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Information and Evidence Unit
The Office of Prosecutor, ICC
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Email: otp.informationdesk@icc-cpi.int

Dated: 5th Sep 2021

Dear Prosecutor

RE: OTP-CR-220/17 Detention Slavery 7.1(c) with Torture 7.1(f) AUSTRALIA.
Intention to submit additional information in accordance with article 15(6) of the Statute and rule 49(2) of the Rules of Procedure and Evidence

I thank you for your reply letter dated 12 February 2020, explaining about the strict jurisdictional mandates and the complementarity roles that the ICC is required to operate. You may be recalled that there were several communications from numerous people and organisations that your office have received, especially after 2013, in regards to Australia's offshore processing centres. This author himself had put forward the observational submissions on 30-Jun-2017 and 15-Apr-2018 pertaining the ICC subject matter *ratione materiae* of Article 7.1(c). This letter is informing your office that I intend to make further submission with newly acquired evidence and related information.

1. To recapitulate the developments that have taken place since my initial submission on 30-Jun-2017; Firstly, this author has remained seized of the subject matter in concern. I remained an independent private citizen throughout and not being affiliated with any political grouping nor non-governmental organisations. In the mean time, I have taken time to collect relevant information that were being imparted voluntarily to the public by various journalists, independent investigators, whistle blowers and, even, asylum-seekers themselves. These information were further analysed, summarized and then put forward, as the way I see fit, within the perspective of subject matter concerned on this dedicated independent website, "Australians for ICC Witness (www.aus4iccwitness.org) Est. December 2017", that is organised, administered and solely funded by this author.

2. In line with the thinking of refugee supporting community in Australia, the concerns for the welfare and freedom objectives of these offshore asylum-seekers have been most important to this author, in addition to the matters of justice. Over the years, therefore, I have also sought to communicate with various entities and international organisations as follows:

On 17-Nov-2017:

> *I have written to the Director of Australian Federal Police, informing the possibility of the incumbent Liberal/National Coalition Government may be committing the Crime Aganist Humanity of Enslavement at the offshore asylum-processing centres;*

On 12-Dec-2017:

I have written to Dr. Peter Maurer, President of ICRC, requesting intervention by his organisation, in concerned with deteriorating humanitarian situation for asylum-seekers on Manus Island in particular;

On 18-Mar-2019 and 11-Sep-2018:

I have written to H.E. Baron Waqa, President of Republic of Nauru, requesting his government to withdraw from the Memorandum of Understanding with Government of Australia in regards to offshore asylum processings, noting that the latter government may be commiting Crime Against Humanity of Enslavement;

On 14-Aug-2018:

I have written to UN Special Rapportuer on Slavery for her attention in concerning with the situation in offshore processing centre on Republic of Nauru, following the death of asylum-seeker where authorities had failed to provide a respectful burial, and the deceased body had been reportedly stored in a refrigerator for more than a month and kept in a shipping container;

Also in Jun-July 2019, I have sought to write to all the members of House of Representatives from both the Government and Opposition Parties, informing that there has been the possibility of Commonwealth Government of Australia commissioning the Crime Against Humanity of Enslavement.

As of current, the cases of offshore asylum-seekers have still remained unresolved. Many of medically evacuated asylum-seekers to Australia have been released on "Bridging Visa E". It is of paramount concerns that these asylum-seekers, who are victims as well as being the eye witnesses to the Crime Against Humanity, are being accorded with such precarious legal status in Australia.

The Nov-2020 Breakthrough in ICC Law implementation

3. Australia practices the Common laws since colonization of its territories in 1788 and, with the commencement of Federal Constitution in 1901, it strictly observes the independence of judiciary. However, Australia is unique amongsts former British colonies not to have included human rights bills in its constitution. The 1948 Universal Declaration of Human Rights, the ICCPR for example, has been signed (1972) and ratified (1980) but never has adopted it into Australian domestic law. This has caused great confusion within the communities supporting Human Rights and other international treaties, such as the 1951 Refugee Convention.

