

Resisting Silence: Asylum Seekers and Voices of Conscience

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‘... there are unbearable things all around us ... The worst attitude is indifference.’¹

– Stéphane Hessel.

I INTRODUCTION

I am an academic human rights activist, who for around 15 years has garnered and disseminated information on asylum seeker detention in the hope of influencing policy and opinion. From 2005, I was a convener of the People’s Inquiry into Detention (‘the People’s Inquiry’),² a collaborative endeavour initiated by the Australian Council of Heads of Schools of Social Work. In undertaking this social action inquiry there was hope that the egregious findings would make self-evident the immorality of asylum seeker detention. More than a decade after commencing this undertaking, asylum seeker advocates lament that politics in this sphere have regressed, and despite harsh rebuke from human rights bodies, the heartlessness of government-induced misery continues unabated. The gulf between the government’s quest for border security and advocates’ quest for human security widens.³ But what is increasingly clear from the People’s Inquiry and beyond is the importance of documenting narratives derived from experiences of asylum seeker detention. As this article will reveal, this quest is becoming increasingly difficult.

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This article presents a brief overview of Australia’s asylum seeker policies and the arguments promulgated by government for maintaining mandatory detention and extending it beyond Australia’s borders. It then examines the manner in which the silencing of ‘people of conscience’⁴ has occurred and showcases endeavours to overcome this purposeful exclusion. The main focus is offshore detention as this has been subject to strident admonition in recent years.

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1. Stéphane Hessel, *Time for Outrage: Indignez-vous!* (Hachette Book Group, 2011) 11.
2. Linda Briskman, Susie Latham and Chris Goddard, *Human Rights Overboard: Seeking Asylum in Australia* (Scribe, 2008).
3. Linda Briskman, ‘A Clash of Paradigms for Asylum Seekers: Border Security and Human Security’ in Bee Chen Goh, Baden Offord and Rob Garbutt (eds), *Activating Human Rights and Peace: Theories, Practice and Contexts* (Ashgate, 2012) 175.
4. I use the term ‘people of conscience’ to denote asylum seeker advocates, including immigration detention employees who have spoken out about what they witnessed in the course of their work.

II THE SCOURGE OF ASYLUM SEEKER DETENTION

Arguments made by the government for the mandatory detention of asylum seekers are spurious. The justifications range from border control and deterrence of others to the integrity of Australia's refugee program. The term 'People Smugglers Business Model' entered the Australian lexicon during Labor Prime Minister Kevin Rudd's term of office, gaining traction through 'sheer repetition'.⁵ Attempts to control the 'smuggler trade' continue, a trade that is depicted as replete with 'callous opportunists taking advantage of the vulnerable and the desperate'.⁶ Alison Mountz contends that human smuggling is in many ways routine.⁷ It is, she points out, an historical phenomenon that has existed for as long as nation states have asserted control of mobility across their borders:

Due to the sensationalism of stories about smuggling and human interest in the securitization of national borders, the media partakes in and promulgates these events as crises. Escalated media coverage heightens public fears about sovereign control of migration.⁸

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More recently, with the advent (2001), abandonment (2008) and re-instatement (2012) of offshore detention in Nauru and Papua New Guinea (Manus Island), a policy imperative has been constructed around the illegitimate 'drownings' argument.⁹ The parable of preventing deaths at sea represents a sustained case for foiling asylum seeker flows, with the force of government propaganda largely unquestioned by the mainstream population. The argumentation connects with hyperbole about people smugglers and the illegality of boats. Stopping deaths at sea is scandalous deception. It arose after the tragic boat crash on the shores

5. Gabriella Sanchez, 'The Myth of the People Smugglers' "Business Model"', *The Conversation* (online), 27 July 2013 <<http://theconversation.com/the-myth-of-the-people-smugglers-business-model-16426>>.
6. Sue Hoffman, "'If We Die We All Die Together': Risking Death at Sea in Search of Safety' in Lynda Mannik (ed), *Migration by Boat: Discourses of Trauma, Exclusion and Survival* (Berghahn, 2016) 219, 220.
7. Alison Mountz, *Seeking Asylum: Human Smuggling and Bureaucracy at the Border* (University of Minnesota Press, 2010) xv.
8. Ibid.
9. Robin Rothfield (ed), *The Drownings' Argument. Australia's Inhumanity: Offshore Processing of Asylum Seekers* (Labor for Refugees, 2014).

