boat to seek asylum, will not ever be eligible to enter or apply for asylum in Australia and will be removed and held in mandatory offshore detention centres for processing.[3] This practice is well out of step with the policies of other comparable countries.[3]

Since offshore processing in Australia resumed in 2012, 4,177 people have been held on Nauru and Manus Island (Papua New Guinea), after attempting to seek asylum in Australia.[4] In July 2013, The PNG Solution was announced and since then 3,127 people, with no pathway for settlement in Australia, have been detained.[4] The numbers of detainees peaked in 2014 and have since dwindled.[4] This is as more than 800 people have been returned to their country of origin with others transferred to The United States (U.S.) in a deal struck under the Obama Administration, or settled in the local community in Papua New Guinea (PNG) or Nauru.[4,5] Manus Island Regional Processing Centre was forcibly closed in 2017 after the PNG government ruled it to be unconstitutional.[6] This left 690 men on Manus Island to fend for themselves in highly hostile conditions.[7] They now live in the community or in transit centres and await transfer to Nauru, The U.S. or removal to their country of origin.[4,7] Nauru Regional Processing centre remains open. Approximately 359 people remain on Nauru, with fewer than ten held in the processing centre and notably all children have been resettled, primarily to the U.S.[4] Those remaining in Nauru live in the community.

Of the 3,127 people denied the opportunity to apply for asylum in Australia more than 80% are recognised as refugees and have this important legal status.[6,8] Thus, for the remainder of this review the group of people discussed are these adults remaining on Nauru or Manus Island requiring of refugee status, not other groups of people who remain in legal ‘limbo’ after not being recognised as refugees for local settlement, but the UN not deeming it safe and therefore allowable for them to go home.[9] Despite the current reduction in numbers, it remains that refugees arriving in Australia by boat will be subject to mandatory detention. Mandatory offshore processing is illegal under Australia’s party to Article 9 of the International Covenant on Civil and Political Rights (ICCPR), despite this it persists at extreme financial cost to Australian taxpayers and does not fulfil the claimed political agenda of stopping boat arrivals.[1,10] As of May 2019, 14 people have died while being detained under this policy.[11] Of paramount importance are the direct harms to health, the lack of appropriate services and inability of refugees to achieve basic health, and the prevention of flourishing in good health that directly results from detaining refugees in detention.

Direct harms to health

Mandatory offshore detention and resettlement within itself is damaging to health, particularly mental health.[3] This kind of detention is not only arbitrary but it breaches the human right to seek asylum as per the Universal Declaration of Human Rights (UDHR), no matter the mode of transport, and is directly prohibited in the 1951 United Nations (UN) Convention and 1967 UN Protocol Relating the Status of Refugees.[8,12] Human rights are further breached through the extended time-period of this
detention, which is up to six years for this cohort. As per Tobin [13] this demonstrates that Australia is unreasonable in meeting their obligations as this measure is far from proportionate to meeting their aim.[4] These breaches directly lead for poor mental health and establish clearly the interlinking nature of health and human rights.

In an independent report on the mental health situation on Nauru in 2018, titled ‘Indefinite Despair’, Medecins Sans Frontieres (MSF) describe that more than 30% of asylum seekers had attempted suicide and that over time the situation had become worse than many other disaster zones worldwide, with multiple people diagnosed with resignation syndrome, unable to eat or drink in a semi-comatose state.[14] MSF Executive Director Paul McPhun states that this situation is a direct result of offshore processing - 'It's people's inability to cope, their absolute abject despair, their loss of will, their loss of control over their own lives that's a direct result of more than five years of detention, that's creating these really acute symptoms of self-harm and suicide'.[15] Any person in immigration detention faces profound uncertainty, hopelessness and fear for their future. They are unable to exert agency and control or participate in society in a meaningful way.