Also, in regards to ICC Rome Statute of 1988, our community's understanding on the implementations of treaty have been poor (We are not lawyers!). And, there has not been any legal precedent in Australia that person(s) being prosecuted under the ICC Laws. However, with the Afghan War Crimes Report in November 2020, the Judge Brereton brought former SAS soldiers who committed War Crimes in Afghanistan to Australian Court under the "*extended geographical jurisdiction*" under the ICC laws. This certainly has created a breakthrough in the community's understanding about ICC laws implementations in Australia.

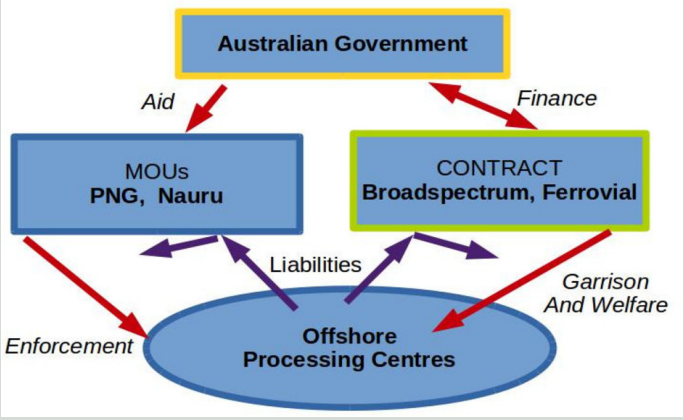
4. As for the slavery offences that have taken place in Australian jurisdictions, such crimes are being covered by the Div. 270 of Australian Criminal Code Act(1995, Cth). The alleged crimes of enslavememt that have taken place on Manus Island of Papua New Guinea and the Republic of Nauru can now be considered as the natural extension of Australian domestic court's jurisdiction under Div. 268 of Australian Criminal Code Act(1995, Cth). With this knowledge of "*extended jurisdiction*" in hand, from beginning of February 2021, I have re-examine the allegations for Commonwealth Government of Australia enslaving asylum-seekers on PNG and Nauru.

The Dilemma of Detailed Investigation

5. In previous report on 30-Jun-2017, the occurrence of slavery at offshore centre has been identified, without going into explicit details, by the approach akin to that of examining "*factors indicia*" of slavery. In that approach, governmental policy and political factors have been taken into account, then analysed and identified that certain group of asylum seekers are being specifically "*used*" to generate pecuniary gains for the detention companies. Here, the English word "*use*" is the same meaning and legal bearing as is in property ownership law "*right to use;*" where in connexion with slavery law text "*the exercise of [any or all] powers attaching to the right of ownership*". Therefore, that conduct has been identified as the manifestation of slavery.

Another manifestation of slavery which I am able to identified in 2017 report has been the case of Commonwealth Government disrupting resettlement offer that was made by the government of New Zealand. In this case, a group of asylum-seekers on Nauru attempting to apply resettlement offered by New Zealand, which was effectively obstructed by the Commonwealth. This conduct has been identified as Commonwealth Government exercising the "*right to security*" over this group of asylum-seekers. This legal phrase "*right to security*" has also been taken in direct analogy with property ownership law.

The Blueprint for Enslavement (pic. Jun-2017 report)



To my observation, this approach relying on "*factors indicia*" to identify slavery -- whilst obviously assisted in understanding the situation -- may not be the prefered method of investigation by the courts in Australia. The common law courts in Australia are likely to prefer a more orthodox method which in line with 1926 Slavery Convention that has been undertaken in the case of Queen vs. Tang (2008).

The approach that taken to establish slavery in the case Wei Tang, to my understanding, necessarily require to establish the perpetrator(s) means of control over the victim(s). In other words, it may require the proof for perpetrator(s) -- directly or indirectly -- exercising any or all powers attaching to the right of ownership over person(s). This has created a dilemma in choosing an appropriate area to focus on the investigation, especially as an ordinary citizen who has no means to extracting out requisite information, but only able to relied upon voluntarily provided information.