of Christmas Island in 2010, in which 50 asylum seeker men, women and children died. Incongruously, whilst saving lives is the rhetorical device used by the government to convince Australians of its compassion, incremental cruel policies are designed and implemented to deter boat arrivals.¹⁰ This raises the question of proportionality and punishment of one group to influence the behaviour of others.

Australia's policies violate the provisions of the 1951 *Refugee Convention*¹¹ and other international agreements that it has signed. These include the *International Convention on Civil and Political Rights* ('ICCPR'),¹² the *Convention Against Torture* ('CAT')¹³ and the *Convention on the Rights of the Child* ('CROC')^{14, 15}. The United Nations Human Rights Committee has persistently criticised Australia for violating the prohibition on arbitrary detention of the ICCPR.¹⁶ The United Nations *Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* has found that various aspects of Australia's asylum seeker policies violate the CAT.¹⁷ Asylum seeker advocates, including international human rights bodies, non-government organisations ('NGOs'), faith groups

10. Linda Briskman and Michelle Dimasi, 'Re-living Janga: Survivor Narratives' in Lynda Mannik (ed), *Migration by Boat: Discourses of Trauma, Exclusion and Survival* (Berghahn, 2016) 253–4.
11. *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).
12. *International Convention on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976);
13. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).
14. *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1557 UNTS 3 (entered into force 2 September 1990).
15. Tania Penovic, 'Privatised Immigration Detention Services: Challenges and Opportunities for Implementing Human Rights' in Bronwyn Glynis Naylor, Julie Debeljak and Anita Mackay (eds), *Human Rights in Closed Environments* (The Federation Press, 2014) 10, 14.
16. Rose Moloney, 'Crikey Clarifier: Does Australia's Refugee Policy Breach UN Rules?', *Crikey* (online), 29 November 2012 <<https://www.crikey.com.au/2012/11/29/crikey-clarifier-does-australias-refugee-policy-breach-un-rules/>>.
17. Human Rights Law Centre, *UN Finds Australia's Treatment of Asylum Seekers Violates the Convention Against Torture* (9 March 2015) <<http://hrlc.org.au/un-finds-australias-treatment-of-asylum-seekers-violates-the-convention-against-torture/> 9 March, 2015>.

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and academics condemn the cruelty of offshore detention, with detention of children in Nauru breaching CROC provisions. The 'Nauru files' – leaked incident reports published by *The Guardian* – revealed that of the 2000 reports made by detention staff, half concerned children.¹⁸ Moving people, including children, offshore is a process from which many people profit, and is what the government accuses people smugglers of doing.¹⁹ Transporting children to detention in Nauru constitutes 'commercialised trafficking' in children.²⁰

Since the introduction of mandatory immigration detention in 1992, both major political parties have spearheaded ruthless methods, cloaked as rational policy, aimed at deterring asylum seeker boat arrivals.²¹ Fortified by the relative popularity of mandatory detention provisions, a raft of harsh measures have followed. These include temporary visa provisions, slow claims processing for people released from detention and militarisation of asylum seeker deterrence including boat turn backs. Competing with the trope of the People Smugglers Business Model, there has been an accompanying chant of 'Stop the Boats', whatever the human consequences. Detention centre sites have shifted from time to time but have included metropolitan, rural and remote settings and Australia's Indian Ocean Territory of Christmas Island, far from the Australian mainland. Criticism of mandatory detention has increased since offshore facilities were established, but to no avail.

