The Beginning of the End of Double-Offshoring? The Panama Papers, Asylum in Australia, and the PNG Supreme Court

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This has been quite a month for Australia's Department of Immigration and Border Protection, which has long relied on both private companies and other countries in managing its asylum system. First, among the hundreds of thousands of companies implicated in the recently released 'Panama Papers' is Wilson Security, one of those contracted to provide Australian offshore immigration detention (via the Australian company Transfield Services, which is also known as Broadspectrum). And then on 26 April, the Supreme Court of Papua New Guinea, one of the hosts of Australia's offshore asylum facilities, ruled that the practice of relocating and detaining people from Australia to PNG is unconstitutional and illegal.

AUSTRALIAN PROTEST MARCH, DISPLAYING A BANNER BY A PNG PRIEST (CREDIT: SHUTTERSTOCK)

In Australia, such 'double-offshoring'—that is, the offshoring of persons and the offshoring of the profits associated with their detention—arguably represents the culmination of a systematic undermining of hard-won human rights and humanitarian frameworks both domestically and internationally. This blog post explores the shared logic behind the offshoring of human detention and the offshoring of the companies and the profits it generates, and asks what this says about how we understand states' use of power against foreigners and what the stance of PNG's Supreme Court means in this light.

Although Australia is the focus here, its practices are part of a much larger trend. As S.E. Smith wrote in February 2016: 'There are dozens of Naurus out there' (Nauru also hosts an Australian immigration detention facility) and 'this is the price paid for tolerating

and in some cases fostering abusive rhetoric about refugees and undocumented immigrants.' Indeed, as Ruben Andersson has written, the privatising and outsourcing of migration management is raising particular concerns in the European context—an issue that Michael Flynn and Cecilia Cannon presented as a global issue back in 2009.

Australia's offshore immigration detention regime is notorious, receiving, for example, criticism from the UN Human Rights Council in 2015. In 2016 alone, Australian immigration detention has been hit by successive scandals, from 'epidemic levels' of self-harm among detainees reported in January, to suicide risks reported in March. February saw the widely publicised case of infant Asha, whose doctors, treating her in Brisbane for severe burns she sustained in Nauru, refused to discharge her back to the island at the same time as popular street protests took place against other removals. And last week another Nauru detainee is being treated in Australia after self-immolation on the island.

There are reports of mice, rats, and cockroaches, of outbreaks of dengue fever, and even of torture. Australia is repeatedly criticised for holding unaccompanied children and families, even pregnant women, unnecessarily and in unacceptable conditions. Despite such criticism, a 2009 Inquiry re-asserted Australia's commitment to privatised immigration detention and in 2014, controversy specifically about Serco's operations on Christmas Island—an Australian Territory—didn't stop its contract being renewed for five years.

The country has led the world in privatising immigration detention, so that according to the Global Detention Project, pretty much all of its immigration detention today occurs in privately run facilities, including those offshore. The conditions in Australian immigration detention came to the attention of the global media when in 2014 detainee riots in the then G4S-run Manus Island detention facility in PNG led to death and injuries. And tearful former guards on the investigative film, 'The Manus Solution,' urged that something needed to change. While the contract for Manus Island was transferred to Transfield Services, the underlying logic of the system remained and in December 2015 riots in the Serco-run Christmas Island detention centre again lead to death and injury.

Offshore facilities are located in Manus Island (Papua New Guinea), and Nauru, and Australia supports Indonesia's immigration infrastructure, including detention (see HRW report). This configuration raises concerns about more than conditions. As one important 2013 book demonstrates, offshoring also has a major impact on individuals' access to refugee determination and on the way in which individual noncitizens are able to relate to the Australian state. This is exacerbated by the privatisation of such facilities.

Currently, both the Manus Island and the Nauru Regional Processing Centres are run by

Transfield Services (aka Braodspectrum, subcontracted by Wilson Security, one of the companies linked to the now notorious Hong Kong Kwok brothers). Transfield Services, as well as Serco and G4S (which also run onshore detention facilities) appeared among the 579 major corporations that paid no Australian income tax in the 2013-14 financial year and the Sydney Morning Herald has been asking questions about Serco's financial arrangements for a while. (Ironically, Serco also mentions a previous contract to provide services to the Australian Taxation Office.) The issue returned to the spotlight this month as it was made public that Wilson Security has been associated with a holding company, arranged by Mossack Fonseca, in the British Virgin Islands.

At first glance, this indicates a spirit of non-compliance with Australian law in the activities of the company concerned. It also demonstrates an intention not only to benefit from the publicly funded detention of persons but also to do so without contributing to the Australian government by paying corporate tax. And the offshoring of irregular immigrants, including asylum seekers, follows a similar logic to that of the profits of those companies contracted to detain them. The former avoids Australia's own domestic humanitarian commitments and international obligations as well as public scrutiny. The latter circumvents Australian laws relating to businesses (including payment of taxes) and obscures its activities further.

When taken together, this multi-layered approach to offshoring becomes significantly more troubling. Elsewhere, I've argued with others that relocated privatised immigration control creates pockets of 'hidden coercion.' And Bart Denaro, writing for Open Democracy, has described the double-offshoring of Australian immigration detention as 'a noxious mix of secrecy, bipartisanship, responsibility dodging and toothless international law that is keeping these centres open and generating mega-profits.'

(CREDIT: SHUTTERSTOCK)

But there is more to this. Double offshoring immigration detention isn't only creating a 'hell' for those detained and making money for everyone else involved. Immigration detention is part of the infrastructure that delineates the Australian state. It constructs some people within the borders as physical outsiders, and when it takes place offshore, it keeps those persons even further from the state. Delegating powers to a private entity, and allowing companies to further obscure their own activities offshore, not only further relocates the use of the force itself from the state, but also weakens the state's power over the way force is used in its name.

How, then, are we to understand the recent decision of the Papua New Guinea Supreme Court? As noted above, on 26 April 2016 the PNG Supreme Court ruled unanimously that the Manus Island detention centre is unconstitutional and illegal. This decision primarily referred to bringing people to the island and keeping them there against their

will, but also addressed conditions in centre and considered some points of law.

The judgement called upon the Australian and PNG governments to *'take all steps necessary to cease and prevent the continued and unconstitutional and illegal detention of asylum seekers or transferees'* at Manus Island. Taken in tandem with the outing of Transfield Services' possible relationship with the Kwok brothers, how will this affect the role of double-offshoring in Australian immigration detention?

It seems unlikely that Australia will be closing down all of its offshore and privately-run detention centres any time soon—and not only because of Peter Dutton's statement from the day of the judgement to that effect. Offshoring of immigration detention is a much more ingrained practice than one overseas judgement can undo. And competence for immigration detention in Australia sits in the private sector. However, perhaps it helps to shake the illusion of state impunity when detention is doubly offshored. The PNG decision also had immediate market effects. The Transfield Services share price took an immediate hit after the PNG decision and by 28 April, the Directors were advising shareholders to sell shares to the company's principal rival, Ferrovial.

These recent events make an important statement. They show that conditions even in doubly offshored immigration detention can be contested. This provides a good moment to revisit the mechanisms in place to protect the individuals who are offshored, and to rethink how a state's use of force in immigration control is delegated.

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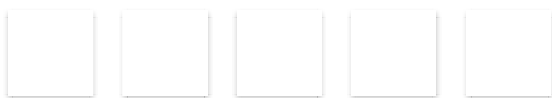

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