The physical environment of offshore processing centres also directly harms health. Beyond migration trauma, people are further re-traumatized by this environment, which has been described by visiting RACP physicians as 'like a prison'.[16] They report a heavy security presence, restriction of liberty, de-personalising use of identification numbers, institutional living conditions and inadequate feminine hygiene.[16] Forcing people to live in this environment is a breach of their right to an appropriate standard of living, a fundamental determinant of health as per the UDHR and ICESCR.[2,12] Further, within this environment sexual and physical assault and violence is frequent, perpetrated by co-inmates and security staff hired by the Australian Government.[16,17] In 2014 a riot in Manus Island Processing Centre resulted in the murder of 23-year-old asylum seeker Reza Barati, with those who witnessed and spoke out about the attack left to fear for their own safety.[18]

This combination of the detention process, environment and lack of meaningful activity culminates in the high rates of mental health problems, self-harm and attempted suicide in this group. According to a submission by the Royal Australian College of Physicians (RACP) the harms of detention are specifically amplified in offshore detention facilities, due to environmental and infrastructure challenges, limited access to specialist health services, and uncertainty around the future and settlement options.[16] Dr Nick Martin, a general practitioner who has worked on Nauru, states that the mental health of people there could not be helped by improved services and instead require removal from the situation itself, which is directly harming their health.[19]

This sense of hopelessness and fear is particularly exacerbated in those separated from their families. Under the PNG Solution there is no formal structure or process for family reunification.[20] Family separation is one of the most significant contributors to poor mental health for refugee communities.[21] Many refugees still have family members in their country of origin, where persecution, war, poverty and violence are ongoing and being able to reunite with their family is often the only way people are able to ensure they are safe.[21] MSF’s report also found that people whose families have been split because of medical evacuations were 40 per cent more likely to be suicidal.[14]

The locations Australia has chosen under the PNG Solution as a ‘final-destination’ are not safe for permanent resettlement, particularly PNG. [18,22] Human Rights Watch has deemed the process of settling refugees on PNG a failure and the Australian Journal of Human Rights ruled in a report that ‘the human rights situation in PNG makes it an unsuitable country for the resettling of refugees’. [22,23] The 1951 Refugees Convention, amongst other treaties, states that Australia must not return people to any country where they face a real chance of being persecuted or subjected to other serious harm.[8] This fundamental obligation is known as non-refoulement.[8] While Australia states that selecting this final destination ‘frees them’ from their obligations to non-refoulement,
evidence suggests there are serious dangers of remaining in PNG for this group.[20] There have been multiple cases in which groups of local PNG young men, often intoxicated and sometimes armed with sticks, rocks, knives, or screwdrivers, have targeted, assaulted and robbed refugees and asylum seekers on Manus Island and in the PNG capital Port Moresby, with victims requiring emergency medical attention.[18,22] Homosexual men who have fled their countries of origin due to persecution for their sexuality face settlement in a country where homosexuality remains not only highly stigmatised but illegal.[23] On Nauru women have often said they felt safer in detention than in the community, where they are subject to racist abuse and sexual harassment.[16] With numerous cases of rape resulting in pregnancy on the island, abortion remains a crime in Nauru.[16] The breach of human rights in direct exposure to violence undeniably directly damages physical and mental health.

Lacking health service provision

Beyond direct damage, the health services organised on Manus Island and Nauru under the PNG Solution are not sufficient to meet basic health needs.[3] This failure directly stems from Australia, as the 5th most prosperous OECD country, not taking responsibility for people who are genuine refugees and originally sought asylum in Australia. [3] The UN’s Special Rapporteurs on migrant rights, torture, and mental health, have told the Morrison Government that the lack of care on Manus and Nauru ‘amounts to cruel, inhuman and degrading treatment’[24] The PNG Solution stipulates that ‘Australia will bear the full cost of implementing the arrangement’ but this does not appear to be the case.[20] The Australian government has a $21.5 million contract with Pacific International Hospital in Port Moresby to provide care, however many people are being referred to the locally funded East Lorengau hospital, which has been described as ‘no more than a GP clinic’. [25] This lack of appropriate healthcare includes mental health, with the Australian government cutting counselling and trauma services last year.[26]