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III TACTICS OF SILENCING

In 2007, Robert Manne wrote of the threat to democracy under the government of Prime Minister John Howard:

18. Nick Evershed et al (eds), 'The Lives of Asylum Seekers in Detention Detailed in a Unique Database', *The Guardian* (online), 10 August 2016 <<http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>>.
19. Linda Briskman and Chris Goddard, 'Australia Trafficks and Abuses Asylum Seeker Children', *The Age* (online), 25 February 2014 <<http://www.theage.com.au/comment/australia-trafficks-and-abuses-asylum-seeker-children-20140224-33cxs.html>>.
20. Ibid.
21. See details on policies and 'mythbusting' at: Refugee Council of Australia, *Mythbusters and Facts and Figures* (2016) Refugee Council of Australia <<http://www.refugeecouncil.org.au/get-facts/>>.

The health of a democracy relies on many different things: limited government; strong civil society; the independence of autonomous institutions; the encouragement of dissident opinion, wide-ranging debate. All these values are presently under threat.²²

The situation has regressed since Manne penned these words, in particular the attack on civil society and even bans on dissident opinion. Intentional silencing erodes not only rights to free speech but also inhibits dialogue and negotiation.

The mere practice of immigration detention places asylum seekers out of sight and out of mind. Being nameless through identification by numbers reinforces invisibility.²³ Secrecy is a privatisation principle of for-profit detention providers. Through contractual arrangements with NGOs, similar commercial-in-confidence principles apply, reducing transparency and obfuscating the public's right to know.

With both media restrictions on visiting offshore sites and limited human rights monitoring, secrecy is a pathway to abusive practices. The media has had almost no access to detention sites, exacerbated by their distant locations and visa restrictions in countries that house offshore detention centres. With rare exceptions, reporting is often undertaken by subterfuge, thanks to the determination of a small but significant number of determined journalists. Combined with the lack of journalistic opportunities are communication restrictions for immigration detainees with limited access to the Internet. Nonetheless, there have been some attempts to bypass controls. Articles by Manus Island detainee Behrouz Boochani about lived experiences in detention have been published in the progressive outlet *The Saturday Paper*, which will be illustrated further below.

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IV OVERCOMING SILENCE: VOICES OF CONSCIENCE

Detained asylum seekers have been active participants in exposing human rights abuses and countering the relentless propaganda of government. Protest has been a feature of immigration detention as a dis-

22. Robert Manne, 'Foreword' in Clive Hamilton and Sarah Maddison (eds), *Silencing Dissent: How the Australian Government is Controlling Public Opinion and Stifling Debate* (Allen and Unwin, 2007) vii, ix.

23. Roger Cohen, 'Australia's Offshore Cruelty', *The New York Times* (online), 23 May 2016 <http://www.nytimes.com/2016/05/24/opinion/australias-offshore-cruelty.html?_r=0>.

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cursive struggle for reinstatement as right-bearing human beings.²⁴ Fire and riot have characterised asylum seeker agency and voice, sometimes with tragic consequences, as with the murder of Iranian Reza Barati on Manus Island in 2014.²⁵ Suicides and attempted suicides have drawn attention to the plight of asylum seekers. One of the most shocking incidents was the self-immolation of Omid Masoumali on Nauru in April 2016, which became visible to the public through television imagery.²⁶

Detainees have found ways to speak to the media, including Boochani who wrote about health conditions on Manus Island:

... there are dozens of people here who suffer from infections, from joint and internal diseases. Hot and humid weather, intense psychological pressure and shortage of sanitary facilities have infected many refugees. Three hundred people take pain pills daily.²⁷

My interest is in probing the role of 'the professions' in speaking out against the odds. Faced with the dual loyalty paradox of where their obligations lie, health and welfare personnel are faced with the choice of silence or speaking out against the injustices they witness. Previously contracted NGOs such as the Salvation Army and Save the Children have employed personnel from my own profession of social work in offshore sites. This is alarming because social work is a profession with a Code of Ethics that not only speaks of human rights and social justice, but also calls on social workers to strive to eliminate human rights violations.²⁸ With the impossibility of being heard by their employing organisations,

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24. Lucy Fiske, *Insider Resistance: Understanding Refugee Protest Against Immigration Detention in Australia, 1999–2005* (PhD Thesis, Curtin University, 2012) v.