6. As has been shown in the "The Blueprint for Enslavement", the Commonwealth had indirectly exercised the powers of control over offshore asylum-seekers. Therefore, it is most likely to face difficulty for an ordinary citizen to focus on the conducts of detention companies, such as Broadspectrum and Ferrovial, which were contracted out by the government. The appropriate choice of focus for investigation, therefore, has been the medical evacuation and medical care of offshore asylum-seekers; an area in which we -- general public -- have reasonable suspicion that there were more direct government involvements in the operations.

Therefore, to start off with, I have focussed my investigation on the deaths of a numbers of offshore asylum seekers over the period of 2013 until 2018. This investigative work has been conducted entirely in public domain and still ongoing, where the findings on points of law are now being updated at this URL: (www.aus4iccwitness.org/node/92) "OFFSHORE DEATHS, DETENTION SLAVERY AND ICC LEGAL CONTEXTS".

7. There have been the deaths of 12 asylum-seekers in offshore processing centres since 2013. Of these, 3 persons had died on Australian soil during the medical evacuations. The Australian government have totally refused to investigate those who died on offshore processing centres. For those who died in Australia, all three in the State of Queensland, the Coroner of the State Government had the duty to investigate and make the report to public. The Queensland Coroner had completed one of the reports in 2018 for Iranian asylum-seeker Hamid Kehazaei who died on September 2014.

The Coronial inquest, in a sense, has never been an "investigation" as such, but a process for establishing the facts. In recent months, I begun to be concerned that making of these reports were being intentionally delayed, especially with the case of Faysal Ishak Ahmed who died on December 2016. Australian public, the refugee supporting community in particular, has been aware that Faysal Ahmed had died as a result of undeniable medical negligence, whereas any type of substantive inquiry would have laid bare before the public of the facts who indeed was responsible. I therefore had communicated to the State Government of Queensland expressing this as unjustifiable delay. I enclosed the related correspondent with Queensland authorities for your information.

It is obvious that there has been the unwillingness by government of Australia to conduct investigation onto these offshore deaths. The unjustifiable delays in Coronial inquest for Faysal Ahmed has also been inconsistent with the authorities having a genuine desire to establish the truth. Given the gravity of crime that may have committed by the government, I respectfully urge the prosecutor to look into invoking Article 17 of the Statute.

The Preliminary Findings

=> A mass scale enslavement have taken place on offshore asylum processing centres on Manus Island and Republic of Nauru. The duration for enslavement, *ratione temporis,* appears to have been between October 2013 and August 2018.

=> Australia's offshore asylum-processing scheme presents to us as a new form of slavery -- the "Detention Slavery" -- whereas the government has created the slaves in order to shored up the detention industry.

=> There have also been the crimes of torture. The torture has taken place when the Department of Immigration and Border Protection(DIBP) and Australian Border Force (ABF) refuse medical transfer and deny medical services to offshore asylum-seekers. In law, such conduct has been held as the practice of torture since the authorities are exahibiting "deliberate indifference to the serious medical needs of person(s) under their care". I've found reliable evidence that DIBP/ABF at the ministerial level have obstructed medical evacuations and medical care of asylum seekers.

=> Therefore, ICC Rome Statute subject matter jurisdictions, *ratione materiae,* would be in two distinct areas: The Enslavement Art. 7.1(c) and The Torture Art. 7.1(f). The ICC, however, would be urged not to elect 7.1(f) and look into cases as that of the torture only. The ICC must view the items of torture as the integral part of enslavement scheme 7.1(c).

=> Under offshore processing regime, there have been occurrences of distinct violation of the inalienable (fundamental) right of persons, i.e. asylum-seekers. There is evidence that these violations of inalienable rights were sanctioned by the Commonwealth Government of Australia.

In closing, I thank you for your kind attention to these matters.

Yours respectfully and sincerely,

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Copy to:
1. United Nations Organisations.
2. Australian Commonwealth Authorities.
3. Others.

Enclosure: Correspondence Re: Queensland State Premier