The PNG Solution places these refugees in a health and human rights ‘grey-zone’ where Australia’s Charter of Healthcare Rights does not apply, and the existing PNG and Nauruan health-systems are unable to cope.[27] There is no statute on the ‘responsibility for refugees’ and Australia has long argued they do not have a duty of care for the people on Manus and Nauru.[28] Lawyer George Newhouse argues however that under common law Australia is responsible, by using its constitution to place these people in harm’s way on these remote islands, like soldiers and diplomats abroad.[28] Nevertheless, the lives of these people provide a torturous example of how international law fails to bind states when it is not implemented into a domestic system. This allows shirked responsibility to the Australian Charter of Healthcare Rights and international conventions on refugees and torture.

This group of people are particularly vulnerable to this political-healthcare-human-rights grey-zone. People seeking asylum usually have highly complex physical and mental health needs.[16] This may include infectious diseases not common to Australia, poor nutrition and undiagnosed or untreated health conditions and injuries.[16] Pre-existing poor mental health is also common because of pre-arrival experiences such as torture and trauma.[16] Regarding physical health, The Australian Human Rights Commission has condemned Australia’s offshore processing arrangements for the lack of maternity care and specialist reviews for chronic conditions, and for keeping people in cramped, overcrowded, hot and poorly maintained facilities that are intended only for short term use and encourage the spread of infectious disease.[29]

Information gathered by the UN suggests that several deaths have occurred due to lack of access to medical care in the offshore facilities.[24,27] Case examples range in severity to include a man with a broken arm that was not treated for more than four years, to Hamid Khazaei a 24-year-old man who died from sepsis after his transfer to Australia was postponed by political discourse.[30] His death was ruled by the coroner as preventable.[27] A key issue displayed in this health and human rights tragedy of the PNG Solution is the way Australia’s Political discussion has manipulated this relationship. Politicians have used their position of power to deny other human beings appropriate medical care, and
overshadow medical opinion of doctors who are bound to do no harm.[30, 31] Mr Khazaei’s death was specifically ruled to be in part due to a failure of Australian immigration officials to grant a doctor’s request for his timely transfer to Australia.[30] MSF, which prides itself on neutrality and functions to provide objective healthcare, was denied access to Manus Island in 2017 and was forced to leave Nauru in 2018.[32] New legislation that came into effect in 2019 allowed asylum seekers to be medically evacuated to Australia, only for medical care, if two doctors say that it was necessary.[33] This legislation was designed to protect health and was defended by multiple key groups such as RACP as ‘life-saving’, but has since been repealed.[33,34] The human rights and thus health of these people has been used as a political soccer ball under the PNG Solution.

Inability to flourish
Underlying direct health damage and lack of health service provision, the people detained on Manus Island and Nauru have had their right to enjoy good health violated. While the ‘highest’ attainable standard of health is carefully worded to be location and situation specific, refugees have sought protection from the Australian Government and thus the health status of refugees living in Australia should be used as a comparator standard. Migrant health is complex even within a comprehensive system such as Australia’s, however refugees that have been settled in Australia, have access to many services and health opportunities, which those in offshore processing do not.[16] The importance of these opportunities can be understood by considering the determinants of health. In addition to the previously addressed determinants of physical environment and adequate health service provision, further relevant determinants are employment and education, social support networks and preventative health opportunities.[35]

These refugees have no ability to exert control over their employment status, income or to further educate themselves. It is widely accepted that people from poorer social or economic positions are at greater risk of poor health and have much higher rates of disease, disability and early mortality.[36] People held in immigration detention do not have the right to work, earn income or to attend educational institutions. According to a report co-written by The Refugee Council of Australia and Amnesty International Australia, the men who are left on Manus Island are unable to leave the island to seek employment or educational opportunities without approval from PNG officials and those settled in PNG and Nauru struggle to find sustainable income with fair wages.[18] These direct and indirect obstructions are not in line with Australia’s obligations under multiple articles of The ICESCR including: (1), Article 1 - The right to self-determination; (2), Article 6 - The right to work; (3), Article 13 - The right to education; and (4), Article 12 - The right to the highest attainable standard of health.[10] The 1951 Refugee Convention also clearly stipulates the rights to work and freedom of movement for migrants.[8] It is important to note while the ‘social profiles’ of these refugees ranges from ‘young and troublesome’ to highly skilled and educated, all are being denied a vast earning capacity and the ability to support their own health, the health of their families and communities.[18]