25. See Eric Tlozek, 'Reza Barati Death: Two Men Jailed Over 2014 Murder of Asylum Seeker at Manus Island Detention Centre', *ABC News* (online), 19 April 2016 <<http://www.abc.net.au/news/2016-04-19/reza-barati-death-two-men-sentenced-to-10-years-over-murder/7338928>>.

26. See Peter Lloyd, 'Omid Masoumali, Refugee Who Died after Setting Himself on Fire, 'Suffered Without Medical Care'', *ABC News* (online), 2 May 2016 <<http://www.abc.net.au/news/2016-05-02/omid-masoumali-without-proper-medical-care-for-hours,-says-wife/7374884>>.

27. See Behrouz Boochani, 'Manus Island's Appalling Health Care Record', *The Saturday Paper* (online), 16 April 2016 <<https://www.thesaturdaypaper.com.au/news/politics/2016/04/16/manus-islands-appalling-health-care-record/14607288003132>>.

28. Australian Association of Social Workers, 'Code of Ethics' (Paper presented at the Australian Association of Social Workers' Annual General Meeting, Brisbane, 12 November 2010).

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social workers were among people of courage who anonymously contributed to a group statement in 2013 to draw public opinion to the plight of asylum seekers on Nauru. The workers told of watching helplessly as those who are mandatorily detained inflicted self-harm, and of trying to 'motivate the hundreds of men on hunger strike to eat again'.²⁹ The 2016 film *Chasing Asylum*³⁰ features interviews with former and current social welfare professionals from the Nauru and Manus Island detention sites – inexperienced, unprepared and traumatised by their own powerlessness.

Health professionals have broken codes of silence. Psychologist Paul Stevenson made fourteen 'deployments' to Nauru and Manus Island, concluding that the Australian government is deliberately inflicting upon people the worst trauma he has ever seen.³¹ His examples documented in *The Guardian* include six unaccompanied boys attempting mass suicide, an asylum seeker opening his stomach and a three-year old boy molested by a guard. And then there are medical practitioners who have not only refused to release from hospital a child destined for return to detention, but also stood together to demand the release of all children from detention, citing severe physical, mental, emotional and social concerns.³² Doctors have continually spoken out, for as Karen Zwi and Nicholas Talley state: '[f]ew issues have united the health profession as strongly as the dissatisfaction with our country's response to people fleeing persecution'.³³ For John-Paul Sanggaran, the ethical course of action is for medical practitioners to boycott working in asylum seeker detention. He states:

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29. Salvation Army Workers, 'Nauru Staff Condemn Cruel Conditions', *Indymedia* (online), 26 July 2013 <<http://indymedia.org.au/2013/07/26/nauru-staff-condemn-cruel-conditions.html>>.

30. *Chasing Asylum* (Directed by Eva Orner, 2016).

31. Paul Stevenson on Australia's Immigration Detention Regime: 'Every Day is Demoralising' (Edited by Josh Wall, Ben Doherty and David Marr, *The Guardian*, 2016) 2:19 <<https://www.theguardian.com/australia-news/video/2016/jun/20/paul-stevenson-on-australias-detention-regime-every-day-is-demoralising-video>>.

32. Patrick Hatch, Judith Ireland and Chloe Booker, 'Royal Children's Hospital Doctors Refuse to Return Children to Detention', *The Age* (online), 11 October 2015 <<http://www.theage.com.au/victoria/royal-childrens-hospital-doctors-refuse-to-return-children-to-detention-20151010-gk63xm.html>>.

33. Karen Zwi and Nicholas Talley, 'Death in Offshore Detention: Predictable and Preventable', *The Conversation* (online), 26 April 2016 <<https://theconversation.com/death-in-offshore-detention-predictable-and-preventable-58398>>.

Right now we all risk being bystanders. As doctors, the thought of being a bystander in this situation should be appalling. For us to be serious in this matter we must take effective action. The only course left to us is to refuse to participate.³⁴

Offshore detention sites have employed an array of professional bodies, all of which are bound by professional ethics and practice norms. Not only have ethical codes and norms been thwarted by confidentiality agreements, but also through punitive legislative provisions. In 2015, the *Border Force Act*³⁵ made it a crime punishable by two years imprisonment for anyone who engages in work for the Department of Immigration to disclose information obtained by them in the course of their work.³⁶ Lawyers Greg Barns and George Newhouse suggest that this turns the Immigration Department into a secret security organisation with police powers.³⁷ Although this provision arguably terrifies people of conscience from speaking out publicly when they bear witness to abuses, others have defied the provisions as shown above.

V BETRAYING HUMAN RIGHTS

As posited by Amy Nethery and Rosa Holman, ‘there is substantial and incontrovertible evidence that the human rights outcomes of Australia’s offshore detention centres are devastating’.³⁸ Those documented consequences include severe mental health issues, loss of childhood, lack of capacity for control over one’s life and the compounding of trauma arising from flight and journey. The questions that these

34. John-Paul Sanggaran, ‘Australian Doctors Should Boycott Working in Detention Centres’, *The Age* (online), 19 February 2016 <<http://www.smh.com.au/comment/health-care-workers-want-more-than-strong-words-about-asylumseeker-treatment-20160218-gmx9ku.html>>.
35. *Australian Border Force Act 2015* (Cth).
36. Ibid s 42; Michael Bradley, ‘Border Force Act: Why Do We Need These Laws’, *ABC News: The Drum* (online), 16 July 2015 <<http://www.abc.net.au/news/2015-07-16/bradley-border-force-act:-why-do-we-need-these-laws/6623376>>.
37. Greg Barns and George Newhouse, ‘Border Force Act: Detention Secrecy Just Got Worse’, *The Drum* (online), 28 May 2015 <<http://www.abc.net.au/news/2015-05-28/barns-newhouse-detention-centre-secrecy-just-got-even-worse/6501086>>.
38. Amy Nethery and Rosa Holman, ‘Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres’ (2016) 20 *The International Journal of Human Rights* 1018, 1032.

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conditions confront extend beyond prescribed international conventions to morality and collusion. A range of agencies and individuals collaborate in inflicting harm, including those professing to espouse humanitarian aims, such as participating NGOs and their employees.

Australia portrays itself as a human rights-respecting nation. It argues that it is one of the most generous refugee hosting nations in the world. Reality rebuts this claim.³⁹ According to the United Nations High Commissioner for Refugees, the most generous nations in the world include Turkey, Pakistan, Lebanon, Iran and Jordan.⁴⁰ As a regular visitor to Iran, I am overwhelmed by how it hosts around 3 million Afghans⁴¹ without the hysteria that is generated by a relatively small number of asylum seekers in Australia.

VI WAYS FORWARD

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Whistleblowing is a discredited endeavour but we can turn this around to make it heroic. We can express outrage at what is being done in our name. Stéphane Hessel's quote at the beginning of this article is a call to action by people of conscience. We can take inspiration from the outspoken, particularly those who are prepared to defy conditions imposed upon them in order to place morality above immoral politics.

Stopping the catastrophe of human harm is in human hands. To achieve this we first need strong counter-narratives against current assertions about asylum seekers, in order to challenge policies that reinforce such assertions. From this, direct challenges can be advanced, particularly by those who have witnessed human wrongs and are prepared to take risks for the sake of humanity.

39. Geraldine Chua, 'FactCheck: Does Australia Take More Refugees Per Capita through the UNHCR than Any Other Country?', *International Business Times* (online), 9 September 2015 <<http://theconversation.com/factcheck-does-australia-take-more-refugees-per-capita-through-the-unhcr-than-any-other-country-47151>>.

40. June Samo, '10 Countries That Accept the Most Refugees', *Borgen Magazine* (online), 22 January 2016 <<http://www.borgenmagazine.com/10-countries-that-accept-refugees/>>.

41. Laura Bisailon, Ehsan Shamsi Gooshki and Linda Briskman, 'Medico-Legal Borders and the Shaping of Health Services for Afghans in Iran: Physical, Social, Bureaucratic, and Public Health Conditions of Care' (2016) 2 *International Journal of Migration and Border Studies* 40, 42.