These refugees are also being denied the right to flourish in a socially supported network, a key determinant of health and right under Article 1 of The ICESCR.[10] The PNG Solution places these refugees from a variety of distinct religious and cultural backgrounds in isolating, arbitrary detention and then forces them to settle in remote countries that are not culturally diverse or welcoming in the case of PNG, particularly in comparison to the multicultural community of Australia.[23] The extent of social connectedness or degree to which people have close bonds with family, friends and acquaintances is associated with lower morbidity and increased life expectancy.[36] ‘Social capital’ provides sources of resilience against poor health, through social support which is critical to physical and mental wellbeing.[36] Breaching this right to connection, breaches the rights to its health co-benefits. This further extends to the rights to have a planned family and reproductive health. A planned family is a key part of human rights and human nature as per Article 10 of ICESCR.[10] Failures of access to this right include no reunification with martial partners, access to reproductive services for family...
planning or contraception, quality maternity care and for those who do settle to have their newly born children registered.[12,37]

The final denied determinant for good health is preventative health. Despite a lack of acknowledgement in the literature on this issue, without appropriate services, self-employment, freedom of movement and self-determination it is unlikely that these refugees have adequate capacity to prevent chronic disease such as type II diabetes mellitus or cardiovascular disease (CVD). Risk factors relevant to these diseases (amongst others) include limited opportunities for exercise in detention, no support for smoking cessation and poor nutrition.[16,38] Further lacking is protection from infectious diseases in the tropical environments of Manus Island and Nauru with access to full vaccination schedules.[39] The possibility of access to the progressive screening programs equivalent to Australia’s cervical screening, CVD risk assessment and breast, bowel and prostate cancer screening is restricted, unlike migrants settled in Australia who are offered these services.[16] Through lack of acknowledgement of these determinants, the highest attainable standard of health cannot be reached.

Conclusion
Australia’s 2013 PNG Solution, has led to the human rights travesty that is the forgotten people of Manus Island and Nauru, who were requiring of Australia’s refuge. Australia has failed to meet many of its obligations under the ICESCR. Article 12, related to the highest attainable standard of health, has been violated due to the entwined nature of health and all human rights. People legally requiring refugee status under the 1951 Refugee Convention have been arbitrarily detained and physically and mentally abused. There has been inadequate health service provision, and key determinants of health have not been addressed. Ms Robertson, Legal Director at The Human Rights Law Centre states:

‘Australian governments make various promises on the world stage by signing UN treaties, but they fail or refuse to actually incorporate them into domestic law. If Australians believe in human rights, it’s time to properly protect them in our laws. We need an Australian Charter of Human Rights to ensure practices like indefinite detention are prohibited.’[24,27]

To end this situation which has destroyed and taken human lives, there must be more transparency about the Australian Government’s current actions towards asylum seekers and a human rights-based approach to health and justice must be applied to legally overturn the PNG Solution and amend the 1958 Migration Act.

About the Author
Jackie Maher is a Doctor of Medicine at the University of Melbourne currently completing the integrated Masters of Public Health program. She is the AMSA Global Health 2020 Vice Chair External. She is passionate about many areas of global health, particularly paediatric and refugee and asylum seeker health.

Conflicts of interest
N/A

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Acknowledgements
N/A

Images
N/A

References
6. Karlsen E. Australia’s offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and
17. Evershed NL, Ri; Farrell, Paul; Davidson, Helen. The lives of asylum seekers in detention detailed in a unique database. 2015.
27. UN calls for refugee transfers to Australia [press release]. Human Rights Law Centre2019.
30. Robertson J. Asylum seeker Hamid Khazaei’s death from leg infection was preventable, Queensland coroner finds. The ABC News. 2018.